

WOMEN'S LAND USE RIGHTS IN SSA
Modernisation As Marginalisation
What Is To Be Done?

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**WOMEN'S LAND USE RIGHTS IN SSA:
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What Is To Be Done?**

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The African Farmer, she ...

- Richard Jolly, Deputy Managing
Director UNICEF

I do not ask my cattle how to run
my farm. Why should I ask my
wives?

- Southern African Chief
(and Minister of Justice)

But you do not understand...

- Liberation Movement Women's
Chairperson walking out of
Women's Solidarity Group presentation

I.

Introduction

Women's land use rights (including control over the production derived) in SSA are not uniform, simple, static, nor in general equitable. Attempting to deal with the last aspect without studying the former ones has not, in general, done much either for equality or for the state of knowledge of these interacting structures, processes, relationships, trade offs and problems.

One striking feature of the evolution of land use rights in most SSA areas and societies over the past two centuries is that with rare exceptions modernisation and marketisation have weakened the position of women. This record should give pause to advocates of free market measures - e.g. unrestricted, single named proprietor, freehold tenure - as self implementing means to empowering women. Whether they are relevant to transgender issues - e.g. security, investment, productivity - in the ways advocates assume is dubious, indeed empirically the nul hypothesis seems to hold. Further if the perception of the status quo (or rather evolving statum movandum) continues to be that of European colonial and Eurocentric

modernisation traditions, results of how action taken through these prisms usually impact on African societies, households and persons suggest that women are more likely to be marginalised or excluded than assisted or empowered.

II.

African Traditional Land Tenure(s)

African traditional land tenure is more commented upon and decried rather than studied or understood. A capsule sketch is difficult, not so much because in its original forms SSA tenure systems were rarely codified on paper, but because African land tenure systems are not identical among or between cultural and political groups, are complex and are evolving (and present tense) not static (nor past tense).

However, a number of factors are common to almost all tenure systems especially for the period before a substantial portion of output was produced specifically for sale - a period with different cut off dates in different places and, indeed, still pertaining in a few.

First, all aspects of ownership or overall tenure were communal or household not individual. The hierarchy tended to be state, political sub-division, clan or lineage, extended family, household. By no means all systems had all five levels nor were the powers exercised at different levels uniform. The top three were more analogous to sovereign land rights (including reserve areas for future 'wholesale' allocation) than to personal ownership or use rights. (A chief's farms were normally perfectly distinguishable from those lands he held in trust and in most cases allocated on behalf of his people.)

Second, use of land was dominantly household, occasionally extended family and almost never communal in the general sense, at least so far as arable land was concerned. Even grazing rights were allocated to/held by distinct, identifiable groups of households who also had rights over adjacent water points where water rather than pasture was the scarce resource. The 'tragedy of the commons' (unlimited access to common land leading to overuse and pasture degradation) is normally either the result of breakdown of traditional allocation systems (not least by forcing them

to let outsiders in without traditional limitations) or misobservation by 'experts' who 'knew' the answers before they looked at the realities on the ground or among the relationships.

In respect to arable land use allocation was normally to a household with its male head (by social definition for this purpose) holding the use right for the household. This did not mean his spouse(s) and certain other female relatives did not have land use rights but that it was his duty to meet those rights by sub-allocation out of the total household use rights. Instances of family land for extended multi household use exist(ed) but usually had more to do with inheritance and/or allocation-reallocation than use.

Third, the household use rights were secure and usually hereditary. So long as land was used the household had a right to keep it which overrode debt obligations (though not treason and its agnates). Usually the rights to land in use and homes or other improvements on it went to the appropriate heir on the death of the owner of those rights. Who this was varied widely but was perfectly determinate in any particular system. Children usually and widows virtually universally were not the heirs. This was universally the case for children in matrilineal systems who tended to inherit from maternal uncles but - especially in the case of extended family lands - was also common in patrilineal ones. A widow did have access to land use rights, but via a male relative (who might or might not be the heir) most frequently her late husband's brother.

Fourth, the impression that land use rights were frequently reallocated by chiefs for fees and were therefore insecure is misleading. Traditional sub-Saharan African cropping systems were usually based on long rotation (also describable as shifting cultivation but only caricaturised as "slash and burn"). Land was cleared and the felled trees/bushes burnt (which increased fertility). It was then tilled with no inputs for 3 to 5 years and after that allowed to lie fallow (returning to bush and trees) for up to 20-25 years before again being cleared and tilled.

Clearly this did mean that use rights to individual bits of land were impermanent because land was not in permanent use. But a user household had a right to a flow of 'new' specific use rights as it relinquished old. Chiefs (who often acted in council) were bound to observe these rights and

their fees (which were on occasion abused) were for managing the community's land/land allocation analogous to court, land register and conveyancers' fees.

Fifth, households could rarely transfer use rights. That power rested with larger (higher order) bodies. Within the community any member household could secure land use rights and the size of use rights areas were usually adjusted to household size as a part of the new allocation process when moving to new land. Thus the lack of transfer rights related primarily to outsiders (would be incomers) and in that case political considerations were crucial. While not much studied, it appears temporary user shifts among close relatives (e.g. among brothers when one went to war over a key crop period) were allowed because not seen as being transfers.

Sixth, attitudes to would be incomers ("strangers") who sought land use rights were varied but fairly pragmatic. If a political unit had ample land, the incomer credibly offered his allegiance and there were no evident cultural differences likely to lead to clashes, strangers could usually - on the payment of some fee and the performance of some allegiance - secure land use rights. If not, not. This aspect of traditional tenure (like the absence of household power to transfer user rights) worked rather well because there were few individual household migrants. Remnants of broken political groupings were perhaps not infrequent, but their acceptance or rejection was a straightforward (even if rarely simple or easy) exercise in real politik.

