

## **Diminished Access, Diverted Exclusion:**

### **Women and Land Tenure in Sub-Saharan Africa<sup>1</sup>**

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#### Abstract

Increasing commercialization, population growth and concurrent increases in land value have affected women's land rights in Africa. Most of the literature concentrates on how these changes have led to an erosion of women's rights. This paper examines some of the processes by which women's rights to land are diminishing. First, we examine cases where rights previously utilized have become less important; that is, the incidence of exercising rights has decreased. Second, we investigate how women's rights to land decrease as the public meanings underlying the social interpretation and enforcement of rights are manipulated. Third, we examine women's diminishing access to land when the actual rules of access change.

While this situation may sound grim, the paper also explores how women have responded to reductions in access to land. They have mounted both legal and customary challenges to inheritance laws, made use of anonymous land markets, organized formal cooperative groups to gain tenure rights, and manipulated customary rules using woman-to-woman marriages and mother-son partnerships. These actions have caused women to create new routes of access to land and in some cases new rights.

## 1. Introduction

There is a common story about women and land tenure status that transcends ethnic, cultural and national boundaries in sub-Saharan Africa. The story begins by placing women not as 'owners of land' but rather as 'owners of crops'.<sup>2</sup> Women generally have rights to cultivate land as well as rights to control income from the resulting crop production. Their rights for the most stop there; women rarely have rights to allocate or alienate land. Women's rights to use land are furthermore associated with their position toward men- as mothers, wives, sisters and daughters. More importantly, when land becomes scarce or rises in value, or when rights are formalized through titles or registration, these rights to use land are revealed to be secondary and tenuous. The right to receive turns out rarely to be as compelling as the right to give. Men use their position of dominance in society to 'expropriate' women's rights to land. Women, whose rights to farm a plot of land were guaranteed by marital or kinship status, lose these rights and face a diminished access to land that underlies and reinforces a greater economic and social insecurity. The literature on women's access to land is replete with examples of these often dramatic reductions in rights.<sup>3</sup>

This paper will explore a number of different facets to this story and its interpretations. First, we review some of the arguments and evidence regarding how women's tenuous access to land is diminishing.<sup>4</sup> The paper will concentrate on three processes. First, we examine cases where rights previously utilized have become less important; that is, the incidence of exercising rights has decreased. An example of declining incidence would be where women who have historically gained rights to land through marriage are no longer marrying and thus no longer exercise their rights to land (Hakansson 1986). Second, we investigate how women's rights to land decrease as the public meanings underlying the social interpretation and enforcement of rights are manipulated. Some of the ways that meanings are manipulated involve how

land is classified, whether a crop is a women's or a man's, and what different kinds of social status are enjoyed by particular women. The final process we wish to illuminate involves women's diminishing access to land when the actual rules of access change. This has frequently occurred when states or projects create new rights to land through titling or irrigation projects; in the process women lose rights to land through customary channels and are restricted in their abilities (financial and social) to gain land through the new formal channels. These three processes are by no means independent or discrete; they frequently operate simultaneously.

While these different processes result in the expropriation of women's land, in many cases women use similar strategies to counteract their exclusion from full rights. Women, like men, are responding to reduced access by manipulating meanings underlying rights, by changing the incidence of exercise of rights, and by using political spaces to forge new rights. They are diverting norms of exclusion, making them more 'friendly' to their interests. They are using norms that empower them in other domains to gain access to land. We examine how women contest and regain rights using the market, using kinship relationships, and using formal political and institutional structures.

The picture that we want to draw is one of dynamic processes; norms that govern rights to land are in flux. The paper can be read as a selective review of recent literature, and it contrasts with and complements other reviews of land tenure in sub-Saharan Africa: Downs and Reyna (1988) focus on land concentration among men; Bassett and Crummey (1993) explore the embeddedness of land tenure in local social systems; and Davison (1988a) concentrates on presenting a 'snapshot' picture of existing gendered rights. The literature that we highlight presents a processual view of changing rights. We have further tried to select research linked by geographical proximity. Unfortunately, we are unable to cover several important topics that will affect land holding both of women and men. The demographic implications (in terms of the gender ratio) of AIDS, for instance, on land tenure, are as yet unexplored in the published sources. Neither are the effects on land tenure of rural mobility caused by refugee movements and war.

These upheavals may be expected to change tenure systems indirectly- by changing land values- and directly- by introducing new tenure systems and new authorities.

## **2. Defining and Characterizing Rights and Incidence of Access to Land**

Shipton and Goheen (1992) and Bruce and Migot-Adholla (1994) provide useful introductions to characterizing rights in sub-Saharan Africa. They distinguish among rights to use land and rights to transfer land. Use rights may be exclusive, with the rights-holder able to exclude all other uses of the land, should she wish, or shared, with various rights-holders permitted to use land in specified ways and at specified times. Use rights are often coupled with responsibilities to carry out specific actions. A recent review by Rocheleau and Edmunds (1997) further notes that multiple and gendered rights to trees and tree products complicate discussions of land tenure. Finally, use rights may in some cases be transferred, though in many areas there are explicit prohibitions against sale of exclusive rights, or even cash rental of shared use rights.

Men and women acquire and exercise rights to obtain, maintain or lose access to land through multiple paths: as members of social groups or networks, through labor and investment, and through purchase (Shipton and Goheen 1992; Berry 1993). While there is tremendous variation across the continent, women's use rights have most often come through their ties to kin and husbands. Their rights are contingent on status. A senior wife may have stronger rights than a junior wife. A woman's rights may increase with the length of marriage or with more children (Guyer 1986). Security also depends on status. Rights may end with divorce, with widowhood, with failure to have sons. Sometimes rights improve with the length of marriage, or time of cultivation of a particular plot for an unmarried woman. Transfer rights are typically limited for women; they usually cannot designate an heir, sell land, or lend land to others. Different methods of inter-generational transfers may be prescribed and proscribed. Moore (1986), Glazier (1985) and Oboler (1985), among others, describe the 'house-property' complex of East Africa, where land

is transmitted from father to son *via* the mother(s) of the sons. Glazier (1985:111) notes: "Inheritance is thus patrilineal, although rights to property are passed on through women, who, paradoxically... cannot own productive property outright."

