Learning Workshop on Women, Land and Housing Rights: Assessing the impacts of dispossession
27–29 August 2020
Harare, Zimbabwe
African Human Rights System
Organs and Institutions

Organization of African Unity (OAU), 1963
- Decolonization and self-determination
- State sovereignty and non-interference
- Eliminate colonization, neo-colonialism, apartheid and Zionism
- Struggle for human rights, dignity and identity
- Various human rights adopted (Banjul Charter; Protocol of African Court; Grand Bay (Mauritius) Declaration and Plan of Action, 1999)

African Union (AU), 2000
- Promote and protect human rights
- Democracy
- Governance
- Development
Organs and Institutions

Organization of African Unity (OAU), 1963/African Union (AU), 2000
  • Peace and Security Council (PSC), 2003
  • Economic, Social and Cultural Council (ECOSOCC), 2004
  • Pan-African Parliament (PAP), 2004
African Commission on Human and People’s Rights (ACHPR), 1986
New Partnership for Africa's Development (NEPAD), 2001
  • African Peer Review Mechanism (APRM), 2002
Core Instruments (binding obligations)

- OAU Refugee Convention, 1969
- African Youth Charter, 2006
Commitments & Obligations!
Right to Land in Core Instruments of the African Human Rights System


- “Freedom of conscience, the profession and free practice of religion shall be guaranteed” (Article 8): spiritual, cultural links to land
- “All peoples shall freely dispose of their wealth and natural resources” “individually or collectively” (Article 21)
- “All peoples shall have the right to their economic, social and cultural development” (Articles 21-22): land is an economic, social and cultural resource
Right to Land in Core Instruments of the African Human Rights System


- Separation, Divorce and Annulment of Marriage: “equitable sharing of the joint property” (Article 7)
- Right to Food Security: “adequate systems of supply... to ensure food security” (Article 15)
- Right to Adequate Housing: “equal access... whatever their marital status” (Article 16)
- Right to Sustainable Development: “access to and control over productive resources such as land and guarantee their right to property” (Article 19)
- Right to Inheritance: “A widow shall have... equitable share in the inheritance of the property of her husband”, “equitable shares [of] parents’ properties” (Article 21)

No specific supervisory body
African Commission may receive State reports and African Court will be able to apply Protocol
Right to Land in Core Instruments of the African Human Rights System

Southern Africa Development Community (SADC) Protocol on Gender and Development, 2008

- “equal legal status and capacity in civil and customary law, including... the right to acquire and hold rights in property, the equal right to inheritance and the right to secure credit” (Article 7)
- “where spouse separate, divorce, or have their marriage annulled... they shall, subject to the choice of any marriage regime or marriage contract, have equitable share of property acquired during their relationship” (Article 8)
- “a widow shall have the right to continue to live in the matrimonial house after her husband’s death” (Article 10)
- “a widow shall have the right to an equitable share in the inheritance of the property of her husband” (Article 10)

Zimbabwe ratified 2009
Right to Land in Core Instruments of the African Human Rights System

- Southern Africa Gender Protocol Alliance?
- Southern Africa Gender Protocol Barometer?

(SADC Gender Protocol cont’d)

- “end all discrimination against women and girls with regard to water rights and property such as land and tenure thereof” (Article 18)
- “ensure that women have equal access and rights to credit, capital, mortgages” (Article 18)
- “State parties shall provide appropriate remedies in their legislation” (Article 32)
- provisions for implementation, monitoring and evaluation (Article 35)

Amendment to the Protocol on Gender and Development, 2016

- Article 10 became “their husband/wife” “their spouses”
Right to Land in Core Instruments of the African Human Rights System

African Youth Charter, 2006 (Zim ratified 2009)
- “young women [shall] enjoy equal rights to own and to inherit property” (Article 9)
- “Every young person shall have the right to social, economic, political and cultural development” (Article 10)
- Poverty Eradication and Socio-economic Integration of Youth: “Provide grants of land to youth” (Article 14)

African Charter on Democracy, Elections and Governance, 2007-2012 (Zim not signed)
✓ “State Parties shall institutionalize good economic and corporate governance,” including through “Equitable allocation of the nation’s wealth and natural resources” (Article 33)
Land in Other Instruments (soft law, initiatives, “commitments”)

Framework and Guidelines on Land Policy in Africa, 2009:
- joint effort between the African Union Commission (AUC), the UN Economic Commission for Africa (ECA) and the African Development Bank (AfDB)
- strengthens women’s land rights and enhances tenure security

