

**‘Securing Land Rights for Women –
Changing Customary Land Tenure and Implementing Land Tenure Reform
in Eastern Africa’**

Elizabeth Daley (Mokoro, Oxford) and Birgit Englert (University of Vienna)

ASA UK Meeting, September 16 – 19, 2010

Abstract

This presentation draws on our own fieldwork and on data from our edited volume on *Women’s Land Rights and Privatization in Eastern Africa*, as well as on a separate collection of papers we have recently edited for the *Journal of Eastern African Studies*. In these we developed a positive, pragmatic and innovative approach to securing land rights for women that is grounded in gender equity, and we illustrated its practical application in different situations.

Today we seek to introduce this work to a wider audience within the Africanist research community. Our presentation draws heavily on two papers; one that we have jointly co-authored in the *Journal of Eastern African Studies*, and one from the same collection written by Elizabeth Daley, Rachel Dore-Weeks and Claudine Umuhoza on Rwanda.¹

Today we set out the background to securing women’s land rights and address ourselves to **three key themes:**

First, the role of customary institutions in securing women’s land rights;

Second, the continuing central role of legislation as a foundation for changing custom;

And, third, the challenges of reform implementation and of building women’s confidence to claim their rights.

¹ Daley, Elizabeth and Englert, Birgit (2010) ‘Securing land rights for women’, *Journal of Eastern African Studies*, 4: 1, 91 – 113; Daley, Elizabeth, Dore-Weeks, Rachel and Umuhoza, Claudine (2010) ‘Ahead of the game: land tenure reform in Rwanda and the process of securing women’s land rights’, *Journal of Eastern African Studies*, 4:1, 131-152.

Background²

By way of background, it is important to understand that across Africa most people hold land under different types of informal customary tenure, and that these customary arrangements exist alongside the formal systems of common and statute law that were imported during the colonial period.³ During the twentieth century, land tenure in Africa was also influenced by population pressure and growing competition for land.⁴ Increasing individualisation and commoditisation of land rights has occurred, and private rights of use and occupancy within customary tenure have become increasingly the norm.⁵

→ *Commoditisation*

These processes of commoditisation and change have weakened some women's customary land rights, and there has been a widespread perception that this is more generally the case, that women's 'fragile' rights are somehow 'eroding'.⁶ At the same time, most women's opportunities to access land through market transactions in Africa are more limited than men's – markets needing also to be seen as "gendered institutions", as Shahra Razavi puts it.⁷ Yet by no means all women are losing out from the increasing commoditisation of land. Some manage to take advantage of the opportunities provided to acquire their own land through purchase, while the development of land rental markets also helps many women gain access to land.⁸

→ *HIV/AIDS / Conflict*

Another factor affecting women's land rights in Africa is HIV/AIDS. This has led to growing numbers of women and children being left behind with no land when their husbands, fathers and in-laws sell off family land to pay for treatment, often without their

² For more detailed general historical accounts of trends in land tenure reform and land law and policy development in Sub-Saharan Africa see Bassett, 'Introduction', Daley and Hobley, *Land: Changing Contexts*, and Englert and Daley, 'Introduction'. See also Berry, *No Condition*, on the social dynamics of land relations in Africa, and Peters, 'Inequality', on processes of increasing social differentiation therein.

³ Adams and Turner, *Legal Dualism*, McAuslan, 'Only the Name'.

⁴ Platteau, *Institutions, Social Norms*, Peters, 'Inequality'.

⁵ Daley, 'Land and Social Change' (1 and 2), c.f. Antwi, *Our Common Estate*; Benjaminsen and Sjaasted, 'Race for the Prize', Ubink, 'Chiefs, customary law'.

⁶ Englert and Palmer, 'Women's Land Rights', Palmer, 'Foreword', ix, c.f. Englert and Daley, 'Introduction', 1, Whitehead and Tsikata, 'Policy Discourses', Razavi, 'Liberalisation'.

⁷ Razavi, 'Liberalisation', 1485-1488, Lastarria-Cornhiel, 'Impact', 1326.

⁸ Daley, 'Gender, *Uneyeji*', Daley, 'Land and Social Change' (2).

knowledge or consent.⁹ It has also contributed to a disturbing growth in widows and orphans being chased from their land, including, at the extreme, through the use of violence and witchcraft allegations.¹⁰ A further factor is the impact of conflict on women's land rights, particularly those of women among refugee and internally-displaced populations, and of women who stay at home while men go off to fight. These issues have only recently started to be grappled with by humanitarian agencies, as yesterday's panel on land and conflict discussed.¹¹

→ *Land tenure reform*

Women's land rights in Africa have also been affected during the twentieth century by land tenure reforms which introduced land registration on the basis of formal survey in the pursuit of agricultural development, commencing in Kenya in 1954.¹² This private registration of land – the narrowing of broad customary rights to land titles in the hands of a single (usually male) owner – became the dominant approach to African land law and administration, despite numerous criticisms of its effectiveness in achieving its goals, and of its negative impact on women's rights.¹³

During the 1990s, however, 'land tenure privatization' broadened out. Land titling and registration remain important, but land tenure reform processes in Africa also became concerned with the formalisation or regularisation of land rights via the registration of land interests in whichever context they customarily occur.¹⁴ Most recent land legislation in Eastern Africa therefore emphasises the formalisation and regularisation of land tenure

⁹ Izumi, 'Gender-based violence', Izumi, *Reclaiming our Lives*, Okuro, 'Struggling with In-Laws'.

