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FATHERS AND DAUGHTERS IN THE SCRAMBLE FOR WOMEN'S LAND RIGHTS The case of the Hehe and Sangu Peoples in South Western Tanzania

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SASA contributes •to the understanding of processes of man-induced environmental degradation in semi-arid regions of East Africa •to the development of agricultural resource management strategies which are sustainable in environmental, economic and social terms, and •to the establishment of a research methodology which can provide a framework for integration of natural and social science approaches to environmental degradation and sustainable agriculture.

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INTRODUCTION

The research on which the following is based is part of SASA sub-project 3, which is about sustainable management of natural resources through local institutions. Land rights and land tenure are some of the important issues, which we are dealing with in detail in connection with sub-project 3. The land question is a highly topical issue at present in Tanzania. The recommendations made by the Presidential Commission of Inquiry into Land Matters (URT/NAI 1994), the National Land Policy, which passed through parliament in June 1995, the Land Bill, which is expected to be discussed in the Tanzanian National Assembly in November this year (1998), have been subject to heated debates in various circles, both within and outside Tanzania.

The question of women's land rights has become an issue in the debate, although this, surprisingly enough, has not been the case until fairly recently (see f. example Manji, forthcoming). Considering the important role women play in agricultural production it is of utmost importance to study the nature of their access to the most essential natural resource for this production, namely land. Moreover, many studies have shown that the type of tenure land users have, is important for the question of sustainable land use. In this paper, therefore, I have chosen to focus on some of the preliminary results, which are emerging from our investigations of women's land rights in the area.

I should like to emphasize, however, that the following is only a very small part of a much larger whole, which I am working on at present, and which covers the question of land rights and land tenure, both in general and in relation to the specific situation existing in the case study villages of SASA.

By drawing on field data collected in villages in Iringa and Mbarali Districts, and discussing them in a historical perspective, I shall show firstly, that some essential rights for Hehe and Sangu women in relation to access in their own right to land and property, were provided for in the customary rules of these two peoples. This contradicts viewpoints expressed by some scholars about the situation in patrilineal communities in general in Tanzania (for example Rwebangira 1996).

Secondly, that quite a number of women in the area, in spite of conflicts often arising between them and their brothers concerning the issue, are exercising such land rights today.

Thirdly, that fathers are increasingly supporting their daughters claims to their share of property and clan land, and often try actively to prevent conflicts from arising.

I want to emphasize that although this paper intends to provide some documentation for the fact, that women do have rights to land in their own right, at least in some parts of Tanzania, I do not want to give the impression, that women and men have equal access to land in the area. This would be far from the truth, which will appear below and further illustrated in the work on SASA sub-project 3 findings in progress, which I have referred to above. But I find it important to contribute to the debate about women's land rights in Tanzania, and to show that it is not necessarily customary laws, which prevent women from exercising land rights, as some participants in the debate have argued. The problem of women's unequal access to land is not likely to be solved, I think, by for example abolishing customary laws and replacing them by 'modern' legislation. The effects for many village women may prove to be the opposite of the ones intended.

The sources on which this paper is based are: In-depth interviews with a large number of villagers in the five SASA villages, men as well as women of different ages, from different socio-economic groups, and persons from the group of village authorities, both the formal and so-called informal ones, written records, and literature.

One of the problems of tracing historically the customary rules of the Hehe and Sangu societies, is that the only written sources we have are mainly produced by explorers and colonial officers. Thus it is their way of interpreting the oral information they have received from local people, which is available in writing. So to rely on written sources alone, or interviews for that matter, would be very problematic. The only way to obtain a reasonably fair picture of the situation is by combining both of these sources of information.

HEHE AND SANGU WOMEN'S LAND RIGHTS IN A HISTORICAL PERSPECTIVE

Although the case study areas of SASA today are inhabited by many different ethnic groups, I shall in the following focus on the Hehe and Sangu, who are the indigenous groups to the areas in question. My previous research and our SASA research has confirmed that the question of being indigenous or not to an area is important in relation to the type of rights one is endowed with in accordance with customary rules. The extend to which an individual is able to exercise such rights is of course a different question, and will also be dealt with below.

