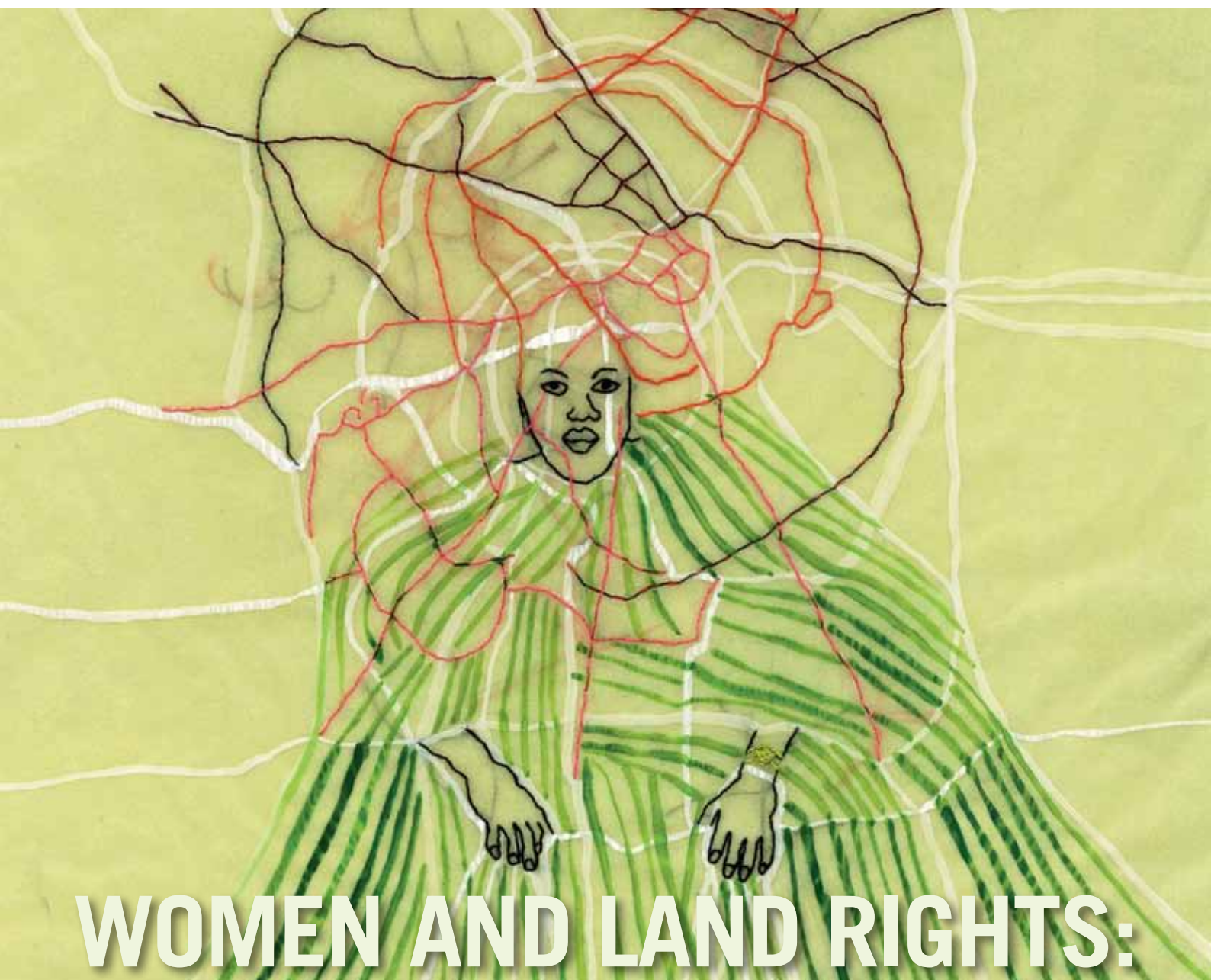


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# PERSPECTIVES

Political analysis and commentary from Africa



## WOMEN AND LAND RIGHTS:

## QUESTIONS OF ACCESS, OWNERSHIP AND CONTROL

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# Contents

Editorial	5
■ I Want It and I Want It Now: Women and Land in Africa <i>Patricia G. Kameri-Mbote</i>	6
■ Land Reform and Women’s Land Rights in South Africa <i>Shamim Meer</i>	10
■ Interview Reflections on Advocacy for Women’s Land and Tenure Rights in South Africa	15
■ As Mining Steals the Basis for Survival, Peasant Women Show a Way Out of the Crisis <i>Samantha Hargreaves</i>	19
■ Interview Women and Land Rights in Somaliland <i>Shukri Ismail</i>	23
■ Comment The Limits of Law: Women and Land Ownership in Kenya <i>Carol Kinya Mburugu</i>	25
■ “In reality, men run the show...”: Queen Mothers in Ghana Fight for Their Say in Land Deals <i>Pascal Kelvin Kudiabor</i>	27
■ Portrait Susan Godwin: Struggle of a Landless Food Hero	29



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## Editorial

# Women and Land Rights in Africa

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Women's land rights remain one of the most important sites of social, political and economic contestation in post-colonial Africa. Land is not only a source of food, employment and income; it also gives social prestige and access to political power. Land has long been recognised as key to advancing the socio-economic rights and wellbeing of women and their position in society. Yet access, control and ownership of land largely remain the domain of male privilege, entrenching patriarchal structures of power and control over community resources, history, culture and tradition. For the majority of women in Africa, access to land is still linked to their relationship with a male family member and is forfeited if the relationship ends.

Even where land reform policies include gender equality goals, these tend to fade when it comes to implementation. The lack of serious attention to gender equality reinforces the marginalised position of women and undermines mainstreaming efforts to improve women's rights. It also hampers, broadly speaking, strategies for economic development.

While civil society advocacy and government programmes to reform disparities in land-tenure regimes have removed some of the historical legal barriers, land remains an unachievable aspiration for the majority of the rural and urban poor in the continent. Women's prospects for socio-economic upliftment through secure tenure appear particularly grim – even more so as the global demand for land for large-scale agriculture and mining increases land scarcity, fuelling a rise in land prices and fierce competition for control.

Further, the *de facto* existence of a dual system of statutory law and indigenous customary law in many countries allows men to manoeuvre from one to the other as it favours them. The complexity of legal systems narrows women's access to justice as they often lack basic knowledge about legal procedures and their rights.

Ongoing legislative and institutional reforms also need to engage with custom in order to deconstruct and re-conceptualise traditional notions of land access, control and ownership, with a view to intervene at points that will make the most difference for women.

Despite the gendered nature of power relations, land-rights issues are constantly negotiated, contested and resisted by affected women in various ways. Beyond formal policy processes, the examples of women's self-organised resistance to land grabs and their strategies to thwart patriarchal forms of dispossession offer powerful narratives.

This issue of *Perspectives* discusses these diverse challenges across the continent. The examination of issues that are specific to women and land unveils both vulnerabilities and potentials. It substantiates the need for interventions that reach beyond the provision of legal access to land rights if the aim of women's economic empowerment is to be realised.

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# I Want It and I Want It Now: Women and Land in Africa

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In Africa, as elsewhere, land rights have remained a bastion of male power and privilege. Since land is a fundamental resource for improving living conditions and economic empowerment, the lack of land rights for women undermines efforts to promote gender equity and equality within a patriarchal society. The minimal transformation of women's socio-economic position with regards to access and control of land is, in many cases, due to land reform programmes and related processes whose design or implementation is "gender neutral". In the worst cases, these legal and institutional processes threaten to even further entrench gender inequalities.

This article provides an overview of current strategies to reform access to property in general, and land ownership in particular, from a gendered perspective.

## Importance of Land

Land is a vital resource for rural and urban livelihoods in Africa. It is also a critical asset in the gross domestic product of African countries, most of whose economies depend on agriculture, wildlife tourism and mining. And land is also central to women's quest for rights: because of the gendered division of labour, women spend a lot of time working on the land and yet have limited rights of ownership, access and control. This exclusion denies women the social, economic and political autonomy that is vital for full membership in a given society, the exercise of functions relating to property, and the capacity to fulfil reciprocal obligations and responsibilities within the community. Land represents the vehicle through which women can move from the reproductive (private and non-work) realm to the productive (public and work) realm.<sup>1</sup>

Women's rights to land in Africa have been affected by a convergence of, on the one hand, government policies related to the current shift towards greater commercialisation and competition

Women's rights to land are critical in the quest to create more egalitarian societies in Africa.

for land and, on the other hand, discriminatory customary law. Land is mainly controlled by male household heads, with the assumption that the rights are held in trust for all in the household.<sup>2</sup> Women are relegated to a subordinate position in accessing land predicated on husbands, fathers, uncles, brothers, and sometimes sons.

Access to land rights is also linked to violence against women, women's participation in the political arena, and women's voice in the domestic, local and national spheres. Women's rights to land are thus critical in the quest to create more egalitarian societies in Africa. Indeed, it has been demonstrated that granting rights to women contributes to the national and household imperatives of family welfare, food security, empowerment, economic efficiency and poverty alleviation.<sup>3</sup>

## Gender in Multiple Land Functions

Since land ownership indicates a person's identity, social standing and citizenship, the negation of women's rights to land has implications at the national, family and household level. Social standing is also influenced by gender, age and marital status, raising the need for holistic policy responses to transform the position of women in Africa.

