

2008

The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property rights and Customary law

Sandra F. Joireman

University of Richmond, sjoirema@richmond.eduFollow this and additional works at: <http://scholarship.richmond.edu/polisci-faculty-publications>Part of the [International and Area Studies Commons](#), and the [Political Science Commons](#)**This is a pre-publication author manuscript of the final, published article.**

Recommended Citation

Joireman, Sandra F., "The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property rights and Customary law" (2008).
Political Science Faculty Publications. 70.<http://scholarship.richmond.edu/polisci-faculty-publications/70>

This Post-print Article is brought to you for free and open access by the Political Science at UR Scholarship Repository. It has been accepted for inclusion in Political Science Faculty Publications by an authorized administrator of UR Scholarship Repository. For more information, please contact scholarshiprepository@richmond.edu.

**The Mystery of Capital Formation in Sub-Saharan Africa: women, property rights
and customary law**

S. F. Joireman

Published in *World Development*, July 2008, (Vol. 36, No. 7), 1233-1246.

Economists such as Hernando De Soto have argued that clearly defined property rights are essential to capital formation and ultimately to economic growth and poverty alleviation. This article traces two impediments to the clear definition of property rights in the African context: customary law and the status of women. Both of these issues interfere with the attempt of African countries to rearticulate property law with the goal of capital formation. Constructive attempts to define property rights must address the problem of enforcement in under-resourced environments where changes may not be welcomed.

Property rights, law, Africa, capital formation, poverty, women

1. INTRODUCTION

Scholars agree that poorly defined property rights are an impediment to economic growth. This observation is both empirical and intuitive. Ambiguity with regard to ownership and usage rights to land does not allow for the most efficient use of property. Admirable efforts have been made to apply theories regarding property rights and economic growth to Africa, the continent with the unfortunate distinction of being in greatest need of development. Well-intentioned scholars and policy makers have followed the tested practice of attempting to isolate the institutions which lead to economic growth and then promoting them in countries and economies in which they are lacking. The neoliberal goal is to fix what is broken so that market forces can take over and work the magic of development. In this paper I seek to draw attention to two property rights issues that impede capital formation in Sub-Saharan Africa: the presence of customary law and the complex social status of women. These realities make the Sub-Saharan African environment a challenging one in which to affect change along the lines suggested by recent economic theory. In noting these difficulties, our goal is not to arrest the attempt to define and enforce property rights in Africa. Rather, we seek to highlight these issues so that both the expectations and methods of policy makers fit the circumstances at hand, and not an idealized setting.

Literature in the field of economics reveals the accepted wisdom that clearly defined and enforced property rights contribute significantly to economic development (Acemoglu, Johnson, & Robinson, 2004; De Soto, 2000; Libecap, 2003; Norton, 2000). Anthropologists (Berry, 1992; Chanock, 1991; Platteau, 1996) and political scientists

(Fukuyama, 2004; Weimer, 1997) have also noted the importance of property rights in issues of economic and political development. Secure property rights encourage people to invest their resources and protect their investments against expropriation. Scholars have argued that economic efficiency requires a clear definition of the rights of ownership, contract and transfer (Johnson, 1972). Ambiguity in the definition or enforcement of any of these rights limits the use of property, leads to an increase in the transaction costs of exchange, and causes residual uncertainty after any contract.

Economists, the most well-known of whom is Hernando de Soto, have argued that the definition and defense of the property rights of the poor worldwide will increase their well being and allow them access to new business and educational opportunities through capital formation (De Soto, 2000). It is argued that property rights in law will facilitate economic growth by creating what De Soto calls ‘meta’ property – the paper trail of title and mortgage which can free the surplus value of assets and provide the necessary capital for economic growth and development. Without this legal framework of property rights people can effectively do business only with those that they know or their family.¹ Wider economic opportunities remain restricted due to the absence of contracts and law that would enable individuals to mortgage their property and use the capital for investment. De Soto’s argument follows on other work that suggests security of land title leads to greater investment and is linked to productivity (Demsetz, 1967; Feder & Noronha, 1987; Platteau, 1996). However, De Soto diverges from previous theory in identifying the importance of titling informally held urban plots as well as rural in an effort to boost the potential of capital accumulation for the poor.

De Soto has popularized this idea that secure property rights lead to capital

formation through the formalization of existing informal claims. But research into the application of De Soto's ideas has led to a number of concerns regarding his conclusions. The first and perhaps most important is that 'meta' property rights do not create credit markets where they have not previously existed (Field, 2005; Gilbert, 2002). Clearly defined property rights can lead to other improvements in people's lives, but they do not necessarily cause the immediate availability of capital. A second problem with De Soto's argument is that while clear, secure property rights are desirable, there are complex social and political challenges to their establishment and enforcement. Elaborating on this second criticism, this article raises a third issue, that attempts to implement De Soto's ideas through land titling programs can unintentionally formalize inequitable property rights systems. This formalization of inequitable rights can undermine the goal of capital formation among the poor, specifically among women.

While noting these criticisms of De Soto it is also important to address the fact that De Soto's ideas about the importance of secure property rights correspond with a demand for clarity and security of property rights by people across the African continent. This demand is evident in the plethora of legal disputes started in national courts or addressed in alternative dispute resolution bodies and local conflict resolution mechanisms (Deininger & Castagnini, 2004; Fenrich & Higgens, 2001; Human Rights Watch, 2003; Joireman, 1996; Toulmin, Lavigne Delville, & Traore, 2002). Legal disputes heard in national courts represent a costly allocation of state resources to the adjudication and enforcement of ownership. There are also less obvious social and economic costs at the local level resulting from conflicts among family members and between neighbors.

If policy-makers and people in both rural and urban communities across Sub-Saharan Africa believe that well-defined property rights are important then why have they been so difficult to implement? Is it simply a problem of governance? Government may be one part of the problem, but governments that have in good faith tried to implement new property rights and failed to do so, such as those in Kenya and Uganda, suggest that we might look further for more complete answers.