When interviewing in the villages in the SASA case study area, and especially when interviewing Hehe and Sangu people, it came as a surprise for us that there seemed to be very different accounts of the rights of women and men respectively to land. The majority of the Hehe and Sangu women of all ages we interviewed, argued that by custom (according to *mila na desturi*) they had the right to inherit clanland from their fathers, although some of them also argued that it is only in principle they have such rights, because in practice it can be very difficult to exercise these rights.

The men, on the other hand, apart from most of the old men, said that women have no rights whatsoever in their own right to clan land. They only have use rights to their husband's land, and only if they are divorced or widowed are they entitled to get help from their relatives in their paternal village, and maybe borrow some of their father's or brothers' land. But they will never be able to call such land their property, and their children will not be allowed to inherit it. However, the majority of the oldest male respondents confirmed the version given by the women.

Such differences in the accounts forced us to investigate this issue in depth both in practice, but also to go back to written sources in order to try to trace which of the accounts would seem to be correct.

Access to land in Tanzania

It is important to be aware that access to land in Tanzania is regulated both in accordance with customary law and 'modern' law. (URT 1983, Fimbo 1992, James and Fimbo 1973, URT 1994).

The important difference between customary law and 'modern' legislation is that while 'modern' law is written down in court judgements and legislation, customary law is unwritten and therefore constantly subject to reinterpretation and changes. It is also important to point out that customary law may refer to at least four different things: 1. Indigenous customary laws of specific ethnic groups 2. Customary law in courts, that is customary law as it has been interpreted by the courts in court cases since the courts were established during the colonial era. 3. Customary law as interpreted by local so-called traditional authorities (groups of elders for example). And 4. Customary living law, that is the way customary law is applied by people in their everyday life.

As the majority of Hehe and Sangu people hold their land in accordance with customary rules, the focus will be on that in the following. It is important to mention though, that in accordance with 'modern' law rural people can also access land through purchase and through allocation by the authorities.

In relation to land allocation it was confirmed both by our male and female respondents, that women can in principle, like the men, be allocated land from the village authorities. However, it was generally agreed that if a woman is married it is very difficult for a her to apply for land, unless the husband gives his consent. Like men, women can in principle also buy land, but very few women in the area seem to have been able to do that.

Customary rules related to Hehe and Sangu women's land rights

To get an idea of the rules regulating access to land in the Hehe and Sangu communities it is necessary, I think, to look at the importance of land for the livelihoods of these peoples at various times in history.

The written sources as well as our interviews point to the fact that land for cultivation has played different roles at different times in history in the areas with which I am concerned here. The historical sources, as well as information from the elders we have interviewed seem to be in agreement on at least the following points in relation to the precolonial situation in the areas:

First, that land did not have any value as such, because there was plenty of it, and more than enough to satisfy the needs of the people. Secondly, that land did not constitute individual property, and land users were not attached to any specific pieces of land. Thirdly, that the role of livestock keeping was as important, if not more important, for the livelihoods of the Hehe and Sangu peoples as cultivation. Fourthly, that the major cultivation activities were undertaken by women in both communities.

I shall now describe more in detail the rules for the two ethnic groups respectively.

The first mentioning of a people referred to as Hehe in the literature is found in the writings of Richard Francis Burton who travelled through the area in 1857. He mentions that they "... have large flocks and herds ..." (Burton 1860, p. 240). This is confirmed by Joseph Thomson (1880) who travelled through what was then by these explorers referred to as Uhehe in 1879. Thomson reports about the Hehe that they "...depend to a great extent upon their cattle ...". (1880, p. 122). He refers to very large grazing areas and plenty of cattle (1881, vol. I p. 215), and emphasizes that: "As a purely pastoral race they depend almost entirely on their cattle for food, ..."

Severe reductions in the herds of the Hehe, at various points in history, due to Rhinderpest and other deceases, warfare etc. (Fülleborn 1906) has implied though that the extent to which the Hehe in practice have based their livelihoods on livestock keeping, has varied. But in any case the establishment of the German colonial authorities around the turn of the century has implied a gradual change in the importance of livestock keeping and cultivation respectively.