The issue of land rights in African countries is complex because of the multiplicity of claims to land and land-based resources. Land policies and laws in Africa have to deal with a number of key issues, which include:



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- state sovereignty over land
- unequal distribution of land resources
- the plurality of property systems
- land tenure security
- sustainable management of the environment and natural resources
- protecting the commons
- competition between different land uses and users
- gender and generational biases in land relations
- HIV/AIDS, which has affected a sizeable part of the labour force in many African countries
- land management in conflict situations
- the place of the rights of women and youth within

- community and customary claims
- structuring land administration systems and institutions
- designing land policy implementation processes and programmes.

Gender issues cut across all of these. When women's land rights are addressed through policy and legal reforms, diverse contexts need to be considered, even as there are commonalities in the challenges and design of new land rights regimes.<sup>4</sup> Land itself has multiple meanings and functions that also have gendered implications (Table 1).

**Table 1. The Multiple Functions of Land Rights**

FUNCTION	EXAMPLES
Economic Functions	Productive activities (farming, livestock rearing) Land sales and rentals Benefits from land appreciation Investment incentive effects
Food security	Source of food and income Buffer against sudden price increases
Reduced vulnerability/ shock mitigation	Source of food and employment Collateral for credit Income from land sales and rentals
Social functions	Social standing/ bargaining position within the household, community and nation Membership in groups Cultural identity Religious functions
Conservation	Authority to make decisions Incentives for sustainable management

Source: Meinzen-Dick et al, 2009

Some emerging issues that must be taken into account in dealing with women's land rights exacerbate an already complicated situation:

- globalisation of agricultural trade
- land grabs, in which foreign governments and international companies acquire land in African countries to grow for their populations or foreign markets
- privatisation of natural resources and the control of public goods moving from state to private actors, largely excluding women
- new technologies (e.g. genetic modification), and their impact on women's management of

- resources
- gender asymmetries in access to information and training in information and communication technologies
- conflicts and their impact on land rights and women's lives.<sup>5</sup>

### Role of Policy and Law

Additionally, land reforms need to redress imbalances, including women's exclusion from ownership, through redistributive measures that take into account dualistic ownership systems based on the intersection of customary and statutory laws.

The minimum goals for land reform initiatives are:

- security of tenure for women and men, so that they can make productive and sustainable use the land for different purposes
- equitable access to land for subsistence, commercial and settlement uses, and the need to achieve a sustainable balance between these
- intra- and inter- generational equity
- gender equity
- effective regulation of land development
- access to land information
- good democratic governance of land.

At the continental level, the “Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa” pays particular attention to land and environmental resources. Article 15 links the right to land to food security, while Article 19, dealing with sustainable development, exhorts states to promote “women’s access to and control over productive resources such as land and guarantee their right to property”. The issue of gender and land relations was also taken up by the African Union heads of state in the Land Policy Initiative. In the resulting “Declaration on Land Issues and Challenges in Africa” in 2009, they resolved to “ensure that land laws provide for equitable access to land and related resources among all land users including the youth and other landless and vulnerable groups such as displaced persons”; and to give special attention to “strengthen[ing] security of land tenure for women”.

National laws and policies to strengthen women’s land rights have had mixed success. In fact, they have at times validated gender inequality and become obstacles to the changes required to remove it.<sup>6</sup> This warrants an inquiry into the injustices entwined within policies and laws, and the extent of their operations.

But policies and laws have also been alleys of hope and windows of opportunity as they introduce norms that promote women’s access to and control over resources.<sup>7</sup> If comprehensive, and applied coherently, they can change property rights holdings and ensure that women have access to the land they need. For instance, constitutions can provide a good anchorage for land rights for women, but to ensure that the rights are actually realised, the implementing legislation must include appropriate mechanisms, e.g. for spousal consent in matters of

**Laws and policies alone are inadequate to address women’s rights to land, especially where their application is mediated by customary law.**

matrimonial property. Laws and policies must also not unduly emphasise economic productivity at the expense of justness and other non-commoditised social, cultural and religious considerations.

Land reform has been the entry point for women’s empowerment in some African countries. The recognition of women’s land rights, provisions for equality and equity, and the facilitation of transparent and accountable systems of management and land administration have formed an important rallying point for women’s empowerment.

Laws and policies have also provided for the decentralisation of power in the governance and administration of land, creating sites of local power in their implementation. These sites can be double-edged: they could entrench local norms that allow for gender-based discrimination or they could provide a more accessible space for effective engagement and participation by women.

However, laws and policies alone are inadequate to address women’s rights to land, especially where their application is mediated by customary law. The latter is commonly interpreted to exclude women from land ownership and access – despite the availability of case studies of living customary law in which women can have access to land, despite not being the legal owners. In many agricultural communities, women are allowed to work on family land and benefit from the products. This access can be severed in the event of a change in the family relationship (e.g. divorce in the case of a wife, or marriage in the case of a daughter). Nonetheless, some researchers contend that women’s traditional access rights were better in the past because they were accorded great protection as mothers and assured of a share of resources even where they did not exercise political leadership.<sup>8</sup>

There is need to engage with customary law, to deconstruct, reconstruct and re-conceptualise its notions of access, control and ownership, both to



discern the positive living aspects of that law and to intervene where it can make the most difference for women. It is important to debunk the notion that all customary law is retrogressive.<sup>9</sup> For example, in some Kenyan communities, families whose unmarried daughters have children have found ways to provide land for the daughters to work and live on.

### Land Rights Should be Earned

It is also important to recast the view that women should be given the same rights that men already enjoy. It does not follow that women should get exclusive ownership and control of property if that's what men have had. The search for sustainable and productive management of land calls for a thorough analysis of granting exclusive land rights to an entity. In the quest for tenure law and policy change for improved gender relations, our engagement with customary law should be informed by Nana Ofori's statement that land belongs to "a vast majority, of whom many are dead, a few are living, and countless hosts are still unborn".<sup>10</sup>

More significantly, innovative and proactive approaches – which must of essence be radical – are needed. In determining tenure, land rights should be deduced from an entity's relationship

with the land, anchored in use, and subject to the greater public good that resides in the trusteeship of land for posterity. In such an approach, women's roles in land management and husbandry will identify their entitlement to tenure rights, thus addressing the often skewed gender and land relations under customary law, which have sometimes been further entrenched by statutory law.

### Making Policy and Law Work for African Women

New land laws and policies are being enacted in different countries across the continent. Such contexts provide valuable openings to deal with discrimination against women and ensure that women's voices are heard in land management and governance.

Campaigners for women's land rights should work with national and local government decision-makers and mobilise allies to deal with gatekeepers and those who are likely to resist change. Other measures to challenge, engage and disarm the gatekeepers include civic education at national, local and community levels to raise awareness and build capacity so that women can contribute to both formal and traditional decision-making processes around land.

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# Land Reform and Women's Land Rights in South Africa

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Nineteen years after the end of apartheid, relations to the land continue to be highly problematic for the vast majority of South Africans. The post-apartheid government's neo-liberal capitalist development model has not adequately redressed inequalities in land access and ownership. Settler colonialism and apartheid rule were based on large-scale land dispossession, and this legacy continues to contribute to racial, gendered and spatial inequalities. These continued inequalities in turn shape the contours of ongoing struggles by farmworkers and rural dwellers today – most notably, the farmworker strikes in the Western Cape in 2012–13 and the resistance of rural people and an alliance of non-governmental organisations (NGOs) to the proposed Traditional Courts Bill.

South Africa currently ranks among the most unequal countries in the world, as measured by income and access to land.<sup>1</sup> Hardest hit by lack of income, landlessness, and lack of access to housing and services are black women residing in rural areas. Yet despite government rhetoric proclaiming concern for gender equality, poor black women have not benefited from land reform.

The government's market-based land reform programme, with its "willing buyer, willing seller" formulation<sup>2</sup>, also limits redistributive land reform for poor men. The outcomes of legal reform have tended to serve the interests of two socially and politically powerful groups: large scale farmers and traditional leaders. For both groups, control over the land shapes their control over people and power relations in the countryside.

While government policy limits redistributive land reform for the poor in general, additional obstacles lie in the way of land rights for women, since allowing women to enter the contest

"...means admitting new contenders for a share in a scarce and highly valuable resource which determines economic wellbeing and shapes power relations in the countryside: and it means extending

the conflict over land that has existed largely between men, to men *and* women, thus bringing it into the family's inner courtyard."<sup>3</sup>

## South Africa's Land Reform Programme

The stated intention of the 1997 land reform policy was to redress the injustices of apartheid, and ease the poverty of poor black women and men. Its three components are land redistribution, land restitution and tenure reform.

To redress historical racial injustice, the ANC-led government set itself the target of transferring 30 percent of agricultural land from white to black ownership by 1999. However, by 1999, only 1 percent had been transferred. By 2012, still less than a third of the 30 percent originally targeted had been redistributed to black farmers.<sup>4</sup>

While the central concern was the racially skewed imbalance in land ownership, land policy was also bound by the gender equality clause of the country's constitution.<sup>5</sup> The attention to gender equality within land reform has been patchy and uneven. No clear overall targets were set for women, gender policy goals tended to disappear in implementation, and data collection was often not gender disaggregated.<sup>6</sup>

## Redistribution

Phase one of the redistribution programme had a distinct poverty alleviation focus. It aimed to provide land for residential and productive use to households with incomes of less than R1 500 (USD150) a month. Such households could apply for a Settlement and Land Acquisition Grant of R15 000 (USD1 500), and would receive additional grants for settlement and planning.

This programme encountered a number of difficulties and was discontinued in 1999. The small size of the grant and the high price of land resulted in the slow pace of land redistribution. Households benefiting from the programme had



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little post-settlement support. Instead of providing productive livelihood opportunities to dispossessed and poor black communities, the outcome seemed to be the creation of rural slums. A quality of life survey conducted by the department of land reform in 1998 found that some communities with land acquired through the programme were worse off than their previous living situation in terms of access to water, electricity, sanitation, healthcare and education. Added to this, there was little improvement in their incomes.