In the following discussion we will address two major impediments to capital accumulation through the implementation and enforcement of property rights on the African continent: customary law and the complex status of women. The focus herein is on the enforcement of the law necessary for capital accumulation as this is the area of greatest challenge for many states. Countries across the continent have exerted great effort and resources writing property and inheritance laws that can promote capital accumulation. Burkina Faso, Niger, South Africa, Mozambique, Ethiopia, Ghana, Kenya, Rwanda and Uganda have all implemented (or are attempting to implement) law that clarifies property rights, both private and communal, and makes them more secure. However, new law alone is a necessary but insufficient means of clarifying property rights (Joireman, 2007). Effectively implementing laws that are passed and then utilizing state resources to ensure their enforcement, particularly in areas far from the center of power in a country, is a pressing challenge to almost all African states.² This paper will seek to elucidate these issues by first giving background regarding the problem of property rights in Sub-Saharan Africa and their interaction with customary law. A discussion of the allocation of property according to customary law will follow. This

leads to the second issue, the distinct position of women in African economies and culture, which is then linked to property rights in the subsequent section. The paper will conclude by addressing how theories of property rights, and specifically that of De Soto, depart from realities in Sub-Saharan Africa and what the implications of this disconnect might be.

2. PROPERTY RIGHTS AND CUSTOMARY LAW

Customary law is a body of rules governing personal status, communal resources and local organization in many parts of Africa. It has been defined by various ethnic groups for their internal organization and administration. Customary law is recognized by the courts and exists as a second body of law (in addition to statutory law) governing citizens in countries of Sub-Saharan Africa. It has the greatest control over people in rural areas, but also affects urbanites in so far as it regulates issues such as marriage and inheritance.³

Customary law affects individuals as members of kinship groups and lineages. It stands in sharp contrast to the individualistic nature of statutory law. Customary law also governs land tenure arrangements across much of the continent. In contemporary Sub-Saharan Africa it has been estimated that up to 75% of the land is held under forms of customary tenure.⁴ Since the colonial era, customary law has existed as an alternative system of organization to public law. However, it is important to understand that customary law is not a set of primordial principles or a body of unchallenged traditions that predate colonization.

Customary law is, and has been, malleable and dynamic. It has changed over time and, in this regard, it is similar to common law which evolves in response to changing circumstances and customs. Customary law was both named and developed in the context of colonization and it became a mechanism for the assertion of power by dominated groups during the colonial era. Customary law is explicitly political and is best viewed as a battleground in the struggle for power within a society. During the colonial era, customary law provided a way for older men within traditional societies to reclaim some of the independence and control that they lost due to colonization. They were able to use customary law to assert control over women, younger men and children - the limited realm over which they were given authority by the colonial power. Martin Chanock has observed that "those who were doing economically well within the limits imposed by the colonial regime were those who had the most interest in promoting a 'customary' view of persons. A view that could be presented and validated in customary terms" (Chanock, 1991: 72). To some extent it is still the case that customary law can be used as a tool for the promotion of the interests of certain individuals who are given responsibility for its definition (Ki-Zerbo, 2004). In a 2002 interview with Human Rights Watch, a senior chief in Kenya recognized that customary law in the current era is created and molded by contemporary traditional authorities, saying, "Customary law is what I describe" (Human Rights Watch, 2003:11). Whitehead and Tsikata note the contrived nature of customary authority,

"Many of the supposed central tenets of African land tenure, such as the idea of communal tenure, the hierarchy of recognized interests in land (ownership, usufructory rights and so on), or the place of chiefs and

elders, have been shown to have been largely created and sustained by colonial policy and passed on to post-colonial states" (Whitehead & Tsikata, 2003: 75).

Customary law regulated access to land for Africans during the colonial era. Virtually every colonized country had two systems of land holding, one which was regulated by the state and one by customary law and traditional leaders. The land regulated by the state was privately held by citizens of the metropole, settlers and sometimes by Africans. The rest of the land was and is governed by customary law since, at independence, few countries had the capacity to embark on the Herculean effort of unifying the disparate land holding institutions. Instead an institutional lock-in occurred and the existing, bifurcated, land holding system remained intact with all of the resulting problems of definition and control. One change that did occur at independence was that in many Sub-Saharan African countries the state became the radical title holder of all land that was not held under customary tenure.

(a) Divergent property rights

Privatized and customary land tenure institutions articulated two very different bundles of rights to land. In the colonial era this dual system followed racial lines; natives used land, white colonizers owned it. Since colonial governments did not find conceptions of land holding that were equivalent to that of fee simple or exclusive land ownership among colonized peoples, it was assumed that landholding must be vested in the community.⁵ Africans maintained rights to land as groups and those groups were

overseen by a chief who controlled land allocation. The belief in African communal land rights was supported by two linked administrative impulses of the colonial government 1) the colonial need to expropriate land and govern its occupation and exchange with some degree of legality (even if this was merely a creation of the colonial administrative fiat); and 2) the necessity of space for the indigenous population to live and to farm. Under the demands of indirect rule, the best type of arrangement to meet the second need required no administrative oversight by colonial officials, hence the creation of native reserves, customary tenure areas or tribal homelands. These areas could be administered by “traditional” leaders without requiring expatriate civil servants working in the adjudicative and administrative institutions of the colonial state. Where traditional rulers could not be found, they were created. Where their previous powers did not relate to the administration of land, they were given new powers. Firmin-Sellers notes the complicity of the colonial state in supporting property rights claims proffered by traditional leaders when they served the goals of administration and control. Her interesting study of Ghana also illustrates that different versions of ‘customary law’ were presented to colonial officials for their support by self-interested leaders (Firmin-Sellers, 1996). In examining the development of land markets within customary land systems Chimhowu and Woodhouse note that those who gain the most from emergent markets in land are those with the most influence over its allocation (2006).

In communal tenure areas where an emergent land market developed colonial officials were eager to suppress it as a land market did not fit with ideas regarding the communal nature of African land tenure.⁶ By the end of the colonial era, Africans were perceived to both define themselves in terms of their group and kinship ties and to require

laws which recognized this group identity as dominant in their economic behavior. Mahmood Mamdani is quite critical of what he sees to be the entrapment of Africans in the 'world of the customary',

"European rule in Africa came to be defined by a single-minded and overriding emphasis on the customary. For in the development of a colonial customary law, India was really a halfway house. Whereas in India the core of the customary was limited to matters of personal law, in Africa it was stretched to include land. Unlike the variety of land settlements in India, whether in favor of landlords or of peasant proprietors, the thrust of colonial policy in Africa was to define land as a communal and customary possession. Just as matters of marriage and inheritance were said to be customarily governed, so procuring basic sustenance required getting access to communal land. With this development, there could be no exit for an African from the world of the customary" (Mamdani, 1996: 50).

No one can know what 'customary law' was prior to colonization. Given the tremendous variation in custom and political organization in Africa prior to European colonization, we realize beyond a shadow of a doubt that it was not everywhere the same. There is a split in the literature between those who view customary law as the invention of colonial powers (Chanock, 1991; Ranger, 1983) and those who hold the more moderate position that through its ambiguities customary law created a realm of struggle over power and the

allocation of resources (Berry, 1992; Nyambara, 2001). Whichever perspective one takes, imputing 'customary' onto African property rights amounted to: 1) the erosion of individual rights (such as they were) that existed; 2) the empowerment of a cadre of local leaders; 3) the undermining of more democratic institutions; and 4) the development of land tenure institutions that are resistant to change.