Urban land tenure - in the cases in which cities other than agricultural villages were significant - was analogous to arable land tenure. Use rights were allocated to households and were normally secure and hereditary. They tended to be of longer duration since towns were somewhat less liable to rotation than cropped lands. Apart from their quantitative smallness they are less significant to present concerns because present urban African land tenure is virtually entirely based on European principles introduced during the colonial period whereas perhaps 80 per cent of rural SSA land is owned/allocated/used within norms and systems which derive basically from traditional, indigenous practice.

This sketch is not presented to suggest that traditional SSA land tenure was perfect in principles, faultless in practice or (even if the foregoing had been true) fully suitable to the present. Substantial inequality

related to status, wealth and power did exist within the allocation process and in its results and was by no means always then seen as equitable (nor would it be now). SSA political units were by no means free of abuse of power, which the combination of the state and ruler's budgets rather facilitated.

The long rotation system depended for its viability on a low household to total arable land ratio. The absence of powers to transfer use rights raised few questions in the absence both of land shortages and of substantial production specifically for sale. The fairly ready, ad hoc procedures for strangers really required that there not be very many.

As to the legal aspects these too were not so different from other legal systems as is commonly supposed. Elders were not, perhaps, professionals but the status did require a working knowledge of past practice - both stare decisis and rationale - not just calendar years. Most units, households, heirs were quite determinable within the system but vexed issues of fact (who really was the appropriate kin? was a claimant the person he purported to be?) were not thereby eliminated. Doubtless Jarndyce vs Jarndyce had its African parallels well before Dickens!

Women's Rights Within Traditional Tenure Systems

Women's rights to access to land were within household rights. In that sense they did not differ from men's. However, in practice the male head of household controlled intrahousehold allocation so that wife (wives) and dependent adult females (mother, aunts, unmarried sisters, widows, divorced women) were dependent on him. His allocation practice was supposed to be within norms and customs which entitled each adult woman in the household to enough land to grow food for herself and those she was socially obligated to feed. How fully (and even-handedly among adult females) these norms were followed and how effective social pressure was in sanctioning/correcting departures from them varied widely.

In most SSA polities/societies at this period (and up to the 1970's/80's in numerous cases with some remaining today) a female headed household was, by definition, impossible. There have always been exceptions to this role e.g. the Amhara people and, to a lesser/more complex degree, in much of coastal West Africa for at least two centuries. This is sometimes

perceived as the "permanent minority" of females. In parts of Southern Africa that does seem to be a fair reading (and one West or East Africans often make!). But it is, at best, an incomplete one.

First, women did have rights/claims. Because no woman with living relatives was not a member of a male headed household, no woman lacked a male guardian whose duty it was to see that she (and her children) had access to land (and certain labour support) to grow food and were not allowed to become destitute. Exactly who the relevant man was varied for unmarried adult women (a relatively small group), widows and divorced women and among societies (especially but not only depending on whether they were matrilineal or patrilineal). In any particular society the person was determinable.

Second, personal and gender social roles conferring status on women were not limited to wifeship and motherhood. The fulfillment of the gender specific obligation to feed (by growing, exchanging, preparing) certainly was status conferring. More broadly women had gender specific roles in religion (especially pertaining to crops), in medicine (including parapsychology which is not best understood by lumping its multiple, complex facets as 'witchcraft'); and in the state (e.g. "Queen Mothership" which frequently was a post with significant influence and conditional powers and was not uniformly held by a Chief's mother). Historically the particular forms of European and Islamic penetration of and ascendancy over African polities and societies eroded all of these traditional status roles of women which may go far to explain why many African spokeswomen are very sceptical of Europeans (especially, but not only, of European men!) presenting themselves as the heralds of female empowerment and liberation in Africa - historically they usually have been the precise opposite.

Third, certain customary law requirements - whatever their subsequent perversion or their appearance in European eyes - did provide protection to women. One was dowry - with rare exceptions paid by the groom to the bride's family. This was not originally seen as 'selling' a woman. Its shift toward being viewed as a recompense for the cost of nurturing and educating is relatively recent (which explains its defence by not inconsiderable proportions of rural women). It is true that an element of exchange of labour power for other sources of income (usually cattle) did exist but this was one of three strands. Another was the groom's having

proved his ability to produce, provide and protect by the work of accumulating the dowry (a practice recorded in the Old Testament along with that of younger brother's literally marrying their deceased elder brother's wife/wives with the duty to 'raise' children to perpetuate their names which is still in residual, if retreating, existence in Africa as it was in 18th Century England). Perhaps most important, dowry provided a protection for the wife. If she was mistreated and fled home or divorced without very clear and sufficient cause her family kept the dowry which was a severe loss to the man who would need to accumulate another before he could remarry. (No protection against wife battering would appear to be tyrannical patriarch proof but two to five years income forfeiture with the power to exact it in the hands of the woman's relatives may be at least as effective as modern European/North American legal safeguards!)

Land rights within the household in "traditional" SSA societies (indeed in most present ones) were not free standing but part of a broader network of rights and duties. The and is crucial, most SSA approaches to human rights see rights and duties as inextricably linked in both directions and assertions of rights without relatively clear statements of consequential duties as both unsound and ultimately unenforceable. (Again hardly a uniquely African position vide Locke and Mill or for that matter Confucius and the Ramayana.)

A women's right to access to land to till linked directly to her duty to feed identifiable children and men (as well as herself) which might or might not be limited to her own children and husband. It therefore subsumed the right to use her own produce to feed directly or via trade (barter or sale). Both on the income (kind or cash or barter) and the provision (basically food, water, fuel and upkeep - though not usually construction - of shelter) sides women had separate, largely gender specific budgets. Access to land and control over produce were central to the income generation needed to meet the expenditure.