A woman's rights depend on her social position in both customary and statutory law. Customary law may enjoin a husband to provide his wife with land, a requirement absent from most statutes. Statutory law may grant a woman a share of the land of her husband upon his death. The co-existence of two authorities that may be appealed to and manipulated creates a complex system translating ascribed status labels to specific rights. Byfield (1996) offers an interesting historical perspective analysis of a very specific instantiation of dual authorities, where women in Abeokuta, Nigeria appealed to British railway commissioners for reinterpretations of their locally-ascribed social status. These are not two 'separate' systems, each acting independently with no cross-references (see van Donge 1993); in many instances the 'statutory' authority may belong to the same household as the 'customary' authority.

Land rights that are disputed depend on the ability to press claims before statutory and customary authorities, and particularly before the constituents of jural groups regulated by customary authorities. Moore and Vaughan (1994:211) note: "In any discussion about land, various interested parties will push claims and interpretations. The ability to make these claims or interpretations stick is a function of local structures of power, influence, and personality." As they suggest, the power of individual women to press claims comes from many sources. One is the subtle ability to manipulate and interpret notions of identity, that determine who has rights to what and where. Another source of power with which to press claims is the economic resources a woman or group of women control. Traditions of collective action through songs or public demonstrations may be a further source of power.

It is worth remembering that notions of male and female, husband and wife, father, mother and daughter are themselves mutable. Hodgson (1996) offers a case study of a young Maasai woman taking a father to court for attempting to force her to marry. The courtroom hearings hinged in part on the concept

of fatherhood, whether it was 'blood' or social, and in what ways was it social. Nsugbe (1974) and Vellenga (1983) point to the tenuous, varied, and ongoing nature of marriages. In some countries, national legislatures after independence debated and re-cast the 'cut-off' point for who was to be classified as 'wife'. Jefremovas (1991) notes that to retain their land and brick works, the Rwandan women interviewed had to follow cultural norms prescribing virtuous and virginal behavior.

In general we will have little to say about what accounts for the local and regional variations in power among women and between women and men. Our concern rather is to describe the structured processes through which that power seems to have been exercised over the past few decades. This does not preclude that in future women and men will invent novel structures for contesting access to resources. Finally, it is worth remembering that a social group may have several forms of access that guarantee extraordinary rights and security to women (female-to-female inheritance, for example) but land acquired in this manner may constitute only a tiny fraction of the area under cultivation (by women or by the entire social group). The permanent right, transmittable and exclusive, to a kitchen garden is certainly not a sufficient indicator of an impressive tenurial status for women. It is important therefore to focus on the incidence of access.

### **3. Women's Diminishing Access to Land**

In many countries and regions of sub-Saharan Africa, women's rights to land, and the incidence of exercising rights, have been eroding over time. Changing values of land (from new crops, improved transport, remittance income available for investment, land degradation, population growth, new techniques and inputs) are the proximate causes of this erosion. As land increases in value, individual men and corporate groups dominated by men, including state authorities, find it in their interest to renegotiate and challenge, before traditional authorities and statutory bodies, the direct and indirect ties that support women's rights to land. In a synthesis of literature on bridewealth and marriage, Tambiah (1989:416)

observed that, "...when 'permanent' cash crops like cocoa or tea have transformed the land on which they grow into patrimonial properties capable of being owned and transferred by owners by sale or inheritance, there too men have usually exercised the rights of ownership and excluded women (even where so-called matrilineal systems of kinship have prevailed)." There are numerous examples where the value of a crop considered to be female increases, and instead of women taking advantage of this change in relative bargaining power, men take advantage of it. Coquery-Vidrovitch (1994:109-10) discusses two. In Benin, men abandoned the production of yams in favor of oil palms and it became a women's crop. Women then realized the superiority of cassava, and began to replace yams with cassava; but later men again asserted control with the availability of new techniques for processing cassava. Women, she asserts, also were responsible for cocoa growing in Cameroon. But in the space of a decade cocoa also became "une affaire d'hommes."

This section will argue that the narrative of erosion of women's land rights comprises three distinct processes. First, sometimes changes in the value of land seem to be leading to changes in the incidence of exercise of rights. In particular, changes in the practice of marriage in Kenya and Rwanda have led to reductions in the incidence of women exercising rights to land from their husbands. Second, sometimes the tenure status of women is altered primarily through redefinitions of rights and social identity. We review studies of gender relations in the cocoa-farming areas of Ghana to explore the process of manipulation of kinship meanings that underlie rights to land. Third, sometimes state interventions create new rights for men and adversely affect women's access to land. We discuss how land titling and registration programs in East Africa have expropriated women's land rights, then investigate intended and unintended effects of irrigation projects on women.

