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Gendered land rights and access to land in countries experiencing declining farm size

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Agriculture for Food Security 2030

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Today more than 800 million people around the world suffer from chronic hunger and about 2 billion from under-nutrition.

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Summary

The following report reviews the literature on land tenure systems from a gender perspective in five countries in sub-Saharan Africa and three countries in South Asia that are experiencing falling farm sizes and rising population pressure on land. The countries in question are Kenya, Rwanda, Uganda, Nigeria, Madagascar, India, Nepal and Bangladesh. We use data from the FAOs Gender and Land Rights Database and review the academic literature on land tenure systems and land reforms from a gender perspective. There is ample evidence of discrimination against women both in inheritance law as well as everyday practices of ownership, control, and access to land. Even in cases where progressive reforms have been implemented, women's right to land remains fettered to their relationship with male relatives. Gender norms pertaining to marriage, and social beliefs and values derived from patriarchal mindsets pose structural barriers to women's landownership. The presence of personal law codes (specific to each religious community in the case of South Asia) and the upholding in practice of customary law in the case of most of the African countries covered by the study, are the key structural barriers to equal inheritance rights and/or land tenure rights for women. However, this is a politically charged issue and cannot be approached from a purely policy-driven perspective. Therefore, we must turn our attention to the other structural barriers, within society and everyday practice.

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1. Introduction

Recently, concerns have been voiced regarding the rapid increases in rural populations in sub-Saharan Africa and South Asia (Headey & Jayne, 2014; Jayne et al., 2014). While Headey and Jayne (2014:18), (referring to Lipton, 2006, 2012) warn that population increases in land constrained (African) countries at a general level "could have potentially disastrous consequences on rural welfare and food security" the potential socio-economic effects of shrinking farm sizes in such countries also deserve attention.

Generally speaking the literature shows two parallel tendencies as demand for land increases: the marginalization of weaker groups' claims to land and a growing push towards individualized tenure arrangements. Such tendencies should also be situated in relation to increasing experimentation with privatized land rights more generally, either on individual or communal basis. While intersectional aspects of age, ethnicity and migrant status must be born in mind, from a gender perspective, women in sub-Saharan Africa as well as South Asia have historically been discriminated against in property rights systems that either view women (and children) themselves as property or severely curtail their property rights by assigning them secondary rights to land tied to the primary property rights of adult males (Joireman, 2008). While such discrimination is characteristic also of present property rights regimes across the two regions, contemporary processes of population growth, privatization schemes and commodification of land more generally are translated into dwindling farm sizes in a handful of countries in particular.

Given the link between growing pressure on land and the contestation of secondary land rights in particular, we focus this report on these countries. A priori our focus is on sub-Saharan Africa and South Asia, since these regions will be experiencing the brunt of rural population growth over the coming decades, although dominated by trends in sub-Saharan in particular (Andersson Djurfeldt & Jirström, 2013; Masters et al., 2013). Our aim is to review the literature on women's rights to land in countries where farm sizes have declined over the past two decades. The countries in focus for our review are five African countries, namely Kenya, Rwanda, Uganda, Madagascar and Nigeria and three countries in South Asia: India, Bangladesh and Nepal.

To guide our process of selecting literature we have departed from a set of research questions:

- Does gender based discrimination exist in the land tenure systems and practices found in these countries. If so, what are the sources of this discrimination?
- How have women's land rights shifted over the past two decades
- Can these shifts be linked to land fragmentation in specific or are other processes more relevant to understanding gender dynamics with respect to land rights
- How do such shifts affect rural livelihoods more broadly speaking, from a gender perspective

Following a discussion of the methodology employed in the report, we summarize trends in land size fragmentation in the countries in question and the existing theoretical perspectives on gender and land rights. Subsequently the analysis is presented by country.

2. Methodology and sources

While the research questions above were used to guide our literature search and reading, during the course of this task it became apparent that there were quite severe restrictions in terms of available academic literature for the post-millennial period, especially in the case of South Asia. Moreover, few quantitative or longitudinal studies exist, with the literature in general being comprised of qualitative case studies, albeit sometimes conducted over several years. Given that the topic at hand is strongly linked to formal legislation relevant to inheritance, marriage regimes and land law – laws which in some cases have been recently reformed, a challenge has been to find up to date, accurate academic work that descriptively outlines relevant legislation for the countries under review.

The FAOs Gender and Land Rights Database (<http://www.fao.org/gender-landrights-database/en/>) compiles key facts related to gender and land rights for 84 countries across the world. These include legal frameworks that regulate land access, use and inheritance, policies and institutional mechanisms, systems of land tenure, and customary norms, religious beliefs, social practices and inheritance practices that influence women's rights to land. The country reports presented on this database are one of the major sources of information for addressing the first research question in the case of Sub-Saharan Africa, whereas official statistics and secondary literature have been used for South Asia. The remaining two questions are covered through a review of existing literature. The depth and scope of this review is very much conditioned by the availability of relevant, peer-reviewed literature, which varies significantly from country to country, but it should be noted that the literature is dominated by qualitative case studies, with few quantitative studies documenting systematic variation in land rights. Moreover, while there is a fairly substantial literature on the implementation of land reforms and the discrepancies between theory and practice with respect to gender equalizing ambitions of such reforms, few studies exist of broader changes to livelihoods emanating from such reforms. Likewise, the consequences of land fragmentation for gender relations – as pressure on land increases – are documented to a very limited extent.

In the case of sub-Saharan Africa, a number of legal reforms have been undertaken in the late 1990s and early 2000s and the literature for this section covers the period 2000 to 2017. For South Asia, the sources are dated between mid-1980s and mid-2000s after which there seems to have been a drop in the number of such studies undertaken. In general, the statistical basis for South Asia is far superior to that of sub-Saharan Africa, although in the former case there is a gap in detailed statistical data beyond the aggregated levels. There also seems to be lacking a database of case-studies pertaining to inheritance disputes, joint titles for husband and wife, and customary settlements of cases of divorce, separation etc.

The countrywide literature is patchy, with a lot of literature on Kenya, Rwanda and Uganda, but very little on Nigeria and hardly anything on Madagascar. In the case of South Asia, similarly, much literature exists on India and Bangladesh, and to a lesser extent Nepal. Sri Lanka was excluded from the study due to the limited amount of available literature.

3. Land size changes

We take our point of departure in several studies that document falling land sizes over the past few decades: the work of Headey and Jayne (2014) and Jayne et al. (2014) for sub-Saharan Africa and (Government of Nepal, 2002, 2014; Hossain et al., 2017; Ministry of Agriculture, 2014), for South Asia. Headey and Jayne (2014) combine data from agricultural censuses and survey data for land constrained (countries with population densities of more than 100 per sq. km of agricultural land) and land abundant African countries (countries with population densities below this threshold). In general, studies of national farm size changes for African countries are sparse and the authors acknowledge that the combination of different types of data warrants caution

In total, farm size trends are presented for 16 countries covered by their study – out of these five countries show clear drops in farm size: Kenya, Nigeria, Rwanda, Uganda and Madagascar. The first four countries are land scarce and the last is land abundant, showing that average farm sizes decrease also in countries with excess land. Table 1 presents farm size trends for these countries.

Table 1: Trends in farm size for Kenya, Nigeria, Rwanda, Uganda and Madagascar.

	Year	Average farm size (ha)
Kenya	1974	4.1
	1980	2.5
	1997	2.4
	2004	2.5
	2010	2.1
Nigeria	1994	2.5
	2010	1.4
Rwanda	1980	1.2
	2006	0.7
Uganda	1963	3.3
	1991	2.2
	1996	1.6
	2006	0.9
Madagascar	1961	1.0
	1980	1.3
	2005	0.9

Source: (Jayne et al., 2014:4)

Although the five countries listed in table 1 are all likely to face several general social and economic challenges related to increasing population pressure and diminishing natural resources, from an institutional perspective they cover a spectrum of property rights regimes and land use systems. From the vantage point of gender relations specifically, moreover women's tenure rights and the political and practical enforcement of such rights vary greatly among the countries. As such they constitute an interesting possibility of comparing the evolution of gendered land rights against the general backdrop of shrinking farm sizes, but under different legal and political conditions.

The South Asian context overall, is characterized by skewed landownership patterns and an agrarian setting marked by deeply-entrenched power differentials in the social relations of gender, caste, and class among others. For the purpose of this report, we focus on three countries – India, Bangladesh, and Nepal – unified by the shared trend of diminishing farm sizes. In India, the total number of holdings has nearly doubled between 1970-71 and 2010-11, while the average size of holdings has fallen from 2.28 hectares to 1.15 hectares (Ministry of Agriculture, 2014). In Nepal too the total number of holdings has more than doubled between 1971-72 and 2011-12 while the total area under cultivation has only grown marginally (Government of Nepal, 2014). The average holding size in Nepal, as of 2011-12,

was 0.66 hectares – a sharp fall from the average of 0.80 hectares in 2001-02. Overall, the size of holdings in Nepal has been falling at an average rate of more than 15% per decade (Government of Nepal, 2014). In Bangladesh, the average size of farm holdings during the 2008 agricultural census was found to be 0.50 hectares and was reported to have declined at a rate of 21% over the past two decades (Hossain et al., 2017). Table 2 summarizes the trend of declining farm sizes in all three countries in the period 1980-2008.