Following a government review of phase one, phase two of the redistribution programme – the Land Redistribution for Agricultural Development Programme – was instituted in 2000. This marked a shift away from poverty alleviation to the black economic empowerment agenda of developing a class of black commercial farmers. Grants of between R20 000 (USD2 000) and R100 000 (USD10 000) were made available to individuals to purchase land, provided they were able to make an own contribution and use the land for agricultural purposes.

In phase one, women's access to land was limited, mediated as it was through their belonging to patriarchal households, within which they were beholden to the decisions of men.<sup>7</sup> In response to this, phase two introduced a 30-percent gender quota, which has enabled some women to benefit as individuals. A recent study by the Commission for Gender Equality (CGE) found that women made up 35.9 percent of land redistribution beneficiaries between 2005 and 2010.<sup>8</sup> However, given the "own contribution" requirement and the shift away from poverty alleviation goals, these beneficiaries were not drawn from the vast majority of women who are living in poverty and have the greatest need for land for housing, settlement and livelihoods.

## Restitution

The Restitution of Land Rights Programme is concerned with restoring land or providing compensation to people dispossessed of their land as a result of racially discriminatory legislation and practice. The onus is on dispossessed communities to lodge claims, which are then adjudicated by the Land Claims Commission, with contested claims taken to the Land Claims Court.

However, a number of obstacles have limited the success of this programme. Firstly, the initial procedures of the commission and court

Since restitution is about restoring former rights, it is men – as former owners – who are entitled to make claims and likely to be key beneficiaries.

were cumbersome. Although these have been streamlined, they still seem to privilege the better educated, better informed and better resourced. Others are less able to access these institutions.

Secondly, given the market-based nature of land reform, increasing land prices and a minuscule government budget allocation, more claims have been settled through cash than through land transfers. Critics have noted that this is a land reform programme that does not deliver land.<sup>9</sup> In the case of rural claims, which are usually made by large communities, cash compensation per household is nowhere near enough to purchase land. As one commentator noted: in some cases, it covers the cost of a bottle of whiskey. Women have tended to lose out with cash settlements, as they are unlikely to get a share. With land transfers, women tend to have more rights even in the context of unequal gender relations in households and communities.

Thirdly, the requirement that restitution should not disrupt agricultural production or political stability or interfere with land markets has constrained the social justice agenda of restoration. In a significant number of cases, the court ordered communities to lease restored land to the former owner or enter into partnerships with third parties, so as not to disrupt agricultural production. The power imbalance in these situations has meant that others benefit at the expense of the claiming communities, and that women within claiming communities have lost out in terms of land access.

Walker points out that, since restitution is about restoring former rights, it is men – as former owners – who are entitled to make claims and likely to be key beneficiaries.<sup>10</sup> This is borne out in the CGE's findings that, between 2005 and 2010, women made up only 9 percent of restitution beneficiaries.<sup>11</sup> Concerning class, it is only those who can prove ownership who can claim, which ignores the large numbers of tenants who were moved off land by the apartheid state.

## Tenure Reform

Tenure reform aims to redress the discrimination experienced by people on commercial farms (estimated at around 3 million) and in the former bantustans or homelands that served as native reserves during the apartheid era (estimated at around 16 million). In commercial farming areas, tenure reform seeks to balance the rights of landowners and farm dwellers. In the former bantustans, it seeks to clarify who has rights to what land, the nature and content of these rights, and how they are to be allocated, administered, recorded and adjudicated.<sup>12</sup>

Since tenure reform, like land restitution, is concerned with upgrading informal rights, traditionally held by men, to formal legal rights, tenure reform also tends to exclude women. In cases where men have decided to sell their land once their rights are upgraded, women in the household lose out on rights to access land.<sup>13</sup>

## On the Farms

On commercial farms, the traditional relationship of farmers to workers was influenced by apartheid-era notions of white superiority and black inferiority, and vestiges of this relationship continue on many farms today. Access to land for farmworkers and labour tenants took place through an employment relation and depended on the goodwill of the farmer. Historically, men farmworkers were employed, and their wives and daughters, although not considered workers, were expected to be available to work for the farmer whenever required.

Between 1994 and 2005, just under one million people were evicted from farms – a larger number than those benefiting from government's land reform.

Two laws – the Extension of Security of Tenure Act 62 of 1997 (ESTA) and the Land Reform (Labour Tenants) Act of 1996 (LTA) – were passed by the ANC-led government to provide long-term secure tenure for farm dwellers, and prevent farmers from arbitrarily evicting farmworkers, labour tenants and their families.

Organised white commercial farmers attempted to prevent the passing of these laws. When that failed, they used their political, social and economic power to subvert them. In anticipation of the LTA, farmers evicted labour tenants from their farms. Over the years, evictions have continued. Between 1994 and 2005, just under one million people were evicted from farms – a larger number than those benefiting from government's land reform – and less than 1 percent of these involved any legal proceedings.<sup>14</sup>

As Hall et al note, the justice system works to the advantage of farmers.<sup>15</sup> The social power that was built under apartheid remains largely intact across commercial farming areas, based on forces and networks that transcend (but often incorporate) the political power of the local state, including a social bloc of security forces, magistrates and farmers.<sup>16</sup> By 2001, not a single farmer had been convicted for illegal evictions, despite the many illegal evictions that took place. Police and magistrates failed to take action, as they did not regard illegal evictions as crimes. Courts instead regularly granted farmers' requests for eviction orders.

On the other side, the socially and politically unconnected farm dwellers could not easily advance their interests within the legal framework, given their lack of knowledge of the law, lack of access to legal representation, and their isolation on farms with no or minimal access to transport or telephones.<sup>17</sup> The lack of these resources weighs more heavily on women.

A 2011 Human Rights Watch Report documents ongoing evictions, with farmers resorting to illegal tactics such as cutting off electricity or water. The report also notes that, while it is a crime for owners to evict occupiers without following required procedures, the authorities rarely initiate criminal proceedings. And even when farmers follow legal procedures, evicted farm dwellers often have no place to go. Municipal governments are generally unprepared to assist them, and some end up homeless.<sup>18</sup>

Such control continues to shape ongoing struggles, as seen in the 2012–13 wave of strikes in the Western Cape when farmworkers demanded wage increases. The impetus for these strikes came from large informal settlements created as a result of off-farm evictions: settlements where farmworkers – no longer isolated, and away from the constant

control of the farmers – were able to organise themselves as a political force. Ironically, evictions had enabled this mobilisation, within which women farmworkers were significant actors.

Through their strike action, farmworkers won a minimum daily wage of R105, as set by the department of labour. However, the struggles continue as farmers devise ways to resist paying this wage. Many farmers have applied for exemptions (allowed in the regulations) on the grounds of a lack of affordability. According to women seasonal farmworkers interviewed by the author in February 2013, farmers are also eroding the gains made by the new minimum wage by charging rent for farmworkers' children over 18 years of age, and for water and electricity – costs that workers did not have to meet previously.

### The Former Bantustans

Women's access to land in the former bantustans continues to be mainly through men – their fathers, husbands and sons. Women are treated as minors, and even married women are not seen as having rights to family land, nor are they consulted on land use or land transactions. Since land is understood as the property of the husband and his natal family, divorced and widowed women are often evicted by their former husbands' families. Women are also not seen as having rights to land in their natal homes, as this is the inheritance of their brothers. Often women who return to their natal homes are evicted by their brothers.<sup>19</sup>

Women have little room to manoeuvre within traditional land allocation systems, which seem unlikely to deliver and protect women's land rights, especially in the context of increased impoverishment. Despite these constraints, women constantly contest and sometimes defeat evictions and exclusions by arguing that this conflicts with proper customary and family law. Single women, especially those with children, take up the struggle to get land on constitutional grounds, and also on the customary basis that all community members are entitled to their birthright.<sup>20</sup>

South Africa's 1996 Constitution promised accountable, democratic local government and ensured that the gender equality clause would override rights to tradition and custom. However, both of these have been compromised in rural areas by post-apartheid legal reforms, including the Traditional Leadership and Governance

Framework Act (TLGFA) of 2003, the Communal Land Rights Act (CLRA) of 2004 and, most recently, the Traditional Courts Bill of 2008. The process of passing these bills into law illustrates the power of traditional authorities and the relative powerlessness of other social groups – and of poor rural women in particular.

Traditional leaders resisted the democratisation of rural areas as a direct attack on their authority. They fought to retain (and even increase) the powers they had enjoyed under apartheid. The ANC, recognising the power of the chiefs in the countryside and afraid to displease them, left the status quo untouched for many years.<sup>21</sup>

Women's access to land in the former bantustans continues to be mainly through men – their fathers, husbands and sons.

Despite objections by civil society and women's organisations, the passage of the CLRA and the TLGFA further entrenched the power of traditional authorities. Traditional Councils established in terms of the TLGFA are dominated by unelected traditional authorities and their appointees. The CLRA gave traditional authorities unprecedented powers over land administration and allocation.

While the CLRA included provision for joint titling and required 30 percent representation for women, these measures could not offset the consequences for women of entrenching and expanding the power of traditional institutions. The Act clearly conflicted with constitutional provisions for land rights for those who were discriminated against in the past; it threatened hard-won access to residential sites by single mothers; and it was inconsistent with the right to equality because it discriminated on the basis of marital status.<sup>22</sup> Concerted opposition from civil society and a Constitutional Court application resulted in the CLRA being withdrawn by 2010.

