

Can the Law Secure Women's Rights to Land in Africa? Revisiting Tensions between Culture and Land Commercialization

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Contemporary land deals in Africa pose new and complex challenges in regard to securing women's rights to land. These challenges relate to the fact that large-scale land acquisitions, which involve leases or concessions or sale of public and communal land that is already occupied and used by local people, are centered on land markets and formalization of the law. Many studies show that the path of formalization might actually weaken women's control over land and landed resources, and undermine customary legal systems within which many African women are still able to negotiate access to land. In this study, Lyn Ossome grapples with the question of securing women's rights to land in Africa in the context of contemporary land commercialization, through a discussion that proceeds from a critique of two approaches to promoting gender equity in land-tenure systems: the institutional approach, which deals with women's formal land rights; and the political economy approach, which deals with the structural nature of women's traditional relations to land. The discussion highlights three distinct but interrelated problems in the framing of women's land-rights discourses.

First, by highlighting the inherent distortions of "official" customary law inherited from colonialism, the paper recuperates the "living" customary law as a potentially progressive approach toward discussing land deals in relation to gender equality. Second, the study critiques the notion that women could beneficially participate in or gain from land deals if their land rights were formalized, arguing that liberal formulations of the law are limited by a set of assumptions regarding women's position in the political economy. These assumptions, such as the claim that women's indigenous land claims are secondary or amount simply to a use right contrasted with a control right, are institutionalized and concealed within the liberal framing of women's land rights, and can be discerned through a structural analysis of the nature of social relations around land.

The study further interrogates the assumptions upon which land policies have historically been based, finding that the policies promoted in Africa during the 1960s and 1970s were based on the premise that customary systems did not provide the necessary security to ensure agricultural investment and productive use of land. Because the security risk was thought to be the absence of clearly defined and

enforceable property rights, the appropriate policy direction was taken to be the state creation of such rights, most often individual, private property rights. However, a number of studies showed that the move toward formalization of customary tenure did not carry the main aims of securing individual rights to land and aiding transferability of land. Moreover, these rights and functions had not been highly constrained under customary tenure. Based on this analysis, Ossome interrogates the possibilities of achieving gender justice within a capitalist system.

Third, by assessing the debates in the literature regarding the efficacy of law in protecting women's rights to land, the study argues that the factors that delimit formalization also constitute the possibilities for application of customary law. For example, customary law is able to provide relative security to community members at lower cost than state-run structures. Furthermore, basing land reform on customary law facilitates decentralization and the participation of local people in the management of natural resources. Studies have also shown that the narrow and limited understanding of registrable interests employed in titling programs, coupled with the fact that for the vast majority of married women, interests in family land are held on account of the marriage relationship, which for most women is based on customary law, means that formalization might actually weaken women's claims to family.

Ultimately, Ossome argues that customary law offers a more promising path toward recuperating women's rights to land in the context of commercialization. It is possible, as most studies on the topic suggest, that marginalized groups, including women, are experiencing adverse effects from large-scale land expropriations taking place in many African countries. Yet it is also still widely assumed that the problem lies in customary tenure systems. And while there is still no conclusive evidence for customary law's efficacy in securing women's rights to land, Ossome finds that contemporary land deals take place in the context of a legal, political, and economic terrain that local communities and women are negotiating and reinterpreting within the customary domain, thus affirming the continued relevance of customary tenure regimes in securing women's rights to land in Africa.

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