In addition gender specific intra-household labour time budgets existed with certain rights/duties for transfers between (among) them. Not all food for household use was to be provided by women (meat and fish were usually exceptions) nor were most work tasks totally (as opposed to dominantly) gender specific. The exchange does not appear to have been very equal - male inputs into soil preparation and to a lesser extent

planting and harvesting of women's crops, even allowing for initial clearing seem to have been much smaller than planting, tilling, harvesting, preserving time inputs by women into men's crops. Further in respect to household work the only male duties tended to be in respect to housebuilding (and occasionally spring protection or pond/well building) with actual maintenance-operation-provision of water, cleaning, cooking, fuelling, housing resting literally on women's backs or heads. But the labour exchanges were exchanges within customary norms not unilateral, open ended exactions.

As with the land tenure systems, this sketch of women's rights (and duties) in relation to them is not designed to assert that a 'golden age' of equal rights of full empowerment without gender bias ever existed. Still less would it be plausible to suggest that norms were never abused, debased and/or violated. Rather it is to outline the nature of the intra-household social contracts which did exist both in principle and usually in praxis.

Two Variants

Two special cases (in the sense of mutation from the basic agro based pattern) require noting. The first is pastoralism (or pastoral dominated agro-pastoralism). Large stock (basically cattle and camels) have almost always fallen in male specific duties (protecting/herding) and rights (ownership/control over use of proceeds). Small stock (sheep/goats) have tended to be divided similarly to crops (production for household use on the women's and for sale on the man's side) and poultry (prior to medium scale urban market oriented production) largely in the women's domain. Dairy products and fish appear not to be uniformly divided by gender - there are fisherwomen and also dairymen. But the net result is usually that in a large pastoral stock dominated economy women's position in the household is weaker because men provide much of the food (directly as meat, blood and sometimes milk/curd and by exchange for root and grain crops or plantains).

A second special case arises in societies with Islamic cultural elements going back several hundred years. In principle Islam recognises female property rights within marriage and female inheritance rights rather more securely than traditional SSA society laws and norms (or for that matter than most Christian traditions). In practice there is little evidence that the elements and forms adopted in SSA had any such result, on balance

probably au contraire. In parts of the Sahel (notably but not only Senegal) Muslim order land tenure concentrated control (including the right to exact substantial rents) in the hands of the leaders of the orders in a form rather more closely resembling the parody of the land grabbing, rent extracting chief than any normal purely SSA system known to the author. (Some Zulu king/emperors came close but on a much more random and less economically oriented model.) However, this system is as readily criticisable on Islamic principles as on any other and was built up through a symbiotic/mutual benefit alliance of the leaders of the Orders with the French colonial power (symbiotic between them, parasitic as viewed by those peasants not convinced that the overlordship was Allah's will).

III.

Evolution Of Traditional Tenure Systems

SSA tenure systems have proven to be both resilient and flexible. Most SSA land rights are - in practice - still held under them. Most systems have evolved to meet changing contexts and requirements.

The proportion of land basically still under the indigenous systems, the nature of change and the interactions (including parallelism, tolerance, mutual reinforcement and clashes) with 'modern' code law systems varies widely partly in relation to the nature of colonial and successor independent governments, partly in response to differing economic and ecological contexts and partly along societal lines. These changes and the present position are often obscured by most writing (especially by lawyers) focussing on the smaller code law sector (usually long term leasehold or freehold) and/or by apparent generalisation of codified systems hiding a rather different underlying reality.

It is true that substantial areas have been excised from the "traditional" land use right systems. At one extreme state land allocable only by the central government is significant especially in respect to forests, to nature and wildlife reserves and to mineral rights. At the other long term leasehold and freehold tenure by corporate bodies and individuals has come to exist in all SSA states and to be significant in many. It is dominant, however, in respect to land area only in respect to urban land and in the

southern cone of ex-settler colonies (Namibia, Zimbabwe, fleetingly Swaziland and South Africa). Even in the countries in which it dominates output and hectarage the proprietors and employees (plus their households) are usually less numerous than the households dependent at least in part on land use under some form of evolved (or in these cases often manipulated) traditional use right tenure.

Forces For Change

Four interacting driving forces for change have been common. Traditional land tenure law might have evolved without them - albeit law (including oral and traditional) is usually conservative and glacial in pace of change if no issues beyond its existing procedures and precedents arise. However, the evolution would neither have been as rapid nor along the particular lines it has actually taken. In respect to each force opportunities have opened up as well as constraints tightened or problems arisen.

First, the opportunities for and perceived need to market significant shares of agricultural output have expanded. Certainly the traditional systems did have a trade component in order to meet needs or amenity targets not produceable by the household but, beyond local barter, these were not large proportions of production or consumption. Fairly limited specialised production for medium or long distance trade in Africa (e.g. shea nuts in West Africa, tobacco in East Africa) "before the Europeans came" in some cases grew dramatically as to export (e.g. cocoa), industrial (e.g. cotton for domestic mills) and urban food (e.g. maize - the mightiest cash crop of all in terms of volume and of households for whom it is the principal source of cash income).

As a result, land suitable (ecologically or locationally) for cash crop production rose in value relative to other land. Further larger land use right holdings came to be desirable - no longer did household consumption plus reserves for calamity plus limited local markets set a ceiling on economically meaningful land use rights. Further labour for cash crop production came to be available. With unequal holding sizes some households sold labour time (rather than, as previously, exchanging it on a relatively even basis with feasts making up the balance) to augment agricultural cash income. Further need or desire for goods purchasable (or taxes payable) only in cash spread beyond areas able to produce (or at least market) cash crops opening up migrant labour flows.

A less explored effect was a greater male role in agriculture. Men occupied most expansion of cash crop (crops produced with primary intent to sell) opportunities. As cash cropping rose relative to household provisioning there clearly were changes in men's time use patterns and almost certainly increases in total male hours worked.

The tenure impact came via the increased value of cash crop suitable land and the greater economic value (and ability to amass labour to realise it) of large use right holdings. By and large it led to greater inequality of holding size and quality and greater manipulation of the allocation process.