Table 2: Trends in farm size for India, Bangladesh and Nepal.

Country	Year	Average farm size (ha)
India	1980-81	1.84
	1990-91	1.55
	2000-01	1.23
	2010-11	1.15
Nepal	1980-81	1.13
	1990-91	0.96
	2000-01	0.80
	2010-11	0.66
Bangladesh	1980-81	-
	1990-91	0.61
	2000-01	-
	2010-11	0.48

Source: Compiled by the authors based on (Government of Nepal, 2014; Hossain et al., 2017; Ministry of Agriculture, 2014) .

Thus, the combined agricultural terrain of the region is dominated by proliferating small farms. The pattern of landownership on the other hand displays a trend of accumulation in the hands of a small number of big landlords. In Bangladesh, only four per cent of the households (owning 2 hectares or more) control up to one-third of the total agricultural land (Hossain et al., 2017). In India the figures are similar, with only five per cent of the farmers owning up to 32% of the farmland. The difference in average area owned by large farmers and marginal farmers is 45 times (Chaturvedi, 2016). In Nepal too, the top five per cent of landowning households occupied 27% of the total agricultural land. However, 95% of the agricultural households in Nepal were found to be landowning, even if in marginal quantities (Sharma, 1999). Thus, alongside the small-farm dominated agrarian landscape, we also find a picture of skewed landownership among agricultural households. Within this context, the question of land rights for women is also a question of intra-household gender-relations and the overall well-being and security of women.

4. Gendered patterns of land ownership and landholding

Before discussing available statistics, a clarification of key terms is in order. Doss et al. (2015) provide a useful conceptualization of land ownership and different levels of land ownership. The authors distinguish between reported ownership (where survey respondents state that they or their household “owns” land), documented ownership (where respondents can present documentation that proves formal or informal land ownership) and effective ownership. In the latter case, the owner is able to make decisions related to land use and most importantly holds the right to transfer the land to another person. It is this latter ability of alienation that defines ownership. Land ownership data is often collected at the household level (and patterns between male and female headed households are commonly compared). To fully document and understand gender patterns of land ownership requires individualized data, however, particularly as women living in male-headed households may own land in their own right, or land may be reported as jointly owned even if the husband in formal terms is the sole owner.

In many countries, especially in sub-Saharan Africa, land ownership is based on user rights rather than individualized ownership. Here land is held in trust either by the state or community leaders on behalf of the community. Members of the community hold user rights to family land, which include the right to bequeath the land, sub-divide for use by adult children, or renting out the land. Restrictions are often placed on sale of land by individual farmers to members outside the community, however as land is considered communal property. Moreover, the practicability of using communal land as collateral may be limited, even in situations of formalized, individualized rights to such land. In

practice, user rights often overlap with reported (or perceived) ownership. The complexity of “bundles of rights” tied to the land and the interests surrounding such rights are documented in the literature (Meinzen-Dick & Mwangi, 2009) as is the existence of legal pluralism. Doss et al. (2014) note that rights to land vary by sex, with women in Africa generally gaining use rights through men. As such, their rights to land are dependent on a functioning relationship with a husband, father or son.

The statistics presented on the GLRD, define the landowner as the legal owner of the agricultural land, taking into account geographical variations in the definition of legal ownership. Such ownership is not necessarily documented through title deeds or other legal documents, however (de La o Campos et al. 2015).

A final term that needs definition is landholder, which in FAOs usage refers to “The civil or juridical person who makes the major decisions regarding resource use and exercises management control over the agricultural holding operation. The agricultural holder has technical and economic responsibility for the holding and may undertake all responsibilities directly, or delegate responsibilities related to day-to-day work management to a hired manager” (FAO, 2005).

Statistics on gender based patterns of land ownership and control are patchy and in many cases outdated. As suggested by the available data, the share of female landowners and the share of land held under female ownership is strongly limited. The share of female landholders is generally higher as this includes land held by de facto female headed households on land controlled by husbands or other male relatives (see Table 3).

Table 3: Share of female landholders, share of female landowners and share of agricultural land owned by female landowners, by country (year in parentheses)

Country	Share of female landholders	Data source	Share of female landowners	Data source	Share of agricultural land owned by female landowners	Data source
Sub-Saharan Africa						
Kenya						
Rwanda						
Uganda	16.3 (1991)	Agricultural Census	49.6 (2011)	LSMS-ISA 2010-2011 GHS Panel Surveys (GLRD team own estimate)	18.0 (2009-2010)	LSMS-Uganda National Panel Survey ((Doss et al., 2015))
Nigeria	10.0 (2007)	Collaborative Survey on Socio-Economic Activities	15.8 (2013)	LSMS-ISA 2012-2013 General Household Panel Surveys (GLRD team own estimate)	4.0 (2010)	LSMS General Household Panel Survey ((Doss et al., 2015))
Madagascar	15.3 (2004-2005)	Agricultural Census				
South Asia						
India	12.8 (2010-2011)	Agricultural Census				
Nepal	8.1 (2002)	Agricultural Census				
Bangladesh	4.6 (2008)	Agricultural Census	22.6 (2010-2011)	LSMS Bangladesh Integrated Household Survey (Kieran et al., 2015))	10.1 (2010-2011)	LSMS Bangladesh Integrated Household Survey ((Kieran et al., 2015))

Source: FAO Gender and Land Rights Database, all figures refer to agricultural land.

Apart from a more general methodological observation concerning the weak statistical basis for studies of gendered patterns of land dynamics, it can also be noted that the availability of data on ownership in particular is lacking. Moreover, as specified by the FAO Gender and Land Rights Database, the definition of ownership varies across countries and does not necessarily entail formalized or individualized land ownership. The data on land owners in some countries therefore includes both spouses in households that reported jointly held land for instance. The data on share of agricultural land held by women, includes only land held by women specifically, however.

5. Theoretical perspectives on land rights and gender

Several major theoretical debates have characterized the debate on gender and land rights over the past decade, linking on to a broader development discussion related to property rights, capital and collateral, proposed for instance by the UN High Level Commission on the Legal Empowerment of the Poor (see Nyamu-Musembi, 2008). Such perspectives call for the formalization and regularization of land rights more broadly speaking to enhance the rights of individuals and groups in what is sometimes referred to as privatization reforms (Englert & Daley, 2008). Influenced by the work of Hernando de Soto (2000), the argument for formalization of land rights revolves around the possibilities for turning assets into landed capital that can be transacted and used as collateral for loans.

In the grey area literature, such as the FAOs (2011) *State of World Agriculture – Closing the Gender Gap for Agriculture*, the redress of gendered differences in access to and ownership of land is put forth as something of a panacea in terms of closing productivity gaps in global agriculture. Moreover, broader welfare effects are theoretically linked to the boost in women's empowerment generated by enhanced female control over land, as women are shown to make wiser and more compassionate consumption decisions, focusing especially on the welfare of their children.

These policy perspectives have their counterpoints in the theoretical literature from the 1990s, with some schools of thought being more influential than others in guiding the policies of the 1990s and early 2000s. The strongest advocate for individualized land rights is perhaps the economist Bina Agarwal (1994a, 1997, 2003a, 2003b), who uses the Indian case to document the linkages between individualized land rights, women's empowerment, rising agricultural productivity and broader welfare gains. Positive dynamics of such connections include greater independence, stronger bargaining power within as well as outside the household, stronger female tenure security following a divorce or widowhood and possibilities for leaving a violent husband without jeopardizing one's livelihood (Agarwal, 2003a). Apart from such rights-based advantages, a number of efficiency gains are also noted as the adoption of capital intensive technologies may increase when land can be used as collateral for credit. Better use of inputs and command over capital generated from sales can enhance production as well as raise women's incomes (Agarwal 2003a: 194-195). A number of secondary welfare effects of enhancing women's bargaining power are also documented, especially with respect to children's welfare and food consumption (Allendorf, 2007; Beegle et al., 2001; Kennedy & Peters, 1992).

A contrasting viewpoint is presented by the political economy literature which questions the viability of privatization reforms, pointing to several failed historical examples of tenure reforms in colonial and post-colonial Africa (Nyamu-Musembi, 2008). Here the loss of rights by marginal groups, especially, women, youth and seasonal users have taken place as such programmes have been captured by elites, and marginalized users with secondary land rights (Alden Wily, 2011; Meinzen-Dick & Mwangi, 2009; Razavi, 2003, 2009). A point often made in this literature is that land rights (or indeed property rights in general), regardless of their geographical provenance are actually social relations embedded in norms and institutions that uphold such rights. While customary land rights award usufruct rights to women, such rights are therefore connected to norms of how these rights can be exercised.

