

WOMEN'S LAND RIGHTS IN SOUTHERN AND EASTERN AFRICA – STILL EXCEPTIONALLY DIFFICULT TERRAIN

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The Land Rights in Africa website

In January 2000, I set up a website in Oxfam space called *Land Rights in Africa*. I was then Oxfam GB's Land Policy Adviser for Africa. There were two main drivers for doing so.

First, I was involved, with groups like the Uganda Land Alliance, Haki Ardhi in Tanzania and the Kenya Land Alliance in trying to engage in the processes of new land law and policy making. Donors were hell-bent on privatising all land in the context of post-Cold War triumphalism. One consequence was the further marginalisation of women's land rights.

Second, it was very clear to me, and to many others, that women's extremely fragile land rights were going to be even more marginalised in the context of the very rapid spread of HIV and AIDS.

The purpose then of the website, as I saw it, was to give space to civil society organizations and others fighting for pro-poor land reform and space to those engaged in seeking ways of advocating for, supporting and defending women's land rights.

That website is still going strong. It moved into Mokoro space after I retired from Oxfam in 2007. <http://www.mokoro.co.uk/land-rights-in-africa>

In recent years, as well as being true to its original intentions, I've consciously tried to make it strong on the phenomenon of global land grabbing and its impact on Africa, including on women's land rights.

Why am I telling you this? Because I believe that it could be an extremely useful resource for your students. Not just as an historical record of trends over the past 15 years but because of the links to some of the organizations cited on the links page. I'd strongly recommend that your students take a look at the websites of institutions such as Namati, LEMU, FIDA-Kenya, TAWLA and the Huairou Commission, which are full of interesting, practical, imaginative alternative approaches to the task of establishing and defending women's land rights.

<http://www.mokoro.co.uk/other-resources/links-to-other-relevant-sites>

There is a rich literature on this subject, much of which is posted on that website, and I include in an appendix a short list of some of the things I've read recently and have found useful. The links page is also copied as an appendix.

Perspectives for your students

I want to list 4 approaches which I'd like to see adopted by your students.

First, the need for a **practical** approach. Do something useful and appropriate to the context in which you're working which might make a difference to people's lives, rather than something merely theoretical.

Second, adopt an **historical** approach. I would say that because I'm an historian by training, but, for example, Kenya, Uganda and Tanzania once formed British East Africa, but they are very different, and students need to understand, and understand well, the relevant history of the area they are studying. This approach was very strongly endorsed by the late Patrick McAuslan, Professor of Law at Birkbeck and Warwick. In his last book his discussion of the Uganda Land Act was steeped in the country's complex land history and he concluded by saying that 'while the law can be reformed, history cannot.'

Third, the need for an **inter-disciplinary** approach. This is because we are dealing with highly complex, difficult and changing realities that demand such an approach, including looking at the limitations of law. This is something I was fortunate to encounter throughout my brief academic career and I have never forgotten it. That said, there is certainly a strong tendency for huge separation in both the literature and among participants, e.g. land people never talking to water people!

Fourth, and this may be wishful thinking on my part. My friend and colleague Elizabeth Daley, who has written many excellent things on women's land rights, said that the most important lesson that she had learnt from the remarkable champion of women's land rights, Kaori Izumi, was that it was possible to be both an academic and an **activist**. In the challenging world of women's land rights we are certainly in need of activists.

Just as one example, for me that activism emerged from the experience of living in white settler controlled Southern Africa and writing a PhD on the politics of land in Rhodesia.

Challenges in asserting women's land rights

Gender and land issues are hugely complex and difficult the world over. There are no easy, painless, single solutions. The challenges in asserting women's land rights occur at virtually every level imaginable:

At the **continental** level, where Africa clearly lags far behind India and parts of Latin America in terms of establishing enforceable inheritance rights for women.

At the **country** level, where the late Professor Okoth-Ogendo put it:

throughout Africa the state remains an important instrument in the suppression of indigenous land rights and cultural resources. This is not only a carryover of colonial perceptions of indigenous property relations but also of the strong belief, without proof or empirical justification, that indigenous land rights systems are incapable of supporting modern agrarian development.

At the **district** level, where confusion, rather than clarity, often reigns, frequently coupled with ignorance of new land laws and policies.

Within the **household**, which never was the unproblematic and conflict-free zone so beloved of policy makers. As Amartya Sen wryly noted many years ago, gender struggles at the household level are even more complex than class struggles because, unlike women and men, the capitalist and the worker did not normally live under the same roof!

