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# Africa neglects women's property rights at its own economic peril - but it's not the only culprit

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**Women** produce between **70 and 80% of the food in Africa, yet they own less than 10%** of the land. To transform this, the **African Union (AU) Agenda 2063 implementation plan** requires at least 20% of rural women to have access to, use of and control over land by 2023. Such transformation can be achieved through legal awareness raising and bottom-up legal change strategies that account for **vernacularised constructs of rights** mediating

cultural categories. This is likely to **impact** women's food security, access to housing, employment, autonomy and facilitate their economic empowerment.

As an African woman who has taught and researched on how law can influence or impede development in Africa for over fifteen years, I have had the opportunity to encounter and work on gender inequality, displacement, dispossession, and economic marginalisation in and on several African countries. Key stakeholders from various African countries who have participated in the **Rule of Law and Inclusive Development in Africa Workshops** that I have convened for several years in **various African countries** have strongly influenced these encounters. A notable consensus throughout these encounters has been the negative impact of homelessness, hunger, poverty and economic disempowerment on land-dispossessed African women and their children and the huge potential that lies in redressing underlying discriminatory systems.



## Land is life

**Land is one of the key cornerstones of society** and the economy in Africa, and farmers, pastoralists and other communities base their livelihoods upon it. Land is also an important component of business assets, for instance, it can serve as collateral for credits and loans. Land in rural Africa is both a means of agricultural production, livestock rearing and a place for gathering natural products that play an important role in local economies. Furthermore, land as collective property is a source of group identity, cultural heritage and socio-cultural and religious practices – land is life.

Since it links up **several basic human rights**, land can be regarded as the most important property a human being can possess. Thus, securing land rights can have a **profound impact**

**on human rights and economic development**. Unequal rights to land put women at a disadvantage, perpetuate poverty, and entrench gender inequality in Africa. This inequality in the use of, access to and control over land even becomes an obstacle to the sustainable management of natural resources and socio-economic and environmental development.

**Gender is thus a critical juncture** in women's land rights because there is a direct relationship between gendered access to land resources, having secured land rights, achieving food security and overcoming poverty. The legal narrative against gender discrimination in access to land and land-related resources is well reflected in relevant **international** and **regional legal frameworks in Africa**. Yet, while African countries have achieved varied legal and policy strides in domesticating these, **studies** have shown that even where laws are equitable, women may not know their legal rights. In addition, implementation may still be **gender-biased**, and law enforcement may **be grossly inadequate or prejudiced** against women, reflecting inbuilt social bias, cultural attitudes and inefficiency.

It is therefore important to examine laws that affect women's land rights in various African countries with specific reference to the **types of rights** that exist and how those rights are **claimed, acquired, held, and transferred**, including whether women can hold land jointly or in their own names and whether customary tenure upholds women's land rights. This requires the exploration of **legal realities around women's land rights** by going beyond constitutions and land laws. For instance, marriage laws, family laws, succession and inheritance laws in particular, are critical to the land rights of women.

It is also imperative to assess whether **principles of gender equity** are broadly embraced, socially or legally accepted, and promoted at the institutional level (such as within land registries, courts, conflict resolution institutions, and local land administration agencies). This calls for the **assessment** of gender balance and practice within formal institutions and a gendered examination of rules, institutions, and players involved in **informal systems** – customary or religious, particularly those regarding succession, inheritance and **divorce**. In reality, despite what formal legal frameworks and institutions may provide, African women's lived experiences closely tie them to accessible, informal systems than the inaccessible formal ones. Because formal systems are replete with their own challenges - being costly and cumbersome for women, this usually automatically re-directs them to familiar, informal systems of land management or governance.



## On transplanted values

Of note is the fact that African women's value within both informal and formal systems is determined by **foreign transplanted values** (legal, colonial, racial and patriarchal) that have **negatively impacted** their rights to use, access or control valuable property, including land. For formerly colonised, gendered and racialised people, most decisions about their value, values and valuables are externalised due to **centuries of extractive relationships** between the global north and south. For instance, the constructed and diminished value of African women is predominantly influenced by **patriarchal cultural norms and patriarchal colonial values re-emphasising each other**.

Transplanted values around law, legal norms and social regulation have over the years, including through colonial processes, influenced the idea of **social or gender roles, as well as property**. Transplanted concepts of marriage and individualised and registered formal property rights, which discount African women's agency due to unequal power structures underlying their construction, **conflict with indigenous concepts of customary or traditional** marriage, tenure and property rights which emphasise communitarian values and offer mediated, but assured land rights for women within African communities (patriarchal issues notwithstanding).