*i. Excluding women: elopement and the incidence of exercise of rights*

The cases discussed in this section illustrate how the characterization of rights can change dramatically with the incidence of different kinds of rights (that themselves may remain relatively

unchanged). Hakansson (1986) describes how a whole category of landless women appeared in Gusii areas of Kenya as the institution of marriage changed. Until the 1960's it was very rare to find unmarried adult women. After this time, as land became scarce, men increasingly refused to pay bridewealth, and women started to 'elope'. Elopement meant that women entered into a prolonged bridewealth payment period. Until bridewealth was paid, the marriage has no legal status; women had no rights, and could be made to leave the homestead at any time. As Gusii men said, women could be "chased away" if they did not work hard. While in the 1960's only 26% of women eloped, in the 1980's Hakansson found 87% eloped. Elopements and irregular unions that did not involve bridewealth payment led to situations where wives were no longer necessarily absorbed into the patrilineal tenure system. These women could be expelled from a man's land easily. According to Hakansson (1986:10), "dissolution of informal unions are mostly initiated by men". Women's access to land was diminished. Women ended up as single mothers, and had no rights to land in their patrilineal or children's fathers holdings.

This has not been a phenomenon unique to Kenya. Increasing population density and reduced land availability in other areas have also made men hesitant to alienate lineage land. André and Platteau (1996:29) find, in their careful study of a Rwandan village, that "roughly two-third of the couples in N. have been married without *inkwano* [customary dowry payment], and the proportion is obviously much higher among young couples." The effect of this has been to reduce the bargaining power of women in the marriage, and even less with respect to their own lineage should they divorce. André and Platteau argue that a divorced woman would leave her sons behind with her ex-husband, knowing that her lineage would not give them land.

In general, when a woman's expectations of remaining married to a man are diminished she has less incentive to contest her husband's stinginess in granting her land. She has less incentive to contest his arbitrary reallocations of land. In short, less incentive to activate her claims to land via her husband. Her husband, then, is left with more control over land, no longer encumbered by the claims of a long-term wife.

If other men pursue similar strategies of monopolizing control over land, the strategies are self-reinforcing; the cost of securing the services of women will be lower since there are more single women willing to enter unions even without rights to land. Gradually the incidence of women obtaining land through their husbands declines, and the right itself fades away through disuse and changed norms.

*ii. Excluding women: contesting rights and manipulations of meanings underlying rights*

Another way in which land rights change is when the meanings underlying rights change, or when rights themselves are contested. Peters (1987) argues that people contest rights and claims by contesting meanings. Moore and Vaughan (1994) illustrate this in Zambia: gardens that were previously controlled by women were no longer under women's control because they had been reclassified as *ibala* gardens for the production of staples. Land where staples were grown belonged to men, so women lost control over their garden land. The authors (1994:210) argue that this strategy was common as people attempted to redefine ownership by manipulating the "relabeling and recategorization of fields, gardens, and other resources."

Similar manipulations have been evident, according to many writers, in the cocoa belt of West Africa. There, several competing classifications of land have been the center of struggles over rights. Land may be classified as belonging to the matrilineage, to a patrilineage, to the nuclear family (referred to as 'self-acquired' land controlled by the husband while he is alive and inherited by children and wife when he dies), or as 'female property' inherited by daughters of a woman. Not all of these classifications have been operative in every setting, but usually two or three are present. In Akan society, for example, both men and women could own property. A man's 'ideal' heir has been his sister's son, and he could designate him before death. A woman's 'movable' property, which apparently did not include land before cocoa, was generally inherited by her sisters, daughters, or granddaughters. After the introduction of cocoa, women gained land or farms through their husbands; this involved the agreement of the donor's matrikin and a recognition of the gift by ritual *aseda* payment of liquor or money. These inter-vivos gifts of land were seen as a reward for the labor that they had applied to their husband's farm.

The story Mikell (1984) tells of the erosion of these rights, for women, is familiar. Brong women were successful cocoa farmers during the the first half of the century, even though their farms were smaller than their male counterparts. But by the 1960s women had retreated from the market, and during the 1970s, when Mikell conducted her study, the only women with cocoa farms were elderly women who had obtained their farms during the earlier period. Her interpretation of this decline was an apparent defeat in a struggle over meanings (1984:209):

Land did not exist as a sex-linked good before 1900, and the stool was the custodian of it. When land did begin to generate produce and raw materials intended for international markets, males tended to acquire it and pass it on to males. The females who began to acquire and control farm land after 1920 considered it their property (thus female property) and desired to pass it on to daughters and sisters...they did not list "brother" as the desired inheritor and seldom listed "son". Yet it is clear that the transmission of cocoa farms to female offspring was not taking place.

Other writers have described similar defeats. Asare (1995) maintains that, "according to the Akan matrilineal inheritance norms, wives whose marital duties enjoined them to their husband's farming activities do not have any recognizable share of the farm on the death of the husband, a situation also applicable to the deceased's children. It is not uncommon for the matrilineal relatives of the deceased to evict, without compensation, wives and children from farms on which they have lived and labored all their lives."<sup>5</sup> Okali (1983:8) notes that women prefer to work for themselves, because there has been an increased tendency for "matrilineal heirs to eject their predecessors" widows and children from the enjoyment of properties that they helped build." Dei (1994:143) echoes this interpretation of women's bleak prospects upon widowhood, and similarly suggests that they responded by working their own farms:

In household relations of production, the married couple had no community of goods, at least by customary law. The economic cooperation between the spouses could result in an insecurity for women, particularly when widows and children are cut off from inheriting the husband's and father's property. Women preferred to work for themselves, cultivating their natal rights to *abusua* [matrilineage] land as an insurance against the future rather than to assist their husbands... In customary relations the distinction between family property and those self-acquired has always been tenuous.