At the level of the **individual**. One of the reasons why concrete gains for women have been so few, is because women suffer overwhelmingly as individuals, and the aid industry is just not geared to helping individuals, as opposed to groups, and to providing shelter, for example, which is often a critical need for women.

Implementation challenges are equally daunting. Martin Adams and I concluded our 2006-7 *Independent Review of Land Issues*:

Many countries in Eastern and Southern Africa are clearly struggling to implement laws and policies that they have formulated in recent years. There are many reasons for their difficulties, including over-ambition, lack of capacity, scarcity of financial resources, and the assumption that customary law can be swept away by the stroke of a pen, or women's land rights protected by another. Social reality at the local level is generally very different from what is imagined in the capital.

It is clear that everywhere women who have struggled for tenure security have been confronted by resistance and by patriarchy in its many forms. This is because in Africa, as in other parts of the world, land is often regarded as a symbol of male dominance, and for women to challenge the status quo is to challenge patriarchal control – and thus other social and political inequalities. So political resistance at many levels is not surprising. Women lobbyists are often told that gender issues will be addressed 'in due time' and are often demonised as being unduly influenced by 'western' ideas deemed inappropriate to 'traditional culture'.

Some historical trends which have not helped women

One of the complexities of gender and land issues is that women's and men's interests within marriages and households are both joint and separate.

1. Traditional patriarchal systems in Africa were reconstructed under colonialism in ways that benefited men, disadvantaged women, and strengthened male controls over female labour.
2. Many land reform and land administration programmes over the past 60 years have been premised on the notion of a unitary household in which resources (including title to land) were seen as benefiting the whole family in a quite unproblematic way.
3. The current strong global push towards privatisation and land grabbing,

Some suggested ways forward, 2003

Participants meeting at a highly successful workshop in Pretoria in 2003 organized by Kaori Izumi and myself felt that there was a need to:

- Learn from and build on positive community practices;
- Continue building a movement, sharing experiences and documenting best practices;
- Share knowledge of pilots and replications and create innovative ways of doing this;
- Build and strengthen coalitions at all levels.

We noted the need for training and sensitisation in gender and human rights, for formal justice centres to create awareness and change perceptions, and to improve the many flaws in traditional justice delivery systems. Ideally, this required a vibrant movement of legal and paralegal NGOs, but even with that 'while formal rules can be changed overnight, informal norms change only gradually.' The bottom line was that proactive legal change can only go as far as society is prepared to accept. That all sounds pretty good advice almost 12 years later.

Some thoughts of Barbara Gärber

I recently attended a seminar by Barbara Gärber from the University of Vienna about her work on women's land rights in Karamoja, northern Uganda. In the context of this meeting, Barbara suggested:

I think it could be interesting to address the frequent detachment of written law from the practical reality women are faced with on the ground. Often the law does not take into account the actual threats to women's tenure security in the rural areas where customary tenure is still dominant. In Uganda the law protects mainly married women, although in practice, widowed and divorced women are the ones particularly prone to land loss.

Many of the issues affecting women in terms of land are in fact regulated by family law, rather than land law. Therefore, unless family law on succession

and divorce is revised, gender-sensitive land legislation is likely to benefit only very few.

Another problem is the weak institutional environment prevailing in many rural areas making it difficult for women to actually claim and assert the rights granted to them under the law.

Some alternative approaches

In this section I want to draw out a few interesting alternative approaches suggested in the literature. But first a personal anecdote.

In March 2004 I attended the launch of the Copperbelt Land Rights Centre in Mufulira, Zambia. I gave a short speech, as did others. These were greeted with polite applause. There followed a 20 minute drama sketch which portrayed land conflicts around gender, class and age. It was absolutely brilliant and had the entire audience, including the men in suits, totally absorbed and in stitches of laughter at times.

I was reminded of that experience when I read the 2012 ILC briefing note, ***Women's legal empowerment: lessons learned from community-based activities*** which noted that:

- The use of radio, videos, posters, songs and cartoons and participatory mapping were crucial to raising awareness of poor women and men.
- Literacy was a big issue.
- Land rights cannot be guaranteed by changes in policy if people have little access to information or to justice.
- There was a great demand for accessible information on laws in local languages, non-legalistic language or pictorial form.
- Close collaboration with the media can have a strong impact.
- Women's legal empowerment is a long-term endeavour.