The **dissonance between the two systems and the prominence of the former to the detriment of the latter**, has disproportionately impacted African women. For instance, contestations around what is valuable and who determines it reinforce women's formal land ownership being the only option for accessing and securing it, missing other **multidimensional bundles of customary entitlements**. The fact that this is conveyed predominantly through a foreign transplanted system of law, justice and tenure, which undermines social embeddedness, means that formal ownership is not only a contested

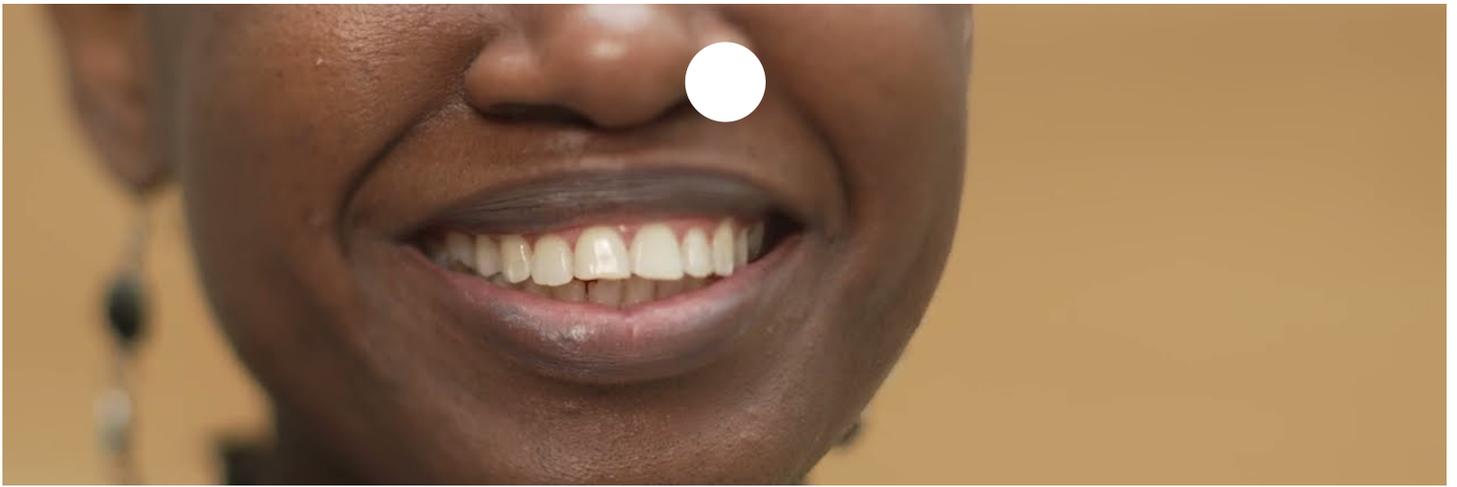
concept, but it is also peddled as a hallmark of civilisation, development, transformation and progress, delimiting custom and customary entitlements and **emphasising formal rights** in order to save African women.

These constructed denominators have shaped women's formal rights to property as boundaries of autonomy that delineate developed and developing nations, empowered women and disempowered victims, saviours and survivors - nurturing fodder for debates between universalists and cultural relativists, without centering rural African women. The consequence is **hierarchies of citizenship for these women and their children** - birthing second-class, displaced, culturally identity-less children and 'wayward' or 'vulnerable' mothers.

## A call for bottom-up legal strategies for change

In our upcoming co-edited book on *Protecting Women's Land Rights in Eastern and Southern Africa*, which is a culmination of years of collective advocacy, policy engagement, research and dialogue through the **Rule of Law and Inclusive Development in Africa Workshops**, we call for reimagining the value of African women and centering what is valuable to them, including how the law (in all its legalities) should aid them in **defining, defending and protecting** their land rights. We acknowledge that transforming the status quo in formal and informal law will require drastic measures, noting useful elements whilst rethinking the blanket emphasis on prescriptive, legalistic, hegemonic and transplanted approaches that are couched within **neoliberal development frames** that actually underpin, perpetuate and sustain African women's inequalities. For instance, despite formal law's patriarchal, colonial and racialised elements, its equality claims, can be combined with socially embedded claims to customary entitlements and utilised to **negotiate** the content of these entitlements. We, therefore, call for embracing bottom-up legal strategies for change that treat rights as relational and useful for mediating the interface with customs. Notably, living **customary law and norms** offer great opportunities to renegotiate power within African communities because of their flexibility, adaptation, and capacity to be mediated through women's **socially embedded positions**. We approach this cautiously though, noting that contemporary living customary norms can also borrow from and be co-opted by formal law's version of distorted custom and prevailing socio-economic conditions, with positive and negative connotations for African women's land rights claims.





Research for Change: African women's empowerment through local transformation of land rights

## About the author

Dr Olivia Lwabukuna is based in the **School of Law, SOAS University of London**, where she has convened and taught on a range of undergraduate and postgraduate modules, including International Law, Foundations of Human Rights Law, Research Methods in Law, Legal Systems of Asia and Africa and Law and Development in Africa. She is the editor of the *Journal of African Law* (Cambridge), and a research fellow in the Free state center for human rights, university of the Free State, South Africa. Dr Lwabukuna has convened the Annual Regional Rule of Law and Inclusive Development in Africa workshops since 2017 with support from the Konrad Adenauer Stiftung Rule of Law Programme for Sub-Saharan Africa. She is currently finalising a co-edited book on Women's Land Rights in East and Southern Africa: Gender, Law and Development, based on outputs from the workshops.

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