(b) Land titling: nettlesome and unnecessary?

In areas where land is relatively abundant, customary law can effectively regulate the distribution of land in a manner that has fewer transaction costs than using a more bureaucratized registration system, if such a separate system exists. In these settings, privatized and formal systems of property rights show few benefits over customary systems of land rights, so even when new systems of property rights are adopted from the top down they are unlikely to be fully implemented. Jean Ensminger has observed that

"Increasing evidence from Africa is calling into question ...: (1) whether the gains of new property rights justify the transaction costs and (2) whether the fit between customary tenure, social norms and the new property rights is sufficient to lend legitimacy to their enforcement"

(Ensminger, 1997: 168).

The best example of this has been Kenya, where, in spite of a process of land registration and documented land transfer, few people have kept their land holding records up to date because of the financial and logistical costs of changing registration upon the death of an owner or transfer of the land. The process of land registration in the countryside has been regarded as a failure (Coldham, 1979).

In areas where the value of land is relatively low, the transaction costs of land registration appear to be too high to make it worthwhile for people to register their land through formal channels. After the Ugandan Land Act of 1998 made it possible for people on customary land to title their land and exchange it through governmentally recognized methods, individuals in land abundant areas still chose to go through locally recognized institutions of exchange rather than the legal system to document land transfers (Joireman 2007). They felt their land was sufficiently secure to preclude any need to go beyond the recognition of members of their local government in a land exchange. Until the value of land or its attributes increases sufficiently to offset the transaction costs, titling and more formalized land transfers will not be embraced (Anderson & Hill, 2004; Barzel, 2002). Rather than promoting security of tenure, titling efforts may lead to higher levels of conflict over land and thereby reduce productivity (Deininger & Castagnini, 2004).

Land is not abundant everywhere in Africa. Where land is scarce and population densities are higher, land allocation is more contested, conflict over land is more frequent and resort to the courts for dispute settlement and recognition of land transfer is more likely. Consistent with the economic literature on institutional change, ample evidence exists demonstrating the breakdown of institutions and the innovation of new ones when land values increase in Africa (Bruce, 1976; Joireman, 1996, 2000). In areas where land has a higher value, customary land ownership patterns can empower and enrich those who make decisions regarding its allocation. “Authority in land whether vested in the chiefs, or in the government officials and political leaders, can in turn, lead directly to private economic benefits for these actors, derived from land accumulation, patronage

and land transactions" (Toulmin & Quan, 2000). Traditional leaders can practice the politics of exclusion, denying resources to groups with less political power, such as divorced women and migrants, who are easily labeled and denied access to land communally held.⁷

Given the health and welfare demands on African states there seems to be little reason to interfere with a customary law system that is working well in a land abundant setting. In these areas state mechanisms to regulate the registration and transfer of land are unlikely to be effectively utilized or enforced because individuals feel their security in ownership or occupancy is sufficiently robust. The transaction costs of receiving formal title are too high given the limited benefits that title brings. However, no country has abundant land resources in all areas, especially not in capital cities, which invariably have shantytowns and slums which house people without the money or connections necessary for land access.

Current economic theories such as that of Hernando De Soto (2000), would argue that customary land holding systems are less conducive to economic development because they do not give those who are present on the land the power to acquire title and mortgage their possessions, thereby accessing capital. While this idea is true for areas in which land is in high demand, in land abundant areas, any effort to formalize title may be undesirable because of increased transaction costs and difficulties in enforcement therefore title would only bring a limited benefit that would not outweigh its costs. Additionally, empirical assessments suggest that titling will not lead to the availability of credit (Cousins et al., 2005; Pinckney & Kimuyu, 1994; Shipton, 1992). As land gains in relative value and the incentives for titling increase due to changing economic

opportunities or population growth, multiple legal systems can create confusion in the allocation of property rights and conflict.

3. WOMEN AND PROPERTY RIGHTS

Women in Sub-Saharan Africa face a distinctive social dilemma. Because of their labor, they are the mainstay of agricultural economies, yet married women in most African countries do not co-own marital property, do not have autonomous rights to lineage or family land once married, and do not have the ability to protect and retain their homes and movable possessions at the death or divorce of a husband. There are some encouraging exceptions to these problems of property rights in West Africa where women are able to maintain some rights through their natal lineages. There are also some countries in Africa, such as Ghana, Mozambique, Namibia and Ethiopia where efforts have been made to give women legal protection of property rights where they have not traditionally existed. That said, in much of Southern and Eastern Sub-Saharan Africa, women have not traditionally or legally shared the same protections of their property and inheritance rights as men, or women in other parts of the world. They face difficulty in representing themselves economically and legally, for example in selling their own produce or in buying new fields on which to grow crops.⁸ In Rwanda, women were not recognized as full citizens until the 1991 constitution. Previous to that point they were legal minors. If a Rwandan woman wanted to buy a plot of land, a building or even a home she had to either do so in the name of a male relative or establish a corporation which could act as a legal person for her (Wanyeki, 2003). In March of 2000 the Rwandan National Assembly adopted the Matrimonial Regimes, Liberties and

Succession Law which allowed women to inherit land. The position and status of women in Africa is so critical and so unusual that it needs to be taken into consideration, not just by feminist scholars, but by anyone wanting to write seriously about agricultural development, property rights or capital formation.

Even when the law exists that enables women to operate as legally recognized economic actors, social impediments to their doing so are abundant. In Western cultures most married women would not own property individually, but jointly with their husbands. In Africa, the idea of co-ownership is an alien one. Women are not supposed to own property but rather, under customary law, they are property. The idea of a woman acquiring property in her own name during marriage is incendiary as it implies that she is not committed to the husband or his family.⁹ In the few African countries where there are laws providing for the co-ownership of marital property such as the family home or other assets, these laws have proven very difficult to enforce because they go against the grain of cultural practice (Fenrich & Higgens, 2001; Lastarria-Cornhiel, 1997; PlusNews, 2006).

