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WOMEN'S ACCESS TO LAND IN AFRICA*

Jane B. Knowles**

Laws [and customs] governing access to land and control over the fruits of agrarian production remain the primary determinants of a woman's income, long-term economic security, and social status.¹ 'Without land we are nothing.'²

I. Introduction

The United Nations (UN) has a long and honorable history of concern for the status of women around the world. A significant part of this concern involves a woman's access to land. Article 16 of the Universal Declaration of Human Rights, for example, recommends that governments take "all possible measures to ensure to the wife full legal capacity . . . and the right, *on equal terms* with her husband, to acquire, administer, enjoy and dispose of property."³ The Convention on the Elimination of All Forms of Discrimination Against Women urges in Article 14 (Section 2 g) that women be given the right "[t]o have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment

* August 1990. The author is acutely aware of the dangers of generalizing on so vast and complex a subject. She is grateful for helpful comments by Dr. John Bruce, Director of the Land Tenure Center, on an earlier version. All errors of fact or interpretation, however, are her personal responsibility.

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1. Newman, *Women and Law, in WOMEN AND WORLD CHANGE* (Naomi Black & Ann B. Cottrell eds. 1981).

2. AGRICULTURE, WOMEN AND LAND: THE AFRICAN EXPERIENCE (Jean Davison ed. 1988).

3. G.A. Res. 217, U.N. GAOR, 3rd Sess., at 71, U.N. Doc. A/810 (1948) (emphasis added).

in land and agrarian reform as well as in land resettlement schemes.”⁴ Despite the bravery of the rhetoric, however, the amount of progress achieved by African women toward these laudable goals of equality of access to the most fundamental economic resource has not been impressive. This article attempts to explore some of the reasons for that lack of progress.

The importance of access to land for the vast majority of African women is indisputable. The UN has long estimated that women perform between 60 and 80 percent of all the work for food production on a continent where the number of people in need of food is rapidly increasing.⁵ Moreover, certain national governments (e.g., Malawi) have recently confirmed the UN estimates of the amount of agricultural work performed by women.⁶ Secure access to land, as well as its accompanying expectations that one will be able to manage one's own land, controlling the resources produced from that property, is a *sine qua non* of development theory. Yet women's rights to land in a wide range of African agricultural systems are anything but secure. The question which needs to be asked is, “How were these uncertainties created?”

II. The Historical Record

Evidence from the pre-colonial period about agricultural systems is fragmentary and ambiguous. Nevertheless, some assertions can be made with a fair degree of security. Land was relatively plentiful and labor was relatively scarce. Hence, household labor was a critical factor in production. Control over labor became a defining characteristic of wealth. Women were valued not only for their own labor, but also for that which they could produce in children. Still, women did not possess independent rights either to land, or to any property produced from land in patrilineal societies; their position in traditional matrilineal societies was only slightly more favorable. Rather, they were firmly fixed in traditional systems, based on dense networks of many responsibilities and few entitlements.

Colonial systems thus found women disadvantaged as to land access and exploited for their productive and reproductive labor, a combination of circumstances which was a convenient “fit” with the then current

4. G.A. Res. 180, U.N. GAOR, 34th Sess., Supp. No. 710.46, at 193, U.N. Doc. A/34/46 (1979) (entered into force Sept. 3, 1981).

5. FOOD & AGRICULTURAL ORGANIZATION, WOMEN IN FOOD PRODUCTION (1984).

6. Morna et al., *Women Farmers Emerge from the Shadows*, 3 AFR. FARMER, 23-28 (Apr. 1990).

Western notions of the appropriate roles of women and men. In East Africa, colonial regimes created a system of "reserve" land, set aside for Africans.⁷ Typically, these lands were of poor quality and were often inadequate to support the populations forced onto them. In spite of this, colonial authorities relied on women to work these lands for subsistence production⁸ while men were used by the colonial powers as migrant labor of various kinds so they could earn enough to pay a "head" tax designed to mobilize a supply of cheap labor. In West Africa, where reserves typically were not created, men were pulled into cash cropping⁹ for export, while, once again, women were pushed into subsistence production. Their confinement to subsistence agriculture did not generate any new opportunities or rights for women; rather, it increased their labor burdens and obligations for family support, it retained them in rural areas within a network of communal relationships, and it increased their economic dependence. Newman summarizes the position as follows:

Thus, at independence, women lagged behind men in numerous ways: they had far less experience with the cash economy, less education, less technical training in 'modern' agricultural methods, and had suffered a serious loss of social status. While men had suffered a great deal under colonial rulers, they emerged from the era of imperialism in somewhat better position than their female counterparts.¹⁰

Molokomme provides confirmation of this assessment from the experience of women in Botswana.¹¹

One thread which links the pre-colonial, the colonial, and the post-independence experiences is the consistent denial to women of the rights to independent access to land and to control of the resources produced by the combination of land and labor.

