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## Women struggle to secure land rights

*Hard fight for access and decision-making power*

By Mary Kimani



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A women's farming cooperative in the Democratic Republic of the Congo: Across Africa, women grow most of the food but rarely have secure rights to land in their own names.

Felitus Kures is a widow living in Kapchorwa, northeastern Uganda. Her husband's death left her solely responsible for their children. To meet their needs, she depended on the small piece of land she and her husband had farmed together. But just months after his funeral, her in-laws sold her husband's land without her knowledge. "We only realized this when the buyer came to evict us," Ms. Kures explains. She was able to regain use of the land after she got legal assistance with the help of the Uganda Land Alliance, a civil society group that campaigns for land rights.

Ms. Kures's plight is a common one in Africa, although she was more fortunate than most other women. Many never regain access or rights to matrimonial land lost after divorce or the death of a spouse.

Experts report that women in Africa contribute 70 per cent of food production. They also account for nearly half of all farm labour, and 80–90 per cent of food processing, storage and transport, as well as hoeing and weeding.

Yet women often lack rights to land, notes Joan Kagwanja, a food security and sustainable development officer at the UN Economic Commission for Africa (ECA), headquartered in Addis Ababa, Ethiopia. Land rights tend to be held by men or kinship groups controlled by men, and women have access mainly through a male relative, usually a father or husband. Even then, women are routinely obliged to hand over the proceeds of any farm sales to a male and have little say over how those

earnings are used.

Moreover, such limited access is very tenuous and can be quickly lost. One study showed that in Zambia more than one third of widows lost access to family land when their husbands died. “It is this dependency on men that leaves many African women vulnerable,” Ms. Ka-gwanja told *Africa Renewal*.

In response, activists are fighting to introduce or strengthen laws intended to give women more secure access to land and are combating social norms and practices that stand in their way. Despite many obstacles, they are making headway here and there.

**AIDS impact**

The spread of HIV/AIDS and the stigma associated with the disease have only made women’s land rights more precarious. Widows of men who die from the disease have often been accused of bringing the malady into the family, possibly leading to the confiscation of their land and other property.

As a result, they and their children are frequently forced to survive on society’s margins. “They often lose access to land, and [must] get by selling food on the street,” says Kaori Izumi, an HIV and rural development officer at the UN’s Food and Agriculture Organization (FAO). “They have no place to sleep. This creates problems of food security.”

Such women sometimes lose custody of their children, end up going into sex work or become squatters. And because they are unable to provide for themselves, they become more vulnerable to violence and other abuse. FAO has documented such cases since 2001, adds Ms. Izumi, supporting work on one of the priority issues taken up by the UN Secretary-General’s Task Force for Women, Girls and AIDS.

The quality of women’s lives can be improved by according them more decision-making power over land, FAO has found. “In Botswana and Swaziland,” Ms. Izumi told *Africa Renewal*, “we found that sexual commerce and other risky behaviour declines dramatically when women have secure assets and property rights. Land and property rights are therefore vital to sexual equality and food security.”

Unfortunately, after decades of work, land rights campaigners and UN agencies have scarcely improved women’s land rights, notes Ms. Izumi. “We need to take stock of what we know, what has worked, didn’t work and why, and come up with a clear road map to secure women’s land and property rights.”

**Historical legacy**

Researchers with the International Food Policy Research Institute (IFPRI), based in Washington, DC, note that the marginal nature of women’s land rights is an historical problem in Africa. Before colonial rule, land ownership and access took diverse forms but were largely vested in lineages, clans and families, with male leaders exercising day-to-day control. Members of a particular lineage or clan would seek rights to use land from those community or family leaders.

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A widow and her children in Ethiopia: Unlike most widows in Africa, she has been able to



retain control over her small farm.

Except in a few communities where inheritance passed through the mother, land rights were typically only inherited by sons. Women rarely had full rights to land. They were seen as secondary claimants, through male relatives. Before getting married, a woman might have access to her father’s land. But in many communities she lost that right with marriage, on the assumption that she would then gain access to the land of her husband or of his family. When a husband died, his land passed on to any sons they might have had or to male in-laws if there were none.

Benjamin Cousins, a researcher for IFPRI, points out that although historically women did not have direct rights over land, they had traditional protections that ensured continued access even after separation, divorce or widowhood. There also were traditional means of arbitration to which women could appeal if access to land was contested.

But the advent of colonial rule led to the introduction of Western systems of land tenure. In East and Southern Africa, the high number of white settlers encouraged the privatization and subdivision of land, held under individual freehold titles. In West Africa much land was left under communal forms of ownership, managed by customary leaders.

At independence, some new governments, as in Tanzania, Mozambique and Benin, proclaimed state ownership over all land. In Kenya and South Africa private ownership existed alongside lineage or clan ownership. In Nigeria, clan and lineage ownership coexisted with both state and private ownership, especially in urban areas.