Women produce up to 80 percent of the food crops in Africa (FAO, 2002: 11). Their labor is crucial to both subsistence food production and the farming of cash crops (Goody & Buckley, 1973). There is a significant discrepancy between the hours of labor that women put into the production and storage of both food and cash crops and their control over decision-making with regard to resource use within the household. Women deserve particular consideration when it comes to issues of property because in areas where customary law determines the allocation of land women can rarely receive it in their own right. Typically women have secondary rights to land access, meaning they can farm

land because they have married a man who is of a particular kinship group or they have children who are seen as belonging to a particular kinship group (Bikaako & Ssenkumba, 2003; Wanyeki, 2003; Whitehead & Tsikata, 2003; Yngstrom, 2002). Women do not receive land access because they are not recognized as having autonomous membership in a particular group and therefore have only the right to till land owned by the group (a secondary right to the land).¹⁰ Since they marry and go to live with their husband's family, women are not viewed as having membership in their lineage, but are seen in some ethnic communities as a member of their husband's lineage and in others only as a commodity.¹¹ One women's organization in Uganda developed the slogan "Women have no Home" to illustrate the difficulty women face as they are not seen as belonging to any kinship group.¹²

If women are not entitled to own customary land autonomously and there is an effort to title customary land so as to allow people access to capital, then women will not receive access to capital. In fact, they may be worse off economically in systems of formally titled land than under a customary land holding system where at least their use rights are acknowledged by the community (Lastarria-Cornhiel, 1997).

Whether the issue of secondary rights to land is problematic depends on demand for land in a given area. Some anthropologists have praised the flexibility of traditional customary arrangements because they can adapt to changing family composition more readily than more formalized systems (Ensminger, 1997; Haugerud, 1989). Where demand for land is low, this is almost certainly true. However, when values of land become higher it is easier for traditional leaders to find themselves unable to accommodate all requests for land to farm. Where there is a high demand for land,

migrants, divorced women, and women in general are most likely to face exclusion.¹³ Moreover, attempts to improve productivity through investment in land that women farm, such as irrigation systems, increases the value of that land and makes the land more vulnerable to reclamation by men in the community (FAO, 2002:1). When land values increase, secondary land rights are insufficient to maintain control of resources.

All movable property acquired by any wife will be considered the property of the husband and ultimately of the lineage.¹⁴ For example, if a woman works a job outside the home and uses her wages to buy a car, it is considered the property of the husband. In the case of a divorce the husband will keep the car, regardless of the fact that the wife was the one who paid for it. Under customary law in most areas a woman is only considered to own her clothing and jewelry given to her as gifts (B, 2005; Fenrich & Higgens, 2001; Human Rights Watch, 2003). In this context, capital accumulation for women is challenging. Moveable assets are difficult to keep after the death or divorce of a husband and immovable assets typically revert to the husband's lineage.

The critical issue in customary law is that there is no concept of co-ownership of property by the husband and wife due to the fact that the women under customary law are either considered to be property (East/Southern Africa) or part of a different lineage (parts of West Africa). There are profound difficulties in trying to reconcile customary law with extant economic theory, which would consider both women and men to be autonomous economic actors. As women contribute most of the labor to agricultural production in Africa, capital accumulation for women is tremendously important for economic development to occur. Yet, where there is a view of women as property under

customary law, women's capital formation within marriage is extremely difficult because women have no autonomous economic or legal rights.

(a) Inheritance

Women's property rights and access to land are linked to inheritance patterns. Under customary law daughters tend to inherit less than sons, and often nothing at all.¹⁵ Inheritance can also be problematic for surviving spouses. Aili Tripp notes that in Uganda,

"under customary law.... a woman may have jointly acquired land with her husband and may have spent her entire adult life cultivating land, but she cannot claim ownership of the property. If he dies, the land generally goes to the sons, but may also be left to the daughters. Nevertheless, [the husband] may still leave the wife with no land and therefore no source of subsistence" (Tripp, 2004: 6).

With the mortality effects of AIDS, civil conflict in Africa and decreasing life expectancies for men and women, institutionalized inheritance structures are of particular interest in understanding patterns of capital formation.

In many polygamous households, if the head of household dies, any childless wives will receive nothing and will have to return to their families taking only their clothing. Because these women have not provided the lineage with heirs, they have no status and no further link to any member of the lineage. Therefore, they can no longer expect to receive access to lineage land on which to farm or live. Women with children are in a slightly less precarious position. They are still not regarded as members of the lineage, however, if they are taking care of minors, their property rights will sometimes be respected.

When a woman dies the situation is much different. The husband will keep all of the woman's personal property. If she is not in a polygamous household the father or the extended family will care for the children. If she is in a polygamous household the burden of care for her children will fall upon a co-wife. This arrangement is less advantageous for children as, in the competition for resources within the household, a woman will privilege her own children rather than those of a dead co-wife. When a woman has died of AIDS, discrimination against her children will be more pronounced, especially if any of the children are themselves HIV positive.

The evidence regarding women's inheritance rights in Africa is mixed. Examining the Kenyan case, Aliber et al. note that most women are able to hold onto their land after the death of a husband by turning to the community as a whole to gain support in legitimizing the wife's claim to the land. In their study, a woman losing home and land after a husband has died is the exception rather than the rule (Aliber et al., 2004). This would be consistent with the findings of Rose and Khadiagala that women are able to negotiate customary law and maintain usufruct rights to land through social networking (Khadiagala, 2002; Rose, 2002). However, the weight of evidence seems to emphasize the vulnerability of women's property rights after the death of a spouse. Human Rights Watch has documented findings in Kenya that argue that spousal loss of property is a frequent occurrence (Human Rights Watch, 2003). This is further supported by anthropological studies such as that of Verma among the Maragoli (Verma, 2001). In Uganda in 1995, The Federation of Women Lawyers (FIDA), reported that 40% of the cases they handled were related to the harassment of widows and property grabbing by their husbands relatives (Bikaako & Ssenkumba, 2003: 250). Poverty and the scarcity of

resources can tax the goodwill of family members. If land is valuable, or a woman has property left by her husband that is viewed as valuable, she may find herself cast off with no land to farm and her household goods appropriated by members of the lineage. In Uganda in the Luwero and Tororo areas, 29% out of a total of 204 widows indicated that property was taken from them following the death of their husbands (Gilborn, Nyonyintono, Kabumbuli, & Jagwe-Wadda, 2001: 1). In Zambia "In an area where livestock represents one of the few reserves of asset wealth, it was found that in the preceding five years, 41% of female-headed households with orphans had lost all their cattle and 47% had lost all their pigs" (Strickland, 2004: 24).¹⁶

(b) Capital formation

De Soto has argued that "The only way to touch capital is if the property system can record its own economic aspects on paper and anchor them to a specific location and owner" (De Soto, 2000: 63). His idea is that formalizing the informal property rights that already exist will empower people with access to capital provided by way of mortgage and sale. Yet, 'formalizing the informal' could have potentially disastrous consequences where customary law regulates access to land and where the co-ownership of women is not legally recognized or enforced.