Second, tree crops became more common. While some domestic food crops e.g. palm, coconut were tree most were field (grain, root crops) or short life bush/shrub (e.g. banana) crops. Most early export cash crops (coffee, cocoa, oil-palm, coconut, rubber) were tree crops. Tree crops totally altered the normal duration of use of specific pieces of land - often from a few years to a few generations.

Therefore, use tenure that had meant frequent moves and new allocations turned into something very like permanent tenure.

Third, in some contexts this tendency to permanent use (and therefore near permanence of secure, hereditary use tenure) was caused or augmented by growing land shortage. The traditional long rotation system has died in most of Africa not because anything ecologically sounder or clearly economically more rewarding is known (still less because agricultural experts decried the old system which they did until it was terminally ill) but because present household/land ratios render it impossible to maintain.

The onset of land shortage was sometimes exacerbated by colonial (or post colonial) state acquisition of land for a freehold sector (whether foreign or African) and/or for reserves of unused land. The latter frequently included (include) rotational land which to the bureaucratic eye looks like other second growth forest and may genuinely be perceived as unused if no local consultation is undertaken.

Land shortage ended the automatic right of community member households to adequate land use allocations (especially as adequate had a higher and a less precise level in the context of substantial cash sales than of

predominantly household self provisioning plus local barter trade production). This made the allocation process more important, more costly (predictably user fees rose and bribes became common), less egalitarian and less able to ensure social harmony and community solidarity.

Fourth, external (to the land use allocation system community) forces intervened. While colonial states (and a fortiori settler states) were less likely to listen to community concerns and more likely to cream off much of the best land for freehold or reserves (normally with nil compensation even for households quite evidently dispossessed and forced to move) than post colonial African ones, the difference is frequently in degree, not kind. Actual allocation mechanisms have often either been changed to central or local government bodies which may not understand the process they are operating or put in limbo because in principle a codified system operates universally but in practice the traditional one continues in some form with greater or less benign neglect/acquiescence. In either case the security of traditional land use rights is sharply reduced and the possibilities for conflicts of right (one holding under the codified, one under the traditional system) and land grabbing (securing code title to traditionally allocated land and using either "due process" or undue influence to expel the sitting holders) greatly increased.

Further, the parallel leasehold and freehold systems do influence the evolution of traditional tenure. Larger landholders and, sometimes, allocaters see aspects of freehold/leasehold attractive to them and seek to have them grafted on to the traditional processes.

A final external influence impacting on land tenure processes is modern court systems and - more particularly - lawyers. While most evident in Anglophone West Africa where land litigation was the basis of the majority of members of the legal profession's cash flows (as conveyancing is in England), this factor is more general. Lawyers like work, modern code law/court oriented lawyers like to widen their scope (whether from a belief this widens certainty and order or a certainty it widens lawyers sources of income). In the context of increasing land values (and cash flows generated from them) and increasing land scarcity, clients have not been hard to find. The results of seeking to handle traditional, oral, customary law system cases in code law contexts, procedures and courts have been mixed. The uncertainty of results has increased because the courts

call in outside principles/precedents to augment or to supplant local and often do not know the latter. The cost to claimants has risen - reducing the access of poorer ones. In fairness, the resulting evolution of traditional oral systems to modernised, written ones often tried in central legal system courts in Anglophone West Africa has not been a total disaster and has probably speeded up some useful aspects of evolution.

Some Consequential Changes

Inheritance has changed markedly. With near permanent use rights to specific pieces of land and increasing diversity in their value inheritance matters more absolutely and as to method. Increasingly parents (usually fathers as female landholding is still relatively uncommon) are unwilling to see farms they have built up go to distant relatives rather than their own children especially if their children's likely inheritance from other relatives on traditional principles is likely to be less. Also with extended families tending to contract, husbands are concerned that their widow's land use (and other support rights) are likely to be safer with her children than with other (often fairly distant) relatives. This has resulted in various methods to avoid traditional inheritance including transfers intra vivos and use of the code law system to make wills which usually (not always) are held by the central court system to override traditional inheritance customary law (viewed as a species of common law in cases of intestacy).

So has treatment of incomers. Basically there are now more candidates and less land. Further the creation of central governments makes physical exclusion of citizens from other communities harder (if by no means impossible if real tensions and a weak rural police presence co-exist as is not infrequently the case). The fairly uniform result is higher entry costs (usually to the allocating authority's benefit - or at least to that of its members). In areas in which land is not yet scarce and the incomers are not seen as a threat (a less uncommon situation than might be supposed) very large movements are possible. Otherwise tensions arise especially if a traditional authority or a 'modern' local government operating on joint local/communal interests is seeking to preserve a "land bank" to allow relatively adequate access to new land use rights to the next generation while the would be incomers are from land scarce areas and - for whatever reason - have the ear of the central government.

The most significant (and also most uneven) changes probably relate to rights to transfer land use rights other than by inheritance. There is a trend toward household (in fact individual) ownership in the full sense and away from community ownership with secure use rights for community member households. Predictably changes tend to be fastest in respect to temporary transfers (rentals for a fixed term or until the holder retires from a non-agricultural occupation and returns to the land) and to transfers within an extended family. Changes have been intermediate in respect to permanent transfers within the community (often either still not accepted or requiring the consent of the allocating body). They are slowest in respect to outsiders (including financial institutions). Only in a few cases can an individual give a permanent land use title to a stranger incomer on his own authority and the stranger then expect to have unimpeded occupation and use. In most areas, for example, a debt seizure (even if legal) and sale would give the new 'owner' a very precarious position indeed with high probabilities of 'natural' combustion of his crops and buildings and unnaturally high 'straying' of his livestock and toolstock, if nothing worse.

A side aspect is division of use rights. For example a holder may retain the underlying use rights and exercise them as to tree crops while de facto renting out grazing or cropping and residence rights under or beside the trees.