III. Women's Access to Land

The most salient fact about women's access to land in Africa is that it has typically been, and continues to be, derived from someone else

7. Newman, *supra* note 1, at 123.

8. "Subsistence production" includes those crops grown for domestic consumption and/or some limited bartering with other family members and neighbors. It excludes those crops grown for sale in local or external markets.

9. "Cash Cropping" includes those crops grown for sale in extra-household markets — local, regional, national or international. It excludes those crops grown for domestic consumption.

10. Newman, *supra* note 1, at 134.

11. *EMPOWERMENT AND THE LAW: STRATEGIES OF THIRD WORLD WOMEN* (Margaret Schuller ed. 1986).

rather than existing independently and directly. That is, rights to land only accrue to women as a result of their status within a family. The problem lies in the fact of the mutability of such statuses and hence of the rights they create. Daughters marry and leave their natal homes; wives are divorced or widowed; mothers lose children to urban migration or to death. This problem is particularly severe in, but not limited to, patrilocal societies. Bruce and Fortmann remark: "Widowhood is probably the most significant life cycle event in terms of security of property rights."¹² I would list divorce and/or desertion as a close second.

The extent of the problem becomes clearer if one thinks of an individual's tenure status as composed of a "bundle" of rights, not simply her or his access to a plot of ground. There are, for example, rights of access to land, and still different rights to control of the factors produced by the combination of land and labor.¹³ The bundle of rights which comprises women's tenure in most African countries is both significantly smaller and less secure than that of men. In matrilineal as well as patrilineal societies, a woman's "bundle" typically does not include any of the hallmarks of ownership, i.e., the ability to: loan, rent, sell, dispose of by will, or make permanent improvements. Conversely, some of these powers may be available to men in certain countries. Moreover, since the initial right of access is derivative and thus insecure, so too are all of the related rights: that is, because the landholder grants the initial use right, he can also control the management and the resource control rights. Specifically, women may not be free to exercise management rights to decide what crops can be planted on land they work, to decide which inputs can be applied and on what schedule, or, in many instances, to control the disposition of the resources they produce.

The point is a particularly crucial one, given women's great responsibilities for the family's food supply. The food cannot be produced without access to land, nor can it be produced if women are forced to grow crops for market sale and/or export on the land they are allowed to use. While the food may in fact be produced, it may not be available for family use if women lack control over the disposal of what they have produced by a combination of land and labor. There are numerous examples of women forbidden to plant food crops and forced to work with no guaranteed return on cash crops controlled by husbands, in lieu

12. JOHN W. BRUCE, LAND TENURE ISSUES IN PROJECT DESIGN AND STRATEGIES FOR AGRICULTURAL DEVELOPMENT IN SUB-SAHARAN AFRICA 237 (U. Wis., Land Tenure Center Paper No. 128, 1986)

13. See S.R. SIMPSON, LAND LAW AND REGISTRATION (1976); and Bruce, *supra* note 12.

of work on food crops or on other income-earning opportunities, or of women deprived of the rights to control the disposal of foodstuffs they have produced.¹⁴ Alternatively, women may be left to farm a holding while men work elsewhere. Though these women possess, at least, limited management rights *de facto*, they are often too resource-poor to produce enough goods to support a family.