That cultivation took place in the precolonial Hehe community is confirmed by the sources, but it seems to have been of minor importance. Thus Thomson observes in Uhehe that "...very little ground is cultivated, producing two species of millet and Indian corn, and here and there sweet potatoes." (Thomson 1880, p. 122). He also mentions that there was very little grain to be got in Uhehe, and that cultivation is reduced to only "...small garden-like plots from which a poor crop of melons and ulezi is raised ..." (Thomson 1881, vol. I, p. 215).

It appears from Thomson that cultivation was almost exclusively done by the women. He mentions that "...the men never condescend to work in the field..." (1881, vol. I p. 235). This is confirmed by Nigmann (1908 p. 59), and as will appear later, this is important in relation to the question of what constitutes property at various times in history.

In the historical accounts of the **Sangu** it also appears clearly that the Sangu were basing their livelihood to a large extent on livestock. Burton refers to them (1860, vol. 2, p. 272) as a semi-pastoral tribe.

Bagshawe (1929) talks about the Sangu as mainly cattle owners and very rich in cattle, and not very enthusiastic about agriculture (1930).

Moffett (1958) sees the Sangu as primarily pastoralists (p. 240).

Although the majority of sources refer to the Sangu as very rich in cattle, agricultural production has been of some importance. Elton (1879) talks about irrigated gardens, and Heese gives in 1913 a detailed description of the gender division of labour, in relation to the cultivation activities, from which it appears that the women were the major producers of agricultural products.

Based on the fact that the **Hehe and Sangu** peoples are mainly seen as pastoralists, it is not surprising that land as a resource is not specifically dealt with in the early accounts of rules in relation to the regulation of property for men and women respectively. The most important type of property was then livestock.

The earliest account of indigenous **Hehe** rules concerning access to material resources, which I have come across, is Nigmann's description of Hehe inheritance rules (1908, p. 62-63). Land is not mentioned at all. Property is mainly looked at in terms of livestock, and according to Nigmann women had the right to inherit livestock in their own right from their fathers as well as from their brothers and sisters.

Hehe legal customs are also described in various files in TNA, and the following is based on Secretariat files No's 7794 and 7794/3, 1925. The notes seem to be translation into English of some notes originally written by Nigmann in German during the German colonial period and confirms his earlier account, but adds some more details. Even though the file from 1925 contains a fairly detailed description of the Hehe legal customs, it is interesting to note that there is no specific mentioning of land as property. Land is only talked about as the territory held by the chief for the benefit of his people. Property is talked about in general, and apart from livestock, only such property as farm implements (axes and especially hoes, which were valued very much and an important means of payment in relation to fines and bride wealth (p. 18)) are mentioned.

Agricultural produce is also seen as property, belonging to the persons producing them - and very much valued. This is indicated by the fact, that theft from fields is seen as a grave offence, and the punishment received for theft of one basket of fruit could be a fine consisting from 2-3 goats up to a head of cattle (p. 12). This is interesting in the light of the fact that the women were the major producers of crops, and of the highly valued locally brewed beer, produced from some of these crops. I shall return to this later.

The file describes the inheritance rules as follows (p. 20-21):

"The eldest grown-up son always inherits the major portion. However by law a minimum share was always provided for all other full, step and adopted children and full brothers and sisters of the deceased. All male and grown up heirs always received larger shares than the others. All female and minor heirs received less. ... In the event of their being no children, the legacy passes to the deceased's own brothers and sisters and grand children ..."

It is emphasised in the file that the reason why the eldest son should receive the major share is that he has the obligations to take over the main responsibility of caring for the old, the sick and small children.

There were also specific rules related to disinheritance (p. 20):

"Disinheritance: ... was the result of any unfilial action as for example maltreatment of one's parents, failing to make provisions for them and similar cases ... Partial disinheritance very often happened i. e. the person entitled to receive the chief share of the legacy was passed over to in favour of a younger person."

According to Brown (1932) there were, however, other ways for Hehe women to acquire property than through inheritance. According to him Hehe wives were given one third of the bride wealth (mafungu) paid for their daughters, and the father kept two thirds. Brown mentions (p. 147) that

"The mother keeps her share of the money, and the stock (cattle, sheep and goats) she puts in charge of her husband or brother, more often than not the latter."

Thus a woman, like a man, could acquire property both through inheritance from her father, mother, sisters and brothers, and through the bride wealth paid for her daughters.