In a December 2008 policy brief, the Land and Equity Movement in Uganda (LEMU), asked are we ***Fighting the wrong battles?*** and proposed '***a new paradigm in the struggle for women's land rights in Uganda***', one based 'on a gender analysis rooted in the local culture, with protection enforced from within the village.' Instead of fighting against tradition, LEMU argued, we should be 'fighting for the cultural rights that women feel exist, but which are being violated' and look at how they should be protected through community acceptance. This will involve 'finding ways of harmonising the customary and State judicial systems, so that they work together on agreed rights instead of against each other.'

'The struggle will be as much for small practical steps as for changes in law: supporting cultural leaders in fighting the myths about women's land rights; making sure that customary and State courts uphold customary land rights in practice; helping couples to have their land boundaries marked, mapped and registered, so that all family members in future would have evidence of who owned which land.'

‘It is naïve in expecting this to happen on its own – the current realities are evidence that the struggle will not be easy. LEMU believes, though, that the struggle can only be successful if we fight on the correct battlefield.’

A later study with Namati ***Protecting Community Lands and Resources. Evidence from Liberia, Mozambique and Uganda*** featured a community land titling initiative designed to protect community lands from land grabbing. It sought to understand what type and level of support was most effective and concluded that community land documentation may be a more efficient method of land protection than individual and family titling, and should be prioritized in the short term.

A 2014 report by the Huairou Commission and UNDP, ***Engendering Access to Justice. Grassroots women’s approaches to securing land rights*** involved community-based research among 70 communities in Cameroon, Ghana, Kenya, Tanzania, Uganda, Zambia and Zimbabwe. It examined how grassroots women used innovative approaches for achieving justice in relation to land disputes and gender-based violence. It documented the main strategies they were using, either by working within or influencing customary legal frameworks, or by accessing the court system. Court proceedings can be inaccessible for women due to cost, the need for legal documents, lack of transport, language barriers, the length of process, community pressure or threats. The research approach included:

- Community sensitization and training sessions on customary and statutory legal systems.
- Community mapping.
- Local-to-local dialogues with headmen, chiefs, and local leaders.
- The use of community paralegals for information, advice, and access to resources by grassroots women.
- The use of watchdogs to identify and highlight problems in a community.
- The development of partnerships with key stakeholders.

The 2014 IFPRI research brief, ***Implications of Community-based Legal Aid Regulation on Women’s Land Rights*** focussed on the yet to be implemented Legal Aid Bill in Tanzania. It found that civil society was increasingly stepping in to fill the wide gap in service provision. Community-based legal aid programmes had emerged as a strategy for improving access to legal services in remote areas and for bridging the gap between formal law and customary justice mechanisms. Community paralegals were provided with basic legal training but there was a high attrition rate because they were expected to work as volunteers.

The 2010 IDLO working paper ***Two Faces of Change: The Need for a Bi-Directional Approach to Improve Women’s Land Rights in Plural Legal Systems*** argued that the participatory process of drafting community by-laws/constitutions for land and natural resources management, if inclusive and conducted in an open and transparent manner, was an opportunity to improve local governance and effect powerful intra-community change as ‘the process provides an opportunity for women and other vulnerable groups to actively challenge discriminatory customary norms and practices and argue for the inclusion of stronger protections for their land and inheritance rights.’ This led to the conclusion that ‘a process of cataloguing, discussing and amending community rules was central to efforts to protect women’s rights during community land documentation activities.’

A 2013 paper for a World Bank conference by Marc Wegerif and Nidhi Tandon, ***Securing Rights and Livelihoods for Rural Women in the Context of Corporate Land Investments: Learning from Experiences in Africa***, stated that:

- Women smallholder farmers and women in pastoral communities often hear about land acquisitions and what is to be grown only long after the deal has been signed and sealed.
- Relying on the often patriarchal institutions of government from local to national levels has not proven to be a fair mechanism for responding to rural women's voices.
- Community mapping offers one route to creating a firm basis for women and their communities to decide on and control the nature of investments in their land.
- As part of gender-sensitive land reform, national land audits and publicly accessible land registries should be established, and reinforced by community mapping that engages women.

Namati, in a letter to its Advisory Council, said it was creating and piloting the following new components of its Community Land Protection Programme:

1. A community **visioning exercise** to stimulate communities to plan for a future they want to create once their land rights are secured;
2. An **ecosystem regeneration training** to ensure a thriving natural environment and promote permaculture/sustainable agriculture;
3. A **financial management training** to ensure that communities manage revenue generated from their lands and resources equitably and transparently;
4. A **land valuation training** to ensure that communities understand the replacement value of their lands and natural resources (and thus can better negotiate with potential investors);
5. A **rural planning training** to support communities to plan for their own future development;
6. An **Early Warning System** that enables communities to call a hotline for legal advice and support when a potential investor approaches looking for land;
7. The inclusion and recruitment of **customary tribunals and local government officials** in the long-term implementation and enforcement of community by-laws;
8. A **para-surveyor program**, in which we will train our most motivated paralegals in basic geo-referencing and surveying techniques, then pair them with a nationally licensed surveyor, so as to allow for inexpensive, efficient, and local technical documentation of community lands;

9. Improved techniques and strategies designed to strengthen **women's land rights** and **resolve local land conflicts**.