Modernised Marginalisation Of Women

There is no inherent reason why changes in traditional land use rights systems should disadvantage women. In the actual SSA contexts the changes made usually have done so. This is reinforced by parallel changes in respect to household and kinship obligations and their interaction with inheritance.

Female headed households are now ubiquitous. They frequently comprise 20 per cent to 25 per cent of all households (excluding households with an absent male member who fairly regularly remits and visits and plans to return at some stage in his life cycle). But neither the central states nor traditional/evolved traditional communities have fully endogenised or acted on this reality. Women can sometimes be granted land use rights (as can women's cooperatives) and can usually inherit land use rights by will. However, the former is not universally the case and even when practiced

frequently discriminates against women in terms of certainty, size of allocation and/or quality - the latter two apparently based partly on the misperception (at least for female headed households) that women produce solely or primarily for the table not the market.

The price of escaping from "permanent minority" (but not entering into full equality) has usually been high. It is no longer true that an unmarried adult woman (especially if a single mother or a returnee from an urban sojourn), a widow or a divorced (or separated) women automatically has a male relative who will honour her claim to land use access and related subsistence/livelihood rights. The point is not the few cases in which there is no such relative living. These always existed and women in that position were usually in dire straits as indeed were aged or destitute males with no, or no accessible, relatives. Rather it is that the extended family is contracting and growing numbers of men decline to accept traditional obligations and find increasingly less social pressure on them to do so. While more advanced in urban areas this process is at work in most rural ones as well. The right to maturity and to freedom from wardship can all too easily also be the right to be destitute, landless and starving.

The same forces have made the 'traditional' inheritance system as now practiced in some areas (notably Zambia) iniquitous. Traditional heirs claim their rights, stripping away the assets of widows and their children and turning them off the land (sometimes despite contrary written wills). But nobody acknowledges the former balancing obligations to the bereaved women and children.

More directly related to farming, the greater male participation with the growth of cash cropping does not reduce women's workload. Quite the contrary - the same standard contributions of female task inputs into larger and/or more intense male crop cultivation increases their workload. Since it does not usually affect their provisioning (food, shelter, water, fuel) obligations and the day has not expanded work, overloads are endemic which is a problem even if the man does use his income in part on improved housing, better clothes for his wife and children and meeting children's school and health bills (which is not always the case).

Women have not been powerless in this context. The labour and income/provision budgets of most rural African households (perhaps especially in West Africa) were and are separate but interlocked with the exchanges bargained. Many women have been able to expand production they have the right to sell (and keep the proceeds) while others have - quite literally - charged wages for additional time devoted to their husbands' crops.

Female headed rural households have a different set of problems. They have unified time and income/expenditure budgets but ones with both built in labour shortages and specific task gaps. The latter centre on clearing, soil preparation (at least where ploughing - especially animal or machine powered ploughing - is common) and house construction. They are exacerbated by the reality that most female headed households in rural areas lack both start of crop year cash reserves or access to credit to buy in these services.

In general therefore the interaction of land tenure, agricultural practice, and social obligation changes over the past decades has marginalised more rural SSA women than it has empowered both within complete households and, perhaps especially, in the newly recognised female headed households.

To argue this is not to advocate a return to the past. Fairly evidently that is in large measure impracticable and many (probably most) SSA Africans including African women would not wish it. It is to warn that in objective terms rural modernisation has on balance marginalised women in SSA as has the emergence of the female headed household as a distinct social form.

IV.

Freehold/Long Leasehold - The Parallel System

Freehold tenure - in a variety of forms including long, transferable leaseholds - is significant in most African countries today. Therefore its forms, realities and impact on women's access to land use require at least brief attention whether or not one believes it will or ought to be the "wave of the future" "whose time has come" (and passed in the industrial economies busy crusading for it in SSA to judge both by the limitations on

land use now burgeoning and by the parlous state of the bulk of most family farms in major industrial economies even after public support costs often equal to half and sometimes more than all family farm net agricultural income).

The largest single source of freehold and long leasehold land is the heritage of colonial land acquisition - land theft to put a more accurate term to most of it. Post colonial governments have rarely, if ever, returned such land to traditional system allocation. They have on occasion substituted secure leasehold user rights for freehold and charged (usually derisory) land rentals or taxes (e.g. Tanzania). But over time much freehold land has moved into African hands - it is no longer a white settler preserve. In a majority of cases (or at least hectares) the new holders are large, capitalist farmers acting on their own with weaker than average family links beyond their immediate households. Other cases involve quasi cooperative/quasi corporate farmer companies buying on behalf of small holder members and envisaging - but rarely achieving - a linked household, modern community regulated set of household tenure arrangements. A somewhat larger number (particularly in Kenya) involve state purchase of large freeholds and their sub-division for credit sale to smallholders - an approach with unequal results but fairly high average insecurity of tenure relating to repossession by the mortgage holding financial institutions.

The Kenyan small holder proprietors are an extension of a late colonial strategy (especially but not only in Anglophone Eastern and Southern Africa) to create property owning African middle class, capitalist farmers partly to boost output but largely to create a base of households with "a stake in the system" to support "safe" African political inheritors as opposed to "radical" ones. While the strategy failed totally on its political front, African elites and governments have - notably in Zambia - continued it partly to provide opportunities for themselves and partly for the same political reasons as their predecessors.

A second fairly large source of real or apparent freehold tenure is land consolidation/tenure consolidation schemes. These have in some cases - e.g. Kenya - led to widespread freehold registration of consolidated plots in the names of individual (almost always male) owners within a code law framework on land transfers (including on inheritance and for debt). When

initial registration campaigns have had heavy top level political support and administrative follow up at local level, initial and apparent results have been impressive.