More recent privatization efforts – at least in the context of sub-Saharan Africa have moved beyond individualization initiatives and instead focus on giving “*statutory support /.../ to customary property in its own right*” (Alden Wily, 2006:25-26, cited in Englert and Daley 2008). As such, contemporary reform efforts centre on the formalization of existing customary land rights, be they individual, family, clan or community based (Englert & Daley). The broader development focus on property rights and capital, hence envisages formalizing rights that in general award only secondary user rights to women, and as Englert and Daley ((Englert & Daley) remind us: “there are questions to be asked about the extent to which the recognition of customary land tenure can have a positive effect on women's land rights, as customary rights and institutions are often not equitable and indeed often outright discriminatory” (p. 10). As noted by the authors, even in countries where women's groups have successfully lobbied for changes to property rights legislation, the challenges of implementation can be formidable in contexts characterized by legal pluralism, noting that the necessary “change in the culture of practice [is] something far more difficult to achieve than law reform” (p. 11).

Given this brief theoretical introduction, we turn now to the country cases covered by our review, reiterating the four research topics outlined by way of introduction. Firstly, we describe the current situation of women's landownership in the selected contexts and detect the nature of inequities and discrimination that are present in the contemporary tenure, market, and inheritance systems. Secondly, we aim to understand the structural parameters behind these existing inequities and to identify the formal and informal mechanisms through which they are perpetuated. Thirdly, we attempt to trace how women's land-rights have evolved over the past few decades, both in terms of policy and practice. Finally, we try to relate these developments to the larger themes of land-fragmentation and changing rural livelihoods.

6. Sub-Saharan Africa

6.1. Kenya

In many respects Kenya represents a clear illustration of the discrepancies between a formal legal framework and national political processes aimed at eliminating gender discrimination and the informal social practices and norms that regulate the access to and use of land on the ground. Like in many African countries, several land tenure systems co-exist and sometimes also overlap in geographical terms. Such systems fall into four major categories: private/modern, communal/customary, public/state and open access. Each of these tenure types is linked to different kinds of property rights regimes, with government, county councils, communities and individuals owning land. Individual property rights (freehold ownership) are held to land that was previously settler occupied and land that has been converted from customary land to individually registered landholdings. Trust lands cover tracts of land that were not alienated for settlement or other purposes by the colonial government, but were not registered by individuals or groups (Kenya country profile, FAO Gender and Land Rights Database, 2017). Such land is vested in councils (local authorities). In 1990, trust lands constituted nearly two thirds of the total land area (Bruce, 1998). Since the early 1990s, however a sequence of land reforms has aimed to convert trust land into privately tenured land based on formalizing existing individual or group claims to land. Finally, pastoralist tenure is based on membership of a particular group ("tribe, clan, family or other group of persons") which exercises rights to so called group ranches. Since the early 1990s, however population pressure, rising land values and increasingly sedentary livelihoods, in combination with political pressures towards formalization and privatization of tenure has encouraged subdivision of group ranches into individually held plots of land (Kyalo & Chiuri, 2010). From a gender perspective, the assessment in the literature is that the individualization and privatization of tenure since the early 1990s has weakened women's tenure security by usurping their secondary land rights through allocating title only to their husbands (Bruce, 1998).

At an overarching level, the new Constitution from 2010 (section 60(1)) enshrines four major rights to land: "equitable access to land, security of land rights, elimination of gender discrimination in law, customs and practices related to land and property in land and encouragement of communities to settle land disputes through recognised local community initiatives" (Kenya Country Profile, FAO Gender and Land Rights Database, 2017). The Land Registration Act of 2012, specifically states that "a spouse may acquire an interest in his/her spouse's land if this spouse contributes by labour or other means to productivity, upkeep and improvement of the land. The spouse in whose name the certificate of ownership or customary certificate of ownership has been registered and the rights gained by contribution of the spouse or spouses shall be recognized in all cases as if they were registered (Section 93(2))." As such, the contribution of women to their husband's land could be expected to influence their right to this land.

In practice, women's rights to land (as enshrined in the Constitution) are undermined by several mechanisms, which either in combination or separately infringe on the possibilities for women to own and access land on terms equal to men. Moreover, restrictions on women's use of land enhance such biases further. The source of gender based discrimination can be traced to the continued influence of customary law on tenure and inheritance practices, despite the efforts to formalize land rights, which in turn restrict the possibilities for enforcement of new legislation and rights.

The point is often made that property rights need to be understood primarily as social relations, underpinned as much as norms as by legal institutions. The enforcement of property rights therefore requires broad based support for the norms that they represent in the communities where they are operating. Herein lies a conflict between the ambitions of the Constitution and the legal praxis of most ethnic groups in rural Kenya. Moreover, at an overarching level, an important distinction between the individualizing efforts of Kenyan land policy and customary law is noted by Henrysson and Joireman (Henrysson & Joireman, 2009): "*Customary law provides a system of rules for the allocation and adjudication of property rights. Typically, it is used as a tool through which traditional leaders (chiefs, elders, or headmen) can evaluate claims to property and resolve disputes regarding land. The logic of customary law focuses on the well-being of the community, rather than the rights of the individual. In practice this means that customary legal decisions tend to be compromises rather than clear decisions for one party against another. Anyone making a claim to land in a customary legal system will be making it in the context of the relationships that construct the social system of their community*" (p. 41).

There are few peer reviewed studies of women's land rights in Kenya and the details of practices around land access, control and adjudication also vary from one ethnic group to the next. Henrysson and Joireman (2009) discuss women's property rights among the Kisii, Hakizimana et al. (Hakizimana et al., 2017) consider the effect of land commercialization on gender relations among the Meru, Burke and Jayne (2014) more broadly make the point that widow's rights to land differ geographically across Kenya and Ong'wen Okuro (2008) documents the aggravation of existing discrimination against women in the context of the hiv/aids pandemic among the Joseme sub-clan of the Luo. The grey area literature (Benschop, 2002; Cotula, 2006; Verma, 2001; Walsh, 2003), largely confirms the peer reviewed literature for the Kikuyu and the Luo, with the body of literature (peer reviewed or otherwise), noting some generally unifying features of customary land tenure systems that have been carried through and embedded in recently privatized property relations and as such remain influential despite recent government policies.

Land access, control and inheritance is a male domain, that is land systems (with the exception of two minor ethnic groups) are patrilineal (Hakizimana et al., 2017; Ong'wen Okuro, 2008; Walsh, 2003). Daughters therefore do not inherit land from their fathers, but rather attain secondary rights to use the land through their husbands (Benschop, 2002; Cotula, 2006; Henrysson & Joireman, 2009; Ong'wen Okuro, 2008; Walsh, 2003). Women's rights to land are surrounded by a number of limitations, in the sense that their use of the land is restricted to farming it. Therefore, they cannot themselves own land, bequeath it, use it as a collateral or sell it. Sons are seen as members of the lineage and as such women (and especially widows) can keep the land in trust for their sons. Women's rights to land are therefore strongly tied to the number, gender and age of their children, with childless widows having the weakest land rights, and thus being at the greatest risk of being "chased" from the land. Unions need to be formalized through marriage for women to be able to exercise their secondary rights to land. While women have an obligation to provide their children with food, the ability to do so is severely compromised if they are not formally married to the father of their children (Henrysson & Joireman, 2009).

A woman's tenure security also depends on the perception of her character and reputation, and as such a woman is subject to moral scrutiny by the community (Verma, 2001). Henrysson and Joireman (2009:45), note that: "perceptions of a woman's character determine her vulnerability to land expropriation. A woman can be accused of having 'bad character' for practicing witchcraft, being sexually promiscuous, drinking too much, or being rude or stubborn, particularly toward her in-laws". It can also be noted that women's possibilities of receiving a favourable outcome in land dispute cases are limited by the inaccessibility of the formal dispute resolution mechanism set up by the Land Disputes Tribunal Act of 1990, documented in detail by Henrysson and Joireman (2009) in the case of the Kisii. The cost of bringing cases to a formal land tribunal and lacking awareness of such mechanisms, means that most land disputes are resolved through informal institutions (mainly elders and chiefs) that do not have the legal right to resolve land disputes. The corruption of informal courts was one of the main reasons for formalizing the dispute resolution process in 1990, but as shown by the authors land disputes in the study area are routinely resolved through the parties paying elders or chiefs to resolve the dispute, with outcomes of such adjudication being biased against women both by the inherent gender biases of informal land institutions dominated by men, as well as weaker possibilities of "outpaying" their opponents to win the case (p. 54).