The government introduced another controversial bill in 2008. The Traditional Courts Bill centralises power in the hands of senior traditional leaders and adds powers that they did not hold under custom. In effect, the Bill would replace the current court system in the former homelands

with traditional courts presided over by traditional leaders. The Bill met opposition from civil society organisations and was reintroduced in 2011. Opposition from an alliance of NGOs and rural communities stalled its passage in 2012. There is speculation that the Bill will be withdrawn in its current form and incorporated into the National Traditional Affairs Bill, which is currently in draft form and not publicly available.

These laws have raised critical questions about women's land rights and what democracy means if rural people do not have the same rights as urban people to elect their local leaders.<sup>23</sup>

## Conclusion

Nineteen years after the end of apartheid and a hundred years since the passing of the infamous Natives Land Act of 1913, new struggles are being taken up for land rights by those dispossessed through colonialism and apartheid. The pace of land reform has been slow, and the development model of the post-apartheid government seems to cement rather than dislodge the social and political relations that determine unequal access to resources and power.

Even when the stated aim is to redress previous disadvantage of poor black men and women, markets and the law tend to favour the more powerful groups in society, such as commercial farmers and traditional leaders, enabling them to maintain their privilege.

Race, class and gender relations of power result in poor black women being most disadvantaged in relation to markets, the state, customary law and tradition, and in terms of community and household relations. Ongoing struggles are being waged on all of these fronts in order to ensure democracy and land rights for women in rural South Africa.

Struggles over land coincide with other struggles. Where commercial farmers continue to wield their power, the challenges for women farm dwellers include access to land for settlement, access to services, access to a living wage and to livelihoods. Women in the former bantustans are challenged to improve their bargaining position within the family in relation to land and property rights, despite the power of chiefs and patrilineal, patriarchal institutions of land allocation.

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## Interview

# Reflections on Advocacy for Women's Land and Tenure Rights in South Africa

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This year marks the centenary of South Africa's 1913 Natives Land Act, which created native reserves on about 7 percent of the country's land (a share that was increased to 13 percent in 1936). While land dispossessions had been under way for a long time, the Act laid the formal foundation for a system of racial segregation that reached its peak in the apartheid state.

The Act created two distinct countrysides, one of abject poverty and underdevelopment in the reserves – also known as bantustans or homelands – and one dominated by white-owned commercial farms, whose success relied on cheap black farm labour. Its legacy poses a formidable challenge for democratic South Africa today.

Since 1994, progress in the redistribution of land and in realising the constitutional promise for secure land tenure has been slow. In the former homelands, which still hold about a third of the country's population, and in the rural areas that are still dominated by commercial farms, women continue to bear the brunt of the consequences of historic inequality, dispossession and marginalisation. Land reform policies and programmes appear to be inadequate to ensure women's access to land and tenure security. The gap between the rhetoric of progressive legislation and its implementation still calls for advocacy interventions.

The Heinrich Böll Stiftung (HBS) spoke with two South African organisations that work for greater integration of women's concerns in the formulation and implementation of land reform programmes and policies from a feminist perspective: the Women on Farms Project (WFP), a non-governmental organisation (NGO) working to strengthen the capacity of farmwomen (women who live and work on farms) to claim their rights, and the Rural Women's Action Research Programme (RWAR) at the Centre for Law and Society (CLS)

of the University of Cape Town, which supports rural women in struggles for change in relation to land, power and custom in South Africa's former homelands.

Single women particularly struggle to access residential land because traditional leaders refuse to allocate land to them.

### **HBS: What are the specific issues your organisations are trying to tackle?**

**WFP:** Our advocacy work is defined by farmwomen's articulated and lived experiences and broader contextual developments in the land sector. We focus on three main land-rights advocacy issues. Firstly, we focus on the continued inequitable distribution and ownership of agricultural land in South Africa. A second focus is around the limitations of current tenure legislation, which effectively provides a framework for eviction procedures and so defeats its purpose of providing farm dwellers with tenure rights and protection. The increased incidence of farm worker evictions as well as agricultural labour casualisation since 1994, largely as a result of farmer backlash to legislation protecting and advancing farm worker rights, builds the third focus of our advocacy work.

**RWAR:** The challenges facing women's security of land tenure in communal settings are multi-faceted. Women face evictions when their marriages end and are often made unwelcome by their brothers when they return to the natal home. Single women particularly struggle to access residential land because traditional leaders refuse to allocate land to them. And women are often excluded from

traditional institutions, such as tribal and village council meetings where decisions on land are taken. These are the kind of problems that RWAR aims to tackle through its research and advocacy agendas.

We promote self-reliance, where women speak for themselves, claim their rights, mobilise support and effect change.

But in more general terms, our work consists of three components: action research, litigation, and working with networks of rural communities, whose concerns and advocacy needs inform our research agenda. Rural women's security of land tenure is therefore a core working area, especially considering the current vacuum in terms of legislation around communal land tenure.

**HBS: What are the specific approaches or strategies you have adopted?**

**WFP:** We promote self-reliance, where women speak for themselves, claim their rights, mobilise support and effect change. For that purpose, we provide rights-based capacity building, skills building, and information-sharing and awareness among farmwomen. This enables farmwomen to take part in public campaigns and engage with various government authorities or other relevant stakeholders. Other lobbying strategies have included written and oral policy submissions, engagement with portfolio committee members, challenging legislation in court, and publications documenting the lives of rural women, based on field research.

**RWAR:** We support and facilitate rural women's work to engage around policy issues and legislation with other key stakeholders in the land reform arena, including government bodies, traditional leadership structures, academics, companies and other NGOs and CBOs [community-based organisations].

Central to the way we work are two related methodologies: a partnership model of working closely with others in joint initiatives and an action research methodology. This seeks to nurture and build mutually respectful and empowering

relationships, particularly with rural leaders. We do this by acknowledging and seeking to address the unequal knowledge, skill, experience and resource bases of different partners, and in particular by foregrounding the depth of experience, knowledge and resourcefulness of our rural partners. This reflective and collective approach ensures that the impact of the work is far-reaching, bringing together different experiences and skill-sets that complement each other.

**HBS: Being a research institute based at a university, how does RWAR bridge the space that separates you from the communities with which you work?**

**RWAR:** Land reform processes are ultimately informed by whose voices are permitted to participate. We are conscious that we may be either playing into pre-existing power imbalances within communities or upsetting relationships that work, and it can be difficult to ascertain the impact of our actions "on the ground". We are, however, committed to relationships that have been built up with rural networks over many years. As a result, the many small rural CBOs and individuals with whom we partner become crucial stakeholders in the advocacy work we do. Our partners include both established NGOs and institutions, and crucially, the small rural NGOs and CBOs with whom we undertake our day-to-day research and policy work. Practically, what this means is that a knowledge feedback-loop is maintained.

**HBS: A central concern expressed by South African civil society has been about the lack of opportunities for the effective participation of ordinary citizens in policy-making processes. What specific challenges do farmwomen face in this regard?**

**WFP:** A major challenge is the fact that not all of the state's public engagements and consultations are resourced, meaning that WFP carries the costs of ensuring farmwomen's participation in such processes. This calls into question the government's commitment to community participation, if only communities supported by NGOs can engage. Also, the reach of these engagements, particularly those initiated by parliamentary portfolio committees, is still largely confined to urban areas.

Furthermore, women's literacy levels and the language of policy documents and legislation – not to mention the formal and intimidating nature of government institutions and processes



– necessitate WFP’s multiple engagements with community structures so that they are able to fully understand the content, have self-confidence and make meaningful contributions during government engagements.

The distance between farms and the expensive and limited public transport in rural areas generally inhibits women’s self-organisation. Added to this is the farmers’ access control, which prevents organisations’ access to farms. Furthermore, the patriarchal nature of the rural household and the structure of agricultural labour and housing also restrict women’s participation in organisation and determine the extent to which they can claim their constitutional rights.

While the courts are another sphere of engagement for women’s land rights, bringing a case to court is often protracted and costly. Farmwomen have to rely on legal agencies such as Lawyers for Human Rights, who are dependent on dwindling donor funding.

Farmwomen’s engagements with various levels of government so far have indicated a greater responsiveness, commitment and seriousness to address farmwomen’s land rights.

**HBS: What have RWAR’s experiences been with regard to public participation in policy-making processes?**

**RWAR:** One of our recent involvements in a public participation process has been the campaign against the Traditional Courts Bill (TCB), which threatens to further cement patriarchal governance structures in rural areas and therefore would have major implications on the way women are able to access and hold on to land. The campaign involved working in partnership with a range of rural NGOs and CBOs to hold provincial and national rural preparation workshops. The workshops enabled rural leaders to make powerful submissions at both provincial and national public TCB hearings, supported by the resource documents we made available. Our work, combined with submissions

during the public hearings, has elicited strong reservations about the TCB by provincial legislatures, with four saying it should be withdrawn forthwith.

This strong wave of opposition to the TCB contributed to a number of important concessions by government in relation to the Bill. So, while many obstacles to public participation do exist and need to be addressed, it is possible to empower rural women to speak on public platforms and influence political decision-making processes.

**HBS: This conversation comes at a time when the department of rural development and land reform has launched the “Reversing the Legacy of 1913 Natives Land Act” project, marking a shift in its approach to land reform. This is likely to re-open spaces for stakeholder engagement in the policy-making arena. What entry points does this provide for advocacy and agenda formulation?**

**WFP:** A number of other current contextual factors are converging to present new opportunities for land rights lobbying. National elections in 2014 and the general focus on farm worker issues resulting from the – in many respects unprecedented – 2012 farm worker strikes. Farmwomen’s engagements with various levels of government so far have indicated a greater responsiveness, commitment and seriousness to address farmwomen’s land rights. While it remains to be seen whether this is political expedience, farmwomen are determined to use this opportunity to advance their own agenda around land rights.