¹⁰ Aliber et al, *The Impact of HIV/AIDS*, Izumi, *Reclaiming our Lives*, 4.

¹¹ Palmer, *Securing Women's*, 7, ODI, *Uncharted Territory*, Pantuliano et al, *The Long Road Home*, c.f. other work of the ODI's Humanitarian Policy Group on land, refugees and IDPs.

¹² Swynnerton, *A Plan to Develop*.

¹³ Daley and Hobley, *Land: Changing Contexts*, 8-13, Englert and Daley, 'Introduction', 5-6, Davison, 'Without Land', Mackenzie, 'Gender and Land', Platteau, 'The Evolutionary Theory', Pala, 'Daughters of the Lakes', c.f. Hanger and Moris, 'Women', Bernal, 'Losing Ground', and Brain, 'Less than Second-Class', on negative impacts on women of land tenure reforms occurring within broader agricultural development schemes.

¹⁴ Alden Wily, *Land Rights Reform*. C.f. Kanji, *Innovation in Securing*, on various ways in which land rights are being formalised across Africa, individually and collectively as appropriate to different circumstances, and Benjaminsen and Lund, *Securing Land Rights*, on processes of 'informal formalisation'.

through the titling and registration of existing rights to land, be they held individually, jointly or collectively.

→ ***Current issues around women's land rights***

By now, land tenure reform has been a hot topic across the wider Eastern African region for nearly two decades, and many countries have been through or are still involved in processes of formulating and implementing new land policies and laws. These processes have led to some disputes between women's groups and other constituencies within civil society. In Tanzania in the late 1990s, for example, the women's groups saw land tenure reform as a chance to strengthen women's land rights as individuals, having often previously been tied to their gendered status (as wives, mothers, daughters and sisters), but other civil society groups saw the potential privatisation of land rights as a threat to smallholders as a whole, irrespective of gender, and therefore wanted women's issues to be subordinated to the broader class struggle.¹⁵

New processes of change have also undoubtedly had a growing impact on the land rights of smallholders across Africa, and not just women. High profile debates about the future of smallholder farming are currently taking place in the wake of the 2007/2008 food crisis and the current phenomenon of land grabbing – the subject of the next land panel today. Yet small-scale family farming still accounts for the majority of farm operations throughout the world, and smallholders are often innovative and entrepreneurial female farmers.¹⁶

The case has already been convincingly made that women's rights to land require strengthening from a purely human rights perspective.¹⁷ However, in a context where influential economists such as Paul Collier are renewing calls for an end to smallholder agriculture in favour of large-scale agro-industrial commercial farming, it is necessary to re-iterate the point that securing women's land rights would also contribute to global food

¹⁵ Manji, 'Gender and the Politics', Manji, *The Politics of Land Reform*, Shivji, 'Reflections', Tsikata, 'Securing Women's Interests'.

¹⁶ Aal, Jarosz and Thompson, 'Food is a Human Right'.

¹⁷ Ikdahl, 'Go Home', Englert and Daley, Introduction, 8-9. C.f. Agarwal, *A Field*, for the more broadly applicable justification of women's land rights she developed for South Asia.

security.¹⁸ Women are still widely acknowledged to be responsible for the lion's share of food production across Africa, and their tenure security and rights of access to land are thus critical to food security. Instead of replacing smallholders with large-scale commercial farming, their rights need to be strengthened, and those of female farmers in particular.

A Positive, Pragmatic Approach

We have argued before that too many studies of women's land rights in Eastern Africa – as indeed world-wide – present grim factual accounts of their insecure tenure and status as property owners and users. The overwhelming negative impact on them of patriarchal structures and processes, and of land tenure reforms that focus on the private registration of land, tends to be over-emphasised, leading to pessimism about the prospects for change, and to a feeling that securing and improving women's land rights in Africa may be nothing more than a pipe dream. However, as the case studies in our book and journal collection have shown, women themselves are actors in the process of change, who can and are trying and often succeeding in securing their land rights – both on a day to day basis, as well as during processes of formulating and implementing land tenure reforms.

1) The role of customary institutions in securing women's land rights

The first main theme we mentioned at the beginning of this presentation is that of the role of customary institutions in securing women's land rights, a subject of intense ongoing debate. There has been a relative consensus in the literature that customary social and political institutions, being rooted in patriarchal social, political and economic relations, are virtually by definition bad for women.¹⁹ This follows the initially keen promotion of customary institutions during the 1990s, as the meaning of 'land tenure privatization' broadened out, but which were then subsequently criticised on the basis of a range of

¹⁸ Collier, 'Food Shortages: Think Big', Collier, 'The Politics of Hunger', Wandia, 'Safeguarding Women's Rights'.