In many African contexts where customary law regulates access to land and moveable property, formalizing existing customary property rights will effectively alienate women from access to capital. This was precisely what occurred in the titling of land in Kenya. Under customary tenure Kenyan women had use rights and 'considerable management control over plots allocated to them by household heads'. When land was registered in

the name of the male household head they lost that control (Ensminger, 1997). As long as land is untitled women have usufruct rights. They may not be able to control all aspects of the land use, but they also may have relative security of occupation as long as land values remain relatively low. Where there has been an effort to formalize the informal customary law that exists in Africa, land becomes titled but not in the names of women.¹⁷ This makes them vulnerable to loss of their use rights if those in whose name the land is titled seek to sell or mortgage it without their consent.¹⁸ In Mozambique efforts to recognize customary land holding and enable registration have allowed for, but not required co-titling and women's recognition as members of rural communities. In practice there have been difficulties in securing women's property rights, particularly after the death of a spouse (*Innovation in Securing Land Rights in Africa: Lessons from Experience*, 2006). More recently, this same phenomenon has been documented in South Africa, where titling in the name of a single household member resulted in reduced tenure security for women (Cousins et al., 2005). National Laws ensuring joint ownership of land would surmount this dilemma.

The dual systems of law in Africa may have a positive benefit in allowing flexible responses to regional and ethnic differences in custom. However, customary law throughout Sub-Saharan Africa has proven inadequate for the protection of women's property rights in areas where there is a high demand for land. Formalizing customary law without providing for joint ownership will undermine both the ownership and use rights of those most involved in the production of food crops and other agricultural products.¹⁹ It will also impede the ability of women to access capital – the goal of many of the new laws regarding land titling in Sub-Saharan Africa.

In summary, there are two fundamental problems regarding women's land rights in many parts of Africa. The first is the absence of autonomous property rights to either customary or privately held land and the second is the lack of enforcement of women's inheritance rights. In the first case the absence of law guaranteeing co-ownership is the problem, in the second case the law exists in many places and is sufficient for the protection of women and children, but it is sporadically enforced. Creating law regarding co-ownership without effective enforcement of that law will not improve the current situation.

(c) Enforcing property rights

Law regarding property rights can be created through two means, legislation or, in common law countries, case law which distinguishes precedent. In most cases, it is legislation which establishes property rights with regard to land and inheritance. The law defines the extent of the rights that individuals or groups might have to a particular resource or good. However, this is only the first part of the equation needed to provide secure property rights, second is the enforcement of the rights that exist in law.

While legislatures around the world can create the laws and regulations that protect individual property rights, they do not have the responsibility of enforcing those rights. Enforcement is left to the courts and to the local administrative structures or police forces across the country. In the developed world, where local administrations are comparatively efficient, legal dicta are communicated to strong and accountable local authorities who enforce legislative decisions in a predictable fashion. Gary Libecap has noted that, "With title, the police power of the state can enforce private property rights to

land. The courts can issue eviction notices against trespassers or arbitrate boundary disputes, and law enforcement officials can implement court orders” (Libecap, 2003: 155). Yet, this statement assumes that an efficient legal and bureaucratic structure exists. Many scholars approach the issue of property rights in a similar fashion, assuming that legislative decisions will be enforced throughout a country by states that have effective control over the entirety of their territory. The belief that states automatically enforce decisions regarding property rights leads to seriously misplaced policy initiatives that focus more on the issue of law-making than on law enforcement or implementation.²⁰ Absent a strong local administrative structure, enforcement of laws regarding property is far less certain and the transaction costs are much higher.

Enforcement is a salient issue with regard to the property rights of women and migrants who are less powerful and more vulnerable to the expropriation of their property should they face a major life change. In Namibia, the Married Persons Equality Act of 1996 and the Communal Land Reform Act of 2002 protected women by allowing them to remain in their houses and on their land after the death of a spouse. However, this legislation has had little impact as women do not know their rights under statutory law and customary law continues to control the dispossession of property (PlusNews, 2006). The Namibian government has not made the necessary investment in civic education to promote the enforcement of these laws. In Ethiopia, efforts to register land title in the Amhara region have been relatively successful for women heads of household, but joint titling in the case of married women has been difficult to implement and enforce (Askale, 2005), and it has been a struggle for women in maintaining access to land in the case of divorce (Adenew & Abdi, 2005). The Ethiopian case is particularly interesting to note as

the lack of colonization there has mean that there is no pluralistic legal structure. Ethiopian women have had more autonomous rights to land than elsewhere on the continent, but there are still challenges in making their property rights secure. Change in law is a necessary first step to protecting women's property rights, but to be effective changes in law must be followed by the education of legal and traditional authorities as well as men and women in areas where customary law might conflict with new statutes.

It is important to note that there are more societal actors concerned with these issues than just the state. In Burkina Faso, Ghana, Uganda and Tanzania, women lawyers associations and civil society groups have played a large role in agitating for women's property rights, educating the populace, bringing test cases regarding women's property rights to court and promoting the enforcement of laws that protect women's property (Cotula, 2002; Kampire, 2006; Ki-Zerbo, 2004; Kuma, 2006; Tripp, 2004). These groups can be critical to bringing property rights changes into effect where the state does not have the resources or the inclination to pursue enforcement of new laws.

4. CONCLUSION

Well defined private property rights are critical in enabling capital formation and providing the basis for poverty alleviation. In developing countries the property rights of the poor, both private and communal, must be adequately defined and protected so that they are able to leverage the capital they have to take advantage of economic opportunities. Protecting property rights is good for economic development.

Where women are active participants in the rural economy it is important to define and protect their property rights specifically and not to simply view them as

members of a household. In Sub-Saharan Africa, the view of women as embedded in the household without autonomous access to property has led to uncertainty and instability in their lives when their personal status changes due to the death of a husband, divorce or polygamy. This uncertainty and lack of autonomous property rights is particularly problematic given the economic responsibilities of women in the rural and urban economies of Africa.²¹

Legally recognized co-ownership of marital property is needed to ensure that women have access to property and to the capital that can be created by property ownership. Where customary law governs land allocation, efforts must be made to ensure that in the process of codifying customary property rights, women are not completely without access to capital in land. If customary law has been defined in such a way as to prohibit women's access to land or eliminate women's ability to pursue title, then customary law must be changed to bring it in line with constitutional provisions of equality. At present in much of Sub-Saharan Africa, both inheritance and property rights for women are unpredictable due to competing sources of law.