In the meantime, families, and especially women and children, are still exposed to continuous evictions. The state’s inability to provide alternative accommodation, despite a stipulation that alternative accommodation must be provided before an eviction is effected, leave evicted families with no alternative but to seek shelter in an informal settlement. Furthermore, most magistrates ignored this and municipal officials did not attend evictions proceedings. Ideally, a moratorium should be placed on all evictions until the state (municipalities) are able to provide decent housing for evicted families. Tenure reform policies should make provision for on-farm housing developments, with secure title for all occupants.

A necessary shift in our advocacy approach going forward, is the need to aggregate local level women’s structures, such as community crisis committees and women’s agricultural co-operatives,

with structures of other rural organisations for a rural women's movement with a common agenda and a critical mass to collectively define and advance the agenda for women's land rights.

Women in Kwa-Zulu Natal and the Eastern Cape are increasingly asking for and receiving land and family plots that were considered the traditional purview of men.

**RWAR:** In some ways, our research paints a gloomy picture of women's precarious security of tenure. But consultations with our rural partners and ongoing processes of change at the local level reveal that potential solutions can be found in living customary law. Women in Kwa-Zulu Natal and the Eastern Cape are increasingly asking for and receiving land and family plots that were considered the traditional purview of men. This is especially the case for unmarried women with children who have acquired residential sites.

These positive moves, however, have been put at risk by laws like the TCB. Using the Constitution as a backstop, we argue for legal strategies that engage with and support the struggles for change

taking place at the interface between custom and rights in the former reserves. Furthermore, legal strategies to secure women's rights to land should strengthen the already existing provisions in Interim Protection of Informal Land Rights Act.

Furthermore, we will need to respond to the Restitution of Land Rights Amendment Bill, published for public comment in May. The Bill makes land restoration awards conditional on cost and on the claimants' ability to use the land "productively", thus introducing scope for arbitrary and corrupt decision-making processes. The Bill also risks opening the floodgates for traditional leaders to claim vast swathes of land, given other laws and recent attacks by the department of [rural development and] land reform on communal property associations. In this context, women's land rights would again come under threat. Although the Bill was put on ice in June, it will remain a key point of contestation should it be taken forward.

We also plan to hold a series of workshops with our rural partners and other community groups in the former homelands around alternative communal land tenure legislation. Women's rights to land will be foregrounded during these discussions. The workshops will be similar in format to those held during the TCB process. This proactive approach would provide the most effective rebuttal to the distorted versions of custom that have informed a spate of new laws, which, like the TCB, bolster the power of traditional leaders at the expense of ordinary people.

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# As Mining Steals the Basis for Survival, Peasant Women Show a Way Out of the Crisis

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*We get upset when our children say, "I want something to eat – I'm hungry." As women, we have always ploughed the land, but now we cannot. The mining company is taking the land we used to plough because they want to build a slimes [tailings] dam here...*

*The fields are now fenced in for the mine. This also means we have no way to go and plough the land. If we do try to grow food or collect firewood, we are told we are trespassing and confronted by a [security] convoy. We have no food, water or electricity; we can't cook, and our houses are cracked...<sup>1</sup>*

These are the testimonies of women from the Mapela district of the Limpopo province of South Africa who have, since 2001, been cumulatively dispossessed by Anglo Platinum mining activities. Many thousands of Mapela residents have been forcibly relocated to compensatory lands, often of inferior quality, incomparable extent, and located many kilometres from their place of residence. Land loss, combined with the extensive pollution of water supplies, has undermined this once vibrant food producing area and impacted food sovereignty. Over the years, Mapela residents, with women playing a leading role, have campaigned for their rights and demanded just compensation for their losses. The women of Mapela, alongside their men, have defied removal orders and refused to vacate their homesteads. They have disregarded the mining company's fences and reclaimed their lands by ploughing and planting.

The stories and the struggles of the women of Mapela are echoed across the region as industrial-scale mining tears through the African countryside, displacing poor peasant communities from the land upon which their livelihoods, well-being and identity rest. These land grabs have a disproportionate

impact upon peasant women because of their leading role in provisioning food supplies for their households, and their fragile and unrecognised rights to the lands upon which they produce.

In the greater context, this kind of land dispossession is a key component of the dominant capitalist model of development and its global "triple crisis" – of food, finance and climate change – that is now drawing us towards social and ecological collapse. This article highlights women's resistances to land grabs and other forms of dispossession by mining corporations, and argues that women's daily work of producing food, caring for nature and reproducing family offers us an outline of the alternatives we need to adopt if humanity and the planet are to survive.

## The Growth of Mining in Sub-Saharan Africa

Sub-Saharan Africa is a key player in a global mining boom driven by the energy needs and consumption patterns of the elites and middle classes of the global North and the emerging economies of the global South. Significant reserves of oil and natural gas exist in Nigeria, Angola, Gabon, Sudan, DRC and Equatorial Guinea, with recent discoveries of oil in Ghana's Jubilee field and Uganda's Lake Albert Rift Basin, and abundant natural gas findings in Mozambique and Tanzania. The region is rich in many other mineral resources – copper, platinum, gold, diamonds and cobalt, to name just a few – with the richest known deposits in southern Africa and the Congo River Basin, and new reserves identified on an almost daily basis. This wealth is fuelling major extractives deals: of the ten biggest mining investments to be completed in 2011, Ernst & Young reported that seven were in Africa. Mining group Anglo American has earmarked US\$8 billion for new platinum, diamond, iron ore and coal projects on the continent, and Brazil's Vale has said it plans to spend more than \$12 billion in Africa over the next



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five years. In 2011, Chinese mining companies made seven major investments in the mining sector in Africa totalling \$14.7 billion, which represented 94 percent of Chinese mining investment in Africa. The smallest of these was worth more than \$1 billion.

According to the World Bank in 2012, sub-Saharan Africa is the fastest growing region in the world – even surpassing China's growth rate in that same year – with Sierra Leone, Niger and Angola leading the pack. What these three countries have in common: new money from mineral exports. They join a long line of other countries in the region that enjoy enormous mineral wealth but have seen increased poverty levels and rising inequality accompany their fortunes, often referred to as the “resource curse”. This “curse” results from

- the neglect of other development sectors – including agriculture, the mainstay of rural communities – which impacts productivity levels and ultimately consumer spending
- high levels of dependency on a single commodity or a few commodities, which often experience price volatility
- weak policy and legal frameworks and regulatory regimes, which have allowed multinational and transnational corporations to extract enormous profits and engage in corrupt practices in collusion with some national elites, at the expense of local populations and national development agendas.

Minerals extraction is often accompanied by conflict and violence, land and water grabs, environmental destruction and pollution, and labour exploitation. It also makes a significant contribution to the runaway climate change that has substantial impact on the most vulnerable geographies and populations of sub-Saharan Africa.

### **Women Peasant Farmers: Their Labour Produces the African Breadbasket**

For us, land is very valuable. It is a source of income, because we grow crops or farm livestock. We can use the land... to educate our children and to build houses. Land is our “gold mine”...

*Land is our nature – sometimes we have no jobs, but there is always land on which to do something. Even without a fixed salary, we can put food on our families' tables.<sup>2</sup>*

In almost all societies on the continent, agricultural production and the preservation of natural resources (such as forests and waterways) is the primary responsibility of women. The Food and Agriculture Organisation estimates that rural women produce half of the world's food and, in developing countries, produce between 60 percent and 80 percent of food crops.<sup>3</sup> The FAO further estimates that women represent a substantial share of the total agricultural labour force, as individual food producers or as agricultural workers, and that around two-thirds of the female labour force in developing economies is engaged in agricultural work.

Despite women's central role in agricultural production, their land rights under communal tenure systems across the continent are deeply insecure. This is because rights to land are derived from accepted membership of a social unit, and can only be acquired (typically by men) through birth, affiliation or allegiance to a group and its political authority. Women's land rights in patrilineal societies are severely marginalised because wives reside in their husbands' villages and farm on land belonging to their husbands and their husband's clans.<sup>4</sup>

Women's access to land is, therefore, indirect, meaning that it is mediated through a man: their father, brother, husband and even son. It is usual for women in these societies to have limited or no decision-making power over land, other than a small garden from which they are expected to produce subsistence crops, the proceeds of which they may exercise control over.

Over centuries, the lands and natural resources of African pastoralists and peasants has been stolen and their forms of ownership and governance undermined and distorted, first by colonialism, then by programmes of structural adjustment and privatisation under neo-liberal capitalism. These processes of dispossession impact all African peasants but, because of their structurally marginal position in African traditional societies, peasant women carry the brunt of the impact.