¹⁹ Cf. Whitehead and Tsikata, 'Policy Discourses', Tsikata, 'Securing Women's Interests', Daley and Holey, *Land: Changing Contexts*, 34-35; Razavi, 'Liberalisation', 1489-1493.

concerns relating to social and economic differentiation.²⁰ Reliance on customary institutions in land matters is therefore now widely viewed as being potentially detrimental to women in general. This is all the more so because even if “customary tenure norms provide women with some basic security”, to quote the World Bank’s recent *Sourcebook on Gender in Agriculture*, processes of land tenure privatisation increasingly lead to a situation in which “vulnerable women such as widows and divorced, separated, or abandoned women are unable to access land”.²¹

Nevertheless, it is important to reappraise the role of customary institutions in light of recent evidence from the ground. In Northern Uganda, for example, Judy Adoko and Simon Levine have found persuasive evidence of the usefulness of working through clans – the local patriarchal social institutions – in order to secure women’s land rights in the absence of new government land administration institutions to materialise.²² Adoko and Levine describe how the clans had in the past protected women’s rights as land users, with men having the role of guardians of the family land rather than that of individual owners, and they argue that these norms can be drawn on to protect women’s rights during land registration today. Adoko and Levine observe that gendered land rights and responsibilities always derive from a social context, and that the Western-originated emphasis on individual rights is not necessarily appropriate to the Northern Ugandan social context.²³

This case demonstrates the value of a more general argument we have often made, that any strategies to support and promote women’s land rights must be suited to, and responsive to, the situation on the ground. As we have argued before, where existing customary institutions can be used as a vehicle for securing women’s land rights, why not

²⁰ Daley and Hobley, *Land: Changing Contexts*, 34-35; Peters, ‘Inequality’, Woodhouse, ‘African Enclosures’.

²¹ World Bank et al, *Gender in Agriculture*, 137.

²² Adoko and Levine, ‘Falling’.

²³ Adoko and Levine, ‘Falling’, LEMU, *Fighting the Wrong Battles?* But see Khadiagala, ‘The Failure’, on women’s disgruntlement with the ‘rule of persons’ that operates within customary institutions dealing with land disputes in south-western Uganda, and their preference for the ‘rule of law’. C.f. Chopra, ‘Promoting Women’s Rights’, for a comparative example of similar work among the Luo in Kenya to protect widows’ land rights by appealing to communities’ beliefs about how their culture protects vulnerable women.

use them? But equally, where existing customary institutions have become weakened, why not pursue alternative strategies? This is the essence of the positive, pragmatic approach that we advocate, whereby the strategic options are opened up in the pursuit of what works best, avoiding getting bogged down in generalised debates about the merits (or otherwise) of working with customary institutions, and allowing scope for the development of a strategy that responds directly to the specifics of the situation on the ground. Thus, as Tim Kelsall has recently asserted in a more general capacity in Africa, this will mean being open, wherever appropriate, to locating our strategies for supporting women's land rights within the distinctive local notions of moral obligation and interpersonal accountability to be found within African cultures, thereby working with, rather than against, 'the grain'.²⁴

However, Adoko and Levine claim for the Northern Ugandan social context that working with customary institutions and accepting the notion of culturally-embedded rights means accepting that people (women and men) have differing rights and responsibilities as family members, which are also subject to change as their family situation changes. They argue that it is therefore not discriminatory to accept and support gender inequality in the form of different rights for different people: there is no discrimination, just a culturally-appropriate channelling of claims to rights.²⁵

This is an important argument but it does contain limitations. One major concern is that, to be both enforceable and able to be monitored, Adoko and Levine's approach to working with customary institutions appears to require customary principles in relation to land rights and responsibilities to be written down and recorded as fact rather than as subject for debate.²⁶ This immediately raises all the old alarm bells about the contested nature of such recording processes and about the dangers of ossifying principles that may depend for their very legitimacy and practical success on being fluid and negotiable.²⁷ A

²⁴ Kelsall, 'Going with the Grain'.

²⁵ LEMU, *Fighting the Wrong Battles?*, 2.

²⁶ LEMU, *Fighting the Wrong Battles?*, 2.

²⁷ There is a vast literature on this based on the colonial experiences of recording customary law; see, for example, Chanock, 'Making Customary Law'; Ranger, 'The Invention'.

second concern, and related, is of course that in most parts of Eastern Africa, custom is continually subject to change.

Moreover, individual women actively contribute to such changes and in some cases make conscious decisions that lead to an overall weakening of women's land rights. This is the case, for example, in the Uluguru Mountains of Tanzania, where matrilineal inheritance practices prevail but where women increasingly allow for sons to inherit land from their mother's clan. In her research in that area, Birgit Englert found women emphasising that they no longer wanted to discriminate against their sons. Several had decided to challenge the influence of the matrilineal clan and had used different strategies to bequeath part of their land to their sons: some women silently challenged the "tradition" that they no longer perceived as suitable by distributing their land equally among all their children; others tried to "please both sides" – the matrilineal clan as well as their male offspring. These women, often acting in conjunction with their husbands, bought land on the market to supplement the land they owned through the clan; the purchased land could then be left to their sons without the parents having to worry about the matrilineal clan making any future claims to it.²⁸

Any strategy that accepts the initial ascription of differing land rights and responsibilities to women and men must therefore be open to updating these as the local context changes, and this must nowadays also include being open to increasing assimilation of Western-derived (and increasingly Government-supported) notions of individual rights and gender equality.²⁹ We would therefore suggest that the pragmatic approach to land tenure reform would be to consider how custom (and customary institutions) can be updated and reformed rather than replaced – on the basis that if custom is what's there, it has to be worked with but not set in stone. In the pursuit of women's land rights, we can thus seek to build on what is already there while simultaneously seeking to change it. New land policies and laws can pioneer change but can also be amended and reformed later on as custom itself changes.