Over the years, rapid population growth has contributed to the overuse of land and to the depletion of soils. This has made fertile land more valuable and increased competition for its control. Such pressures, together with changes in family structures and clan relations, have eroded traditional social safeguards that ensured some access by women to land. So while many land disputes in Africa are still formally governed by customary law, notes Mr. Cousins, “many protections of women have not been accurately carried forward” into modern life. Moreover, he told *Africa Renewal*, today there are many situations, such as cohabitation without marriage, to which traditional norms do not apply. Consequently, “Many women have lost access to land.”

**Dual systems**

Many African countries today recognize both “traditional” rules of land ownership

and Western-type statutory laws. In Nigeria, the state assumed ownership of all land after independence in 1960. Although this weakened customary land tenure, traditional laws still were recognized by the government in areas of long-established clan and lineage ownership. The recognition of Islamic law in Nigeria's northern states complicated the situation further.

In southwestern Nigeria, notes IFPRI, confusion about which rules to follow enabled rich elites to collude with tribal chiefs to buy up land, which formally belonged to the kinship group, without anyone, especially women, being able to stop it.

Such dual systems of Western and traditional or religious law have often disadvantaged women. A joint study by the UN Development Programme (UNDP) and World Bank in 2000 on gender and agriculture in Africa cited the example of Kenya's Succession Act. The law stipulates that both men and women have equal rights to inheritance. But it also states that if the man dies without a will, the customary law of his group relating to land inheritance will prevail. Since few men write wills and most Kenyan communities do not allow a woman to inherit property from her husband or father, the equality provisions of the Succession Act generally do not apply. In reality, the study argues, inheritance rights for women do not exist.



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Marthe Nzabakurana, a member of a women farmers' association in Rwanda: The government has passed a law giving women equal rights to those of men in inheriting land and other property, overturning traditional norms that favoured males.

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### Land titling

One solution that Western development experts initially promoted to overcome the shortcomings of customary law was to give land titles to individuals. Esther Mwangi, a land rights researcher at Harvard University, notes that governments in East and Southern Africa followed the course of land titling, in an effort to ensure that individuals had legal power over their land. This policy was expected to help women secure legal rights to properties that they owned or inherited.

"In the areas where I have been working, the privatization process has actually stripped women of their access," Ms. Mwangi told *Africa Renewal*. During titling operations, it was mainly men who got their names on the documents because they were deemed to be the "household heads." Widows lucky enough to get land were allocated the smallest lots.

The number of poly-gamous households across Africa has complicated things further. Often senior and junior wives, their children and several sets of in-laws compete for access. "As the legal land title holder, the man can do whatever he wants with the

land,” explains Ms. Mwangi. “Some just sell the land without informing their wives.”

Land rights activists suggest that one way to give women guaranteed access to land is to separate formal ownership of land from the ability to use it. Thus, while the land may be registered in the name of a man, he would be barred from selling it without the consent of his wife or wives or other heirs. Ghana has a “head of family accountability law” that is intended to ensure that family property cannot be sold without others being informed, giving consent or benefiting from the proceeds.

“Another alternative would be for land to be put in the name of families or both men and women to have their names on the certificate,” suggests Ms. Mwangi. “Where resources such as water, sanitation and grazing land have to be shared communally, then whole communities could be identified as owners of the land, with everyone having equal access.”

### **Resistance to legal reform**

But such ideas may be easier proposed than implemented. First of all, they require changes in the law. Activists for women’s land rights have tried to have laws passed in many countries, with mixed results, notes Ms. Izumi. In Uganda, where there was very active lobbying by the Uganda Land Alliance for both men and women to be listed in title deeds as co-owners, the bill came to parliament repeatedly and failed each time. In part, explains Ms. Izumi, there was resistance by the private sector.

In Tanzania, where land is owned by the state but assigned on the basis of long-term leases (usually lasting 99 years), businesses argued that collective ownership would make it hard to use land as collateral for bank loans or as a source of income. “They argue that if buyers have to get consent from family members before land can be sold or utilized in a certain way, it will be very difficult. It doesn’t facilitate the land market,” says Ms. Izumi.

That argument, Ms. Izumi notes, overlooks the fact that women often do not benefit from such private land transactions or use land as collateral. That is because they generally do not control financial resources in the family and cannot afford to buy land. Even when they do, they still have difficulties getting credit, because in many countries they need the consent of their husbands to apply for loans.

Where progressive laws have passed, things do not necessarily get easier. In Mozambique, civil society groups gained a law in 1997 entitling women to secure access to land and property. “We saw the land law as a victory,” Lorena Magane of the Rural Association of Mutual Support told a reporter.

But Rachael Waterhouse, an editor of a report on gender and land in Mozambique, says that while the law was fine in theory, implementation proved difficult because traditional courts, which most rural women use, still consider the man the head of household and therefore the rightful authority over land.