Finally some pragmatic approaches suggested by Elizabeth Daley and Birgit Englert in their introduction **Securing land rights for women** to a series of 2013 **JEAS** articles:

Gender issues are intimately bound up in struggles over power and authority, particularly in relation to land. This underlines the salience of considering the issue of securing women's land rights as a primarily political issue, and of seeing struggles over women's land rights as being almost inevitably likely to challenge existing (patriarchal) structures of authority and power. Given both the complexity and level of specificity that will therefore be required, we are convinced that a positive and **pragmatic** approach must be pursued if there is to be sustainable social change.

We felt that the key point was that any strategies to support and promote women's land rights must be suited and responsive to the situation on the ground. So, where existing customary institutions can be used as a vehicle for this, why not use them? Equally, where existing customary institutions have become weakened, why not pursue alternative strategies such as creating new institutions with mandated numbers of women members – as has been done in Rwanda.

In short, taking a hard line, in principle position on the merits of a particular approach seems less likely to be as effective as taking a pragmatic approach which looks at the situation on the ground as it is and says 'what now can we do to maximise the gains for women'? Similarly, a better approach might be to consider how custom can be updated and reformed rather than replaced – on the basis that if custom is what's there, as in Northern Uganda, it has to be worked with.

And drawing from that it is clear that in order to best support women's land rights, the formulation and implementation of land reforms requires flexibility in approach based on detailed understanding of local cultures and customs and of land rights and responsibilities. This of course is much easier said than done.

It is now widely acknowledged that the law alone is not enough in securing women's land rights, yet the law remains the essential starting point.

Some curious personal encounters with the law

In 2003, at the remarkable workshop in Pretoria which I organized with Kaori Izumi, many of us were very struck by the work of women paralegals from Kenya (FIDA) and Tanzania (TAWLA) doing 'first aid in law' resolving disputes and trying to prevent women/widows being dispossessed of land and other resources by their husbands or his relatives. While the important role that litigation and test cases (as in South Africa) can play was acknowledged, there was also scepticism about the role that law can play in changing realities on the ground, and much discussion of non-law strategies based at the local level. Mediation was discussed as a possible alternative to legal aid. (I was very struck recently when the daughter of a friend studying law in London didn't know what a paralegal was!).

In 2001 I did an evaluation for the Legal Resources Centre of South Africa. I was amazed by the faith the LRC lawyers placed in using the law to establish social and economic rights in the new South Africa. They had had a proud record of challenging forced evictions by the apartheid government. I was very struck by this as my recent experiences elsewhere in eastern and southern Africa had not given me much optimism about being able to use the law to defend the rights of poor people.

In 2000 and 2002 I was appalled to come across cases of total legal impunity in the Philippines, where a plantation owner shot dead two land invaders, and in Guatemala and Honduras, where the law was openly flouted by those with guns and political clout. Though I had spent much time living in or in the shadow of white-ruled Southern Africa, where black South Africans had no right to vote in their own country, there was a rule of law in those countries, though manifestly an unjust one.

I studied for a history degree in the early 1960s at the University College of Rhodesia and Nyasaland. In 1962 I talked to the UFP MP Benny Goldstein who had been a member of a commission investigating Southern Rhodesia's basic segregation law, the Land Apportionment Act. He was convinced that the time had come to scrap that law which he saw as 'irrational' and thereby encourage the stronger emergence of a black middle class and also help defuse nationalist sentiments. His party committed itself to scrapping that Act if it was returned to power in the December 1962 election. It was not. The Rhodesian Front came to power, committed to retaining, indeed tightening, the segregation laws. Ian Smith later became Prime Minister and led his country into the disastrous UDI from Britain in November 1965. Shortly afterwards I was deported and had to finish my PhD on the politics of land in Rhodesia in London.