The connection between land rights and gendered livelihoods, and agricultural production in particular, are also outlined in the literature. Mugure et al. (2013), studying the impact of land ownership on agroforestry practices among the Bakhayo of Busia County, Nambale District, in Western Kenya note that men as landowners decide on land use practices, including the planting of trees. As such, their tree rights are embedded in their rights to land, with women holding only secondary use rights to parts of the trees which are used collectively for the household as a whole. Similarly, a study of fish farming, also from western Kenya (Kwanza Division, of Trans Nzoia County) (Kiumbuku & Bernard, 2013), reports that married women's engagement in fish farming is restricted by lacking access to land. Those women who are involved in fish farming as a primary source of income generation are heading their own households, since these are the only women who have access to their own land. While previous studies from West Africa ((Udry, 1996) as well as much of the grey area literature (FAO, 2011), suggests productivity differentials based on gender, a study by Owoo and Boakye-Yiadom (2015) from two districts, Suba and Laikipia, finds that the lower degree of formal titles among women in itself may explain lower productivity among female farmers: "although the effect of title possession is positive and significant, this research does not find any evidence that women who possess land titles would be more productive than men who have titles" (p. 926).

Kyalo Willy and Chiuri (2010) study the gendered effects of privatization of land in the River Njoro Watershed. In geographical terms, the study focuses on the communally held pastures of the Masaai of Narok, and the individually held land of the hunting and gathering Ogiek in the Eastern Mau forest complex. Before the privatization of tenure rights, the elders of the two communities negotiated the terms on which the Masaai were permitted to move their cattle over Ogiek hunting grounds. Payment was made in kind, with goods that were used by Ogiek women for the welfare of their families. With privatization, and the individualization and sub-division of communally held hunting grounds, this relationship is no longer subject to collective bargaining processes, but rather negotiated with individual (male)

landholders, with payment in cash replacing in kind transfers of milk, meat and skin “denying women a major source of food (milk and meat) that was previously availed during the dry periods each year, or whenever herds came back” (p. 741). Similar consequences are noted also for the Masaai women, as women’s and children’s access rights to communal lands disappeared with the subdivision, individualization and privatization of ranch lands. When livestock are taken to pasture in the watershed, renting land to wheat farmers has become a major source of income for the male title holder. Making the land suitable for agricultural production – and thus rentable – has, however entailed the removal of all vegetation, severely restricting women’s access to fire wood in the vicinity of the homestead. Moreover, the authors note that women are losing user rights also to other resources, such as lactating cows, as all livestock leaves the land to enable renting it out for wheat farming (p. 747). For other settled communities in the watershed, such as the Agikuyu and the Kalenjin, the authors note that rising land fragmentation results in increased stall feeding of cattle, with such cattle competing for fodder with migratory livestock. In Kenya, cutting and carrying fodder is a woman’s job, whereas incomes from sale of fodder and crop residues to pastoralists mostly befalls the men (p. 743).

Gender based contestation over land is also arising as a result of the increasing value of land – a phenomenon tied to land scarcity in general as well as more specific processes of commercialization that augment the demand for particular types of land. Dolan (2002), studying the production of French beans in Meru, describes the renegotiation of rights to pieces of land that were traditionally female in the wake of land registration and the introduction of contract farming agreements entered into only with male landholders. As in other parts of Kenya, tenure systems are patrilineal and regulated through customary law. Importantly, however, women have since the pre-colonial era held use rights to gardens producing local vegetables on these plots, with the output from such gardens constituting a source of food for the household and crucially, a source of independent income for women. With the introduction of export production, men are increasingly pressuring their wives to grow French beans on these plots or withdrawing women’s rights to these gardens altogether. Commercialization and the connection to global value chains are hence challenging women’s usufruct property rights and the rights to income generated from such property that “have conventionally been enshrined in cultural norms” (p. 672). As described by Dolan (2002), the “failure to compensate women for their labour and land /.../ has provided the fodder for heightened marital discord” (p. 677), with some women voicing their dissent through witchcraft.

6.2. Rwanda

Rwanda is often put forth as one of the most progressive advocates of women’s rights in sub-Saharan Africa as a whole, both with respect to land legislation as well as more general policies aimed to enhance gender equality. The aftermath of the 1994 genocide produced an unprecedented demographic shift as households became increasingly women or orphan-headed following the eradication of the erstwhile (male) household heads. This shift occurred, however in the context of patriarchal gender norms and patrilineal land tenure arrangements that upheld the husband as the head of household and landowner, creating unexpected complications as “women and orphan (children) household heads were inheriting land on a scale not previously known in Rwandan history” (Daley et al., 2010:132). As noted by Daley et al. (2010), the vacuum left by men in public institutions as well as a concerted move by the new government to enhance gender equality, had far-reaching effects on women’s rights to property. Comprehensive reforms of the legal and policy framework for property rights in general and land tenure in specific, must also be placed in relation to broader measures to enhance gender equality in the post-genocide period as well as more recently. As an example of the latter, can be mentioned the enactment of a Gender-Based Violence Law in 2009 and a policy against the same in 2011, (see Kagaba, 2015).

While the official land tenure reform programme was not initiated until 2006, several legal reforms aimed to equalize women’s access to property and land were enacted prior to this. The Inheritance and Marital Property Law of 1999 (The 1999 Succession Law), established the right for women to inherit property. The community of property marriage regime, which gives joint and equal rights of ownership to property brought into as well as accumulated during the marriage, was introduced as the default regime for couples entering into marital unions. This protects women’s property from the interests of her husband’s relatives in the case of separation or widowhood (ibid.). Moreover, the 1999 law also established equal rights of inheritance among sons and daughters (Ansoms & Holvoet, 2008; R. c. p. FAO Gender and Land Rights Database, 2017). As noted by several studies (Ansoms & Holvoet, 2008; Bayisenge et al., 2015; Daley et al., 2010; Kagaba, 2015), the law, however only applies to formally registered, monogamous unions entered into after 1999, and the offspring of these unions.

The new Constitution which was passed in 2003, constituted a renewed push towards gender equality, but also clarified the status of civil monogamous marriages as the only marital unions recognized by Rwandan law. Despite campaigns intended to encourage registration, studies note that around a third of marriages remain unregistered (Bayisenge et al., 2015), hence leaving women and children in such unions without legal rights to household property and reliant on the benevolence of their husbands and his relatives (Ansoms & Holvoet, 2008). Similarly, the new law prohibits polygamous marriage, with dire consequences for women and children in such unions, which as noted by Ansoms and Holvoet (Ansoms & Holvoet, 2008), remain a common custom. Finally, the 1999 Law does not apply

retroactively and as such does not “protect the inheritance rights of the numerous widows and orphans left behind after the civil war and genocide” (p. 142).

Together with the 1999 Law of Succession and the 2003 Constitution, two additional pieces of legislation, The National Land Policy of 2004 and the Organic Land Law (OLL) of 2005, constitute the core legal and policy framework for Rwandan land relations. These two documents reiterate and specify some of the key principles enshrined in the first two viz. rights to land specifically, prohibiting discrimination in land ownership or possession of rights to land (Daley et al., 2010). The OLL, moreover requires the consent of family members with respect to land transactions, such as sale, donation or exchange, but as noted by McAuslan (McAuslan, 2010), such consent is limited to joint owners and spouses in legal marital unions (p. 118). In 2006, the Rwandan government embarked on a land tenure reform programme, to implement the corpus of land laws and to consolidate landholdings to deal with problems of falling land productivity connected to land fragmentation. A major component of the programme is land registration and titling, which was been carried out initially in trial areas in 2006 and then extended to the country as a whole, with 1.7 million titles being issued by January of 2012, covering 93% of all plots (Santos et al., 2014). Overall, Rwanda’s land tenure reform programme has been described as state-of-the art in an African context, both in terms of its scale and design ((Ali et al., 2014)) as well as its gender equalizing ambitions (FAO, 2011).

Bayisenge, Höjer and Espling (2015) describe the practical process of land tenure reform in detail, noting the importance of sensitisation and education campaigns both at the local level as well as more broadly through various media channels. Demarcation on the ground has been carried out “by the local land committees together with the technicians from the NLC (National Land Centre in Kigali – authors’ comment) and DLB (the District Land Bureau, authors’ comment) [who] demarcated the land, parcel by parcel, guided by the leader of the concerned village” (p. 78).