Questions as to what these results mean arise because subsequent transfers (on rental, inheritance, sale) are frequently not registered (in about two thirds of all cases in Kenya) in the code system but apparently are handled by parallel quasi-traditional procedures often operated through local government functionaries and structures answerable to (and called to account in other areas by) central government. This does not appear, at least to date, to have led to a qualitative increase in land disputes or for a greater proportion using court as opposed to traditional settlement procedures. The most plausible interpretation is that these freehold systems have neither been generally internalised nor operational and are widely seen as less satisfactory than the evolving traditional ones.

A third source of freehold has been post colonial land grabbing. Its classic form arises when provision exists for "non-titled" land to be registered as freehold or for old rights to be reasserted as freehold (whatever they were before) without much reference to the intervening period or who has had quiet possession of de facto use rights for how long. The former, in the absence of recording of traditional rights, is a magna carta for political and economic barons to acquire peasant land (an element also notable in the original magna carta and its early descendants) and was seen at its most brutal and systemic apogee in Liberia. The other form became common in Somalia when river valley cultivation became profitable again after independence and especially in the 1980's. Somali elite members who during the colonial period had abandoned their holdings, and the Swahili serfs or slaves who had tilled them, reasserted their land rights taking back the land from the Swahili households who had often had up to fifty years undisturbed possession. The Swahili became sharecroppers or hired labourers or were simply expelled with no chance to obtain replacement land use rights.

Similar results have come from government policies intended to rationalise pastoral land use and harmonise large and small farmer interests. In Botswana these created a category of individual grazing lands (fenced) parallel to and excised from communal lands. The (unintended) result was

that larger ranchers (the only ones who could afford fencing and boreholes) used their quasi-freehold rights to the hilt and then claimed communal rights of access in drought years.

Perhaps the most interesting freehold development is a creeping one not usually seen as such. Some traditional land tenure systems have evolved to an approximation of permanent, secure, freely transferable use rights which are in practice hard to distinguish substantively from leasehold. Ghana's coastal and forest zones and parts of southwestern Nigeria are the most evident cases but smaller examples exist in the Mount Kilimanjaro - Mount Meru zone in Tanzania. The remaining differences from classic forms of freehold seem to be non-acceptance of straightforward land seizure for debt and a real community ability to veto unacceptable purchasers (by communal pressures of varying degrees of statutory law a legality or illegality) which do constrain transfers.

The cases made for freehold have usually been increased security of land access, greater access to credit secured on land rights and consequential greater productivity. They have usually been advanced quasi theologically on the basis of universal principles with little examination of on the ground realities and a profound ignorance of actual African land tenure systems.

Security of use rights is very high in most SSA land tenure systems and if it is not abuses of the system (which as noted above are hardly absent from freehold systems), not its principles, are usually at fault. A more convincing case might be made in respect to lines of inheritance but broader use of wills, not freehold tenure (which would not by itself alter who inherited) seems a more plausible and accepted (by growing numbers of African farmers) way forward.

To argue that the ability to seize land for debt would increase credit availability may sometimes be true, albeit most African lenders are more concerned with medium farmer crops and current assets and cash flow and find small farmer loans unattractive for administration and collection cost reasons. But it is somewhat hard to see how creating a real risk of land loss via foreclosure would increase security of land use as understood by African farmers (or, one might suppose, any practitioner of single speak).

Empirical studies (including a few multi country comparative ones) do not show land tenure systems to be a major determinant of productivity per person year of labour or per hectare. There is some evidence temporary land use right transferability (rental) is conducive to higher output, but that is a pattern increasingly consistent with most evolving traditional systems.

In short the case for general conversion to freehold tenure remains unproven in respect to likely gains. Its administrative costs and probable social costs/tensions from farmer opposition are, per contra, only too self evident.

Freehold Tenure In SSA And SSA Rural Women

In one respect the emergence of freehold tenure in SSA has had a negative impact on African rural households, including women, generally. Its creation - especially during the colonial period - reduced land, and especially the good land, available to African households. Admittedly it increased rural wage earning possibilities but - again especially during the colonial period - these were usually at levels unattractive as full time substitutes for household farm incomes and because of timing or location factors rarely usable in conjunction with continued family farming to achieve a higher overall household income. The larger holdings in the evolving traditional system more often provided a genuinely complementary wage earning opportunity e.g. in Ghana's forest zone and in northern Tanzania.

Beyond that generalisation a differentiation exists between wives of freeholders (female freeholders are relatively uncommon even in the West African evolutionary freehold variant and very uncommon elsewhere) and other rural women. The former have probably gained, albeit perhaps marginally and by developing broader ranges of income earning activities rather than within the household farming interlocked enterprise cluster proper. The latter have lost primarily from greater pressure on household land.

Freehold family farms are on average larger, more oriented to producing a few crops primarily for sale and more hired labour intensive than traditional system farms. The last characteristic probably reverses the increased labour time demands cash cropping increases would otherwise put

on wives. But it also reduces the economic importance of the female household provisioning role in farm activity. Whether this reduces a woman's economic independence depends on whether she builds up a network of processing, trading and craft income generating activities, an option likely to be differentially more accessible to wives of freeholders than to their sisters in poorer households.

For wives (and female headed households) in the traditional sector the primary impact of expanding freeholds is greater land pressure which can only be offset by additional work-on the farm or for larger farmers as part time hired labour. Even if real incomes do not fall, or rise marginally, the increased workload is a negative consideration.

New Communal Tenure Systems In SSA?

New land tenure and production organisation on bases which were neither evolved traditional nor freehold had an intellectual vogue in the 1970's and were seriously promoted in some polities notably Tanzania, Mozambique and the last phase of the Ethiopian Empire (under Comrade Ras Mengistu Haile Mariam I). While not in fact all that similar (Tanzania's was intellectually traditional based; Mozambique's was in fact based on liberation war period production models; Ethiopia's was an odd mix of Russian state cooperative and traditional Imperial Ethiopian soldier and supporter strategic settlement themes) all three proved to be failures at least in respect to altering either land use or land tenure patterns significantly.