Although the question of land rights is dealt with more directly in later accounts of Hehe customs, the way they are described is of a very general nature, and obviously access to sufficient land was not seen as a problem until much later in history.

This is reflected in an account of the Hehe land tenure system in 1938) TNA, Acc. No 157, file No. 26/42:

"The Hehe system of land tenure is not a complex one. The reason for this is that there is more than enough arable land in the tribe, and the individual can always find land in any area in which he wants to live ..."

"The individual receives his grant of land from the headman. The right to sufficient land for cultivation goes with the right of residence ... Ownership of land is thus really only a right of occupancy, valid as long as occupancy is effective; and the effectiveness is judged by residence and use in cultivation. Consequently land so possessed is not private property in the European sense of the term. It is private, in that only one person can use it; it is not private in that its possession is not absolute; possession is contingent only. It is neither heritable nor saleable. It is not heritable because, if a man's children are grown up, they will have lands of their own; and if they are young they will go to other guardians. A man's widows will be allowed to go on cultivating; but they will eventually remarry, go to their children or be inherited. It is not saleable, first because no one will buy what is free and, secondly, because ownership can only be transferred to the headman. Land is not, in itself, valuable; it is only occupation which makes it so."

Concerning the rights to the agricultural produce the files states (p. 4):

"While land is not transferable property, standing or growing crops are in a different category. They are the property of the person who cultivated them, subject to his social obligations. Crops are thus both saleable and heritable; but once harvested, they have no effect on the ownership of the land."

The files also stipulates the rights of individual family members to land:

"The rules stated are those regulating the occupation of land by the man, the head of the household. Within the family, there are rights in land. A man must subdivide his land so that his wives and his children have plot of their own. If he does not do this, in the case of the wives at least, he can be forced to so by the courts. Once he has granted land to a wife, it is hers as long as the marriage continues. If he takes a strip from her to give to another wife, she can claim ownership. Intra-family disputes over land ownership are not uncommon. Frequently, they are settled by the family council; but if a woman is dissatisfied with the verdict, she can always claim her rights in court. Within the family, land is usually allocated in strips, as few being allocated to the children and the husband retaining the remainder to cultivate himself."

According to the author of the notes in the file the system worked satisfactorily as long as there were no permanent improvements made to the land. He foresees though, that if such are made, which was clearly the policy of the colonial authorities, it would entail that new rules should be made. The history since then shows, I think, that the rules which have been made and written down implies a different concept of land as property than the one previously existing. But before I continue with this discussion I shall turn to the records about the Sangu.

According to Heese (1913, p. 137), which is one of the oldest published sources about the Sangu, it is stressed that women were able to hold property in their own right, and acquire additional property either by working for others, selling produce from the fields she was cultivating. He emphasises that man and wife manage their property independently of each other. According to Heese a woman's inherited property would go back to the blood relatives of the woman, while property she herself had acquired would be inherited by her children. Husband and wife did not have any communal property - both of them having property only together with own consanguineous relatives.

Heese also writes that daughters usually like the brothers get their share of their fathers property on his death. A woman also had the right to get a piece of land from her husband on marriage. Mumford also stresses that Sangu women, like the Hehe women, hold property of all and any kind in their own right, and that they take their share in inheritance of their father's property (Mumford 1934, p. 207).

The indigenous Sangu rules in relation to land rights are seen as similar to those of other ethnic groups in Mbeya District and therefore dealt with jointly in the file from 1938 mentioned above. The rules are described as follows:

"All land is held by the chief for the benefit of his people. The right of sufficient land for cultivation goes with the right to reside in a certain village and the villagers have definite areas on which it is their customary right to grow crops. These areas are not restricted to land actually under cultivation, but they include all those plots which, not being abandoned, have been cultivated by their owners in the past and which are now lying fallow in order that they can obtain a period of rest. These rights are known and these individual rights are protected and no one except the chief can interfere with them. Once a newcomer settles in a village, he automatically obtains the right to cultivate land in that area."