### **The Impact of Mining on Women's Land Rights and Food Sovereignty**

In the past decade, large-scale land dispossessions (also referred to as “land grabs”) have received widespread attention in civil society and increasingly also in the larger public domain. The major focus has been on land grabs resulting from biofuels schemes and industrial-scale agricultural projects, with

minimal attention to mining sector activities. These grabs involve the acquisition of land, usually by force, without due respect for local land users' entitlement to proper consultation, informed prior consent, or adequate compensation for the loss of land-based livelihoods.<sup>5</sup> Approximately 56 million hectares worth of large-scale farmland deals were announced before the end of 2009, and more than 70 percent of these were in Africa. Countries such as Ethiopia, Mozambique and Sudan have transferred millions of hectares to investors in recent years.<sup>6</sup>

While there is currently no co-ordinated effort to track and gather data on land dispossessions as a result of mining activities, the available documentation, complemented by anecdotal evidence, is replete with examples of mostly communal lands being taken by mining companies, with forcible resettlement and inadequate or no compensation being the most common features. Agricultural production is often brought to a halt.<sup>7</sup>

In Sierra Leone, women in the Sierra Rutile mining area have been forced to cultivate upland areas with less productive soils because of mining-linked dispossessions. Two affected districts, Bonthe and Moyamba, are among the five poorest districts in the country, with the loss of livelihoods due to resource theft and environmental degradation caused by rutile and bauxite mining identified as the most significant contributor to chronic poverty and food insecurity.<sup>8</sup>

In Ghana, it has been confirmed that the greatest impact of gold mining on Ghanaian society has been relocation, and that 95 percent of those forced to leave their lands between 1990 and 1998 were subsistence farmers. Agricultural lands were converted into dumps for mine waste, and the compensation deals offered by mining companies, if any, were insufficient to maintain a similar quality of life. Farmers were either given inferior quality land, small cash settlements or nothing at all.<sup>9</sup> Though these data are not sex aggregated, the majority of smallholder farmers in Ghana are women and their output accounts for 80 percent of total agricultural production.<sup>10</sup>

A study of several coal mining projects in Mozambique, conducted by the food-rights NGO FIAN International, found that peasant communities were being resettled to sites where agricultural conditions, particularly access to water, were not as favourable as on their current lands.<sup>11</sup> A further impact of eviction was that peasant farmers would only be able to harvest one and not two crops in

a year. In Sierra Leone, an investigation into the impact of the operations of Sierra Rutile Limited revealed that 11 villages that had been displaced by the company were resettled on farmlands reported to be grossly inadequate.<sup>12</sup>

The Capanga Nzinda community in Mozambique was not compensated for the loss of maçanica fruit, even though their harvesting and sale by women is critical to the food security of families.<sup>13</sup> Their experience echoes emerging testimony of other communities in the region that the loss of common (as opposed to individually held) resources within communal tenure systems is rarely recognised. Other common resources that are typically used and managed by peasant women to fulfil their social reproduction responsibilities include woodlots, springs, communal gardens and forests. The uncompensated dispossession of these results in deep and differentiated impacts on peasant women.

Other significant related impacts on women's ability to produce, and hence on the food sovereignty of their families and communities, include:

- water grabbing by mining corporations, which, along with industrial agriculture, is the most water hungry sector
- the pollution of land and water resources
- the loss of male labour due to out-migration from rural sending areas
- the diversion of women's labour from food production to care work when household members fall ill due to the pollution of water supplies and agricultural products by toxic waste from mining activities.

### Women's Resistance and Women-centred Alternatives

Peasant women are using their power, assuming agency, and struggling to defend the life and dignity that is so threatened by mining. In Ghana, women organised under the Concerned Farmers' Association to mobilise, march on AngloGold Ashanti, and pursue legal action against them for the pollution of local watersheds. In the Niger Delta in Nigeria, women have continued a long tradition of resistance to oppressive governments and institutions. In the 2000s, they targeted Chevron and Shell to force them to clean up oil spillage and rehabilitate the environment, provide clean water, electricity and education, and support micro-enterprises. Their tactics have included laying siege

to the offices and facilities of the oil companies, bringing production to a halt. At the extreme (as they do in other parts of the world), the women strip bare for the “curse of nakedness”, to inspire collective shame in those who steal their land and pollute their rivers.<sup>14</sup>

The planet and most of its citizens – poor and working class people, the majority of whom are women – share a deep and multifaceted crisis that is substantially fuelled by the current extractivist model of development. Alternatives are needed. The debates about the neo-extractivist models being implemented by the leftist/socialist/progressive governments in Latin America are instructive. Reforms have ranged from nationalisation to higher taxation levels and share-ownership through public finance institutions. But extraction is being scaled up in many of these countries, with devastating social and environmental impacts that even the redistributive policies of leftist governments cannot ameliorate. In Africa, governments are undertaking more limited reforms of taxation and foreign exchange policies. Zimbabwe’s radical indigenisation policy may, in time, provide inspiration.

Are these reforms adequate? Do they reach to the core of the problem of the current extractivist model? Where else must we turn for inspiration and guidance? It is the author’s contention that peasant farmers – and particularly peasant women – in sub-Saharan Africa offer us living alternatives (in their practices, but also in their philosophy and values) which must be drawn upon to define a development

model that is centred on sustainability, the care of humankind, and the protection of the basis for social and environmental reproduction. These alternative ways include:

- sustainable forms of farming that replenish the soil, conserve water and provide wholesome nutritious food for local consumption
- management and use of natural resources, like water, forests and grazing lands, that will balance immediate needs against those of future generations, and protect the sources of nature’s regeneration
- care for and reproduction of members of households and communities – a vital contribution that is not acknowledged and barely supported by the state (and has been especially eroded by structural adjustment and neo-liberal reforms)
- sustainable forms of consumption and resource use based on the philosophy of taking only what is needed, recycling, and reusing, which is well captured in the Latin American idea of “*buen vivir*”, which “includes the classical ideas of quality of life, but with the specific idea that well-being is only possible... [in] cohabitation with others and Nature.”<sup>15</sup>

If humanity and the planet are to endure beyond this crisis, the values that underlie these alternatives should guide the forging of a new model for the extractive industries and accompanying development policies and programmes.

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## Interview

# Women and Land Rights in Somaliland

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**S**omaliland is an internationally recognised autonomous region of Somalia – a country without a national government since civil war broke out in 1991. Although Somaliland has generally enjoyed relative peace and stability under the leadership of its own government, land disputes, mostly in form of illegal occupation and land grabs, remain a frequent source of conflict both in rural and urban areas. The fact that Somaliland is governed by a number of different legal systems has only complicated the situation.

Ahmed Awale of the development organisation Candlelight for Health, Education and Environment spoke to Shukri Ismail, chairperson of the same organisation, about land rights conflicts in Somaliland and how women are affected.

**Awale: What legal systems are available to Somalis to deal with land rights issues?**

**Ismail:** There are three different systems of law at work in the country: customary, religious and secular law. Islamic law is viewed as the primary source of law in Somaliland and the sharia has been officially recognised in the Constitution. Where the secular system contradicts Islamic sharia laws, the latter is taking precedence. Currently Islamic law governs mainly family related issues such as marriage, divorce and inheritance. Customary law (xeer) is more prevalent in the countryside but is also applied in urban areas. Xeer is a highly specialised institution for administering, managing and regulating common property such as grazing land, forests and water. The elders' court of a clan constitutes the source of xeer and has the role of the supreme guardian.

In cities such as Hargeisa, the capital of Somaliland, one can find the secular district and supreme courts, private sharia courts run by influential sheikhs, and traditional judges who make their rulings on basis of customary law and conflict resolution mechanisms.

While government organs prefer to carry out

legal cases in accordance with secular law, many cases are being solved through customary and sharia laws. A major problem is that the co-existence of these three systems opens the door for people to choose their legal route according to which system promises to be more beneficial to them.

While everyone can be affected, it is especially female-headed families or families from marginalised tribes whose chances for recovery of usurped land through litigation are very remote.

**Awale: What are the reasons for the high prevalence of land conflicts in the country?**

**Ismail:** As a tribal society, each tribe has its own deegaan (area of settlement), over which they claim "ownership" and respond with violence if such ownership is infringed. Solving conflicts rooted in land is cumbersome, complex and, in many cases, ends in bloodshed.

In the rural areas, land conflicts mainly arise from issues around grazing cattle and access to water. Pressure from increased human and livestock populations, on the one hand, and the shrinking of resources and the politicisation of ethnic/clan identities, on the other, have contributed to the exacerbation of the conflict situation. In cities, such as Hargeisa, issues often arise around land occupations by internally displaced persons that interfere with plans for property development and urban planning.

While everyone can be affected, it is



**Shukri Ismail**

Shukri is chairperson and founding member of Candlelight, a non-profit organisation dedicated to development issues in under-served Somaliland communities. A founding member of Nagaad, the country's largest women's network, Shukri is known as a vocal campaigner for women's rights. She serves on the management committee of the African Democracy Forum and was the only female national election commissioner for Somaliland's first National Election Commission. In June 2013, Shukri was appointed as the minister of environment of Somaliland.

especially female-headed families or families from marginalised tribes whose chances for recovery of usurped land through litigation are very remote.

**Awale: What makes securing women's land rights so difficult?**

**Ismail:** Somali women, despite being the backbone of society, play a subservient role in the day-to-day life of the country. Lineage and patriarchal traditions are entrenching structural forms of discrimination. For example, according to customary, law women are seen as only temporary members of a family – as they are bound to join another tribe through marriage – and therefore cannot inherit any immovable assets, including land.

Somali women, despite being the backbone of society, play a subservient role in the day-to-day life of the country. Lineage and patriarchal traditions are entrenching structural forms of discrimination.

However, it is important to note that the situation is better in urban areas, where the secular and sharia laws are more prevalent. This is because of the greater awareness of women's rights, due to some efforts by government, with the assistance international institutions, to make the courts more women-friendly through legal aid facilities.

**Awale: What problems do women face when they seek to resolve land and property issues?**

**Ismail:** As you can imagine, having three

different laws can make the judicial system very complex. Generally, women are not familiar with any of them. The legal system also remains a very male-dominated domain – women judges and lawyers are still very rare. In addition, as women have increasingly become the breadwinners in their families, due to the fact that many men have been killed in the war, they lose out on income-generating activities when they are drawn into legal affairs such as land conflicts and property issues, as they have to spend a lot of time in and around courthouses. Because they know little about the legal procedures and their own rights, women also easily fall prey to exploitation through bribery.