New laws designed to formalize informal property rights must give attention to both customary law and women's property rights. But law alone is not the solution unless it is combined with enforcement. Effective law enforcement assumes that state strength is sufficiently capable of penetrating into rural areas where conflict between statutory and customary law will be most pronounced. It also assumes that there is an effective and independent judiciary. With a few exceptions, state capacities in Sub-Saharan Africa do not meet this threshold.²² Moreover, the property law that is most conducive to economic growth is that which develops organically (Anderson & Hill,

2004; De Soto, 2000). Custom and history in Sub-Saharan Africa have created a set of circumstances in which the most beneficial types of property rights are unlikely to develop on their own due to preexisting institutions of customary law. Under certain circumstances it may be necessary to undermine customary law to promote an alternative understanding of customary land ownership that protects women's property rights.

¹ This same idea is echoed in (Demsetz, 2002).

² Ideally, law relating to property rights develops organically from the bottom (practice) up to statutory law. There is ample evidence, some which will be discussed here, that the imposition of legal reforms from the top down will not achieve the desired outcomes.

³ See for example the much discussed Otieno case in Kenya in which an urban, wealthy, Kikuyu woman wanted to bury her husband, a Luo, on his farm outside of Nairobi according to his stated wish. His family insisted that he must be buried in Western Kenya, his home area. Since his family and not his wife were viewed as the next of kin, their preferences won in court. For more detail regarding the case see (Gordon, 1995).

⁴ Although, more specific country based estimates range from 10-13% of the land area in South Africa at the low end to 90% of land transactions in Mozambique and 78% of the land area in Ghana (Augustinus, 2003).

⁵ It would be more accurate to say that community rights and individual rights in pre-colonial Africa were not mutually exclusive. The conception that Africans held all land communally was incorrect in two ways 1) it minimized the individual rights to land which existed short of alienation and 2) it disregarded the multiple and overlapping forms of rights that might exist among separate individuals to the same plot of land. Take as an example a farmer cultivating a crop. She has been given the right to use the field by the chief and to harvest the crop that she grows there. She anticipates maintaining the use rights to this field well into the future. However, there are several fruit trees on her farm land which belong to someone else. The owner of the fruit trees has the right to harvest his fruit and look after his tree. There may also be

another person in the area who has the right to graze cattle or goats on the crop residues after the field is harvested. Here we have a complex array of long-term use rights (the farmer), ownership (the tree owner) and seasonal privileges. Not all of these rights are equally protected in a system that assumes group rights to resources; the rights of the individuals tend to be minimized or overlooked.

⁶ Evidence of the rapid evolution of land markets in the work of Hill (1963) on cocoa farming and work in Zimbabwe by Cheater (1990). In Ethiopia in traditional tenure systems there was evidence of land sales in communal tenure areas with the monetization of the economy (Joireman, 1996).

⁷ For a recent example of precisely this problem see the work of Marja Spierenburg on the Mid-Zambezi Rural Development Project in Zimbabwe. In this case it was the government of Zimbabwe that in the 1990s recognized an area of communally held land in Dande. They sought to reallocate the land in a more ecologically sustainable way that would be conducive to agricultural development and the resettlement of families living on former European-owned land. In the process of doing so they effectively stripped land rights from migrants who had been living in the area peacefully and cooperatively for years (Spierenburg, 2004). By not recognizing that migrants were part of this community, and instead adhering to the old idea of communally held lands belonging collectively to one people group, the government repeated the error of colonization.

⁸ In Uganda, while women grow food crops, many ethnic groups view it as the job of the husband to sell the agricultural produce at the market.

⁹ This point was driven home in conducting interviews on the new land law in Uganda in 2006. In an interview with a woman who was the regional gender officer for her part of the country, a fairly elevated position and one in which she was required to assist women in defending their property rights, the interviewee reported that "Women can't own land and have stable marriages." This is a sentiment that was repeated, albeit less vividly, in other interviews and contexts. See also (Human Rights Watch, 2003).

¹⁰ Yngstrom argues that in Tanzania this was not always the case, that women used to be able to claim land from their families, but secondary rights became standard practice by the late 1950s when men began to 'assert greater control over land, by limiting land transfers made by lineage members to female family members' (Yngstrom, 2002, p. 30).

¹¹ This is true even in matrilineal societies where descent is traced through the female line. That said, it would be wrong to suggest that in all circumstances under customary tenure women have no access to land through their own kin group. In West Africa, women will have some residual claim to land in their natal kinship group or through wider social ties. However, this is more the exception than the rule. Hakansson gives an anthropological framework for understanding the differences in lineage attachment for women in Africa. There is a bifurcation between lineage systems in which women maintain an identity in their natal lineage after marriage and those lineage systems in which they do not (Hakansson, 1994). If a woman maintains a social identity formed by her natal lineage after marriage then she is likely to have property rights associated with that lineage. However, if she is ‘detachable’ and is identified with her husband’s clan or lineage after marriage, then she is likely to have few, if any, socially recognized property claims in her natal lineage.

¹² This was articulated as a slogan by the Mifumi Project, a Ugandan NGO active in women’s issues.

¹³ Nyaramba notes that in Zimbabwe land allocating authorities viewed divorced women in particular as social misfits (Nyambara, 2001, p. 777)

¹⁴ The widespread practice of polygamy in Sub-Saharan Africa seriously complicates issues of property and inheritance. A Christian, Muslim or animist man can under customary law, marry as many women as he likes without seeking the prior consent of either current wives or the lineage. Since under customary law women have secondary rights to land through their husbands, in land-abundant settings each wife will be allocated a piece of land to live on and farm.

¹⁵ This is true even in Islamic areas where sharia law controls inheritance for women. In Nigeria in the northern states where sharia law is recognized, women still do not inherit as dictated by sharia law. The reason given is that according to the Maliki school of sharia law Nigeria is an area in which Islam was imposed by conquest and therefore some allowance for pre-existing customs, *urf*, must be allowed. (Abdullah & Hamza, 2003)

¹⁶ The study gave no indication of how this property was lost.

¹⁷ Either in their own name or jointly with spouses.

¹⁸ The Ugandan Land Act of 1998 has attempted to surmount this problem by requiring the consent of the spouse on land sales. However, in a polygynous society it is relatively easy to get around this problem by having another spouse sign the consent form, or even marrying another woman in order to ensure a spousal consent.