- “equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women” (para.55)
- “ensure that women (whatever their marital status)... are guaranteed equal access to land, adequate housing or shelter and to acceptable living conditions in a healthy environment...” (para.79)
- equal right to protection from forced eviction and compensation, security of tenure, and compensation for violation of housing rights (para.79)
Land in Other Instruments (soft law, initiatives, “commitments”)

African Union Declaration on Land Issues and Challenges in Africa, 2010

✓ “strengthen security of land tenure for women which require special attention.”
  Assembly/AU/Decl.1(XIII) Rev.1

African Land Policy Centre (ALPC, formerly Land Policy Initiative), 2006

✓ established by the African Union Commission (AUC), the Economic Commission for Africa (ECA) and the African Development Bank (AfDB)
✓ aims to enhance women’s secure access to land
Land in Other Instruments
(soft law, initiatives, “commitments”)

Nairobi Action Plan on Large Scale Land-Based Investments in Africa, 2011
“maximize opportunities for Africa’s farmers, with special attention to smallholders and minimize the potential negative impacts of large-scale land acquisitions, such as land dispossession and environmental degradation, in order to achieve an equitable and sustainable agricultural and economic transformation that will ensure food security and development.”

✓ Includes three main principles: Transparency, Nondiscrimination, Accountability
Agenda 2063: The Africa We Want

“The African woman will be fully empowered in all spheres, with equal social, political and economic rights, including the rights to own and inherit property... Rural women will have access to productive assets: land...” (para.50)

Land and housing: “access to affordable and decent housing... effective and territorial planning and land tenure, use and management systems.” (para.72)

Agriculture Development: “Develop and implement affirmative policies and advocacy to ensure women’s increased access to land and inputs, and ensure that at least 30% of agricultural financing are accessed by women.” (para.72)
African Human Rights Mechanisms
African Commission on Human and Peoples’ Rights (monitoring mechanism)

Functions:
- Determines if alleged human rights abuses violate the African Charter
- Makes recommendations to governments on promoting and protecting human rights and addressing past violations
- Organizes seminars and conferences
- Conducts country promotional visits
- Disseminates reports on various human rights issues
- Interprets the African Charter
- Investigates human rights violations through fact-finding missions
Civil society plays a pivotal role in the activities of the Commission:

- Alerts to violations of the African Charter
- Submits communications and complaints on behalf of victims
- Monitors governments’ obligations under the AC and other human rights treaties
- Attends the Commission’s public sessions
- Submits parallel reports
- Engages in advocacy to shape concluding observations
- Increases awareness of the commission’s activities
Zimbabwe ratified the ACHPR in 1986

- States should submit a Periodic Report to the Commission every two years
- no concluding observations available
- from previous concluding observations (2007):

  “Undertake a comprehensive review of the application of statutory and customary laws in the country with a view to ensure that adequate safeguards are in place to protect the human rights of women and girls from discriminatory practices and to ensure fair dispensation of justice” (para.29)
Special Mechanisms of the African Commission (monitoring procedures)

Working Groups and Committees:
- Economic, Social and Cultural Rights
- Death Penalty and Extra-judicial, Summary, or Arbitrary Killings in Africa
- Indigenous Populations / Communities in Africa
- Rights of Older Persons and People with Disabilities
- Extractive Industries, Environment, and Human Rights Violations
- Protection of the Rights of People Living with HIV and Those at Risk, Vulnerable to, and Affected by HIV
- Prevention of Torture in Africa
African Court of Justice and Human Rights, 2004–2008


**Function:** “complement the protective mandate of the African Commission on Human and Peoples’ Rights”

Who can submit cases before the court?

- The African Commission on Human and Peoples’ Rights
- Governments of countries that are complainants or respondents to a communication before the African Commission
- Governments that have an interest in a case
- African inter-governmental organizations
- Non-governmental organizations with observer status at the African Commission and ordinary individuals, if the government against which the case is brought has made a declaration giving the court jurisdiction over cases brought by individuals and non-governmental organizations. (*8 countries*: Burkina Faso, Malawi, Mali, Tanzania, Ghana, Cote d’Ivoire, Benin, Tunisia)

Zimbabwe Signed the protocol of the Court in 1998 but has yet to ratify
Future of the African Human Rights System (civil society engagement)

- African Commission?
- African Court?
- SADC??
- Role of local NGOs?