In theory, customary systems of land tenure and use traditionally provided some recourse for women in need of land for food production. Evidence suggests that this theoretical refuge ran along a continuum from a "right" to beg for a piece of land from a male relative or acquaintance, to a system where women's rights to land from their native lineages were strong enough to attract them away from their marital residences (in patrilocal societies), for the purpose of continuing to cultivate land provided by their natal families. (The latter is true in parts of Sierra Leone.)¹⁵ One can adduce numerous examples of women's insecurity of tenure within these traditional systems.¹⁶ What is becoming even clearer is the difficulty women face as these systems begin to modernize. Most common is the greater individualization of land access and use, tendencies falling more clearly under the rubric of statutory as opposed to customary law. Thus, at best, women are forced onto the least desirable and productive land and, at worst, their limited rights may be extinguished altogether.¹⁷

IV. Some Legal Issues

In virtually all of the countries of sub-Saharan Africa there are two operative legal systems — the customary one and the body of common law derived from the relevant colonial power, as modified by statute or decree since independence. Thus, in Swaziland and Zimbabwe, a "mixed"

14. Davison, *supra* note 2.

15. Personal communication with Josephine Beoku-Betts (1988).

16. On the Peanut Basin of Senegal, see ELICE H. GOLAN, *LAND TENURE REFORM IN SENEGAL* (U. Wis., Land Tenure Center Research Paper No. 101, 1990); on upland Mali, see R. McLAIN, *TRIMESTERLY REPORT NO. 1* (U. Wis., Land Tenure Center, 1990).

17. See, e.g., Allison, *Women, Land, Labour and Survival*, 16 *IDS BULL.* 24, 25 (1985); J. Jiggins, *Women's Access to Land in Sub-Saharan Africa* 10 (ILO Regional African Workshop, held in Harare, Zimbabwe, Oct. 17-21, 1988); D.M. STEINBARGER, *TENURE AND ALLEY FARMING: A LITERATURE REVIEW WITH PARTICULAR REFERENCE TO THE WEST AFRICAN HUMID ZONE* 21 (U. Wis. and Int'l Livestock Center for Afr., Land Tenure Center Paper No. 138, 1990); P.C. BLOCH, *THE DYNAMICS OF LAND TENURE: THE CASE OF THE BAKEL SMALL IRRIGATED PERIMETERS* (U. Wis., Land Tenure Center, Bakel Discussion Paper Series No. 1, 1987); and M. BLOCH, *THE ROLE OF WOMEN IN THE BAKEL SMALL IRRIGATED PERIMETERS* (U. Wis., Land Tenure Center, Bakel Discussion Series No. 3, 1987).

system of Roman-Dutch and English law is the body of law received from the colonial power, whereas it is British common law in Kenya, and it is Portuguese law in Mozambique. The systems are quite different from one another, especially when French, Belgian, Ethiopian, etc. variants are considered. It is useful to explore those differences and, ultimately, to examine their interaction.

Molokomme¹⁸ defines customary law as composed of three different but closely related entities:

- 1) a normative system of behavior which obtained in pre-colonial African countries, based on traditional technologies, certain population levels, and fixed patterns of consumption and demand;
- 2) that portion of the original system which the colonial powers allowed to continue to function, even if in a diluted or adulterated¹⁹ form; and
- 3) current beliefs about appropriate behaviors.

This may be too mechanistic a view of a system of behavioral standards evolving in response to changing conditions exogenous to the system.²⁰ Perhaps, *change* is the most important element in a legal system which is not codified, whose sources may be merely oral tradition or, as in the case of Botswana,²¹ an anthropological treatise written in the mid-1930s at the request of the colonial administration. Statutory law, on the other hand, is codified and available for reference. However, its implementation often depends on local governmental authorities who may or may not be fully conversant with its terms.²² Both of these systems adversely affect women's access to and use of property. The customary systems typically prohibit women's direct access to land, either by ownership or inheritance. Statutory systems affect property rights in other ways, often by limiting women to the status of legal minors, despite their chronological age, hence rendering them incapable of owning property, entering into contracts, and the like.

18. Schuler, *supra* note 11, at 117, citing W.M. Reisman.

19. See, e.g., RUDO B. GAIDZANWA, *WOMEN'S LAND RIGHTS IN ZIMBABWE* (U. Zimb., Dept. of Rural and Urban Planning Occasional Paper No. 13, 1988); and M. MABOREKE, *THE GENDER DIMENSIONS OF THE LAND QUESTION IN ZIMBABWE* (Conference on Land Policy, held in Harare, Zimbabwe, Feb. 13-15, 1990).

20. ROBIN FOX, *KINSHIP AND MARRIAGE 85 et seq.* (1967).

21. Molokomme at 119.

22. See, e.g., R.T. Nhlapo, *Law Versus Culture, in WOMEN AND LAW IN SOUTHERN AFRICA* (Alice Armstrong & Welshman Ncube eds. 1987).