¹⁹ John Locke in his Second Treatise on Government argued that property rights naturally accrue to an individual as a result of the contribution of his or her labor (Locke, 1764). This idea is alien to the kinship based customary land institutions in Sub-Saharan Africa in which a man may possess land but his children and wives are supposed to provide the labor for the production of crops without gaining any interest in the land for themselves.

²⁰ Enforcement is dependent on a local administration that has the capacity to police and administer its areas and a judiciary that is free to make decisions in accordance with the law.

²¹ Virtually all of the limited literature on women and property in Africa casts women's right to own property in the language of the human rights discourse. This is beneficial and certainly women's property rights are a human rights issue. Yet, there is a compelling economic argument to be made for women's access to clearly defined property rights in Africa.

²² For example in East Africa, Uganda and Kenya are adjacent to one another and have radically different judicial capabilities. Judicial independence in Uganda is one of the most positive results of the democratization process there, while in Kenya the judiciary has been notoriously corrupt and under the control of the government. In both countries, however, state strength in the countryside is limited. In Uganda the government barely functions in the northern parts of the country where a civil conflict has been raging and in Kenya, the strength of the state in the West is certainly not what it is in the capital. Catherine Boone and Jeffrey Herbst have both written about the challenges of local administration in African states from very different perspectives. (Boone, 2003; Herbst, 2000)

Abdullah, H. J., & Hamza, I. (2003). Women and Land in Northern Nigeria: The Need for Independent Ownership Rights. In L. M. Wanyeki (Ed.), *Women and Land in Africa* (pp. 133-175). New York: Zed Books, Ltd.

-
- Acemoglu, D., Johnson, S., & Robinson, J. A. (2004). *Institutions as the Fundamental Cause of Long-Run Growth* (Working Paper Series No. Working Paper 10481). Cambridge, MA: NBER.
- Adenew, B., & Abdi, F. (2005). *Land Registration in Amhara Region, Ethiopia* (Research Report No. 3): International Institute for Environment and Development.
- Aliber, M., Walker, C., Machera, M., Kamau, P., Omondi, C., & Kanyinga, K. (2004). Overview and Synthesis of Research Findings. In *The Impact of HIV/AIDS on Land Rights: Case Studies from Kenya* (pp. 141-157): Human Sciences Research Council.
- Anderson, T. L., & Hill, P. J. (2004). *The Not So Wild, Wild West*. Stanford, CA: Stanford University Press.
- Askale, T. (2005). *Land Registration and Women's Land Rights in Amhara Region, Ethiopia* (Research Report No. 4). London International Institute for Environment and Development.
- Augustinus, C. (2003). *Key Issues for Africa and Globally* (Report). Nairobi, Kenya: UN-Habitat.
- B. (2005). Interview. S. Joireman. Tororo, Uganda.
- Barzel, Y. (2002). *A Theory of the State: economic rights, legal rights and the scope of the state*. New York: Cambridge University Press.
- Berry, S. (1992). *No Condition is Permanent*. Madison, WI: University of Wisconsin Press.

-
- Bikaako, W., & Ssenkumba, J. (2003). Gender, Land and Rights: Contemporary Contestations in Law, Policy and Practice in Uganda. In L. M. Wanyeki (Ed.), *Women and Land in Africa* (pp. 232 - 277). New York: Zed Books Ltd.
- Boone, C. (2003). *Political Topographies of the African State: territorial authority and institutional choice*. New York: Cambridge University Press.
- Bruce, J. (1976). *Land Reform Planning and Indigenous Communal Tenure*. Unpublished S.J.D. dissertation, University of Wisconsin, Madison, WI.
- Chanock, M. (1991). Paradigms, Policies and Property: A Review of the Customary Law of Land Tenure. In K. Mann & R. Roberts (Eds.), *Law in Colonial Africa*. Portsmouth, NH: Heinemann Educational Books.
- Cheater, A. (1990). The Ideology of 'Communal' Land Tenure in Zimbabwe: Mythogenesis Enacted? *Africa*, 60(2), 188-206.
- Chimhowu, A., & Woodhouse, P. (2006). Customary vs Private Property Rights? Dynamics and Trajectories of Vernacular Land Markets in Sub-Saharan Africa. *Journal of Agrarian Change*, 6(3), 346-371.
- Coldham, S. F. R. (1979). Land-Tenure Reform in Kenya: The Limits of Law. *The Journal of Modern African Studies*, 17(4), 615-627.
- Cotula, L. (2002). *Gender and Law - Women's Rights in Agriculture*. Rome: Food and Agriculture Organization.
- Cousins, B., Cousins, T., Hornby, D., Kingwill, R., Royston, L., & Smit, W. (2005). *Will formalizing property rights reduce poverty in South Africa's 'second economy'?* (No. 18). Cape Town, South Africa: Programme for Land and Agrarian Studies, University of the Western Cape.

-
- De Soto, H. (2000). *The Mystery of Capital*. New York: Basic Books.
- Deininger, K., & Castagnini, R. (2004). *Incidence and impact of land conflict in Uganda* (No. 3248). Washington, DC: The World Bank.
- Demsetz, H. (1967). Toward a Theory of Property Rights. *American Economic Review*, 57, 347-359.
- Demsetz, H. (2002). Toward a Theory of Property Rights II: The Competition between Private and Collective Ownership. *Journal of Legal Studies*, 31, S653-S672.
- Ensminger, J. (1997). Changing Property Rights: Reconciling Formal and Informal Rights to Land in Africa. In J. N. Drobak & J. V. C. Nye (Eds.), *The Frontiers of New Institutional Economics* (pp. 165-196). San Diego: Academic Press.
- FAO. (2002). *Gender and Access to Land* (No. 4). Rome: Food and Agriculture Organization.
- Feder, G., & Noronha, R. (1987). Land Rights and Agricultural Development in Sub-Saharan Africa. *The World Bank Research Observer*, 2, 143-169.
- Fenrich, J., & Higgs, T. E. (2001). Promise Unfulfilled: Law, Culture and Women's Inheritance Rights in Ghana. *Fordham International Law Journal*, 25, 259-336.
- Field, E. (2005). Property Rights and Investment in Urban Slums. *Journal of the European Economic Association* 3, no, 2/3, 279-290.
- Firmin-Sellers, K. (1996). *The Transformation of Property Rights in the Gold Coast*. New York: Cambridge University Press.
- Fukuyama, F. (2004). *State-Building: Governance and World Order in the 21st Century*. Ithaca, New York: Cornell University Press.