**Awale: How could women's land rights be improved?**

**Ismail:** As mentioned earlier, under customary law, the land rights of women are weak on the basis that they are considered only temporary members of a family. While the implementation of sharia law provisions relating to inheritance would lead to more progressive outcomes than customary law, devolving secular law to the rural areas, where the majority of the population lives, would be most desirable. For example, the Constitution in Somalia clearly provides equal rights for women and men, but this rule does not apply to the inheritance system as it conflicts the sharia law, which states that females inherit half of what males inherit of a family property. However, the implementation of sharia law will be easier to achieve, as Somalis are Muslims and as the secular system is particularly weak outside of the cities.

It is also very important that women are made aware of their land rights. Knowledge about these rights would empower them: once they know about their rights, they will be in a position to voice their concerns and make them better heard.



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## Comment

# The Limits of Law:

## Women and Land Ownership in Kenya

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In Kenya, land has always been the principal economic asset through which a very large proportion of the population has derived its livelihood. Women farmers in particular have been critical drivers of economic growth in the agricultural sector. By engaging in agricultural activities, women have been able to provide food for their families and contribute to their overall wellbeing. However, and despite attempts to improve the situation through legislation, women remain discriminated against when it comes to property ownership and their ability to acquire and own land.

According to customary law, land is bequeathed by fathers to sons. Accordingly, clan land was traditionally allotted only to male heads of households and could only be inherited by males down the line. Although the British colonial administration introduced individual tenure and titles to land, women could neither buy land nor be registered as owners –further entrenching existing patriarchal structures and the discrimination against women inherent in customary law.

Over the years several legislative advancements have sought to strengthen the rights of women to land and property. For example, it was established in a Kenyan court in 1971 that the (British) Married Women's Property Act of 1882 (MWPA) applies in Kenya on basis of it being a statute of general application in England as at 12 August 1897. The Act provides equal rights to land ownership between a husband and a wife, and that married women have the same rights over their property as unmarried women. The Act further allows a married woman to retain ownership of ante-nuptial property and to keep separate ownership of property acquired during the marriage.

Similarly, the Law of Succession Act of 1981 has since been used to fairly distribute a deceased estate to heirs who include a wife or wives, as well as daughters, whether married or not – with the

However, and despite attempts to improve the situation through legislation, women remain discriminated against when it comes to property ownership and their ability to acquire and own land.

exception that, if the deceased died without a will, customary law should be applied in the distribution of agricultural land and livestock.

The Constitution of Kenya (2010) expressly prohibits parliament from enacting any laws that permit the state or any person to deprive a person of property or right over any property, or in any way restrict the enjoyment of any right to ownership on the basis of any of the grounds of inequality or discrimination (Article 40). This differs from the previous Constitution, which had no specific provision on property rights, but only general anti-discrimination provisions, which were interpreted to exclude property ownership by the dominantly male authorities. The Constitution also provides for equal spousal rights at the time of the marriage, during the marriage and at the dissolution of the marriage (Article 45(3)).

The Constitution sets out principles governing land which include the elimination of gender discrimination in law, customs and practices related to land and property, and also requires all laws relating to land to be revised, consolidated and rationalised (Article 60). Parliament is also tasked to regulate the recognition and protection of matrimonial property and, in particular, the matrimonial home during and on the termination of marriage, and to protect the dependents of deceased persons holding interests in any land,



**Carol Kinya Mburugu**

Carol is an advocate of the High Court of Kenya and a graduate of the University of Nairobi school of law. She is also a teacher of trial advocacy. Carol practices at Kituo Cha Sheria, a legal empowerment NGO, where she specialises in women and land law, labour law and public interest litigation. She has conducted several public interest litigation cases before the Human Rights and Constitutional Division of the High Court on the right to healthcare, the right to vote, access to information, good governance and constitutionalism. Prior to joining Kituo Cha Sheria, Carol practiced law in a private firm in Nairobi City, specialising in land and commercial law.

including the interests of spouses in actual occupation of land (Article 68 (c)(iii)(vi)).

In furtherance of Article 68 of the Constitution, the Land Act No. 6 of 2012 and the Land Registration Act No. 3 of 2012 have secured the right to access and protection of matrimonial property for both sexes. The new land laws have created statutory rights to land for spouses. These rights affect all land and not just matrimonial property. A lender or purchaser now has a duty to inquire whether the consent of the other spouse or spouses has been obtained. If the spouse undertaking the disposition misleads the lender or purchaser or other transferee, as the case may be, the sale, transfer, charge, lease or other disposition shall be void, at the option of the spouse who did not consent to the transaction.

So why is it that all these efforts have so far failed to significantly strengthen women's access, control and ownership of land?

The main reason for this is that women are economically disempowered, as they do not enjoy the same economic, social and cultural rights as men. Most notable is the limited access to education by girls and women which keep them largely unaware of the law, or, if aware, unable to seek their active implementation.

The political climate has also largely remained patriarchal, with law-makers being mainly men and not keen to make pro-women laws. Much like the legislature, the judiciary has been slow to embrace changes in custom to enable women to own land. This is evident from court decisions that have refused to consider the indirect contributions of women to property ownership when adjudicating matrimonial property.

This demonstrates that the effectiveness of laws in affording equal opportunities to women depends largely on a society's willingness and ability to enforce such laws.

The far-reaching provisions of the Constitution of Kenya and the new land legislation seek to define women's equal rights to land and property. However, these laws are not applicable retrospectively and the courts have continued to rely on progressive jurisprudence and precedent when pronouncing on matters filed before August 2010, particularly on cases filed under the MWPA.

This demonstrates that the effectiveness of laws in affording equal opportunities to women depends largely on a society's willingness and ability to enforce such laws. It is at this point of enforcement that one gets caught up in the dichotomies and conflicts of statute law, customary law and law in practice. There is need for a deliberate shift in ideology, both of litigants and the presiding judicial officers, to embrace the principles of equality and non-discrimination that are largely absent in customary law.

Ongoing land-law and institutional reforms should engage with custom to deconstruct and reconceptualise customary notions related to issues of access, control and ownership of land, with a view to intervene at points that make the most difference for women.<sup>1</sup>

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#### Endnote

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# “In reality, men run the show...”

## Queen Mothers in Ghana Fight for Their Say in Land Deals

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It is about half past two in the afternoon. Women and children are busily mining salt from the pond near Elmina, a small coastal town in the Central Region of Ghana. A 46-year-old single mother, Adjoa Mensah, tells me this is her livelihood. “I sell this salt to take care of my family and aged father.”

The coast of Elmina is blessed with an abundance of salt and beach sand. While some natives of the area engage in salt mining, others are busy mining beach sand, although this is illegal. The local salt pond is the property of the people of Gwira Akyinim, a suburb of Elmina known for its Portuguese slave castle. In recent years the castle was developed into a tourist attraction, but most people continue to live from salt mining or fishing, as has been the case for centuries. A bag of salt sells for about GHS15.00 (USD7.00). It is good business, but you cannot just go to the pond to mine salt. You must buy a portion of the land the pond is located on, inherit it from your family, or lease it from the family that owns it. Mensah is lucky: the pond belongs to her father, who is aged and cannot mine anymore. As a woman, she would never get a space to mine on her own.

Elmina is at the heart of the territory of the Fanti people, who are famous for a matrilineal inheritance system that traditionally gives women authority in questions of land ownership and management. In today's practice, it is mostly the men who control land.

Women's access to communal land and participation in land governance issues in the area has been seriously curtailed, says Nana Tseasewaa III, the 49-year-old queen of Gwira Akyinim of Elmina. Together with some women in the community, she has started to complain about the chief's sale of communal land without due consultation. As Ghana's economy prospers, selling or leasing “stool” (communal) land to private developers has become big business.

Referring to the matrilineal inheritance tradition, Nana Tseasewaa III believes everything around the stool belongs to women: “Men do not have property when it comes to the stool. All stool properties – such as lands and regalia, to mention but a few – belong to women. But in reality, men run the show.”

In the past, women of authority made important contributions to development, but without control over land, they have only limited means to contribute to community wellbeing.

This practice of not consulting women has rendered most queens and queen mothers incapable of implementing basic developmental projects in their communities, which is part of their traditional responsibility in Fanti society. In the past, women of authority made important contributions to development, but without control over land, they have only limited means to contribute to community wellbeing.

“My chief has indiscriminately sold a lot of our stool lands. He has realised that I am calling him to account for this reckless behaviour, so he has tendered his resignation – something that is rare in a traditional setting such as this. Unless he dies, I will pursue this case to its logical conclusion. We shall reply to his [resignation] letter, after which I will face him about the sale of the lands without consultation,” Nana Tseasewaa III fumes.

Her view is that “most women in my area are afraid of questioning his actions because they fear he will kill them through supernatural means, or through what is popularly referred to as voodoo.”



Pascal Kelvin Kudiabor

Pascal is an investigative online journalist and reports for ghanabusinessnews.com, the premier economics and business news portal in Ghana, and spyghana.com, a news portal with a sharp eye on corruption and bad governance. His areas of focus include oil, gas, mining, environment, climate and election-related matters. He was named Online Reporter of the Year 2012 in the Gold Business Awards for his investigative story, “The complex web of illegal mining in Ghana – Chiefs, politicians, the police, land owners involved”.

Chiefs in Ghana are undisputed authorities not only due to their position in the traditional hierarchy but also to the belief that they vest themselves with spiritual powers before inauguration to consolidate their lifelong power over people and land.

Nana Tseasewaa III, however, is not scared. She believes that this situation has occurred as a result of illiteracy and timidity on the part of some queen mothers, who “are so afraid of being killed spiritually, by voodoo that they... are not challenging the decisions of these chiefs or even request[ing] explanations for some decisions the chiefs make.”