Several positive effects of the legal and institutional reforms outlined above are noted in the literature. Broadly these can be grouped into primary effects related directly to land use and ownership, and secondary effects on gender relations in general. Daley, Dore-Weeks and Umuhoza (2010), on the basis of major fieldwork from 2006 tracing the impact of the 1999 Succession Law, list several positive initial effects on women’s rights to land, such as an increased likelihood of daughters receiving land from their fathers. Moreover, women who had left marriages and returned to their parents were increasingly receiving permanent, rather than temporary, rights to land, including the right to transfer the land. Finally, the authors note that women were increasingly able to resist customary practices of polygamy, through the equalized land rights given them under the new legal framework. Kagaba (2015) confirms these findings based on qualitative data collected in 2013 and in Kamonyi District, which constituted the best-case scenario in a national context. Decision making in relation to land matters has been equalized as wives now need to sign the sales documents for land sales to occur. Moreover, land inheritance from their parents gives women resources of their own to bring into the marriage, which gives the woman “value in the household and equality with her brothers” (p. 579). Bayisenge, Höjer and Espling (2015) on the basis of interviews with local level mediators in land conflicts (Abunzi) confirm that decisions related to sale, transfer, lending or buying of land requires the consent of both wives and adult children (p. 80). Broader secondary effects include a reduction in domestic violence and the right to earn an independent income (Kagaba, 2015).

Nonetheless, the literature also notes several causes for concern. Like in Kenya, the discrepancies between formal legislation and policy frameworks and the realities on the ground are raised in several studies, which point to the reluctance of men in accepting reductions in status and power as gender relations are formally equalized. Male resistance to change takes a number of shapes. Firstly, the norm of the male-headed household is persistent and many women did not exercise their rights to land, as they did not have confidence in the legislation or were reluctant to face social pressure from their brothers, husbands or the broader community (Daley et al., 2010). Despite awareness raising campaigns, as noted by Bayisenge, Höjer and Espling ((2015)), “some women do not understand how they can have equal rights to their brothers or husbands and are therefore reluctant to fight for their land rights” (p. 79). Indeed, in the interviews with female Abunzi, despite the formal right to land, the majority of women still felt that the land, as well as all valuable property in the household belonged to their husbands. Men were reported to uphold similar views, with consequences for decision making and transparency in land transactions, with Dore-Weeks and Arnesen (2007) documenting cases of men refusing to let their wives farm the land and renting out land behind the backs of their wives.

Male resistance to change and social norms around marriage also prevent women from exercising their legal rights to land as well as property more generally. Bayisenge, Höjer and Espling (2015) describe the reluctance to register and formalise marriages as this leads to the joint registration of land (p. 84). While the law in theory provides the possibility for legally married women to leave an abusive husband and retain her right to property held under the community of property marriage regime, the social ramifications of a divorce are such that many women continue staying with their husbands (Daley et al., 2010:141). Although Kagaba (2015) notes changing attitudes towards domestic violence among both men and women, the law is failing to protect women from violence in practice, as such violence is sometimes condoned by the family or the broader community and thus “even if a woman has a given right, exercising

that right sometimes places her in fear of her life” (p. 582). The context of shrinking farm sizes and increasing competition for land, may moreover heighten resistance to change, with women being blamed for land fragmentation, leading to conflicts between siblings, and growing communal pressure to prevent women from exercising their rights to land (Daley, Dore-Weeks and Umuhiza 2010:140).

Growing land fragmentation and high fertility rates is also leading to changing livelihoods, however with both husbands and wives engaging in non-farm labour. Regional patterns appear to make a difference here with Kagaba ((2015)), reporting that female respondents in Kamonyi District reporting that they were engaged in casual work on water irrigation and construction sites, breaking the traditional mould of gender segmented labour markets (p. 580). By contrast, a feminization of agriculture appeared to be occurring in Musanze District in the Northern Province as husbands increasingly sought work outside agriculture (Bayisenge et al., 2015).

Gender-based inequalities in property rights also exist between households headed by men and households headed by women. In a quantitative study of data from 17000 households covering the period 2005-2011, Isaksson (2011) controlling for the resource base of the households finds that female headed households have weaker land rights, in spite of land reform efforts aimed at redressing such imbalances (p. 72). As in Kenya (see Burke & Jayne, 2014 above), Isaksson (2011), finds that there are regional differences in land rights, however, underlining the importance of adapting land reform implementation and awareness campaigns to regional gender norms.

6.3. Uganda

Like Rwanda, Uganda has undertaken several far reaching legal and administrative reforms, centred on privatizing property rights and formalizing customary ownership to that effect (Adoko & Levine, 2008). Constitutional reforms during the early 1990s and the ensuing ratification of the new Constitution in 1995, provided the legal foundation for the subsequent land reforms (as later enshrined in the Land Act of 1998) by moving all the landholding rights in the country from the government to the citizens of Uganda (Joireman, 2007).

Four types of land tenure systems are recognized under the Ugandan Constitution, and specified in the Land Act. *Mailo* tenure concerns land that was apportioned between the British Protectorate Government and the King of Buganda under the 1900 Buganda Agreement. Land under *mailo* tenure is held in perpetuity, often by landowners who hold large tracts of land that is then sub-let to tenants (*bibanja*) or squatters. Squatters become bona fide occupants after living on the land for at least a decade, whereas *Bibanja* in return for rent, have the right to sell, lease, mortgage or bequeath the land (Doss et al., 2012:602). Doss et al. (2014) note that successive governments have sought to protect the rights of *mailo* tenants since the end of colonial rule, providing these with “the right to acquire freehold title to *mailo* land” (p. 82). Freehold tenure holders can use, sell, lease, transfer and bequeath their land. Land under freehold tenure is commonly held by religious and educational organizations with individual freehold tenure being limited to specific groups of elites (Doss et al. 2014). Leasehold tenure entitles the lessor to rent, and the lessee to the use of the land for a specified time period, and is regulated by a contract between the two parties. Finally, customary tenure – which covers more than 80% of all land in Uganda (Doss et al., 2014:81): – is “governed by the customs, rules and regulations of the local community” (Doss et al., 2012:602). With respect to customary land specifically the Land Law provides for landholders (as individuals, families or clans) to receive certificates for their land. Group ownership of land is regulated through membership in Communal Land Associations, governed by constitutions that dictate the principles for sharing and managing land held in this way (Adoko & Levine, 2008:103). Doss et al. (2012:602) note that land tenure arrangements vary geographically, with *mailo* tenure (and the associated *Bibanja* holders and squatters) being most prevalent in the Central region, while leasehold tenure is most common in the Western and Central Regions of the country. Although most land is held under customary tenure, this type of land tenure is most pronounced in the eastern and northern regions of Uganda.

Adoko and Levine (2008) point to a dissonance between a government policy focused on privatizing and formalizing customary land and the parliamentary efforts to safeguard the interests of weaker groups (such as women) through protective legislation, during such processes (p. 103). The titling process formulated by the government, like in Kenya and Rwanda, involves the certification of customary land titles, formal surveying of the plot and eventually the issuing of a freehold title to the certified owner (p. 104). In this sense, the impetus and justification for Ugandan land policy lies in the perceived economic gains from formalized and privatised land titles (pp. 103-104).

The protective measures put in place in the Land Law, are several. As described by Asiimwe (2001), they include a consent clause (Section 40), which requires both spouses to provide their consent in writing for any transactions that concern family land, while Section 28 “prohibits decisions affecting customary land that deny women access to ownership, occupation or use of any land, as well as decisions that impose conditions violating constitutional provisions protecting women” (The Land Act §28 cited in Asiimwe, 2001:177). Moreover, the Act makes provisions for female membership of key institutions, such as the Uganda Land Commission, the District Level Land Boards and Communal Land Management Associations (pp. 177-178). Despite such provisions, the Land Act has become

infamous for its “missing amendment”, a co-ownership clause which had been debated and approved in parliament, but did not appear in the final version of the Act (Joireman, 2007; McAuslan, 2010:123-124). Women’s and human rights groups who had lobbied for co-ownership viewed the amendment as a way of challenging social mores and customary laws that prevent women’s ownership of property, thereby addressing the low land ownership among women as a way of improving livelihoods and enhancing women’s bargaining power within the household (Asiimwe, 2001:178).

In a country where women are frequently prevented from holding property by the justification that they are property (Bennett et al., 2006; Doss et al., 2012; Joireman, 2007), laws regulating women’s rights to property within marriage and after the dissolution of marriage or the death of a spouse are also central to women’s access to land. The Customary Marriage (Registration) Act and the Marriage Act, are both silent on the issue of rights to property brought into or acquired during a marriage, or how such property should be divided upon the dissolution of a marriage (Doss et al., 2012:601). Widows in particular are hard hit by the Succession Act of 1972, which stipulates that in the case of intestate succession (where a will is lacking), the property of the husband, that is “the home, household chattel, and surrounding land passes to the intestate’s legal heir, which is the nearest male lineal descendant to the deceased, usually the eldest son” (Bennett et al., 2006:463). As such the legal framework surrounding land (and property more generally) encodes the legal pluralism (and patrilineal property systems) prevalent in many African countries, while also discriminating directly against widows in statutory law. Even if the Constitution specifies that state law overrules customary law in the case of discrepancies between the two, in practice the implementation of customary law trumps the former.