²⁸ Englert, 'Changing Land Rights', 87.

²⁹ Kelsall, 'Going with the Grain', 648.

2) The continuing central role of legislation as a foundation for changing custom

This brings us to the second main theme we would like to address today – the continuing central role of legislation as a foundation for changing custom, and for the state in maintaining and protecting women’s rights through constitutional and legal provisions against discrimination and in support of women’s land rights as part of a broader commitment to gender equity and equality.³⁰

It is widely acknowledged that the law alone is not enough in securing women’s land rights. However, we contend that without the law we have nowhere to start from. In particular, as we have argued before, it is broad constitutional protections for women’s rights and in favour of gender equity and equality that provide a key component in the struggle for women’s land rights, on top of which the details of statutory land policies and laws can subsequently be built. For where a constitution or constitutional amendment upholds gender equity and equality, it is undoubtedly harder for those in power at all levels of society to resist change that is positive for women.³¹

This can be very clearly seen in the case of Rwanda, which was explored by Elizabeth Daley, Rachel Dore-Weeks and Claudine Umuhoza in our *Journal of Eastern African Studies* collection. In Rwanda, a new Constitution was passed by national referendum in 2003 that lays down the principle of gender equality in no uncertain terms, and which now sets the parameters of what can and cannot be done in all aspects of governing and law-making. Article 9 mandates that 30 per cent of members of all decision-making institutions at all levels of government must be women. Therefore, where land administration has now been decentralised to five-person committees at local government level this has resulted in 2 of the 5 members being women in literally thousands of local committees in every part of the country.

³⁰ Daley and Hobley, *Land: Changing Contexts*, 35. Cf. Whitehead and Tsikata, ‘Policy Discourses’; Tsikata, ‘Securing Women’s Interests’; Woodhouse, ‘African Enclosures’, 1718.

³¹ International conventions also play a role (such as CEDAW) as there is international moral pressure for states to support these, and thus scope for activists to push for their provisions to be transmitted downwards into national legislation.

Rwanda was also the first country in the world to elect more than 50 per cent of its parliamentarians as women.³² This means that women have been elected well over and above the minimum 30 per cent level required by the Constitution. Yet even in the previous parliaments, where women were not an absolute majority, it was women MPs who drove through such measures as Rwanda's transformational Succession Law (in 1999), persuading their male colleagues that the legal establishment of equal inheritance rights for sons and daughters and joint land ownership for most husbands and wives was in society's broader interest. Seven years later, in 2006, two different field studies, one for a human rights NGO and one for the Ministry of Lands, independently came to the same conclusion – that as a result of the Succession Law, Rwandan women were increasingly starting to claim their land rights and were increasingly succeeding in this as the notion of gender equality in marriage and inheritance has taken popular hold.³³

However, it is important to note that often in establishing constitutional and legal protections for gender equality, both in general and in land matters, the focus is on securing and improving rights – or in this case, land rights – for *women*. Such a goal is not necessarily a zero sum game – it does not necessarily imply an equal deterioration in the land rights of *men*. But it does raise questions about the effects of the frequent blurring in practice of discussions about 'gender equality in land rights' and about 'women's land rights', and the frequent equating of 'women' and 'gender' as synonymous terms. If women's rights are often negatively affected by patriarchal structures and processes in land relations and wider social and political relations, it would not be unreasonable to concentrate efforts on improving their situation and securing their rights on the assumption that most men already have secure rights. However, if this is done at the expense of gender equity, we believe it is unlikely to lead to sustainable positive change.

³²http://www.unifem.org/news_events/story_detail.php?StoryID=736,
http://www.womenontheline.org.au/audio/this_week/WOTL.16.01.09.mp3

³³ Dore-Weeks and Arnesen, *Facilitating*, MINITERE et al, *Results*

It is important to make a clear distinction here between gender equality and gender equity.³⁴ Equity – fairness – requires the treatment of all human beings as equals, such that gender is not used as the basis for systematic discrimination in access to and allocation of resources. However, following Ronald Dworkin, the right to treatment as equals is distinct from the right to equal treatment, or egalitarianism, which gender equality often implies.³⁵

In the matter of land rights, gender equality could imply that all men and women be granted equal rights to equal amounts of land, whereas gender equity implies that all men and women be granted equal opportunities to access land of different types and tenures, and equal rights irrespective of gender to the different types and tenures of land that they access. Thus, if land tenure is to be privatised through the registration of individual land ownership rights, gender equality could imply, either, that all a married couple's land be divided in two and the man and the woman register half each in their own name, or, that all a couple's land is registered jointly in both their names with equal rights over the land.

Gender equity, however, could allow for each land parcel within the couple's total landholding to be examined separately and rights registered according to the use of, need for and mode of acquisition of the land, taking into account also local socio-cultural and political relations. To an extent, this parallels the argument of Adoko and Levine discussed earlier about supporting the norms of customary institutions which protect women's access rights to land in gender-specific ways, yet it goes much further in, first, requiring attention also to be paid to the land rights of men, and, second, in requiring each couple's situation to be assessed on a case by case and participatory and consultative basis during the registration process. Moreover, such a gender equitable case by case

³⁴ 'Gender' itself is a conceptually problematic term. We use it to refer to that aspect of social and political identity which is constructed in some way from, and gives meaning to, an individual's biological sex and physical body. We define 'women' as all those individuals who fall into the category of women as it is socially understood in any particular society or culture; as a socially constructed category 'woman' is therefore a gender, derived from physicality and biological sex, but not necessarily dependent on these in fixed ways. We take gender relations to mean the socially constructed (and contestable) relations between people, based on the different social meanings attributed to biological sexes and different bodies. See MacKinnon, *Feminism Unmodified*, and Moore, 'The Divisions Within', from which we derive our position.