The two systems interact in quite a wide variety of ways in different countries. For example, we can think of two points on a continuum of such interaction:

1) On one end of the continuum, in Ghana, there are two systems of legal authority — one modern, state-centered and based on statutory law which deals with the armed forces, the judiciary, the economy and other national matters; and the other traditional, based on customary law and defined by blood ties, dealing with such concerns as divorce, child-custody matters and land disputes.²³ These systems interact over such matters as the inheritance of property.

2) At the other end of the continuum, in Swaziland, both customary and statutory legal systems are extremely “live” and in constant juxtaposition with each other, especially on questions of property rights, with the customary system often being given more weight than the statutory rules in the event of a conflict between the two.²⁴

Most countries lie somewhere along this continuum, accommodating both systems and stipulating in one way or another the points at which the colonially derived statutory system of law impinges on the customary system, especially in matters of rights to land and other immovable property. Typically, the state asserts control over ownership, ceding control of subsidiary rights to customary systems. In a very real sense, women in sub-Saharan African countries are in a double bind vis-à-vis these overlapping legal systems. They cannot escape the weight of the customary systems of law, based on historical realities largely past; nor can they effectively capitalize on the opportunities (often, admittedly, very limited) offered by statutory legal systems.

It may be instructive to examine briefly three case studies of countries in sub-Saharan Africa, countries which range widely on a continuum from little or no change in the legal systems governing land tenure, through some change, to a fairly dramatic change. Our goal in every case is to estimate the impact of the changes on women's rights of access to, and management of, land.

Swaziland

Swaziland is committed to retaining the bulk of its customary system of land tenure. More than half of the land in the country is Swazi Nation Land, owned by the state and distributed to male heads of household by

23. Henry, *Modernity and the Monarch*, WASH. POST WKLY, Aug. 6-12, 1990, at 18.

24. Nhlapo, *supra*, note 22.

tribal chiefs. Wives receive land from husbands. Unmarried women may only approach chiefs for access to land via a male household member. Within the Nation Land there is a series of small-holder irrigation schemes; here, too, land is allotted to male household heads on long-term leases, but wives can inherit these leases on the death of a husband. On both types of Nation Land — irrigated and non-irrigated — women make up a substantial number of the de facto heads of agricultural households, since the returns from labor in agriculture cannot compete with the wages men can command for off-farm work. Nevertheless, women remain subject to the limitations of the customary system of land access, and the degree of management rights they can exert depends on whose parcel is being worked.²⁵

Swaziland does include sizable amounts of Private Tenure Land, much of it in the hands of non-Swazis and large companies. Technically, women can own land in this category, which includes urban households, subject to the restrictions of the marital property regime she and her husband have selected under the statutory legal system. In practice, however, male town councils “operate what amounts to a blanket ban on the purchase of immovable property by married women.”²⁶ To sum up:

In the Swazi dual system two systems of law exist: the received general law for the whole population, and customary law for the vast majority of the same population. The separate court hierarchies also conform to a similar distribution. The scope for overlap is wide. . . . It is such legal dualism which makes it possible for a male-dominated society to resist claims for women’s rights by vacillating between the two systems, successfully postponing (or neutralizing) any reforms that might have been instituted.²⁷

Zimbabwe

In *Zimbabwe* there exists a similar dualism of law — customary and statutory. Customary law still plainly dominates in the so-called Communal Areas (or Native Reserves): there, women have never had and do not now have direct access to land. Access is controlled first by their fathers and

25. See ALICE K. ARMSTRONG, *LEGAL ASPECTS OF LAND TENURE IN SWAZILAND* (U. Swaz. & U. Wis., Land Tenure Center, 1986); ALICE K. ARMSTRONG & M. RUSSELL, *A SITUATION ANALYSIS OF WOMEN IN SWAZILAND* (UNICEF/SSRU 1985); and ALICE K. ARMSTRONG & RONALD T. NHLAPO, *LAW AND THE OTHER SEX: THE LEGAL POSITION OF WOMEN IN SWAZILAND* (U. Swaz. & USAID 1985).