-
- Gilbert, A. (2002). On the mystery of capital and the myths of Hernando De Soto: What difference does legal title make? *International Development Planning Review*, 24(1), 1-19.
- Gilborn, L. Z., Nyonyintono, R., Kabumbuli, R., & Jagwe-Wadda, G. (2001). *Making a Difference for Children Affected by AIDS:baseline Findings from Operations Research in Uganda*. New York: Population Council.
- Goody, J., & Buckley, J. (1973). Inheritance and Women's Labour in Africa. *Africa*, 43(2), 108-121.
- Gordon, A. (1995). Gender, Ethnicity and Class in Kenya: "Burying Otieno" Revisited. *Signs*, 20(4), 883-912.
- Hakansson, N. T. (1994). The Detachability of Women: Gender and kinship in processes of socioeconomic change among the Gusii of Kenya. *American Ethnologist*, 21(3), 516-538.
- Haugerud, A. (1989). Land Tenure and Agrarian Change in Kenya. *Africa*, 59(1), 61-90.
- Herbst, J. (2000). *States and Power in Africa: Comparative Lessons in Authority and Control*. Princeton, NJ: Princeton University Press.
- Hill, P. (1963). Markets in Africa. *The Journal of Modern African Studies*, 1(4), 441-453.
- Human Rights Watch. (2003). *Double Standards: Women's Property Rights Violations in Kenya* (No. Vol 15, No. 5 (A)). New York: Human Rights Watch.
- Innovation in Securing Land Rights in Africa: Lessons from Experience*. (2006). Briefing Paper. London: International Institute for Environment and Development.
- Johnson, O. E. G. (1972). Economic Analysis, the Legal Framework and Land Tenure Systems. *Journal of Law and Economics*, 15, 259-276.

-
- Joireman, S. F. (1996). Contracting for Land: Lessons from Litigation in a Communal Tenure Area of Ethiopia. *Canadian Journal of African Studies*, 30(3).
- Joireman, S. F. (2000). *Property Rights and Political Development in Ethiopia and Eritrea: the state and land, 1941-1974*. Athens, Ohio: Ohio University Press.
- Joireman, S. F. (2007). Enforcing New Property Rights in Sub-Saharan Africa: The Ugandan Constitution and the 1998 Land Act. *Comparative Politics*, forthcoming.
- Kampire, A. (2006). (Head of Dept of Conflict and Dispute Management, FIDA). Interview. S. Joireman. Kampala, Uganda.
- Khadiagala, L. S. (2002). Justice and Power in the Adjudication of Women's Property Rights in Uganda. *Africa Today*, 49(2), 101-121.
- Ki-Zerbo, F. (2004). *Les femmes rurales et l'accès à l'information et aux institutions pour la sécurisation des droits fonciers. Etude de cas au Burkina Faso*. Rome: FAO.
- Kuma, E. (2006). Interview. S. Joireman. Accra, Ghana.
- Lastarria-Cornhiel, S. (1997). Impact of Privatization on Gender and Property Rights in Africa. *World Development*, 25(8), 1317-1333.
- Libecap, G. (2003). Contracting for Property Rights. In T. Anderson & F. McChesney (Eds.), *Property Rights: Cooperation, Conflict and Law*. Princeton, NJ: Princeton University Press.
- Locke, J. (1764). *Two Treatises of Government*. London: A. Millar et al.
- Mamdani, M. (1996). *Citizen and Subject: Contemporary Africa and the legacy of late colonialism*. Princeton, NJ: Princeton University Press.
- Norton, S. W. (2000). The Cost of Diversity: Endogenous Property Rights and Growth. *Constitutional Political Economy*, 11, 319-337.

-
- Nyambara, P. S. (2001). Immigrants, 'Traditional' Leaders and the Rhodesian State: the Power of 'Communal' Land Tenure and the Politics of Land Acquisition in Gokwe, Zimbabwe, 1963-1979. *Journal of Southern African Studies*, 27(4), 771-791.
- Pinckney, T. C., & Kimuyu, P. K. (1994). Land Tenure Reform in East Africa: Good, Bad or Unimportant? *Journal of African Economies*, 3(4), 1-28.
- Platteau, J.-P. (1996). The Evolutionary Theory of Land Rights as Applied to Sub-Saharan Africa: A Critical Assessment. *Development and Change*, 27, 29-85.
- PlusNews. (2006). Inheritance Rights Still a Thorny Issue. Retrieved February 14, 2006
- Ranger, T. (1983). The Invention of Tradition in Colonial Africa. In T. Ranger & E. Hobsbawm (Eds.), *The Invention of Tradition* (pp. 211-262). New York: Cambridge University Press.
- Rose, L. L. (2002). Women's Strategies for Customary Land Access in Swaziland and Malawi: A Comparative Study. *Africa Today*, 49(2), 123-149.
- Shipton, P. (1992). Debts and Trespasses: Land, Mortgages, and the Ancestors in Western Kenya. *Africa*, 62(3), 357-388.
- Spierenburg, M. J. (2004). *Strangers, Spirits, and Land Reforms: Conflicts about Land in Dande, Northern Zimbabwe*. Boston: Brill.
- Strickland, R. S. (2004). *To Have and to Hold: Women's Property and Inheritance Rights in the Context of HIV/AIDS in Sub-Saharan Africa* (Working Paper): International Center for Research on Women.
- Toulmin, C., Lavigne Delville, P., & Traore, S. (2002). *The Dynamics of Resource Tenure in West Africa*. Portsmouth, NH: Heinemann.

-
- Toulmin, C., & Quan, J. (2000). Introduction. In C. Toulmin & J. Quan (Eds.), *Evolving Land Rights, Policy and Tenure in Africa* (pp. 1-30). London: IIED.
- Tripp, A. M. (2004). Women's Movements, Customary Law, and Land Rights in Africa: The Case of Uganda. *African Studies Quarterly*, 7(4), 1-19.
- Verma, R. (2001). *Gender, Land and Livelihoods in East Africa: Through Farmer's Eyes*. Ottawa: International Development Research Centre.
- Wanyeki, L. M. (2003). Introduction. In L. M. Wanyeki (Ed.), *Women and Land in Africa: Culture, Religion and Realizing Women's Land Rights* (pp. 1-28). New York: Zed Books Ltd.
- Weimer, D. L. (1997). *The Political Economy of Property Rights*. New York: Cambridge University Press.
- Whitehead, A., & Tsikata, D. (2003). Policy Discourses on Women's Land Rights in Sub-Saharan Africa: The Implications of the Re-turn to the Customary. *Journal of Agrarian Change*, 3(1 and 2), 67-112.
- Yngstrom, I. (2002). Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate over Land Policy and Changing Tenure Systems. *Oxford Development Studies*, 30(1), 21-39.