³⁵ See Dworkin, *Taking Rights Seriously*, Chapter 9, especially 227.

process could not depend on following recorded customary norms as Adoko and Levine suggest.³⁶

Let us return to Rwanda, where this sort of gender equitable approach to women's land rights has been put in practice. In the run-up to national land registration in Rwanda, extensive field consultations sought to establish people's preferences with regard to how the rights and interests of different family members should be recorded on title documents, including those of legal wives, non-legally-married women and children. The main finding was very clear: the vast majority of people wanted their new title documents to include the names of all owners and people with interests in the land. They also wanted joint registration (in both names) of land owned by couples who were legally married, but proposed that the land of single men and women, including unmarried people and non-legally married women or women living in the (illegal) state of polygamy, should be registered to them as sole owners. These views reflected a broad understanding of the status of marriage under the Rwandan constitution, whereby only civil monogamous marriage is legally recognised. However, they also reflected a broad understanding that a man with more than one wife generally tended to have different parcels of land for his different families, and the land used by a non-legally married 'wife' might have been bought purposefully for her use by her husband, or acquired independently by herself.

During land registration, it would then become very important to carefully identify the main user of a piece of land that at first sight might appear to be 'owned' by a man with multiple wives. Because of the constitutional status ascribed to legal marriage, the legal wife's name could straightforwardly be recorded as a joint owner on some of the family land, but the husband could not be recorded as a joint owner on the land of any other wives; he could only be recorded, like children, as a person with interests in that land.

³⁶ Adoko and Levine's position is also flawed because they attempt to generalise too much, by proposing a dual strategy of supporting individualised land rights and titling for "urban and educated women" but not for "the rural, the less educated and those who see themselves as family and community members and not only as individuals" (LEMU, *Fighting the Wrong Battles?*, 3). This is deeply problematic as it supports inequity between different groups of women and thus does not support the treatment of all human beings as equals.

On the back of these preferences and understandings, the Rwandan land registration process was then designed, tested and enshrined in legislation to allow for up to three joint landowners to be named on title and lease certificates, as well as others with interests in the land to also be named. The registration process and legislation also provides for single men and women to register as individual landowners, which in practice covers non-legally married couples, where the ‘wife’ registers the land she is using in her name with her ‘husband’ recorded not as a joint owner but as having an interest in her land.

As this case shows, securing women’s land rights can be a complicated process and it is therefore important to think outside the box in formulating and implementing land tenure reforms that benefit and improve the situation for women in a gender-equitable way.

3) The challenges of reform implementation and of building women’s confidence to claim their rights

Rwanda is an instructive, if potentially unique case, but more widely in practice the challenges of reform implementation, and of building women’s confidence to claim their rights, are great. This marks our third and concluding main theme today.

In Dar es Salaam, in Tanzania, Ingunn Ikdahl has found with respect to the process of issuing residential licences that, although licence documents have space for several names, there is only space “for one picture of the rights-holder”. Furthermore, “officials who had visited residential areas during working hours had talked to neighbours and, based on such information, had put only the husband’s name on the documents.” The women Ikdahl spoke with found that getting this changed required a high “level of legal literacy, as well as time and patience, to deal with the bureaucracy.”³⁷ Ikdahl also reports one senior bureaucrat in the Tanzanian Ministry of Land stating that, although wives sometimes came to get their name included on the residential licence, officials would “normally not deal with such conflicts”. Instead, they told the wives to “go home and

³⁷ Ikdahl, ‘Go Home’, 53.

clear the conflict”, as they saw it as a household matter which was up to the couple to decide.³⁸

This example begs the question that if land officers are not interested in the gendered fallout of land registration exercises, what is one to do? The transformative potential of gender equal and gender equitable legal provisions is so clearly dependant on the competence and commitment of the political and bureaucratic actors involved. In Rwanda, during preparations for the roll-out of national land registration, field staff made particular efforts to provide people with information so as to ensure that women’s land rights were correctly recorded during the technical process of demarcation and adjudication, either with their siblings, their husbands or in their own right if widowed or otherwise single (including those non-legally married as we have just described). Field staff worked alongside Cell Land Committees who were specifically trained on how to deal with gender issues during the land registration process, and a specially made training video, for example, includes scenes showing how women’s rights were being recorded during demarcation and adjudication. All this has come from within the broader context of progressive national government policies towards gender equality and women’s rights that are upheld and protected within the constitution

The sorts of measures utilised in Rwanda have made a big impact on women’s confidence in claiming their land rights there – both from the sensitisation work going on around the current process of land registration, and earlier legal literacy work that surrounded the passing of the Succession Law. In other cases, where customary institutions are important to land tenure reform implementation and new institutions are not being created, capacity building work to strengthen the links between different types of institutions that women are involved with, and to strengthen their ‘voice’ overall, will be just as important, as Fiona Flintan will be talk more about a bit later in this panel.³⁹

³⁸ Ik Dahl, ‘Go Home’, 53.