The same basic discriminatory practices, characteristic of patrilineal land tenure systems in many parts of Africa can be noted also in the case of Uganda: women access land through a male relative, primarily the husband. Customary rules subject women to a double exclusion as they are not viewed as members of their husband’s clans, while the payment of bride price by their husband concludes membership of their native clans, and “as a result they are alienated from land ownership from childhood to widowhood” (Asiimwe, 2001:175). The reach of statutory law is especially limited in rural areas, where illiteracy, lack of awareness and limited administrative capacity pose challenges to law enforcement.

While the consent clause requires written consent from the other spouse for the sale of “land on which is situated the ordinary residence of the family and from which the family derive sustenance” (The Land (Amendment) Act, 2004). Adoko and Levine (2008), in a study of Apac District, based on fieldwork from 2004, note that they did not encounter a single woman who knew of the consent clause. Moreover, even if they are aware of their rights, Joireman (2007) and Doss et al. (2012), note that most couples opt for customary, rather than statutory marriage as such marriages are more strongly embedded in local relations and provide social status in ways that consensual unions or statutory marriages do not. For customary marriages to be given legal status – hence enabling the consent clause - the full bride price needs to have been paid, however (Joireman, 2007). Despite the limited legal awareness of rural women (see Whitehead & Tsikata, 2003), a survey commissioned by the government in 2006, shows that in general spousal consent is obtained for land sales, although the share of households who did not do so varies regionally, with the lowest share of households seeking consent being found in the North (74%) and the highest in the Central Region (92%) (Associates for Development and Centre for Basic Research, 2006).

Land adjudication processes remain a challenge as limited legal and administrative capacity lead to a vacuum that is frequently filled by local leaders, “who may rule in favour of customary laws, rendering state law obsolete” (Doss et al., 2012). Adoko and Levine (2008) note the emergence of “hybrid” legal codes, that combine the elements of customary and statutory law, both among legal practitioners as well as the population at large, with an infringement of women’s rights and livelihoods as a result. Limited access to legal advice among women affect their ability to exercise their rights: “we found that few people know their rights and when they are told by someone more powerful that they have no rights, most simply accept this. This applies particularly to women, who keep being told that they cannot own land because they are women” (p. 112). While the Land Act stipulated the creation of a variety of land management institutions, such as land tribunals, as noted by Joireman (2007), the staffing of these organisations required an estimated additional 20 000 trained administrators at a time when AIDS related deaths were taking their toll especially on the working age population. In addition, financial resources for setting up the tribunals were not earmarked by the government. In the two districts (Mbarara and Tororo) covered by Joireman’s (2007) study, logistical problems related to salaries and office equipment delayed the opening of the tribunals and restricted their operations. The ambitious stipulations on female representation in land boards have fallen short in practice, with these institutions being staffed primarily by men (Doss et al., 2012).

Since women attain land primarily through their husbands, as noted by Doss et al. (2012) marriage is a crucial factor for women’s ownership of land, with 16% of the female landholders in their survey of 770 individuals in three districts (Kapchorwa, Kibale and Luwero) stating that they acquired a plot of land through marriage. The precarious situation of widows in particular is noted by several studies (Asiimwe, 2001; Bennett et al., 2006; Doss et al., 2012; Joireman,

2007), as women under customary law are not traditionally entitled to own property at all. Moreover, as pointed out by Naybor (2015), the Hiv/Aids pandemic has led to a near doubling of the share of widows in the female population, between 2005 and 2010, with the share of widows in the adult female population reaching 11% in the latter year (Uganda Bureau of Statistics, 2010). As described by Bennett et al. (2006) "Because all property is deemed to belong to the husband's relatives, these relatives frequently steal the widow's property, all the way down to the bed sheets, evict her from her home under threat of physical beating and even death, and take away her children" (p. 460). Regional and individual variations in relation to this common pattern exist, even if they are few: in some communities, that practice wife-inheritance, the widow remarries the brother of her late husband, thus keeping the property within the clan, in others (although very rare cases) land has been bequeathed to daughters by their parents (see Doss et al., 2012)). While strong social norms dictate against women owning land, Doss et al. (2012) show that there are cases of land ownership among women, even if they are relatively few.

Few studies exist of the livelihood aspects related to land fragmentation or changes in land rights legislation specifically. One exception is the study by Rutakumwa et al. (2017), from Masaka District (from which the study district Kalunga was hewn off in 2010) which uses a stratified sample from a General Population Cohort established by the Medical Research Council/Uganda Virus Research Institute Research Institute Unit (MRC/UVRI) (see Asiki et al., 2013). The purpose of the study was to analyse how women who have been affected by Hiv/aids related deaths and other types of shocks handle these, given their poorer access to land. The sample was stratified to include both households who had been and had not been affected by an aids-related death within the household. In addition, qualitative interviews were carried out with a sub-sample of the quantitative sample, again stratified by the same principle. In contrast to most regions of Uganda, the Baganda who live in the study site award women stronger customary land rights than other ethnic groups in the country, with women being able to inherit land from their own clan, while they can also keep usufruct land rights to their husband's land following his death. Nonetheless, daughters can only inherit half of the land that their brothers inherit. The authors note several strategies engaged in by women specifically to cope with rising land shortages: borrowing land in response to food shortages prompted by land constraints, cost-sharing of livestock and selling of casual labour within the village (Rutakumwa et al., 2017:46).

6.5. Nigeria

As a starting point, it can be noted that the scientific literature on land rights in Nigeria is very limited and quite outdated. Data from the FAO Gender and Land Rights Database confirm the general legal pluralism characteristic of many African countries and the discrepancies between customary and statutory law. The Land Use Act of 1978 vests all land rights in a particular state in the Governor of that state (with the exception of land held by the federal government), and awards local governments the role of granting customary use rights for agricultural land.

Just a handful of peer reviewed papers analysing gendered land rights can be found for the period since the year 2000. Madu (2013), on the basis of a qualitative study of two Igbo communities in South-Eastern Nigeria confirms the general picture from other African countries of legal pluralism and a hiatus between statutory law and customary tenure principles on the ground. While the Constitution and the Land Use Act of 1978 in principle give equal rights to both men and women to acquire and own immovable property (including land) in practice patriarchal land tenure systems, underpinned by social norms that regard women as chattel undermine the functioning of statutory law (see also Ikejiofor, 2006). While the lack of independent financial resources effectively puts paid to women's possibilities for entering the land market in many countries, in the case of these particular communities Madu (2013) notes that women who buy land "do so under the authority of their husbands or with male support. The implication, according to them [the respondents] is that the women cannot sell land of their own volition in the traditional sense which is widely in operation. A widow can buy land for her sons, but where she has no son, the land she buys would go the deceased husband's relations" (p. 260). Women therefore are disinherited by their husband's relatives even when they have bought land using their own financial resources.

Importantly, variations exist within Nigeria, however with muslim communities for instance following numerical principles for inheritance laid down by quoranic law. The grey area literature from the mid-1990s also suggests that Yoruba women enjoy stronger rights to property than women in other ethnic groups (Ezeilo, 2007; Karibi-Whyte, 1994). Remi et al. (2015), in a study of 102 female rice farmers in Osun State, show, that around half of the surveyed women do not own the land they cultivate and around a third lacked security of tenure. Inheritance was the single most common way of accessing land, however suggesting that it was indeed possible for women to inherit land in this particular context.

6.6. Madagascar

We have only been able to find one recent peer-reviewed article in English (Widman, 2014) that discusses gender and land rights in Madagascar. The information on Madagascar in the FAO gender and land rights database is in French. Widman (2014) notes several sources of weak tenure security among women, which like in the countries discussed above, revolve around the persistence of gender norms that discriminate against women. In the case of Madagascar,

moreover such norms are underpinned both by customary law, but also by civil marriage legislation that recognizes the husband as the head of the family (Loi 2007-022: Article 54, cited by Widman). In parts of Madagascar, women are prohibited by custom to own land, and like in most other African countries, wives take up residence in their husbands' villages upon marriage. Inheritance law perpetuates male landowning as female children according to an exception can receive the value of their land inheritance in cash. Recent land reforms, like in other African countries, have aimed to enhance tenure security through certification and registration, but in the case of customary marriages jointly owned land is generally registered only in the name of the husband, with qualitative data suggesting that joint registration would be perceived as a way of challenging the male household head (p. 149).

7. South Asia

The discussion around securing land rights for women emerged in the sub-continent in the 1970s and gained momentum in the 1990s. The discussion spanned academic as well as policy-making spaces, and was fueled by parallel social action by women's rights movements. In the academic literature, the demand for land rights for women has been framed within a larger agenda to democratize development – both as a process and as goals – along gender lines.

Agarwal (1994a, 2003a) has argued that the dominant orthodoxy within economic theory and development policy was to treat the household as a unified unit of analysis, thereby overlooking gendered flows of power and resources within. This all-pervasive assumption serves to camouflage the gender disparities in development outcomes. While some of these disparities gained prominence over the 1970s and 1980s, the discourse around women and development remained focused on discussions of women's participation in education, employment, and other aspects of the public sphere. It was against this background that scholars like Agarwal began to advocate for women's direct control over productive assets i.e. land and property rights.

