



International Environmental  
Law Research Centre

# I WANT IT AND I WANT IT NOW

## WOMEN AND LAND IN AFRICA

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Published in: 2 *Perspectives* 6-9 (2013).

*This paper can be downloaded in PDF format from IELRC's website at*  
<http://www.ielrc.org/content/a1309.pdf>

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# I Want It and I Want It Now: Women and Land in Africa

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In Africa, as elsewhere, land rights have remained a bastion of male power and privilege. Since land is a fundamental resource for improving living conditions and economic empowerment, the lack of land rights for women undermines efforts to promote gender equity and equality within a patriarchal society. The minimal transformation of women's socio-economic position with regards to access and control of land is, in many cases, due to land reform programmes and related processes whose design or implementation is "gender neutral". In the worst cases, these legal and institutional processes threaten to even further entrench gender inequalities.

This article provides an overview of current strategies to reform access to property in general, and land ownership in particular, from a gendered perspective.

## Importance of Land

Land is a vital resource for rural and urban livelihoods in Africa. It is also a critical asset in the gross domestic product of African countries, most of whose economies depend on agriculture, wildlife tourism and mining. And land is also central to women's quest for rights: because of the gendered division of labour, women spend a lot of time working on the land and yet have limited rights of ownership, access and control. This exclusion denies women the social, economic and political autonomy that is vital for full membership in a given society, the exercise of functions relating to property, and the capacity to fulfil reciprocal obligations and responsibilities within the community. Land represents the vehicle through which women can move from the reproductive (private and non-work) realm to the productive (public and work) realm.<sup>1</sup>

Women's rights to land in Africa have been affected by a convergence of, on the one hand, government policies related to the current shift towards greater commercialisation and competition

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for land and, on the other hand, discriminatory customary law. Land is mainly controlled by male household heads, with the assumption that the rights are held in trust for all in the household.<sup>2</sup> Women are relegated to a subordinate position in accessing land predicated on husbands, fathers, uncles, brothers, and sometimes sons.

Access to land rights is also linked to violence against women, women's participation in the political arena, and women's voice in the domestic, local and national spheres. Women's rights to land are thus critical in the quest to create more egalitarian societies in Africa. Indeed, it has been demonstrated that granting rights to women contributes to the national and household imperatives of family welfare, food security, empowerment, economic efficiency and poverty alleviation.<sup>3</sup>

## Gender in Multiple Land Functions

Since land ownership indicates a person's identity, social standing and citizenship, the negation of women's rights to land has implications at the national, family and household level. Social standing is also influenced by gender, age and marital status, raising the need for holistic policy responses to transform the position of women in Africa.

The issue of land rights in African countries is complex because of the multiplicity of claims to land and land-based resources. Land policies and laws in Africa have to deal with a number of key issues, which include:



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- state sovereignty over land
- unequal distribution of land resources
- the plurality of property systems
- land tenure security
- sustainable management of the environment and natural resources
- protecting the commons
- competition between different land uses and users
- gender and generational biases in land relations
- HIV/AIDS, which has affected a sizeable part of the labour force in many African countries
- land management in conflict situations
- the place of the rights of women and youth within

- community and customary claims
- structuring land administration systems and institutions
- designing land policy implementation processes and programmes.

Gender issues cut across all of these. When women's land rights are addressed through policy and legal reforms, diverse contexts need to be considered, even as there are commonalities in the challenges and design of new land rights regimes.<sup>4</sup> Land itself has multiple meanings and functions that also have gendered implications (Table 1).

**Table 1. The Multiple Functions of Land Rights**

| FUNCTION                                | EXAMPLES  |
|---|---|
| Economic Functions                      | Productive activities (farming, livestock rearing)<br>Land sales and rentals<br>Benefits from land appreciation<br>Investment incentive effects     |
| Food security                           | Source of food and income<br>Buffer against sudden price increases  |
| Reduced vulnerability/ shock mitigation | Source of food and employment<br>Collateral for credit<br>Income from land sales and rentals  |
| Social functions                        | Social standing/ bargaining position within the household, community and nation<br>Membership in groups<br>Cultural identity<br>Religious functions |
| Conservation                            | Authority to make decisions<br>Incentives for sustainable management  |

Source: Meinzen-Dick et al, 2009

Some emerging issues that must be taken into account in dealing with women's land rights exacerbate an already complicated situation:

- globalisation of agricultural trade
- land grabs, in which foreign governments and international companies acquire land in African countries to grow for their populations or foreign markets
- privatisation of natural resources and the control of public goods moving from state to private actors, largely excluding women
- new technologies (e.g. genetic modification), and their impact on women's management of

- resources
- gender asymmetries in access to information and training in information and communication technologies
- conflicts and their impact on land rights and women's lives.<sup>5</sup>

### Role of Policy and Law

Additionally, land reforms need to redress imbalances, including women's exclusion from ownership, through redistributive measures that take into account dualistic ownership systems based on the intersection of customary and statutory laws.