³⁹ C.f. Flintan, ‘Sitting at’.

We would like to conclude here with the suggestion that the goal for all those working in the field of women's land rights must be to learn and understand how different women can best be supported, in differing ways according to circumstance and social context, choosing from every strategy available the one that is most likely to be effective, and then remaining open to adapting the strategy as events unfold. At base, there must be a stronger focus on gender equity within such a positive, pragmatic and innovative approach to securing women's land rights – a focus on securing equitable land rights for both *women* and *men* – in order to achieve sustainable positive change in broader social and political relations.

References

- Aal, Wiliam, Jarosz Lucy, Thompson, Carol. 'Food is a human right, not a corporate commodity. Open letter to Paul Collier, director of Oxford's Centre for the Study of African Economies' *Pambazuka News*, February 5, 2009. Online: <http://www.pambazuka.org/en/category/letters/53783>
- Adams, M. and S. Turner, *Legal Dualism and Land Policy in Eastern and Southern Africa*. CAPRI Policy Brief, 2006.
- Adoko, Judy; Levine, Simon, 'Falling Between Two Stools. How women's land rights are lost between state & customary law in Apac District, Northern Uganda', In *Women's Land Rights & Privatization in Eastern Africa*, edited by Birgit Englert and Elizabeth Daley, Suffolk: James Currey; New York: Boydell & Brewer; Kampala: Fountain Publishers; Nairobi: East African Educational Publishers; Dar es Salaam: E & D Vision Publishing, 101-120, 2008.
- Agarwal, B. *A field of one's own: Gender and land rights in South Asia*, Cambridge: Cambridge University Press, 1994.
- Alden Wily, E. *Land Rights Reform and Governance in Africa. How to make it in the 21st Century*. Discussion Paper. United Nations Development Programme (UNDP), 2006.
- Aliber, M., C. Walker, M. Machera, P. Kamau, C. Omondi & K. Kanyinga, 'The Impact of HIV/AIDS on Land Rights in Kenya.' A research report commissioned by DFID-EA and FAO-KEN in partnership with the Ministry of Lands and Settlement, 2003.
- Antwi, Adarkwah, *Our Common Estate: A Study of Informal Urban Land Transactions in Accra, Ghana*. London: RICS Foundation, 2002.
- Bassett, T. 'Introduction: The Land Question and Agricultural Transformation in Sub-Saharan Africa', In *Land in African Agrarian Systems* edited by T. Bassett & D. Crummey, USA: University of Wisconsin Press, 1993.
- Benjaminsen, Tor A. and Christian Lund, *Securing Land Rights in Africa*, London: Frank Cass, 2003.
- Benjaminsen, Tor A. and E. Sjaastad, 'Race for the Prize: Land Transactions and Rent Appropriation in the Malian Cotton Zone'. In *Securing Land Rights in Africa* edited by T.A. Benjaminsen and C. Lund, London: Frank Cass, 2003.
- Bernal, Victoria, 'Losing Ground – Women and Agriculture on Sudan's Irrigated Schemes: Lessons from a Blue Nile Village', in *Agriculture, Women and Land – The African Experience*, edited by Jean Davison, Boulder, USA: Westview Press Inc., 1988.
- Berry, Sara, *No Condition is Permanent – The Social Dynamics of Agrarian Change in Sub-Saharan Africa*, USA: University of Wisconsin Press, 1993.
- Brain, J., 'Less Than Second-Class: Women in Rural Settlement Schemes in Tanzania', in *Women in Africa: Studies in Social and Economic Change* edited by N. Hafkin and E. Bay, (USA: Stanford University Press), 1976.