Even when women were keeping rights to farms of their husbands and the farms transferred to them inter-vivos by their husbands, they were losing rights to designate heirs of their 'female property'. Mikell (1984) claims that a woman became unable to designate an inheritor of her choosing because the matrilineage would claim her estate. Women's farms increasingly went directly to the *abusua* and generally went to males. Women, Mikell (1984: 212) argues, became less likely to invest in cocoa farms because their land was not "treated as female property but is treated as *abusua* property transferred to men following the death of their sisters."<sup>6</sup>

Opong, et al. (1975) and Okali (1983) confirm this interpretation of the decline or erosion in the content of status of women's tenure.<sup>7</sup> Okali finds that in the early 1970s 55% of Akan 'citizen' women owning cocoa farms in the village of Akokoaso, and another 36% owning food farms. Even among 'stranger' women, about 15% owned their own farms. Most of these women were unmarried- either widowed, divorced, or not yet married. Yet there were significant numbers of married women with own farms, and some women whose husbands worked on their farms. This strong presence of women in the cocoa economy did not appear sustainable. Court cases were favoring the rights of men to pass their farms on to their sons, and disfavoring the rights of women to exercise independent rights over their own land.

Bukh's (1979) study of Ewe cocoa farmers confirms the same erosion of women's rights under cocoa in a patrilineal region. The patrilineage used to assure all women a parcel of land to cultivate, but women were increasingly having to ask permission from men to use their fallow land, or go about 'begging' land, as Bukh calls it, borrowing land from men that do not belong to her lineage. This situation became more complicated with cocoa production. Men no longer gave land to their daughters as they feared land would be alienated from their lineage; if the daughter planted tree crops, then her children, who might belong to their father's lineage and not their mother's, might claim the trees, and the land would then be passed on through the children's father's lineage. Similarly, a wife might no longer have been allowed to plant trees on her own farm, since upon her death her husband's patrilineage might have claimed the land.

This loss of rights occurred at the same time as men increasingly gained the right to designate an inheritor; men increasingly were successful in defining land as 'self-acquired' and outside the purview of the lineage while women increasingly found unsuccessful their arguments that land they farmed was 'female-property' . Men escaped the claims of the corporate body while women found themselves more incorporated.

*iii. Excluding women: creation of new rights through the state*

State involvement in the allocation of land through formal registration and titling has had a tremendous effect on women's access to land.<sup>8</sup> Women, whose access to land has historically been guaranteed through customary channels, have generally been denied access through formal titling and registration. In the titling process, express norms against women 'owning' land trumped their rights to the use of land through marriage or kin. Furthermore, men gained new kinds of rights: the right to go before the formal apparatus of the state and trump informal claims to land. Under formal titling women are dually condemned; land is no longer available through customary channels and women are severely restricted in their financial and social ability to gain land through government or market routes.

Kenya is undoubtedly the stellar example of the negative effects of land registration and titling. The ideology of exclusive rights over land, set forth by European settlers, was followed after independence as the government continued the policy of consolidating land under individual ownership. According to Davison (1988b:165) these policies gave "precedence to individual ownership invested in male heads of households and in turn marginalized the usufruct rights of women formerly guaranteed under lineage tenure." Davison argues that women in Kenya were cultivating smaller parcels than their mothers did. Shipton's (1988) study of land tenure reform among Luo speaking farmers in Nyanza province in western Kenya illustrates how seven years after a reform program had been completed only 7% of registered land parcels had women as joint or exclusive owners. He argues that "registration has effected a hardening on men's land rights into absolute legal ownership, to the exclusion of women and children" (1988:119).

A women's marital status is very important in determining how she will be affected by land registration. Widows are particularly vulnerable because land is generally registered in the husband's name and upon the death of their husband they are not considered heirs. Okeyo (1980:207) suggests that registration speeded "the developmental cycle of the house and renders the house unnecessary from a proprietary point of view... it isolates women from their sons, for whom, in the past, they would have been guardians of property until their marriage." Fleuret (1988) describes how Taita women in southwestern Kenya did not own land, but had well-developed use rights after marriage. Widows had particularly strong rights, as they could "sell, pawn, or lend parcels on behalf of minor heirs" (1988:140). After registration, however, their rights to act on the behalf of their guardians were limited, because the land was registered in only the husband's name. In central Kenya, Davison (1988b) relates how widows continued to farm land that was registered in their husband's name after his death. In most cases they were secure; their male children would eventually inherit land and continue to let their mothers farm land. With recent increases in land sales, however, women were questioning their security as it was not uncommon for sons to sell their land without their mothers' permission. Widows without male children were especially vulnerable as the land customarily goes to her husband's relatives.

Women's reduced access to land under state resettlement and irrigation projects further illustrate how tenuous women's rights are under certain systems. Women usually lose land under formal projects, even in cases that specifically target women. Bloch (1993) examines women's access to land on small-scale irrigation plots along the Senegal and Faleme rivers in eastern Senegal. In traditional agriculture women had their own fields from which they controlled the income. The project, funded by USAID and a French NGO was managed by SAED, a parastatal agency created to develop the Senegal River Basin area. There was tremendous variation in women's participation. Women in some villages were eligible for land equal to that of men, while women in other villages were eligible for a smaller portion or not eligible for land at all. In another irrigated perimeter in Senegal, Weigel (1982:320) notes that farmers reproduced the

pre-irrigation scheme, guaranteeing married women rights to individual plots through their husbands. In Zimbabwe, Jacobs (1991) observes how land reform and resettlement was biased against women, while Cheater (1990:194) notes that the chiefs and district councils refused to allow women's cooperatives to obtain land.