26. Nhlapo, *supra* note 22, at 49.

27. *Id.* at 37.

brothers, and later by husbands. Nor can women inherit land in these areas; indeed, they are a part of their husbands' inheritable property.²⁸ Zimbabwean women suffered a steady attrition of their customary use rights during the colonial period due to a succession of laws, such as the Land Reapportionment Act of 1930 and the Native Land Husbandry Act of 1951, which attempted to codify customary law and ended by doing so in a relentlessly paternalistic fashion.²⁹ Those use rights continue to be constrained by two kinds of contemporary pressures: economic and legal. Scarcity of land relative to population in the Communal Areas is serving sharply to limit women's access to land for food production. Moreover, increased market orientation in other regions is having a similar impact.³⁰

In the Government-sponsored Resettlement Schemes (especially the Model A Schemes), permits to settle and cultivate are issued to husbands. Although wives are expected to perform a significant share of the agricultural labor, they have no registered rights in these Schemes (though this is theoretically possible) and are absolutely without protection in the event of a divorce, a death, or eviction because of a husband's having contravened the terms of a residency permit. Subject now to government discretion in these Schemes, women have lost recourse to any customary protections, and, at the same time, they have gained access to no modern safety nets.³¹

Kenya

In *Kenya*, there has been a clear and purposeful shift away from customary systems of land tenure and the rules which governed them, to a system of individual rights. The process involves three steps: the adjudication of an individual's interest in land; consolidation and demarcation of scattered units if that is necessary; and registration of the newly defined interest as confirmation of legal ownership.³² The goals of the process were

[P]olitical — to create a stable African middle class, with immediate attention to the Kikuyu in order to quell dissent and opposition to

28. Maboreke, *supra* note 19, at 9, 21.

29. Gaidzanwa, *supra* note 19, at 1-11; Maboreke, *supra* note 19, at 5.

30. Gaidzanwa, *supra* note 19, at 7.

31. *Id.* at 11-13; see also Maboreke, *supra* note 19, at 11-12; and Pankhurst & Jacobs, *Land Tenure, Gender Relations, and Agricultural Production*, in *AGRICULTURE, WOMEN AND LAND*, *supra* note 2, at 202-227.

32. See Kiamba, *The Introduction and Evolution of Private Landed Property in Kenya*, 20 *DEV. & CHANGE* 121, 134 (1989), citing an abundance of primary sources.

government — legal — to replace the uncertainty of customary tenure with a system [of] land titles registered and guaranteed by the state — and economic — to expand cash crop production, improve agricultural techniques, and encourage agricultural investment once fragmented holdings were consolidated into units of economic size and registered titles could be used as security for agricultural loans.³³

A primary feature of the Kenyan registration process has been to assign land titles to males only. There is no legal prohibition against women either receiving title or owning land in Kenya. Indeed, perhaps six percent of the land is owned by women, but they did not receive their titles in the adjudication/consolidation process. Their land was acquired by purchase subsequent to the titling by government. It is widely acknowledged that the process has worked to the significant detriment of women in that men are now free to sell land to which they hold legal title, thus completely extinguishing women's customary access rights.³⁴ Women without husbands — widowed, divorced, deserted, or never married — are especially vulnerable, and they constitute significant portions of the rural population, as many as 37 percent in one study.³⁵ One important consequence of the decision not to award titles to women is to separate them from the official agricultural credit system in Kenya and to prevent their temporary loaning and borrowing of land to meet special production needs.³⁶

In these three cases we encounter women firmly held within traditional and customary tenure rules, women in transition from such rules, and women in a completely modernized tenure system. In none of these places do women have secure, independent rights to land. The problem is by no means confined to these three countries: Okuneye observes that Nigerian women are similarly constrained in their access to land and that government policies are not operating to change the situation, despite the crucial

33. Haugerud, *The Consequences of Land Tenure Reform Among Smallholders in the Kenya Highlands*, 15-16 RURAL AFRICANA 65, 66 (1983).

34. See, e.g., ACHOLA O. PALA, WOMEN'S ACCESS TO LAND AND THEIR ROLE IN AGRICULTURE AND DECISION-MAKING ON THE FARM (U. Nairobi, Institute of Dev. Studies Discussion Paper No. 263, 1978) [hereinafter WOMEN'S ACCESS]; Achola O. Pala, *The Juluo Equation*, CERES 37 (May-June 1980); H.W.O. OKOTH-OGENDO, THE PERILS OF LAND TENURE REFORM (Workshop on Land Policy and Agricultural Countries, held in Gaborone, Botswana, Feb. 14-15, 1982); and PARKER SHIPTON, THE KENYAN LAND TENURE REFORM: MISUNDERSTANDINGS IN THE PUBLIC CREATION OF PRIVATE PROPERTY (Harv. Inst. of Int'l Development Discussion Paper No. 239, 1987).