"... In Usangu ... the sanction of the village headman is necessary and this headman has to take steps to point out the land allotted to the individual ..." (p. 1)

This right to cultivate a particular piece of land is a right which on the death of the holder passes to his heir. If there is no heir or if the heir does not wish to exercise his right to claim property or if he declines to move into the village to which the land is appurtenant, then the land reverts once more to the village and can be acquired by anyone for agricultural purposes, once standing crops have been removed. This right to cultivate a particular piece of land can also be alienated, but only by way of a gift. It cannot be sold since the occupier has only the right to the use of the land under certain conditions, the actual ownership of the land being considered as being vested in the chief. (p. 2)

"... Crops are regarded as personal property, belonging to the person who plants them and the owner can deal with them in any way he desires. Thus he can dispose of them by way of gift or sale and on his death they can be inherited by his heir. If a man leaves a village before he has reaped his harvest, then although he loses all right to continue to cultivate his land, he may never the less return and reap his crops when they are ready."

According to tribal custom every man must provide his wife or wives with a shamba, but no provisions are made for the children. When a child becomes old enough he acquires land in the same way as any other adult." (p. 3)

The file does not contain more details about women's land rights. In relation to this I have obtained more information during interviews in 1991. While confirming the details in the above quotation, a group of elderly men and elderly women gave me the following further details:

Both sons and daughters inherit property from their fathers . If a man dies his wives will continue to cultivate the fields they have been given at marriage. The children - both girls and boys - will inherit the rest. If a girl gets married, her husband, if the couple settle in the home village of the girl, may be able to use her land together with her, but never be able to access her land, but she can continue to cultivate it and keep it. In case she is divorced and not living in her paternal village, she can return home and cultivate her land again. Daughters also inherit livestock. Thus a woman can be in possession of livestock when she gets married and her livestock remains her property.

The question is now what is the relevance of these customary rules thus described way back in history for the situation today?

As will appear below, the relevance is that the women, some of the young and middle aged men, and the majority of elderly men in the SASA case study areas, still stick to a very similar description. However, with the important difference that land is now included in the definition of what constitutes property today. Thus according to fathers and daughters, land is now part of a father's property to be inherited by all his heirs. This shows the flexibility of customary rules to adjust to changing circumstances.

The changing circumstances are well documented: Land has from being a plentiful resource become a scarce resource and a crucial type of property to ensure access to for the next generations.

Reasons why land has become a scarce resource are also well known and documented. To deal with this in detail is not possible here, and I shall just mention a few points.

Since the beginning of the colonial era there has been a continuous increased emphasis on cultivation activities in the areas concerned. It was in the interest of the colonial powers to make productive use of the land, and large areas were alienated and given to private companies, used for government purposes, made into conservation areas, forest reserves and national parks, and given to settlers.

At the same time local people became more and more involved in agriculture to produce a surplus to pay taxes, school fees etc. Concurrently there has been a massive increase in population in the areas in question: Both natural increase among the Sangu and Hehe themselves, and, due to land shortage in other areas, large numbers of immigrants have found their way to various parts of Ruaha River Basin, including to the villages we have worked in. Thus, the ethnic composition of the populations in the SASA villages is now complex. There is increased competition for land, both for cultivation and for pastures, and, therefore, naturally enough increased focus on land rights.

At the same time there has been a development through which women now, much more often than previously, find themselves in situations where they need to make use of their rights to inherit from their fathers: Many are divorced, are single mothers, either by choice (Odgaard 1997), or because they do not have contact with the fathers of their children. Pressure on land implies, moreover, that there are cases where widows, instead of continuing to cultivate in their husband's village, are chased away, and have to go back to their paternal village.

Thus many men in the SASA case study area complained that their sisters are increasingly coming home and trying to get access to the clan land, which, in the opinion of many of the men, they were only entitled to borrow as a help, but not to be given as property.

The question is whether those of the male respondents, who have argued that women do not have a right to inherit clan land from their fathers, have a static interpretation of customary law?

I think their interpretation is as dynamic as that of the other group of men and the women. They also see land as part of the property. However, they distinguish between land as property and other types of property, and stress that a father's landed property can only be inherited in the male line. There is no doubt, that in actual practice more sons than daughters manage to get their share of the fathers' land. However, we have numerous examples of daughters having inherited clanland from their fathers, and information which point to the fact that the tendency is increasing rather than the opposite. As this has to be brief, I have only picked the following few examples from Iringa Rural District for illustration:

Example no. 1:

The woman interviewed has not herself made use of her rights to inherit clan land from her father, but she and her husband (deceased) have made sure that their land has been divided between all

the children, both daughters and sons. She said that it is becoming more and more common, that sons in law now live in the home village of their wives and cultivate land which their wives have inherited from their fathers.