Several authors have studied the effect of irrigated rice cultivation on women's access to land in the Gambia (Brautigam 1992; Carney and Watts 1991; Dey 1981). In the Gambia, farmers recognized both common and individual land rights. Women had historically controlled rice fields that they cleared with their own labor. Their rights to this land were well defined: they controlled the production from this land, but more significantly they controlled the right to transfer land, which they generally did, to their daughters. Women's access to land changed when the irrigation projects intervened. Brautigam (1992) argues that because the rice land was cleared and developed by men, men could claim the land as their personal plots. Some of these plots were categorized as household property that came under the control of male household heads; inputs and mechanized services were allocated overwhelmingly to men. Carney (1988) describes how women's rights to irrigated rice land evolved in the Jahaly Pacharr irrigation project that was expressly aimed at women farmers who were ignored by other failed rice projects. About 13% of the irrigated rice land was registered in women's names, but "even though the land was registered in women's names, none of the pump-irrigated plots were considered their individual (*kamanyango*) fields. Irrigated plots throughout the project were designated by both men and women as *maruo*, or compound land" (ibid, p. 71). Women's access to land was reshaped by redefining the meanings of the categories by which their access has traditionally been allocated. The new project allocated land to women, but that did not mean that women had the power to control it.

Registration and state projects, of course, have not been entirely negative for women. Shipton (1988) maintains that some women, particularly widows, gained from land registration. They obtained titles in their own names that could be left to whomever they wished, and they were protected from their

husband's relatives. But, he argues, these cases were isolated; overall, the position of women in terms of rights to land was precarious.

Women have used statutory law to press their claims. Haugerud (1989) argues that it was not uncommon for a wife to prohibit the sale of a piece of land by her husband by placing a complaint with the land registrar's office, who might then prohibit any land sale. She notes that about 2.5% of the 1,117 titles registered in the Embu coffee and cotton areas had such restrictions placed on them. Wanjama, et al. (1995) report that even the Kenyan government finally recognized the impact of land registration on women's rights to land and in 1990 issued an administrative directive to ameliorate the discrimination against women's land acquisition, inheritance, and rights over land alienation. This directive limited the ability of men to sell land without the consent of their wives and children, allowing the first child as the representative of all the children and allowing female children to have a say in stopping land sales.

Amare (1994), however, describing the effects of land redistribution in Ethiopia, contends that the legal position of women had improved since land reform when the Ethiopian government assigned joint ownership of land to married couples. After divorce, a woman could claim up to half of the land they cultivated together. In practice, this was not always the case, but he contends that overall the practice of granting land to divorcees was widespread. An auxiliary effect of this is that women were much more secure in marriage. Before the revolution, rates of divorce were very high; upon divorce women could be left with only their movable property and land that they brought with them to the marriage and had few rights to jointly cultivated land. At the time of the study, however, most peasants perceived that divorce was much less common as "divorce could entail a disastrous division of land resources that would impoverish both resultant households" (ibid, 23). Despite a stronger position for married women, women's individual landholdings were somewhat negatively affected. Before the revolution, women had access to inherited land which they could return to in case of a marriage breakup, but this option had now apparently been removed.

The discussion above should not leave the impression that state projects, once completed, preclude further disputing of and appealing to customary, informal norms. In areas where land is registered through formal title, the modes of transmission and adjudication of complaints frequently remain in the domain of custom, invariably dominated by men. Shipton (1988), for example, describes how among the Luo, local adjudication committees were generally all male and unpaid, and expected food and drink to be provided. Women were effectively deterred from bringing up complaints to the committee because they could not afford the goat or sheep that would provide the meal and because interested women were kept from attending meetings as they were responsible for food preparation.

Mackenzie (1993:195-196) also contests the idea that in Kenya with the introduction of freehold tenure and land registration, customary rights to land have been discontinued, seeing “both customary law and statutory law as arenas of struggle to which both men and women have access.” In particular, Kikuyu men were attempting to gain control over women's land by invoking the notion of *mbari*, the basic unit of Kikuyu society that unites ideas of kinship and territory. By invoking *mbari* inheritance norms, families could maintain territorial integrity. Mackenzie cites an example of a woman who gained title to her deceased husband's farms, but then attempted to divide it among her daughters, even though she retained title. The daughters were forced off their mother's land by their deceased father's elder brother who believed it was his land by right of *mbari* customary inheritance. The uncle proceeded to divide the land amongst his sons.<sup>9</sup>

#### **4. Responding to Exclusion: Women Reshaping Access**

So far we have concentrated on how states, projects and custom combine to reduce women's access to land, either through a redefinition and relabeling of rights, or through changes in the costs and benefits of exercising rights. We have not illustrated how women use different strategies to ‘fight back’. These strategies take two broad forms: first, by operating through men's authority, utilizing relationships with

male kin, husbands, and sons, to gain access to resources; and second, by manipulating other routes of access and evading male authority, such as by invoking norms of women-to-women marriage and by forming associations with ties to the state. Below we have selected three of the many strategies women employ to illustrate the importance of these strategies in determining women's access to land.

*i. Obtaining secure tenure through the 'modern' land market*

Wealthier women have responded to tenure insecurity by purchasing land that is clearly in their name, that they can use and transfer as they wish. As Weiss (1993:31) puts it, with regard to gender and land in Tanzania, "over the on-going, contentious and fractious process of clan and family formation women's capacity to control farm land is severely restricted... as a consequence of these restrictions, women's practical attempts to control farm land dispose them to both buying and selling."

Probably the most abundant evidence of this trend comes from Ghana.<sup>10</sup> Dei (1994) has provided recent data from a Ghanaian market town showing that the incidence of purchase continues to be fairly high: "... data among the 450 sample households in 1989 show that for the 102 female-headed households represented, 83 (82 percent) were using lineage land, 11 (11 percent) outright purchase and 7... stool land." Another random survey he conducted found that 22 percent of 50 women obtained land by purchase.