From the onset, the claim for women's right to land ownership was seen to be in conflict with the experience of diminishing farm sizes and fragmentation of holdings. It was argued that securing inheritance rights for women would further exacerbate the problem of inter-generational fragmentation of holdings. Furthermore, women's position as legitimate subjects of development interventions was often seen as attached to their marital status (Kishwar, 1982, 1987). Hence the joint ownership of land titles by spouses was considered to be a suitable alternative to women's individual ownership of land. There has been a substantial discursive shift over the past few decades, to the extent that land is now acknowledged to be "one of the most fundamental resources to women's living conditions, economic empowerment, and to some extent, their struggle for equity and equality" (Carpano, 2011:4). However, at the level of practical implementation, the status of women's land ownership remains largely unchanged.

This makes it evident that the issue of gendered land rights is deeply embedded in the larger context of gender relations in the sub-continent and the various socio-cultural institutions that shape it. These will be taken up in detail in the country-specific sections below.

7.1. India

In the context of India, women's right to agricultural land has been subsumed within the larger question of women's right to inheritance of property. At the same time, various formal and legal frameworks, have maintained a distinction between other kinds of property and agricultural land. In the following paragraphs, we will discuss the inheritance rights for women currently in place and how they relate to the issue of women's ownership of agricultural land. It is important to emphasize at the onset that the interpretation and adoption of the laws vary vastly between the different states and region of the country. This is further complicated by the existence of different landholding and tenure systems marked by different levels of hierarchy between owners, tenants, and workers.

The right to inheritance in India is governed under various personal laws, specific to each religious community. The Hindu Succession Act of 1956 (applicable to the 80% majority Hindu population) gave the daughters, widow, and mother of a Hindu man equal inheritance rights to his property, as his sons. This law exempted tenancy rights on agricultural land from its purview. Thus, women's inheritance rights to tenancy land depend on local state-level tenurial law (Agarwal, 2003a, 2003b). This follows a clear geographical pattern. In the southern, western, and eastern states of India the tenurial laws are silent on the issue of inheritance, thereby leaving the scope open for automatic application of the Hindu Succession Act. In the north-western states however, the tenurial laws clearly specify the order of devolution in inheritance and it strongly favours male heirs with women relegated to the bottom of the hierarchy (ibid).

Yet another source of inequality within Hindu inheritance law is the institution of the 'joint family' in which only sons have inheritance rights by birth. Women's inheritance rights in these contexts are dependent on particular reforms to this aspect of the law enacted at the state-level by sub-federal governments. This again has led to a geographical

pattern of inequality. While some states in the south, east, and west have enacted reforms to do away with this provision, many others have failed to do so (Agarwal, 1995).

The Muslim Personal Law Application Act of 1937 (applicable to the second largest religious community constituting 14% of the population) also exempts agricultural land of all kinds (tenanted and owned) from its purview. Some southern states have introduced reforms to annul these provisions and bring agricultural land into the purview of gender-equal inheritance rights. But by and large, the formalized inequality in terms of women's right to inherit agricultural land remains prevalent in the Muslim community of India (ibid).

Given these geographical disparities and legal loopholes, much of the actual practice of women's inheritance rights is dependent on customary law and localized traditions. In such instances, there are frequent disjunctions observed between what is formalized in law and what is practiced in real life. These disjunctions play out in both official and everyday spheres. To understand this further, Agarwal (Agarwal, 1994a, 1994b) has distinguished between the notions of 'ownership' and 'control'. In the development literature, the term women's "access to land" (Rao2011) has been widely used to refer to various forms of ownership and/or control, including those mediated by informal concessions made by male relatives (ibid). However, Agarwal argues that these are not comparable to the security afforded by legal ownership and therefore must be conceptually separated. At the same time, legal ownership does not always translate into actual control over the use of the land and decision-making powers over its produce. We first examine the mechanisms through which this takes place in the sphere of everyday practice, before turning to the formal sphere of land reforms and redistribution and how women's exclusion plays out therein.

It has been observed in multiple contexts that women's legal right to inheritance of property is not socially recognized as legitimate (Chen, 1989, 1995). It is often seen that family members exert pressure on women to forfeit their share of the property to male relatives, usually their brothers. While part of this is explained by the fear of further fragmentation of holdings, it is also closely tied to what Agarwal (1994b:1458) has called "the structural mismatch between contemporary inheritance laws and traditional marriage practices."

In the northern and north-western states, caste strictures and customary norms often prohibit marriages within the same or neighbouring village. This means that women are required to move far away from their natal home at the time of marriage. Furthermore, the high prevalence of dowry payments is strongly attached to the commonly-held belief that the dowry is a substitute for share of inheritance. Thus, women are expected to abdicate their share of inherited property in lieu of the dowry paid to their husband's family at the time of marriage (Agarwal, 1995; Chen, 1995; Scalise, 2009). Additionally, there is a strong social stigma attached to seeking assistance from a married daughter or her marital family in a time of crisis. Thus, endowing married daughters with a share in property is seen as both lacking a reciprocal value and carrying the risk of property slipping through into the hands of outsiders.

Agarwal (1994b) has further noted that cultural constructions of what it means to be a "good sister" have hindered several women from asserting their rights. It is often deemed shameful for a sister to demand a share of what is seen as her brothers' rightful inheritance. In a number of situations, such as in the case of the death of the husband or the marriage turning abusive, the women are solely dependent on the goodwill of their brother(s) for their upkeep. Such circumstances further prohibit them from vocally demanding their fair share of property. Exacerbated by lack of education and exposure to the public realm, many women are unable to follow through with the paper work and bureaucratic procedures involved in making such demands (Agarwal, 1995; Chen, 1995). Thus, women's ownership of and control over agricultural land, is faced with several structural and institutional constraints within the sphere of everyday practice. We now turn to a discussion of the same within the formal sphere, with special reference to land reforms and redistribution initiatives.

Agarwal (1994a, 1995, 2003a) has noted that official functionaries at local levels are known to have obstructed the recording of inheritance shares for daughters, especially married ones. This prejudice is less acute in the case of widows, but exists nonetheless. However, such practices take on a different dimension of exclusion when they are legitimized by the provisions set within a particular policy or project. The redistributive land reform policies of the sub-continent have been modeled on the notion of a unitary male-headed household. This has paved the way for government officials at local levels to obstruct the allotment of public land to women on the grounds that allotments can only be made to heads of household who are assumed to be male. Even in the case of widows it has been often found that allocations are made jointly in the name of the woman and her eldest son (Agarwal 1994a). As mentioned before, women's entitlement to property rights is seen as inseparable from their connection to male kin, and so the distribution of joint titles for married couples is considered to be an adequate redressal of the problem. In addition to this, there is a near absence of any further public land available for redistribution. Thus, the scope for women to gain ownership of land either through the state or through their immediate communities is fairly narrow in India.

Against this backdrop, Agarwal (2003a) has discussed the possibility for women to gain ownership of land through market mechanisms. To begin with, the agricultural land market in India is fairly inelastic as most individuals and

households are reluctant to sell. It is usually seen as an extreme crisis-aversion strategy and is only adopted in the absence of all other options. Even within this restricted market scenario, women are faced with further financial constraints. Thus, market access cannot compensate for the obstructions within state and society, but Agarwal argues that it can still be a supplement towards reforming those. She further posits that a group approach is most suitable in this regard, as collectively women can garner greater resources for investing in farming implements and inputs, have a stronger bargaining position, and split the risks.

A recent study of farmers collectives in parts of Bihar, West Bengal, and the Terai region of Nepal has indicated that the extent of effective bargaining and decision-making on labour and capital input and profit distribution is highly linked to the homogeneity of the group (Leder et al. 2017). This is also closely connected to the nature of tenant-landlord relations in the particular setting. For instance, landless women were observed to have internalized the devaluation of female labour to a greater extent in locations where the land relations were more starkly hierarchical. Thus, the performance of collectives with regard to empowerment depends on the pre-existing conditions and intra-group power relations.

There have been a few successful instances of women collectively purchasing, leasing, and/or cultivating land. This is however by no means a norm or standard practice. It also comes with its fair share of problems such as how to determine fair inheritance, how to deal with breach of trust within the collective, and how to negotiate differences and hierarchies. Nevertheless, Agarwal (2003a) maintains that collective ownership or leasing is the most realistic way forward for women's land ownership in India, given the limitations within legal and social institutions.

In the post-independence era, there has been substantial progressive legal reform towards ensuring equal inheritance rights for women. However, their implementation remains compromised both within formal and everyday spheres of practice. At the same time, the path towards agrarian transformation in India has been clearly gendered. It is well-documented in the literature that as male agricultural workers have migrated to urban settings for precarious work in secondary and tertiary sectors, the representation of women among agricultural workers has steadily increased (Agarwal, 2003a). Thus, as far as agriculture is concerned, women continue to contribute more than their fair share of labour while owning very little of the productive resources. As we will see in the following sections, this holds true not only for India but for the region on the whole.