In Tanzania and Mozambique communal production of crops was never common. At its peak it accounted for perhaps 3 per cent of cultivated land and 2 per cent of output. Land allocation was rather more traditional in most cases than was realised (or intended by the state promoters) at the time. Except for a handful of cases, the basic unit was the household plot and the actual allocation process local. Inequality in household land use right sizes (and perhaps quality) was reduced but by no means eliminated. Communal production was less infrequent in Ethiopia but there the dominant feature was compulsory procurement at fixed (low) prices from villages - a feature unknown in the less communalist Tanzanian and Mozambican approaches.

Certain aspects of the new systems had genuine support - especially in Tanzania. These included better access to public services, markets and production inputs - which turned on having clustered villages not isolated households rather than on land tenure. In addition some activities did achieve much broader indigenisation at village level than communal production. These included village cooperative commercial (crop sales, input purchases, general retail), storage and transport operations as well as (especially in Ethiopia) village organised silviculture (fuel-fodder-wood-food providing mini forests) and occasionally dairying. They also extended to community based public and infrastructural works. What is notable is that each has economies of scale and external benefits not necessarily present in communal crop (or a fortiori livestock) production. A special (intended) characteristic of the Tanzania system was raising peasant household strength vis a vis state and party functionaries because villages automatically organised (or at least agglomerated) households in larger units. However, that result was also quite independent of land tenure or crop production elements.

The Mozambican and Ethiopian systems were on balance deeply unpopular and have vanished with few traces in the maelstrom of external aggression (directly and via local hired hands) in Mozambique and the interlocking revolutions which have broken up the Ethiopian (Amharic) Empire. The Tanzanian was, on balance, unevenly popular but its popular elements are now integrated into a radically changed rural settlement pattern (from 25 to 30 per cent to 90 per cent village as opposed to scattered household and hamlet residence), revised and strengthened village level local government and restructured (and potentially now peasant household rather than professional manager or state accountable) primary cooperatives with no lasting impact on land tenure or use other than that resulting from the altered residence pattern.

To attempt to relate these experiences to women's access to land use rights is rather difficult (or potentially nugatory) because they had so little and so brief impact on land tenure and production management. However, in both Tanzania and Mozambique they were associated with women's special purpose production or marketing - input supply - service provision and lobbying cooperatives. These have survived to a degree in Tanzania and in the peri-urban Green Zones of Mozambique and do represent a modest

improvement in some women's (by and large some poor women's) access to land use rights and to ability to organise (and benefit from the fruits of) production.

V.

What Might Usefully Be Done?

African land tenure/access to land use rights systems are changing and will continue to change. Their present form cannot be said to provide equal opportunity for (let alone equal results to) women. On balance the pattern of evolution has weakened the position of women. Therefore, a case exists for doing something to influence the process of change rather than simply standing and observing it. The question is what?

The following checklist or tentative agenda is deliberately general, imprecise and suggestive (or perhaps provocative). That is deliberate because to be a positive contribution it needs to contribute to a multi stage process dominantly in specific SSA contexts and primarily led by SSA rural women:

- a. more country and area specific data collection and analysis involving primarily participatory research (finding out how rural women perceive existing conditions and patterns of change and what interventions/opportunities/altered patterns of change they believe they need and want) backed by direct, field level observation (including) syntheses and analysis from field level observations);
- b. analysis and dialogue from that data base, again specifically involving rural women but also persons influential in social, political and economic processes and decision taking (including but not limited to national women's organisation leaders and female professionals);
- c. agreement on a prioritised, sequenced agenda (agendas) for action, including institutional and administrative aspects, as well as means to mobilise consciousness and support (especially by rural women) in support of the implementation of as much as possible of that agenda.

History, Knowledge and Social Engineering

More data (and more understanding of it) on both the present and the past is needed. Most land tenure interventions in post-colonial SSA have been based on highly stylised (and often highly inaccurate) perceptions of both the existing situation and how and why it has evolved into the present.

The typical result has been social engineering interventions with limited support from intended beneficiaries, unanticipated opposition (frequently by supposed beneficiaries), quite unexpected side effects (more often negative than positive) and little ability to sustain or evolve the initial intervention. Not surprisingly the net impact (in fairness negative as well as positive) has usually been very low and the total failure rate (as well as the number of missed opportunities) high.

One weakness has been a failure to relate land use access to other aspects which both condition it and influence its results. These include inheritance systems, the pattern of intra-household obligations and rights including labour and sources/expenditures budgets.

A second has been a failure to perceive that women are by no means powerless within traditional African rural households and that their power lies largely in the form of intra household labour, income and expenditure budget interactions. Better understanding of these could indicate likely opportunities for strengthening womens position e.g. winning wages for additional labour inputs into male income stream crops; securing more male construction/establishment inputs into water facilities and woodlots which would substantially reduce the workload associated with gender specific female activities (in the e.g.'s cited watering and fuelling).

Some Possible Tenure Reforms

Both men and women need security of land use rights. Most SSA evolving traditional tenure systems provide this rather better than most freehold systems. That does suggest an agenda bias toward influencing traditional tenure evolution not leaping toward a rush for freehold generalisation.

Small farmers - and especially women with farming activities within households as well as those who are heads of households - need better access to credit. Credit 'secured' on cash flow and moveable assets (especially growing crops) is both less likely to threaten security and

more accessible to women than credit secured on land rights. Credit 'wholesaled' via primary cooperatives controlled by small farmer members can reduce transaction costs (which is vital to greater voluntary financial institution provision of credit to small farmers). It may also improve women's access if established women's cooperatives have more equal access than do individual women.

Who should be the holder of land use right titles is a complex issue. Clearly women should have an equal right to men to do so. Clearly too female headed households should have land rights registered in the woman's name, not that of some (often purely titular) male guardian or protector.