35. P.M.Nyamwange, *Structural Constraints in Land Ownership* (1989) (unpublished M.A. thesis, University of Waterloo).

36. See Shipton, *supra* note 34; and WOMEN'S ACCESS, *supra* note 34.

importance of women's agricultural production to the overall economy of the country.³⁷

V. Conclusion

What constitutes tenure security and how does one achieve it? Researchers at the University of Wisconsin's Land Tenure Center conclude that security revolves around a landholder's perception that she or he is likely to lose access within the foreseeable future to land under cultivation. She or he may similarly lose some other right associated with land, including, *inter alia*, "the rights to cultivate, graze, fallow, transfer, or mortgage."³⁸ They further conclude that "High levels of tenure security can exist without legal possession of title. . . . Conversely, high levels of tenure insecurity may exist even with legal title."³⁹ Titling projects on the scale of Kenya's are unlikely to occur in much of sub-Saharan Africa, and that is probably a good thing for women since the strong tendency in such projects is to assume, often inappropriately, that there exists the Western model of nuclear households with single utility functions, and to assign titles to males only.

Women's land rights in Africa can fairly be identified as secondary rights, i.e., rights of less force than those of ownership. Nonetheless, these rights are extremely valuable to their holders and deserving of legal protection. Titling is probably not the answer, as "registration of land rights militates against secondary right holders in most instances."⁴⁰ Where then do answers lie? Many African governments are choosing to make changes at the margin, leaving untouched the customary laws' prohibitions against formal land allocation to women.

Changes in statutory law governing inheritance seem to be an increasingly likely area for effecting change. For example:

- The Malawi Wills and Inheritance Act of 1967 makes a wife (or wives) and children primary heirs of a deceased husband, reserving at least 50 percent of the total estate to their interests.⁴¹

37. See P.A. OKUNEYE, A CASE STUDY OF THE SOCIO-ECONOMIC IMPLICATIONS OF WOMEN'S ACCESS TO LAND IN NIGERIA 16, 18 (ILO Regional African Workshop, held in Harere, Zimbabwe, Oct. 17-21, 1988).

38. Roth et al., *Land Ownership Security and Farm Investment: Comment*, 71 AM. J. AGRIC. ECON. 211 (1989).

39. *Id.*

40. Gaidzanwa, *supra* note 19, at 6.

41. Nhlapo, *supra* note 22, at 55.

- In Ghana, a number of laws were passed in 1985 which drastically improved the situation of wives and children in the event of an intestate death of a husband. (Although wills are legally possible virtually everywhere in Africa, they continue to be a rarity.) Essentially, women and children may inherit money and goods accumulated during the marriage.⁴²

- Zambia presently has under discussion an Intestate Succession Bill which divides such estates among widows (20 percent), children (50 percent), parents (20 percent), and other relatives (10 percent).⁴³ There is also evidence of changes in rural areas which tend to point in the same direction.⁴⁴

- In 1982, Zimbabwe passed a Legal Age of Majority Bill which gave women the status of legal majors, and hence allowed them to inherit property from deceased parents and husbands. More recently, the Customary Law and Local Courts Act of 1990 specifically permits the inheritance of immovable property by wives.⁴⁵

More radical and far-reaching changes are unlikely to take place in the very near future. Various revolutionary governments' efforts to impose such changes seem to have met with little success.⁴⁶ Mozambique has had in draft form for more than ten years a new Family Code to replace one inherited from Portugal. While drafts continue to circulate, they have met too much opposition for the government to begin to implement many of their new ideas.⁴⁷ The verdict is still out on Burkina Faso's 1986 legal code giving women full political recognition, including the right to own land and to be treated equally with male farmers.⁴⁸

The difficulty of effecting such basic changes in the organization of African societies should not surprise us too much. Entitlements to land for men were created centuries ago out of historical realities which will probably never be fully apparent to modern scholars; they have been —

42. Gordon R. Woodman, *Ghana Reforms the Law of Intestate Succession*, 29 J. AFR. L. 118 (1985).

43. NEWS FROM ZAMB., Apr. 5-18, 1989.

44. See Mvunga, *Law and Social Change*, 28 AFR. SOC. RES. 643 (1979).

45. Stewart, *Playing the Game*, in WOMEN AND LAW IN SOUTHERN AFRICA 85 (Alice Armstrong et al. ed. 1987); WOMEN AND LAW IN SOUTHERN AFRICA (Research Project Newsletter No. 4, 1990).