### WOMEN, TRADITION AND LAND IN AKAN SOCIETY

Inheritance and succession in traditional Akan society is based on its political, economic and social organisation according to matrilineal lineages – persons who are related through a specific ancestress. A lineage controls the land farmed by its members, functions together in the reverence of its ancestors, oversees marriages, and settles internal disagreements.

About twenty million people in Africa are Akans, most of whom live in Ghana and Ivory Coast. The Fantes are one of the major groups of matrilineal Akan-speaking people in Ghana. Among the Akan, females have a unique role in ensuring the perpetuation of the lineage and in identifying who qualifies to be a member. This gives women a respected and powerful position. Development of the community is traditionally considered to be task of the women.

In contrast to other traditional authorities, Akan societies have a dual traditional leadership structure. The chief (Nana, who may be male or female) of a certain territory comes from one family lineage (called gates), while the queen or queen mother (depending on the tribe) comes from a different family lineage. They are not husband and wife, but rule together and have specific tasks.

Except for government-owned land (representing about 20 percent), there is no privately owned land in Ghana. According to the traditional tenure system, chiefs are the custodians of ancestral land (stool land), while the heads of families (mostly male) are the custodians of community and family land. Land is leased, usually over a period of 50 or 100 years, but not sold. Land titles (of leased land) are registered with the land commissions.

The Ghanaian Constitution guarantees customary rules and land rights. Although male traditional leadership has an uncontested and continuing legitimacy and power, the traditional tasks of women seem to have lost their importance in modern society, due to such changes as paid work and modern urban lifestyles. Men are also increasingly active in trade, a field where women traditionally obtained power from their positions as marketers.

### TRADITIONAL RESPONSIBILITIES AND TASKS IN AKAN/FANTE SOCIETIES

#### The role of a queen or queen mother

- ❑ kingmaker
- ❑ conflict resolution in family affairs
- ❑ no land rights, but determines the inheritance lineage
- ❑ preservation of cultural heritage

#### The role of a chief (Nana – male or female)

- ❑ political representation at paramount level at the Regional House of Chiefs
- ❑ sitting in the National House of Chiefs (traditional court)
- ❑ all legal matters referring to land and property
- ❑ tenure of stool land

#### The role of a family head (male or female)

- ❑ control family lands
- ❑ the position is determined by elections according to maternal lineage

However, some queen mothers have come together to fight back. The formation of the National Queen Mothers Association in 2008 has given some level of authority and confidence to a lot of women in Ghana, including queens and queen mothers. The association has appealed to government for capacity-building support to keep them abreast of modern technologies in order to play their role in the country’s socio-economic development.

Nana Tseasewaa III also believes that the Chieftaincy Act of 1971, which provides guidelines for the various chieftaincy institutions, is silent on queen mothers and needs to be reviewed. The minister for chieftaincy and traditional affairs, Dr Seidu Daanaa, refutes the assertion. “It is probably misinformation. The highest law in Ghana is the Constitution. When you look at the definition of a chief in the 1992 Constitution, it says the chief is one hailing from the appropriate lineage or family who is selected or elected and installed as a chief or queen mother. Probably what they are complaining about is the fact that, over the years there has been some kind of traditional imbalance. Men in our culture have dominated.”

He adds, “You know old traditions always die hard and the way to deal with it is to get the people to see the harm. We are now in a modern economic world and women form a very large part of our population. The sooner we make them play their rightful role, the better for democracy and economic development.”

Daanaa plans to organise seminars to bring chiefs and queen mothers together, shoulder to shoulder. “If you only legislate and do not educate and sensitise, you don’t achieve much. To strengthen the female part in traditional structures, the government started paying some allowances to queen mothers in 2009. The idea is that they are now brought on board and they are supposed to be seen on the pitch and to play hard”.

Daanaa supports Nana Tseasewaa III’s stance of taking chiefs who mismanage communal land to court, and encourages queen mothers to report mischievous chiefs to the Regional Houses of Chiefs or to the ministry of chieftaincy. But, he admits, “these machines grind slowly”.

So, for the time being, the office of a queen mother does not influence the life of Adjoa Mensah, the single-mother salt miner near Elmina. But Nana Tseasewaa III knows: the moon moves slowly, but it gets across town.

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## Portrait

# Susan Godwin:

## Struggle of a Landless Food Hero

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Inside the yard, Susan Godwin is bent over, arranging cobs of corn to dry in the sun. As she energetically makes the rounds, she is the very picture of a farmer who knows her onions. Proof of this can also be gleaned from a shelf inside the austere interior of her living room. Two glittering plaques, memorials of recent accolades for her “contributions to small scale agriculture”, grab the visitor’s attention.

In 2012, Oxfam and three other agriculture and food security NGOs adjudged Susan “Nigeria’s Female Food Hero”. The recognition opened a vista of opportunities for this woman farmer who lives in Tunduadabu in the Obi local government area of Nasarawa State, North Central Nigeria. Since the competition, Susan has learned new farming skills and techniques through training provided by Oxfam

and a local faith-based organisation, the Young Men’s Christian Association. Her new knowledge has proven very valuable in cultivating her various farms, which cover about 20 hectares altogether.

She declares that she now knows how to select the best seeds for planting. “Before when planting, we just planted the seeds and left them in the ground for God to take over. Now, however, with the knowledge from this training, we are using fertiliser. We can just farm a small portion, take good care of it and get what we want from that piece of land.”

The training has also made land use more efficient. Susan explains, “Before we almost carried the whole community to farm, to cultivate large portions of land, but now we have adjusted and harvest more than we were doing before. Formerly, we could harvest between four and eight bags of



groundnut from a big piece of land, but now, with the techniques we have acquired, that same piece of land could yield between 13 and 15 bags.”

While reaping the benefits of the training, Susan has to contend with some fundamental issues. The female food hero farms on rented land. She has not even a single piece of land that she can call her own.

### **My biggest challenge has to do with access to land. Land is the first issue that I face.**

Too often, the landowners renege on rent agreements, leaving the farmer stranded. Susan says that landowners have terminated rent agreements on a number of occasions, with no regard for her exertions to clear and till the land for an upcoming planting season. “My biggest challenge has to do with access to land. Land is the first issue that I face, and that is what we face as women who are in farming. Last year, the land I [had] rented to farm on for five years was taken away from me after just two years. I had done up to 10 000 heaps [for yam planting], and I was called and told that those heaps were being levelled. After I called in the police, the landowner paid me [for] the heaps, but there was no refund for the rent for the remaining years that I was supposed to use the land.”

In such a situation, Susan begins a frantic search for another piece of land. When she can find another place to rent, the soil fertility is often not as good as what she could find if she had time to look properly. There are also other issues. One of the plots she found to cultivate millet and groundnut is located about 28 kilometres from her home. She has had to cover major costs commuting and conveying farm equipment, labourers and other supplies needed to get the job done.

Nigerian women are an active part of the labour force in agriculture, but they rarely own the means

of production. They are involved in all aspects of agricultural activities: making of ridges, yam moulds, yam staking, weeding, mulching, fertiliser application, harvesting, processing, storage and marketing. But they mainly have to depend on the benevolence of their husbands to own land. Although a woman with the financial clout could eventually acquire land of her own to farm, not many are in a position to do so, especially small-scale rural women farmers. Women’s land rights are fragile and transient, being dependent upon age and marital status (including type of marriage and the success of that marriage) and whether they have children (including the number and sex of those children).

Susan’s difficulty is compounded by the fact that her husband, Godwin Gaga, is a former police officer who served for three decades in posts across Nigeria. Because of this, he was not able to acquire any land in the community. If he had any, he would have willingly handed it over to his enterprising farmer wife.

Susan yearns to acquire a piece of land of her own, but the laws of demand and supply are not on her side. It would cost her about N1.4 million (USD9 000) to buy a piece of land – an amount, Susan says, she cannot come up with at the moment. “As I am talking to you, I don’t have enough land for the kind of farming I want to do. That is why I had to go to another village, far away from here, to look for land, which is where I have one groundnut and two maize farms. So I have had to get small pieces of land in different areas that are far away from each other. Apart from that, the lands we have around here are not so fertile: they have been exhausted, and that is another problem entirely.”

Outside her yard, middle-aged women with little children at their backs can be seen milling around Susan’s groundnut-shelling machines. They help her with the work of shelling, just as they are willing to learn some of the techniques that have made Susan a farmer of repute. One wonders how much more successful she would be with a piece of land of her own.



# WURA-NATASHA OGUNJI

A performance and visual artist who works in a variety of media, Wura-Natasha is perhaps best known for her videos, in which she uses her own body to explore movement and mark-making across water, land and air. Her current performance series explores the presence of women in public space in Lagos.

Wura-Natasha has received a number of awards, including a John Simon Guggenheim Memorial Foundation Fellowship (2012) and grants from the Idea Fund, Houston (2010), and the Pollock-Krasner Foundation, New York (2005). She has performed at Centre for Contemporary Art (Lagos), the Menil Collection (Houston) and the Pulitzer Foundation for the Arts (St. Louis).

Wura-Natasha received a BA in anthropology from Stanford University in 1992 and a MFA in photography from San Jose State University, CA, in 1998. She lives in Austin and Lagos. For more information visit: [www.wuraogunji.com](http://www.wuraogunji.com).



## About the artwork

Title: City of Ife (2011)

Dimension: 14 x 12.5 inches

Technique/ Material: Thread, acrylic, colored pencil on paper

Courtesy of the collection of Antonio LaPastino and Dale Rice

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