But substitution of individual for household titles would appear much more problematic. The typical African small farming household does have separable - in principle - male and female spheres but these interact. Treating them as separate holdings is not self evidently sensible and seems singularly unlikely to solve the problems arising from those male household heads who do not accept customary norms in respect to women's land use, labour income and control over income rights. Registering household title in the woman's name (in households including both spouses) has been suggested frequently and occasionally practiced but appears to seek to solve one imbalance by creating an equal and opposite one (as well as facing administrative sabotage and male farmer opposition which would threaten not only its own effectiveness but acceptance of other less controversial reforms as well.) The logic of the specialised partnership structure of most small African household farming enterprises would seem to suggest joint titling, an approach likely to generate broader support by rural women and both less uniform and less intense opposition by rural men (and by male agricultural and legal professionals).

Some Interacting Items

Tenure reforms need, for full effect, to be paralleled by action in other directions. A short list would include inheritance, status of female headed households, rural service prioritisation - structuring - delivery and - more speculatively in most contexts nationwide old age pensions.

Traditional inheritance systems, especially with the collapse of their original parallel obligations to widows systems, are inequitable to (sometimes iniquitous in their treatment of) women. They also run counter to an increasing transgender desire to have ones own children inherit. For these reasons both female and male support for change is likely to be mobilisable. The short term path of least resistance is furthering the trend toward written wills backed by unambiguous statutory provision for them to override customary practice. A second stage (which may be acceptable within a decade in some SSA states) would be statutory law entrenching the position of surviving spouses and children in the case of intestacy. (Intestacy in a traditional inheritance system was, in a sense, impossible. Both rights and obligations were defined, ubiquitous and not subject to individual alteration. In respect to obligations, however, almost all of these systems have disintegrated.)

The status of female headed households needs to be rendered identical to that of complete (or single adult male headed, in practice a minute category) households. This might be facilitated by statutory provisions (especially where the heritage of life long male guardianship for women lingers) but the more general problems relate to lack of operational realisation that these households are common and have serious inherent problems (notably low labour power to mouths to feed ratio) which are exacerbated by 'invisibility' and discrimination. That would appear to call for consciousness raising by women, women's organisations and national leaders.

Rural service prioretisation needs to include reducing women's workload and increasing their hourly productivity. Often access to nearby pure water, development of small scale agroforestry and provision of universal access to preventative and curative primary health care are the most proven and practicable immediate actions. Watering, wooding and tending sick household members are gender specific and very time consuming duties.

In addition services must both cease to treat women as invisible (literally in the case of extension officers who believe they talk primarily with male household heads only, when in fact both spouses are usually present) and to relate to actual gender divisions of labour. For example if water project construction is primarily male but operation and maintenance female, then management committees should be set up with female majorities and

maintenance training provided primarily to women. Further women should not be limited in their roles within services - e.g. to cooking and garden plots within agricultural extension. This is not to argue against directing female obligation oriented extension (e.g. nutrition) primarily to women. It is to argue that nutrition extension should be based within agricultural extension and related to production extension to make its advice realistic and implementable.

Old age pensions reduce vulnerability and dependence of aged persons (and as a by-product pressure to have very large families to ensure that one or two children survive long enough and are fortunate enough in economic terms to sustain their aged parents). Because in SSA (as elsewhere) a substantial majority of persons over 60 are women OAP's would differentially benefit women.

Admittedly universal OAP's are not practicable in the short run in a majority of SSA countries for financial and/or administrative capacity reasons. But one SSA state (Namibia) already has (and is improving) such a system. Three more (Botswana, Mauritius, Seychelles) could introduce them more or less immediately. Others - e.g. Zimbabwe - have the administrative capacity and could achieve the fiscal within a decade. The opportunities now and in 2002 at the least deserve more and more serious exploration and dialogue.

Some Legal System Approaches To Land Tenure

Codified land tenure systems that do not address traditional tenure (or list it as outside their scope for an ever extending "interim" period as in Tanzania) are not optimal, even if better than ones which set up new system of general application on paper but not in practice (e.g. - in different ways - Kenya and Mozambique). Study of actual traditional practice and desired directions of evolution should allow enacting statutory frameworks within which evolving traditional systems had to operate. These could usefully include equal access rights for women and organised groups of women (e.g. female cooperatives).

Whether code frameworks to enforce intra household obligations would be useful is less clear. Their prime functions would be consciousness raising and community social pressure legitimising, because the court systems of SSA could hardly handle large numbers of cases.

Specific provision needs to be made for local/regional customary practices to continue until they evolve into a relatively uniform system nationally. To work well, the administration of these systems needs to be local both in the sense of being within local government and being personed largely by individuals with genuine local knowledge.

In some cases it is a matter of some urgency to codify who does have the power to administer customary land allocation and adjudicate on or conciliate land tenure disputes because the bodies doing so have no apparent governmental authority to do so. If they are generally accepted civil society bodies this may create few immediate problems but it always leaves open the chance of conflict with local level central officials who - on paper - do have such authority and/or challenges by aggrieved individuals in courts who will be forced to rule present practice (whatever the merits of its decisions) is either alegal and non-binding or positively illegal.

Evolving traditional law cannot, and local level bodies aiming at accessibility, flexibility, speed and intelligibility to rural households should not, attempt codification and case precedent collection fully comparable to statute law. On the other hand, there is no necessity to go to the opposite extreme as is often done. Oral tradition and experienced elders as talking law libraries are valuable and deserve more respect than they usually receive from fellow legal professionals and other branches of the legal system. But it is by no means self evident that setting down principles in writing as well as summaries of seminal cases need undermine rather than complement their roles. Nor is it evident that para-legal training for allocating body members and - perhaps - the right of claimants to have para-legal representation before such bodies is inherently non-feasible nor generally undesirable.

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Author Note

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