46. See discussions of such attempts in Ethiopia in DANIEL HAILE, *LAW AND THE STATUS OF WOMEN IN ETHIOPIA* (1980), and in Somalia in N.H. MERRYMAN, *WOMEN'S ACCESS TO ECONOMIC RESOURCES IN THE JUBBA VALLEY* (1989).

47. Maria de Conceicao da Quadros, personal communication, 1990. See BARBARA ISAACMAN & JUNE STEPHEN, *MOZAMBIQUE: WOMEN, THE LAW, AND AGRARIAN REFORM* (1980).

48. AFR. FARMER 23 (Apr. 1990).

and will continue to be — protected vigilantly by their holders.⁴⁹ The land base in Africa is fixed and means to improve its productivity are both costly and technically difficult.⁵⁰ We are looking, in effect, at a nearly classic zero-sum game situation where gains to women in agricultural systems must come at the expense of men. Vigorous male challenges to even marginal changes are cropping up in quite unexpected ways and places. As this article is being written, for example, there is pending in Zimbabwe a suit against the government Agricultural Finance Corporation (AFC), brought by a male farmer who considers himself to have been deprived of his rightful profits. The AFC made production loans to two of his wives without his knowledge, as he was working away from the farm. The wives repaid the loans after the harvest, and the husband now seeks restitution in the amount of the repaid loans on the grounds that the land and the produce therefrom belong exclusively to him.⁵¹ This is the occasion for humorous headlines about keeping women in their “proper places,” but it is significant also, as a symbol of the difficulty of effecting social change.

The historical record indicates that the extension to women of legal parity with men is a very slow transformation, one which began more than a century ago in the different states of the United States with the Married Women's Property Acts of the 1840s, and in England with the Married Women's Property Act, 1882, and which is still not complete.⁵² In both the US and Britain, women played a major role in winning these hard-earned rights; in Africa a similar mobilization is taking place. There is the very promising Women and Law in Southern Africa Project, which has already published a major book of papers on a wide range of women's legal concerns.⁵³ Individual women lawyers associated with the project are working to effect change in their own countries by educating and mobilizing women to use the law wherever possible and change it where necessary.⁵⁴ There are increasing efforts to help African women see how

49. For a general discussion of property rights and strategies for their protection see Calabrese & Melmed, *Property Rules, Liability Rules and Inalienability*, 85 HARV. L. REV. 1089 (1972).

50. ACCELERATING FOOD PRODUCTION IN SUB-SAHARAN AFRICA (John W. Mellor et al. eds. 1987).

51. See Maboreke, *supra* note 19, at 1.

52. Busch, *The Emerging Legal History of Women in the United States*, 12 SIGNS 97 (1986); Shanley, *Suffrage, Protective Labor Legislation and Married Women's Property Laws in England*, 12 SIGNS 62 (1986); Read, *Women's Status and Law Reforms, in CHANGING LAW IN DEVELOPING COUNTRIES* (J.N.D. Anderson ed. 1963).

53. WOMEN AND LAW IN SOUTHERN AFRICA, *supra* note 45.

54. See Molokomme on Botswana, *in EMPOWERMENT AND THE LAW*, *supra* note 11.

the law constrains them by regulating access to economic and social resources, and how it can be used as a means to their greater empowerment.⁵⁵

Just as the Land Tenure Center research cited above reminds us that acquiring title to land does not in and of itself guarantee security of tenure, Pankhurst and Jacobs usefully remind us that improving women's access to land without addressing broader gender inequalities will have only limited utility in improving their overall status.⁵⁶ Nevertheless, given the continuing heavy reliance in most sub-Saharan African countries on women as food producers, improving women's access to land, even by itself, is a good starting point.

55. *Id.* at 1-5.

56. Davison, *supra* note 2, at 223.