The minimum goals for land reform initiatives are:

- security of tenure for women and men, so that they can make productive and sustainable use the land for different purposes
- equitable access to land for subsistence, commercial and settlement uses, and the need to achieve a sustainable balance between these
- intra- and inter- generational equity
- gender equity
- effective regulation of land development
- access to land information
- good democratic governance of land.

At the continental level, the “Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” pays particular attention to land and environmental resources. Article 15 links the right to land to food security, while Article 19, dealing with sustainable development, exhorts states to promote “women’s access to and control over productive resources such as land and guarantee their right to property”. The issue of gender and land relations was also taken up by the African Union heads of state in the Land Policy Initiative. In the resulting “Declaration on Land Issues and Challenges in Africa” in 2009, they resolved to “ensure that land laws provide for equitable access to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons”; and to give special attention to “strengthen[ing] security of land tenure for women”.

National laws and policies to strengthen women’s land rights have had mixed success. In fact, they have at times validated gender inequality and become obstacles to the changes required to remove it.<sup>6</sup> This warrants an inquiry into the injustices entwined within policies and laws, and the extent of their operations.

But policies and laws have also been alleys of hope and windows of opportunity as they introduce norms that promote women’s access to and control over resources.<sup>7</sup> If comprehensive, and applied coherently, they can change property rights holdings and ensure that women have access to the land they need. For instance, constitutions can provide a good anchorage for land rights for women, but to ensure that the rights are actually realised, the implementing legislation must include appropriate mechanisms, e.g. for spousal consent in matters of

**Laws and policies alone are inadequate to address women’s rights to land, especially where their application is mediated by customary law.**

matrimonial property. Laws and policies must also not unduly emphasise economic productivity at the expense of justness and other non-commoditised social, cultural and religious considerations.

Land reform has been the entry point for women’s empowerment in some African countries. The recognition of women’s land rights, provisions for equality and equity, and the facilitation of transparent and accountable systems of management and land administration have formed an important rallying point for women’s empowerment.

Laws and policies have also provided for the decentralisation of power in the governance and administration of land, creating sites of local power in their implementation. These sites can be double-edged: they could entrench local norms that allow for gender-based discrimination or they could provide a more accessible space for effective engagement and participation by women.

However, laws and policies alone are inadequate to address women’s rights to land, especially where their application is mediated by customary law. The latter is commonly interpreted to exclude women from land ownership and access – despite the availability of case studies of living customary law in which women can have access to land, despite not being the legal owners. In many agricultural communities, women are allowed to work on family land and benefit from the products. This access can be severed in the event of a change in the family relationship (e.g. divorce in the case of a wife, or marriage in the case of a daughter). Nonetheless, some researchers contend that women’s traditional access rights were better in the past because they were accorded great protection as mothers and assured of a share of resources even where they did not exercise political leadership.<sup>8</sup>

There is need to engage with customary law, to deconstruct, reconstruct and re-conceptualise its notions of access, control and ownership, both to

discern the positive living aspects of that law and to intervene where it can make the most difference for women. It is important to debunk the notion that all customary law is retrogressive.<sup>9</sup> For example, in some Kenyan communities, families whose unmarried daughters have children have found ways to provide land for the daughters to work and live on.

### Land Rights Should be Earned

It is also important to recast the view that women should be given the same rights that men already enjoy. It does not follow that women should get exclusive ownership and control of property if that's what men have had. The search for sustainable and productive management of land calls for a thorough analysis of granting exclusive land rights to an entity. In the quest for tenure law and policy change for improved gender relations, our engagement with customary law should be informed by Nana Ofori's statement that land belongs to "a vast majority, of whom many are dead, a few are living, and countless hosts are still unborn".<sup>10</sup>

More significantly, innovative and proactive approaches – which must of essence be radical – are needed. In determining tenure, land rights should be deduced from an entity's relationship

with the land, anchored in use, and subject to the greater public good that resides in the trusteeship of land for posterity. In such an approach, women's roles in land management and husbandry will identify their entitlement to tenure rights, thus addressing the often skewed gender and land relations under customary law, which have sometimes been further entrenched by statutory law.

### Making Policy and Law Work for African Women

New land laws and policies are being enacted in different countries across the continent. Such contexts provide valuable openings to deal with discrimination against women and ensure that women's voices are heard in land management and governance.

Campaigners for women's land rights should work with national and local government decision-makers and mobilise allies to deal with gatekeepers and those who are likely to resist change. Other measures to challenge, engage and disarm the gatekeepers include civic education at national, local and community levels to raise awareness and build capacity so that women can contribute to both formal and traditional decision-making processes around land.

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### Endnotes

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