She argued that the children of her daughters were entitled to inherit land from their mothers.

Example no. 2:

The lady has inherited her share of her father's clanland. She is a widow, and after the death of her husband she went back to her paternal village to cultivate the land she had inherited from her father. She and her husband cultivated land together in Vitono (the home area of the husband), but her children have now inherited that land - both the daughters and the sons. When she dies all her children will inherit her lungulu in Ikuwala she maintains.

Example no. 3:

She has inherited land from her maternal grandfather. Her husband moved to her place and they have cultivated together on her land. Her husband is dead now, and her children, both male and female, will inherit the land after her - in fact they are already cultivating part of it those of them who live in the village. Others have moved away, but they are still entitled to the land if they return.

Example no. 4:

She is divorced, and after her divorce she returns to her paternal village to get her share of the 'lungulu' inherited from her father. However, one of her brothers (the youngest) refuses to let her have her share. The other brothers, who are very old and, as she puts it very weak, have not been able to convince the younger brother that she is entitled to her share, and have not been able to enforce that she gets it either, due to old age as referred to above. One of the old brothers is present, and agrees with the sister that she has the right to inherit. Until this time she has not got her share. She has been able in various ways to mobilise some money, and has bought a small piece of land from other relatives in the village.

These four examples are just a few of the many cases of women having inherited or being recognized as heirs to father's clan land, which we met in the SASA case study villages in Iringa District. In Usangu, where we have worked in one village in Rujewa division, the examples are even more numerous than in Iringa.

Although, as has appeared, the circumstances which have given rise to the need for the sisters to claim their rights, differ from case to case, these examples and many others from our villages, show that women have been able in practice to exercise what they perceive to be their customary rights to inherit clanland from their fathers.

It appeared during the interviews, both with the women and elderly male respondents, that fathers, if alive, actively support their daughters land claims if they are brought forward. Many fathers also said that they want to divide their land before their death between all the children, to avoid conflicts from arising between them. Some of the responding fathers said, that they had already distributed land to their children.

When asked why they wanted to make sure, that the daughters were given their share, the answer was that daughters were generally more caring towards their old parents than sons, many of whom, due to education and/or employment, were living away from their home areas.

When discussing the question about the size of the shares of a father's property sons and daughters respectively were entitled to, the answers differed a lot even among respondents who recognised the women's rights of inheritance.

Going back to the historical accounts, it appear here that in general the male heirs were entitled to the largest shares, and especially the eldest son. However, it also appears from the accounts, that the right to inherit is tied to obligations to care for parents, small children and sick members of the family. However, many respondents said that today the tendency is that a person can get away with acquiring the largest shares of a father's property without living up to obligations. This giving rise to many conflicts.

Thus a father's concern to be ensured of support during old age is reflected in the strategy he makes in relation to the distribution of his wealth among his children. As the daughters have proved to be important in relation to that, the fathers want to make sure that the daughters are ensured a livelihood. One can thus say, that they indirectly make use of rules of disinheritance for those of their children, who otherwise would be entitled to the largest shares.

This also shows, I think, the flexibility of customary rules.

CONCLUSION

It has often been argued that customary rules are static, traditional and a barrier against development. In relation to the land question, especially in relation to women's rights, customary rules have been looked at as discriminating against women.

I think that the above has shown the opposite. The extend to which women are able to exercise their customary rights is difficult to assess, but I think that our material shows that it is not uncommon in Iringa and Mbarali Districts. The importance of this for the question of sustainable agriculture is obvious. If one can say that women can exercise land rights in their own right, like the men, women can in principle also make decisions in relation to how the land should be used.

The findings are also important in relation to the discussions about land policy and the new Land Bill in Tanzania, in which the question about customary rules and women's land rights has received some attention recently. In this discussion there is a need for much more detailed information, than what seems to be available at the moment, about women's customary land rights in various parts of Tanzania, and the extend to which they are able in practice to exercise such rights.

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