- Chanock, M., 'Making Customary Law: Men, Women, and Courts in Colonial Northern Rhodesia'. In *African Women and the Law: Historical Perspectives* edited by M. Hay, and M Wright USA: Boston University African Studies Centre, 1982.
- Chopra, Tanja, 'Promoting Women's Rights by Indigenous Means: An Innovative Project in Kenya', *Justice for the Poor*, July 2007, Vol 1 Issue 2, World Bank, 2007.
- Collier, Paul. 'Food Shortages: Think Big. If We're to Solve this Global Problem, We Need More Globalisation and Less Sentimentality.', *The Times*, April 15, 2008. Online: http://www.timesonline.co.uk/tol/comment/columnists/guest_contributors/article3746593.ece
- Collier, Paul. 'The Politics of Hunger. How Illusion and Greed Fan the Food Crisis', *Foreign Affairs*, November/December 2008. Online: <http://www.foreignaffairs.com/articles/64607/paul-collier/the-politics-of-hunger>
- Daley, Elizabeth, 'Land and Social Change in a Tanzanian Village 1: Kinyanambo, 1920s – 1990'. *Journal of Agrarian Change*, 5, no. 3 (2005a): 363-404.
- Daley, Elizabeth, 'Land and Social Change in a Tanzanian Village 2: Kinyanambo in the 1990s'. *Journal of Agrarian Change*, 5, no. 4 (2005b): 526-572
- Daley, Elizabeth and Mary Hobley, *Land: Changing Contexts, Changing Relationships, Changing Rights*. London: DFID, 2005. Online: www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/land_changing_contexts_relationships_rights.rtf
- Daley, Elizabeth, 'Gender, *Uenyaji*, Wealth, Confidence & Land in Kinyanambo. The impact of commoditization, rural-urban change & land registration in Mufindi District, Tanzania', In *Women's Land Rights & Privatization in Eastern Africa*, edited by Birgit Englert, and Elizabeth Daley, Suffolk: James Currey; New York: Boydell & Brewer; Kampala: Fountain Publishers; Nairobi: East African Educational Publishers; Dar es Salaam: E & D Vision Publishing, 61-82, 2008.
- Daley, Elizabeth, Rachel Dore-Weeks and Claudine Umuhosa, 'Ahead of the Game: Land Tenure Reform in Rwanda and the Process of Securing Women's Land Rights', *Journal of Eastern African Studies*, 4:1, 131-152, 2010.
- Daley, Elizabeth and Englert, Birgit. 'Securing Land Rights for Women'. *Journal of Eastern African Studies*, 4: 1, 91 – 113, 2010.
- Davison, Jean, "'Without Land We Are Nothing": The Effect of Land Tenure Policies and Practices upon Rural Women in Kenya', *Rural Africana*, 27,(1987): 19-33.
- Dore-Weeks, Rachel and Arnesen, Kelly, *Facilitating a Shift to Gender Equitable Land Distribution: Legal Frameworks, Inheritance Patterns and the Gap between Policy and Practice*, African Rights: Kigali, 2007.
- Dworkin, Ronald, *Taking Rights Seriously*, London: Duckworth, 1991.
- Englert, Birgit and Robin Palmer, *Women's Land Rights in Southern and Eastern Africa*. A Short Report on the FAO/Oxfam GB Workshop held in Pretoria, South Africa, 17-19 June 2003. Online: www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/wlrsea_short_report.rtf
- Englert, Birgit and Elizabeth Daley. "Introduction." In *Women's Land Rights & Privatization in Eastern Africa*, edited by Birgit Englert and Elizabeth Daley, Suffolk: James Currey; New York: Boydell & Brewer; Kampala: Fountain Publishers; Nairobi: East African Educational Publishers; Dar es Salaam: E & D Vision Publishing, 1-17, 2008.
- Englert, Birgit, 'Changing Land Rights & Gendered Discourses. Examples from the Uluguru Mountains, Tanzania', In *Women's Land Rights & Privatization in Eastern Africa*, edited by Birgit Englert and Elizabeth Daley, Suffolk: James Currey; New York: Boydell & Brewer; Kampala: Fountain Publishers; Nairobi: East African Educational Publishers; Dar es Salaam: E & D Vision Publishing, 83-100, 2008.
- Flintan, Fiona, 'Sitting at the Table: Securing Benefits for Pastoral Women from Land Tenure Reforms in Ethiopia.' *Journal of Eastern African Studies*, 4:1, 153-178, 2010.
- Hanger, J. & Moris, J., 'Women and the Household Economy', in Chambers, Robert & Moris, J. (eds.), *Mwea: An Irrigated Rice Settlement in Kenya*, (Munich: Weltforum Verlag), 1973.
- Ikdahl, Ingunn, "'Go Home & Clear the Conflict". Human rights perspectives on gender & land in Tanzania', In *Women's Land Rights & Privatization in Eastern Africa*, edited by Birgit Englert and Elizabeth Daley, Suffolk: James Currey; New York: Boydell & Brewer; Kampala: Fountain