Vellenga (1986) interviewed 100 women in two matrilineal Brong towns and 40 women in five patrilineal Ewe towns. Among the matrilineal Brong farmers, 43% of farms were purchased, whereas only 34% of patrilineal Ewe farmers purchased their farms. Concurrently, only 33% of matrilineal women received land from their matrilineage, whereas 58% of patrilineal women inherited land from their fathers. Vellenga speculates that the differences in purchases between the two groups of women may come from different expectations in the two lineage groups regarding inheritance and giving of cocoa farms. Brong matrilineal women may pursue a more diversified strategy of farm acquisition since they have lower expectations of gaining land through their matrilineal ties. The lack of data on area, and the non-random nature of the sample make it impossible to treat these as anything more than preliminary hypotheses, but

they do point the way to an understanding of the incentives and expectations that different systems may provide.

As noted earlier, titling has allowed other opportunities for women as in some cases women are able to buy and sell parcels of land and bequeath it to whom they wish (Fleuret 1988). Obbo (1980:44) writing about Uganda notes that the *mailo* system introduced by the British, “enabled women to inherit freehold land, and to rent or purchase land under customary tenure.” She suggests that most women in her study area owned plots of land, and quotes one woman’s reasons why they save in order to buy land:

Men fear that once you have bought a piece of land it is a sign that the wife is planning to leave them... I have some old friends [though] who have owned land ever since I can remember, but who have never left their husbands. It makes life easy for the woman to know that in the event of separation or divorce they can at least be assured of somewhere to go and where they could be self-supporting. In the past a woman would go and stay with her brother, but nowadays it is not easy to stay in people’s homes.

*ii. Using political associations and the state to assure tenure*

Dei (1994 :126-7) makes clear that women’s access to the land market is not necessarily free from conflict, and suggests that it took organized action on the part of women to clear paths of access. Women formed associations and purchased land collectively:

As part of the community coping strategies to the hardships of the early 1980s, the local chief [of Ayirebi town in southeastern Ghana] in 1983 released stool land to a group of women for rice farming...the successes of the group in later years brought pressure on the local leaders to end the traditional male bias for stool land... In 1988, the Zongo women utilized part of the accumulated projects from their five farming ventures to establish a 1.5 hectare cassava farm... the land was purchased from the local chief. In later years, the women have utilized their farm earnings to buy more lands for the cultivation and sale of additional cassava and maize farm plots.

That women’s rights to purchase land may be strengthened through concerted group action is a recurring theme in the literature. Davison (1988b:172) found that: "In Mutira [Kenya], several women's groups were working with local authorities to purchase land for members food cultivation."

Associations and organized political action towards 'modern government' can also be indirect means to assure tenure status within the customary framework. Schroeder (1993) and Newbury (1984), among others, discuss cases where women's groups, often organized with church, donor agency and non-governmental agency assistance, marched and protested to local state authorities. In the Gambian case discussed by Schroeder, they also represented themselves collectively to a donor agency, obtaining funding to permanently demarcate garden plots- over which they had only insecure customary tenure- with concrete and wire fencing.

In addition to local action, national political action and establishment of national precedent through the formal legal system have been effective, particularly in southern Africa. Papers collected by Stewart (1992) under the auspices of the Women and Law in Southern Africa Research Project appear to confirm this assessment. Mukonoweshuro (1992:73) finds an, "increasing tendency for property to be inherited by a widow who has borne children with the deceased..." Numerous examples are given of how statutory and customary authorities are increasingly influenced by progressive and enforceable national legislation.

In Zimbabwe, the 'traditional' land tenure that emerged from colonial era cooperation between male chiefs and elders and colonial officials had maintained women in secondary and eroding tenure status. Shona and Ndebele women received land through membership in patrilineages, according to their status as wives or as daughters. After the long struggle for liberation, however, the picture appears to have changed. Cheater (1982, 1990) shows that the model of traditional tenure in 'communal' and 'freehold' areas is belied by on-the-ground reality. In the model women have no direct rights, "only temporary usufruct within the lineage system through their husbands or male patrikin" (1990:191). In reality, Cheater (1982:84-5) argues, "women as affines would appear to be using their importance as farm workers to acquire... land in their own right." Her data from the freehold area of Msengezi shows that the number of women holding usufruct rights increased from 165 women in 1972 to 327 women in 1980. Additionally, Cheater argues that the rights of widows were considerably stronger than elsewhere. Though not recognized in either

customary or formal law, in practice a widow was usually guaranteed rights to manage her husband's land until she chose to relinquish control to the heirs.

Where Cheater focuses on the effects of women's increased value as farm workers, Fortmann and Nontokozi (1992:5) outline a contentious legal environment that demonstrates the importance of pro-female advocacy in Zimbabwe. Many argue that in traditional tenure widows had (ibid, 5), "no right to inherit and are therefore without even the theoretical protection provided to divorcees by the Matrimonial Causes Act." The Zimbabwe Supreme Court recently upheld a version of customary law that did not recognize the right of a widow to be appointed as heir to her deceased husband's intestate estate. But other legal actors have taken a different view: "Community courts have with increasing frequency appointed widows as the heir to their deceased husband's estate when he dies intestate." New national laws do guarantee that the daughter may inherit land, thus preventing the deceased husband's family from taking the land in cases where a widow has no sons. Another recent law allows a grace period of one year before the husband's customary heirs can acquire the property, which may give woman an opening to negotiate a settlement with the husband's relatives. A law permitting equal inheritance of property by daughters and sons was enacted, only to be reversed with the government "holding that a son would be preferred as heir over a daughter regardless of who was the elder."

Similar contradictions between customary and statutory laws regarding women's inheritance are seen across the border in Zambia. Statutory laws have been partial to women, but are often ignored in favor of customary laws that work against women's interests. When it comes to inheritance of property, the patrilineal and matrilineal societies of Zambia have privileged male agnatic ties over conjugal ties. Widows therefore have not been eligible to inherit property and have faced an onslaught of "property grabbing" by their husbands' relatives. Munalula and Mwenda (1995) report that recent statutory laws provide legal protection to widows, either by allowing their husbands to make wills declaring the nature of

his wives' inheritance, or through the Intestate Succession Act of 1989 that permits widows a 20 per cent share of her husbands property.