APPENDIX: SOME USEFUL PUBLICATIONS ON LAND AND GENDER
(for EDOLAD conference, 13.15, Thursday 22 January)

Engendering Access to Justice: Grassroots women's approaches to securing land rights, *Huairou Commission and UNDP*, October 2014

https://huairou.org/sites/default/files/EngenderingAccesstoJustice_web2014.pdf

Implications of Community-based Legal Aid Regulation on Women's Land Rights, *IFPRI Research Brief 20 (Lucy Billings, Ruth Meinzen-Dick, and Valerie Mueller)*, May 2014

<http://www.ifpri.org/publication/implications-community-based-legal-aid-regulation-women-s-land-rights>

Realizing Women's Rights to Land and other Productive Resources, *UN Women and OHCHR*, 2013

<http://www.unwomen.org/en/digital-library/publications/2013/11/realizing-womens-right-to-land>

Securing Rights and Livelihoods for Rural Women in the Context of Corporate Land Investments: Learning from Experiences in Africa, *Nidhi Tandon and Marc Wegerif (Annual World Bank Conference on Land and Poverty)*, March 2013

<http://landwise.landesia.org/record/1150>

Protecting Community Lands and Resources. Evidence from Liberia, Mozambique and Uganda Namati (*Rachel Knight, Judy Adoko, Teresa Auma, Ali Kaba, Alda Salomao, Silas Siakor, Issufo Tankar*), October 2012

<http://namati.org/resources/protecting-community-lands-and-resources-evidence-from-liberia-mozambique-and-uganda/>

Women's legal empowerment: lessons learned from community-based activities, *International Land Committee Briefing Note (Sabine Pallas & Luca Miggiano)*, 2012

<http://www.landcoalition.org/en/publications/womens-legal-empowerment-lessons-learned-community-based-activities>

Two Faces of Change: The Need for a Bi-Directional Approach to Improve Women's Land Rights in Plural Legal Systems, *IDLO Working Paper*, 2011

<http://landwise.landesia.org/record/386>

Securing land rights for women, *Elizabeth Daley and Birgit Englert, Journal of Eastern African Studies*, 4, 1, March 2013, 91-113

Personal reflections on drafting laws to improve women's access to land: is there a magic wand?, *Patrick McAuslan, Journal of Eastern African Studies*, 4, 1, March 2013, 113-30

Women's Land Rights & Privatization in Eastern Africa, *Birgit Englert & Elizabeth Daley (Eds)*, *James Currey*, 2008

Fighting the wrong battlers? Towards a new paradigm in the struggle for women's land rights in Uganda, *LEMU*, December 2008

<http://land-in-uganda.org/assets/Fighting%20the%20Wrong%20Battles.pdf>

Land Rights In Africa - Links to other relevant resources

- [Land Rights](#)
- [Horn of Africa](#)
 - [Links](#)
- [Africa General](#)
- [Southern Africa](#)
- [East Africa](#)
- [West Africa](#)

1. [African Centre for Technology Studies](#) (Kenya)
2. [African Institute for Agrarian Studies](#) (Zimbabwe)
3. [Agter](#) (France)
4. [CAPRI - Collective Action and Property Rights](#)
5. [FAO - Food and Agriculture Organization of the United Nations](#)
6. [Fida \(Federation of Women Lawyers\) - Kenya](#)
7. [Future Agricultures Consortium](#)
8. [Food Crisis and the Global Land Grab](#) (GRAIN)
9. [GLTN - Global Land Tool Network](#)
10. [The Hub \(Le Hub Rural\): Supporting Rural Development in Western and Central Africa](#)
11. [Huairou Commission](#)
12. [IFAD - International Fund for Agricultural Development](#)
13. [IIED - International Institute for Environment & Development](#) (empowerment & land rights)
14. [ILC - International Land Coalition](#)
15. [KLA -Kenya Land Alliance](#)
16. [LEMU - Land and Equity Movement in Uganda](#)
17. [LRAN - Land Research Action Network](#)
18. [MST - Landless Workers Movement](#) (Brazil)
19. [LDPI - Land Deals Policy Initiative](#)
20. [Landesa - Rural Development Institute](#)
21. [Legal Assistance Centre](#) (Namibia)
22. [Namati](#)
23. [PLAAS - Institute for Poverty Land and Agrarian Studies](#) (South Africa)
24. [Ruzivo Trust](#) (Zimbabwe)
25. [Rwanda Land](#)
26. [TAWLA \(Tanzania Women Lawyers Association\)](#)
27. [Uganda Land Alliance](#)
28. [World Bank](#) (Land Policy & Administration)
29. [WISP \(World Initiative for Sustainable Pastoralism\)](#)
30. [Zambia Land Alliance](#)
31. [Zimbabwe's Land Reform](#)