- Publishers; Nairobi: East African Educational Publishers; Dar es Salaam: E & D Vision Publishing, 1-17.40-60, 2008.
- Izumi, Kaori (ed.) *Reclaiming our Lives. HIV and AIDS, Women's Land and Property Rights and Livelihoods in Southern and East Africa. Narratives and Responses*, Cape Town: HSRC Press, 2006.
- Izumi, Kaori, 'Gender-based Violence and Property Grabbing in Africa: a Denial of Women's Liberty and Security', *Gender & Development*, 15, no. 1, (March 2007): 11-23.
- Kanji, Nazneen (ed.), *Innovation in Securing Land Rights in Africa: Lessons from Experience*, Briefing Paper, London: IIED, 2006.
- Kelsall, Tim, 'Going with the Grain in African Development?', *Development Policy Review*, 26, no. 6, 627-655, 2008.
- Khadiagala, Lynn, S., 'The Failure of Popular Justice in Uganda: Local Councils and Women's Property Rights', *Development and Change*, 32, 55-76, 2001.
- Lastarria-Cornhiel, Susanna, 'Impact of Privatization on Gender and Property Rights in Africa'. *World Development*, 25, no. 8, 1317-1333, 1997.
- LEMU, *Fighting the Wrong Battles? – Towards a New Paradigm in the Struggle for Women's Land Rights in Uganda*, Working paper, Kampala: LEMU, December 2008.
- Mackenzie, Fiona, 'Gender and Land Rights in Murang'a District, Kenya', *Journal of Peasant Studies*, 17, no. 4, 609-643, 1990.
- MacKinnon, Catherine, *Feminism Unmodified: Discourses on Life and Law*, USA: Harvard University Press, 1987.
- Manji, Ambreena, 'Gender and the politics of the land reform process in Tanzania'. *Journal of Modern African Studies*, 36, no. 4, 645-667, 1998.
- Manji, Ambreena. *The Politics of Land Reform in Africa*, London: Zed Books, 2006.
- McAuslan, Patrick, 'Only the Name of the Country Changes: The Diaspora of "European" Land Law in Commonwealth Africa', In *Evolving land rights, policy and tenure in Africa*, edited by Camilla Toulmin & Julian Quan, London: DFID/IIED/NRI, 2000.
- MINITERE/DFID/HTSPE Ltd., *Results of Preparatory Field Consultations in Four Trial Districts; March – October 2006* (Official report for 'Phase 1 of the Land Reform Process for Rwanda' project, final draft as at 16 February 2007), E. Daley, with T. H. Ngoga, J. Cyubahiro, O. Kamusiime and D. M. Rugema, and with H. Kyomugisha, D. Mwambari and J. Wamukama, 2007.
- Moore, Henrietta, 'The Divisions Within: Sex, Gender and Sexual Difference', in *A Passion for Difference - Essays in Anthropology and Gender*, Oxford: Polity Press, 1994.
- ODI, 'Uncharted Territory – Land, Conflict and Humanitarian Action – Meeting Report', Undated report of conference held on 7 February 2008. Online: <http://www.odi.org.uk/hpg/meetings/land-conference-note.pdf>
- Okuro, Samwel Ong'wen. 'Struggling with In-Laws & Corruption in Kombewa Division, Kenya. The impact of HIV/AIDS on widows' and orphans' land rights', In *Women's Land Rights & Privatization in Eastern Africa* edited by Birgit Englert and Elizabeth Daley. Suffolk: James Currey; New York: Boydell & Brewer; Kampala: Fountain Publishers; Nairobi: East African Educational Publishers; Dar es Salaam: E & D Vision Publishing, 121-137, 2008.
- Pala, A.O., 'Daughters of the Lakes and Rivers: Colonization and the Land Rights of Luo Women', In *Women and Colonization - Anthropological Perspectives*, edited by M. Etienne and E. Leacock, New York: Praeger Publishers, 1980.
- Palmer, Robin. 'Foreword.' In *Women's Land Rights and Privatization in Eastern Africa*, edited by Birgit Englert and Elizabeth Daley, ix-xii. Oxford, Kampala, Nairobi: James Currey, 2008. Online: http://www.oxfam.org.uk/resources/learning/landrights/downloads/foreword_womens_rights_to_land_eastern_africa.pdf
- Palmer, Robin, *Securing Women's Land Rights in Africa*. Notes of a Royal African Society meeting in association with the Centre of African Studies, SOAS at the School of Oriental and African Studies, London 29 January 2009, Oxford: Mokoro, February 2009. Online: http://www.oxfam.org.uk/resources/learning/landrights/downloads/securing_wlr_in_africa_ras_mt_g_29_jan_09.pdf
- Pantuliano, Sara, Margie Buchancan-Smith, Paul Murphy and Irina Mosel, 'The Long Road Home: Opportunities and Obstacles to the Re-integration of IDPs and Refugees Returning to Southern

- Sudan and the Three Areas – Synthesis Paper, , ODI: Humanitarian Policy Group, September 2008. Online: <http://www.odi.org.uk/resources/download/2461.pdf>
- Peters, Pauline, 'Inequality and Social Conflict over Land in Africa', *Journal of Agrarian Change*, 4 no. 3, July (2004): 269-314.
- Platteau, Jean-Philippe, 'The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment', *Development and Change*, 27, 29-86, 1996.
- Platteau, Jean-Philippe, *Institutions, Social Norms, and Economic Development*. Amsterdam: Harwood academic publishers, 2000.
- Ranger, Terence, 'The Invention of Tradition in Colonial Africa'. In *The Invention of Tradition* edited by Eric Hobsbawm and Terence Ranger, Cambridge: Cambridge University Press, 1983.
- Razavi, Shahra, 'Liberalisation and the debates on women's access to land', *Third World Quarterly*, 28, no. 8, 1479-1500, 2007.
- Shivji, Issa, 'Reflections on the Woman Question and Land: Some Debating Points', *Change*, 5, no. 1 (1997): 64-71.
- Swynnerton, R. (compiler), *A Plan to Intensify the Development of African Agriculture in Kenya*, Nairobi: Government Printer, 1954.
- Tsikata, Dzodzi. "Securing Women's Interests within Land Tenure Reforms; Recent Debates in Tanzania" In *Agrarian Change, Gender and Land Rights*, edited by Shahra Razavi. Oxford: Blackwell Publishing, 2003.
- Ubink, Janine, 'Chiefs, customary law, and the protection of land rights in Ashanti, Ghana.' Draft of paper presented at International Workshop on *Adjudication of land disputes, legal pluralism and the protection of land rights in Ghana and Cote d'Ivoire*, 17-18 February 2005, Institute of Commonwealth Studies, University of London.
- Wandia, Mary, 'Safeguarding women's rights will boost food security', In: *Pambazuka News*, June 25, 2009, Issue 439, Online: <http://pambazuka.org/en/category/features/57225>
- Whitehead, Annie and Dzodzi Tsikata, 'Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary'. In *Agrarian Change, Gender and Land Rights*, edited by Shahra Razavi, London: Blackwell Publishing Ltd, 2003.
- Woodhouse, Philip, 'African enclosures: a default mode of development'. *World Development*, 31, no. 10, 1705-1720, 2003.
- World Bank, FAO, and IFAD, *Gender in Agriculture Sourcebook*. Washington, DC: World Bank, 2009.