*iii. Manipulating customary institutions*

Women invoke custom in the face of challenges to their traditional rights of land use. In Kenya, for example, where land titling and registration have reduced women's usufruct rights without compensating for this loss by granting formal rights, women circumvent male authority and gain or maintain control over land through the institution of female husbands. The same seems to have been true in Nnobi society in Nigeria (Amadiume 1987). A childless widow or a widow without sons would take a wife and give her a part of her land as bridewealth to protect her access to her deceased husband's land. The woman-woman marriage that results will give the older 'female husband' an heir; according to Glazier (1985:116) the child of the young woman (fathered perhaps by an agnate of the older woman) would be considered to be "a descendant of [the]... fictitious son" the widow never had.

This provides options to widows with no sons who choose not to be inherited by a brother of her deceased husband, although women may use the 'right' to marry a brother of her deceased husband in the hopes of producing a son and keeping her property intact. In Nandi society, where women have not been forced to accept levirate arrangements, and few do so, female marriages have increased since land registration as women have taken wives in order to keep their husband's property (Oboler 1985, Hakansson 1986:16). Langley (1979:73) noted that, "The practice is common; I know of no area of Nandi which I visited without hearing of an example in the neighborhood." The women were "considered husband and wife, and the older woman becomes the social and legal father of any children her wife may bear" (Oboler 1985:129). There can be problems with this strategy as Mackenzie (1993) demonstrates with her case study of a female marriage that was fraught with conflict over the amount of land that the wife's children from a previous marriage would receive from her female husband.

Obbo (1976) illustrates another type of female marriage. Women in Uganda- not widows- who had accumulated wealth through their own activities and mobilizing kinship ties, used their wealth to provide bridewealth to enter into marriages with other women. The two examples she discusses- not exceptional, apparently- were of women who owned land, had already had children, and wished to create households of their own. Hakansson (1986:16) finds an increase in this arrangement in Gusii areas of Kenya.

Women may also use strategies to bolster their own eroded traditional rights to land by entering into partnerships with male kin. Bestemen (1995) illustrates how women entered into partnerships with their sons in Somalia to circumvent their husband's-father's authority, in a system where very high divorce rates and polygynous marriage has been critical in reducing women's already tenuous access to land. Married and single women had few avenues of access to land and very little control over their own labor. Widowed women had few rights of inheritance or use of land, even if they had sons. For example, a woman with underage son typically had no right to farm her deceased husband's property until the son was an adult and could allocate the land as he wished. Land would often lie fallow in the intermittent period, a time of great hardship for women and their children.

Women had gotten around these restrictions over their access to land by forming partnerships with their sons. Sons acquired land, which then mother and son worked jointly. All decisions were made jointly, with the mother responsible for all financial aspects. One woman said, "it's his land, but I'm the bank, so I keep all the money" (1995:205). These partnerships often occurred after the death of a husband on the deceased husband's land, but also with senior wives and their adult sons in a polygynous household. Women were the primary decision makers in these relationships; the proceeds from the farms were split equally, but it is quite clear that women did not and would not, through these partnerships, control the land on which these partnerships were formed.

Hay (1976:93-95) describes a mother-son partnership among the Luo of Kowe, and ascribes “experimentation and innovation in agriculture” to the security of property created by the knowledge that a woman’s sons would inherit the property she was partly responsible for managing. Indeed, it appears that a mother-son alliance (ibid., 101) was responsible for one woman acquiring considerable wealth and finally acceding to the normally male position of *Jagolpur* (“the one who begins cultivation”).

## 5. Conclusions

The position of women in sub-Saharan Africa vis-à-vis land is highly variable and contentious, but most women in Africa gain rights to land through their relationships with men, as wives or kin. In many societies women’s traditional rights appear to have eroded with changing relations and forms of production. With new technologies, rising land values and government and donor interventions, the trend is clear throughout the continent: women’s rights to use land, gained through husbands or kin, are exposed as secondary and diminishing. In response to these changing rights in and access to land, women have mounted both legal and customary challenges to inheritance laws, made use of anonymous land markets, organized formal cooperative groups to gain tenure rights, and manipulated customary rules using woman-to-woman marriages and mother-son partnerships. These actions have enabled women to create new routes of access to land and in some cases new rights.

Researchers tend to draw two implications from these narratives of expropriation of the secondary and tenuous land rights of women, and of their strategies for reasserting rights. One implication focuses on efficiency effects and the other on equity effects. For the major surveys of land tenure in sub-Saharan Africa (Bassett and Crummey (1993), Berry (1993), Downs and Reyna (1988), Bruce and Migot-Adholla (1994), Platteau (1996)), state interventions in the form of land registration and titling schemes across the continent failed to appreciate the chaos and confusion caused by uncompensated elimination of ‘secondary’ forms of tenure (of which ‘secondary’ rights of women are but one example). The schemes undermined

secure tenure status, and men and women increasingly spent scarce resources investing in social networks to maintain access. The bottom-line of this approach is that the state should be less involved in formalizing tenure relations, and local institutions should evolve undisturbed. For the gender-oriented and feminist literature on agricultural relations in sub-Saharan Africa, erosion of women's rights has been caused by increases in the value of land occurring with expansion of cash-cropping (Davison 1988). Failure of government to counteract the dwindling of rights has caused a worsening of the position of women. Recommendations lean towards more involvement: legal reform and donor-driven projects are but two examples of how the state can stem inequitable evolution of local institutions.