Similarly, in Zimbabwe, the government amended the inheritance law to make the surviving spouse, whether male or female, the legitimate heir. But, says Ms. Izumi, “lack of information means many women in rural areas are not aware of it.”

In Ghana the 1985 Intestate Succession Law and the Head of Household Accountability Law were both intended to create greater security for widows and children. If a man died without a will, the succession law decreed that his property

would be equally divided and distributed among his widow, children and other members of the extended family. Yet an FAO study in Ghana's Upper Volta Region found that few women knew of either law and that customary practices continued to determine inheritance. This left many women without access to land after the death of their partner.

In general, acknowledges Ms. Izumi, "progressive laws in Africa suffer from lack of appropriate implementation. In countries where lobbies are trying to get governments to pass progressive laws, there is still a lot of resistance."

### **Multiple avenues of change**

What women need, argues Ms. Kagwanja, is for their basic rights to be entrenched in constitutions and for equal rights of property ownership to be clearly stipulated in the law. Where this has already been done, it is necessary to bring all inheritance and land laws into harmony with the constitution, so that they say the same thing. In addition, legal institutions responsible for implementing the land laws need to operate equitably, be friendly to women and operate not only in the cities.

"At present," she says, "we have very centralized institutions. Moreover, it is men who are in charge of the dispute-resolution systems and the court systems are very expensive and intimidating."

Traditional land ownership systems in particular need some rethinking, she says. Local chiefs authorized to allocate land generally assign it to men. "How do you democratize the systems for allocation of land?" Ms. Kagwanja asks. "Do you develop new localized land boards, where you elect members of the land board and insist on a requirement for gender equity, as is the case in Tanzania and Uganda? Or do you democratize the old system? These are some of the questions we need to answer."

Answering such questions, suggests Ms. Izumi, requires pursuing multiple efforts simultaneously. "So much effort has been put into legal reform. Laws and policies are important and we should continue trying to change them and make those changes happen. However, we also need to assist governments to improve their technical and financial capacity to implement the laws."

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***Activists are fighting to introduce or strengthen laws intended to give women more secure access to land and are combating social norms and practices that stand in their way.***

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Judicial and traditional leaders also need training, she adds, to help the wider community accept women's rights to land. Community tribunals could then be set up to arbitrate such issues. The most important thing, Ms. Izumi adds, is to sensitize women "on their own rights, and what they could do or where they could go to get help."

### **Combating negative norms**

Broader cultural change is also vital, says Ms. Mwangi. Those who decide land allocations have particular cultural understandings of the role of women in society. So wider gender disparities in economic and political power also need to be addressed.

She spent some time talking to men and women about sharing land ownership. “I think that the men are not ready,” observes Ms. Mwangi. “They don’t seem very sensitized to the idea that women can be decision-makers when it pertains to land.” That is a paradox, she adds. “Women’s labour is key to productivity, yet that land is literally out of reach for women. Males do not seem to see a problem with this.”

Mr. Cousins agrees. “To address land rights, you need to address the unequal power relations within families. Unless you change the power relations, the legal definition of who has rights may not make much of a difference,” he told *Africa Renewal*.

“We have seen a lot of resistance,” says Ms. Izumi. “These norms are very deep. Gender relations are the most difficult social relations to change.”

**Positive developments**

But there are some positive achievements. In Swaziland, women cannot own land because they are considered minors under the law. Yet some HIV-positive women who lost access to land after their husbands died were able to negotiate with a female chief to persuade other chiefs to give the widows land they could use to secure their livelihood. They got 13 collective farming plots in different areas, Ms. Izumi reports.

In Kenya, community watchdog organizations and other groups providing home-based care for those living with HIV/AIDS are intervening. When they encounter property grabbing, they negotiate, mostly with male members of the family, for women and girls to retain access to the land and property.

In Rwanda, the government passed a law in 1999 giving women inheritance rights equal to those of males, overruling traditional norms by which only male children could inherit. This has enabled widows and female orphans of the 1994 genocide to secure land.

In Ghana, reports IFPRI, cocoa production is changing land relations. Growing the plants is labour-intensive, and increasingly men and women are negotiating exchanges of labour for land. Under the process, which is called “gifting,” the married woman is given a piece of land as payment for her work. The community recognizes the gift as an irrevocable exchange of land for labour, and the woman continues to own it even in the event of separation.

Currently, UN agencies such as FAO, the UN Development Fund for Women (UNIFEM) and UNDP are working with non-governmental organizations to raise awareness among women of their rights and to support efforts to entrench equality of access in national laws.

But Ms. Izumi argues that more must be done. “Small initiatives must be scaled up. What one small group can do is limited. What we have been doing is disseminating information on what others have done and asking groups to try it out. Such work should be supported. There is growing awareness of the issue, and there is reason to remain optimistic.”

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