These sometimes contradictory and sometimes complementary interpretations have led to interesting contemporary 'official' actions. States that have abandoned any pretense of maintaining registries and adjudicating titles have taken instead to 'gender-targeting' tenure reforms and legal innovations. Special laws of intestate succession have been adopted in Kenya, Ghana, Zimbabwe and Zambia (Dei 1994; Himonga et al 1990; Munalula and Mwenda 1995; Wanjama et al 1995). Irrigation projects are attempting to mandate and manage intra-household negotiations over property (Brautigam 1992; Carney and Watts 1991; Dey 1981). Donors who have turned sour on the cost-benefit ratio of tenure reform willingly fund women's group forestry and gardening projects that indirectly but dramatically reshape local tenure relations (Leach 1992; Schroeder 1993). These piecemeal and incremental policy initiatives have in turn fed back into ongoing processes. Perhaps the most that can be said about these complex feedbacks, given the sparse evidence available, is that the general character of exclusion of women from owning land has been intensified, while the forms of exclusion and access have changed.

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## Notes

1. This paper is a considerably revised version of a paper entitled "Land Tenure Status of African Women", written as a background paper for the Project on Gender and Property Rights in Africa at the World Bank. Tara Vishwanath deserves thanks for supporting and encouraging us in this project. We would also like to recognize the detailed and constructive criticism of two anonymous referees.

2. See Goheen (1988), Harms (1974), Moore (1986), and Moore and Vaughan (1994); for an exception see Chilivumbo's (1971) discussion of land in a matrilineal area of Malawi where men are 'caretakers' while women are 'owners'.

3. Von Bülow (1992:531) is typical: "...male dominance did not become a prominent feature of Kipsigis ideology until some time during the colonial period as a result of increased competition over productive resources between men and women." Afonja (1986) gives some interesting details on regional variation of these processes in Nigeria. Coquery-Vidrovitch's (1994) sweeping survey tells the story well, and contains many important references. Lastarria-Cornhiel (1997) is another recent review.

4. Using the social category 'women' may in some cases obscure more important differences among social groups, such as between the rich and the poor, migrants and natives, whites and blacks, citizens and subjects, following Mamdani's (1996) useful distinction, and old and young. While women of these different groups do not always share identical experiences and social status, there is enough coherence to the social identity of 'women' in different social groups across the continent to warrant a general discussion, if only for purposes of setting out what processes are indeed common.

5. In Asare's (1995:106) study area in southern Ghana, "receipt of the farm as a gift from a husband accounted for 64% of female-owned farms, while 36% of female-owned farms were acquired through inheritance."

6. Elsewhere, Mikell (1989:125) states that in late 1960s, "the court was silent on the issue of whether female generated property belongs to the lineage and therefore to abusua-controlled positions, or to individual female heirs."

7. Not all researchers agree on the characterization of eroding rights for women. Quisumbing, et al. (1998) assert that inter-vivos gifts to women are increasingly important, and increasingly recognized by the community.

8. Arguments in favor of land titling in Africa have focused on several potential benefits. A titling program gives the title-holder a valuable asset; he or she can sell the title and benefit from the intertemporal gains from trade from holding an asset (Besley 1995). Owning an asset also gives land collateral value; farmers can use their land to borrow for investment or inputs. Farmers with a high degree of rights and security will make investments on their land, thus increasing the value of land and increasing productivity. Finally, security in tenure reduces costly effects of litigation which increases when land becomes more valuable. In much of Africa, however, land titling in practice has had the opposite effect of creating tenure insecurity and diminishing access. Platteau (1996:40) argues that, "In effect, if titling may reduce risk and transactions costs for some categories of people, it may simultaneously create new uncertainties for others categories which rely on customary or informal practices and rules to establish and safeguard their land claims." During the land registration process sub-groups "face a serious risk of being denied legal recognition of their customary rights to land" (ibid:40).

9. Hakansson (1988:119) also reports on a similar directive in the Gusii area of Kenya: "Before 1982, a husband could sell his land before his sons had reached maturity... without consulting his wife or his brothers, if the land was registered in his name. Formerly wives had no legal power to resist their husbands' sale of land. But in 1982, husbands' ability to sell land without wives' consent was curtailed when land boards controlling land sales were established in most parts of Kenya. Such boards comprise the District Officer, chiefs, ex-chiefs and councillors who review all land sales. They only allow a man to sell land with the consent of his wives and sons and then only if he retains two acres for himself and his family after the sale." Registration began in the 1960s, and at present all land has been surveyed and registered.

10. For some evidence from Burkina Faso see Kevane and Gray (1997). Hill (1963) is the classic study on land purchase in Ghana, showing how two kinds of (male) corporate groups entered into the land market. Men from patrilineal groups typically formed land-buying companies "for the sole and commercial purpose of buying land for cocoa-growing from a vendor chief. In their dealings with one another, the company members are untrammelled by considerations of kin, they attach great importance to the fair division of land, in accordance with the sum subscribed by each farmer" (ibid, 75). Certain matrilineal migrants organized their land-holdings quite differently, adopting what Hill calls a family land system: "The family group which buys the family land is nearly always readily distinguishable, in practice, from the company...such groups are small, are usually dominated by leaders or heads and consist...of relatives and affines only" (ibid, 75). According to Mikell (1989:101): "Women were not generally farm owners in the primarily patrilineal migrant 'companies' or the *abusua* [matrilineage] farms in the southern Gold Coast as described by Hill." The earliest female cocoa farm owners appear to have emerged in the 1950s and 1960s. For purchase of oil palm plantation land, see Gyasi (1994), and for cocoa in the Ivory Coast, see Hecht (1985).