7.2. Nepal

As a predominantly agrarian country, up to 80% of households in Nepal are dependent on agriculture. Thus, land in Nepal, is one of the most important forms of productive assets as well as a major source of power and status in the community (Bhandari, 2001; Lumsalee, 2002). According to Allendorf (2007) up to 14% of landowning households in Nepal comprise women land-owners, most of whom are widows who inherited land after the death of their husband. As in the case of India, women's right to land is based on patrilineal inheritance laws, wherein their right is premised on their relationship to their male kin. For instance, although widows have a legal right to their deceased husband's share in inherited property, the rights of daughters are limited to only those who are unmarried. Furthermore, daughters were expected to return the inherited parental property to other heirs upon getting married.

There has however existed a long tradition of women's activism towards securing equal inheritance rights in Nepal (Adhikari, 2001; Shrestha, 1999). In 1994 a group of activists challenged the inheritance laws in the supreme-court leading to the introduction of a new bill on inheritance of parental property in the parliament. When the parliament failed to discuss these reforms in 1998, there were massive demonstrations in the country (Acharya et al., 1999). Finally, in 2002, a version of the bill was passed as the 11th amendment to the Civil Code. This removed age restrictions on unmarried daughters for inheriting property. However, the marital clause remained. Widows were allowed to retain a share of their deceased husband's property even if they remarried (Allendorf, 2007).

There is also some diversity in this regard between different ethnic communities within Nepal. For instance, Tibeto-Burman groups have more egalitarian inheritance practices and pass on property to daughters in the same way as sons (ibid). Scalise (2009) has argued that women's right to inherit is influenced by the type of property in question i.e. tribe owned, family owned, or purchased. She further asserts that as a general rule, the rights of the kin group or family take precedence over the rights of the woman.

Thus, despite some progressive reforms, women's route to land-ownership through the family remains restricted in formal and legal frameworks. Additionally, Nepal has witnessed what has been termed as "feminization of agriculture" (Acharya et al., 1999). Led by male out-migration into secondary or tertiary sector jobs in urban areas within or outside Nepal, the task of agricultural production has increasingly been left to women. As of 2001, over 90% of women workers were agricultural labourers or land managers, as opposed to only 64% of male workers (Government of Nepal, 2002). Despite this trend, women's participation in certain agricultural activities is deterred by prevalent gender norms, which in turn also poses barriers to their ownership rights. For instance, irrigation in Nepal is seen as a man's activity, resulting in women being barred from water committees and being forced to pay high fees for

irrigation services. It results in young sons being taken out of school and older men being prevented from taking up wage-work elsewhere in order to perform the irrigation tasks (Van Koppen et al., 2001). There have been some institutional reforms introduced in this regard. Since 2007, 33% of all positions in governmental and decision-making bodies at all levels have been reserved for women. While there are continued problems of women being placed as proxy-candidates to such posts or being controlled and manipulated by male relatives, it is nonetheless an important institutional intervention towards securing women's representation (Acharya 2017).

A recent ethnographic study by Pradhan, Meinzen-Dick, and Theis (2018) brings new insights into the importance of an intersectional approach in understanding women's property rights in Nepal. Based on a review of existing legislations and intensive fieldwork among different ethnic groups in Nepal, the study claims that property is best understood as a set of relations between individuals with respect to valued goods. The authors further claim that in the context of Nepal, more than caste or ethnic group, it is the social location of the woman within the household that emerges as the decisive factor in shaping these relations. For instance, at the time of marriage most women move into a joint family household where they occupy a relatively junior position with less decision-making power. With the passage of time, the joint family goes through a formal or informal disintegration and couples move into a nuclear family set-up. Eventually the cycle is repeated with the son in the nuclear family getting married and the daughter-in-law moving into a joint family. Singh (2016) has observed that women in nuclear households and senior women within joint families have more say in the sale and purchase of land, livestock, and crops. This dynamic is further complicated by the observation that women exercise their agency by conforming to gender norms and expectations to strengthen their ties with their marital family and consolidate their position within the family (Pradhan, Meinzen-Dick & Theis 2018). The study documents multiple instances of women turning down inherited shares of land from their parents for fear of offending their brothers and sisters-in-law. This often meant that after moving from a joint to a nuclear family set-up women were able to exercise greater managerial rights to land and agricultural production. In fact many such women reported "owning" land even though it was only their husband's name that featured on the formal title. It was also observed that women who contributed substantially to the household finances through paid work, enjoy more decision-making power about sale and purchase of land. These trends were consistent across caste and ethnic groups.

As Allendorf (2007:1985) describes, the land ownership issue is like a "zero sum game" wherein "for women to gain independent land rights, men will have to lose land". This is connected to the issue of fragmentation which has detracted even the most ardent proponents of women's land ownership from demanding equal inheritance rights. Instead, like most other countries in the region, the advocacy in Nepal has focused on education and employment. Within this context one of the issues that indirectly addresses the question of women's ownership of productive assets is that of community forestry.

Forests and village commons have conventionally been a supplementary source of livelihood for communities all over South Asia (Agarwal, 2001). Since the 1950s there has been a steady shift from community ownership of these resources to state or private-individual ownership. In the 1970s this reached crisis proportions, which necessitated the government of Nepal to introduce community forestry projects to remedy the situation. Nepal's 1993 community forestry program had the target to transfer 61% of all forest land to forest user groups (FUG) facilitated by NGOs. Agarwal (2001) observed that in keeping with the trend in development planning, the unit of membership for FUGs in Nepal was a household and for male-headed households the name of the man was noted down as the sole member. Overall it was found that only 3.5% of all FUG members were women (Dahal, 1994). Advocating for the FUGs as one of the avenues through which women's collective ownership of productive assets could be realized, Agarwal (2001) conceptualizes a typology of participation. According to the typology, participation can range from nominal (mere membership in the group) to interactive and empowering (having a voice and influence in decision making). In order to instrumentalize FUGs as institutions for facilitating women's ownership of community resources, an interactive and empowering approach towards participation would have to be put in place.

7.3. Bangladesh

As in the case of India, in Bangladesh too, women's ownership of agricultural land is closely tied to their overall rights of inheritance. This in turn is governed by personal laws specific to each religious community. According to the Muslim personal law, applicable to the majority Muslim population (90%), women heirs (as wives, sisters, mothers, and daughters) can inherit property but not equally to their male counterparts. According to Hindu personal law, applicable to the 9% Hindu population, the widow inherits the life estate of deceased husband; meaning that she has ownership of the property in the duration of her life, but cannot bequeath it according to her wishes. Following her death, the property is inherited by sons, unmarried daughters, and daughters with sons. Married daughters who are childless or only have daughters cannot inherit within the Hindu personal law code. Under the Christian personal law, applicable only to 0.3% of the population, the widow inherits one-third of the property while the remaining two-thirds is distributed among lineal descendants i.e. both sons and daughters (Scalise, 2009).

It may be further noted, that women's access to land through the market is legally protected but practically compromised by a number of factors. First, there is a limit on the private ownership of land. A ceiling of 100 bigha per family (33.3 acres) was placed in 1972 which was further lowered to 60 bighas (20 acres) in 1984. As the fragmentation figures from Bangladesh have already demonstrated, there is a severe land shortage in a nation of rising population. Second, a woman's ownership is only recognized if her name appears on the deed or other land documents, and not based on her membership in the family/household (Sarwar et al., 2007). While land owned by a household is registered in the name of the male head, there are also documented cases of men purchasing land in the name of their women relatives ("benaami" land) and retaining control over its use and transfer (ibid). It has also been noted that women scarcely have the financial resources to purchase land independently. In the cases where this has taken place, it is often at the cost of giving up on liquid assets such as jewellery or at the risk of being evicted from control over their own land by male relatives (Sourav, 2015). Thus, in the case of Bangladesh we see the recurrence of themes from the previous country cases. The centrality of the household as a unified entity in legal, policy, and development approaches obscures the individual ownership of land by women. On the other hand, the legal provisions of inheritance are explicitly skewed against women. Thus, the possibilities of owning land through family and the market are both restricted for women.

We now turn to the state-led land redistribution initiatives. The 1984 Land Reforms Ordinance and 1997 Khas Land Settlement Policy promulgate the distribution of 99 year leases to landless families. The land available for redistribution includes confiscated agricultural land, non-agricultural homestead land in urban area, water bodies (only leased to cooperatives), and land reclaimed from sea-level rise and river erosion. It was stipulated that these leases were to be distributed equally in the name of the husband and the wife within each household (Rahman & Manprasert, 2006; Sourav, 2015). Thus, even within these progressive steps, women's right to land ownership is defined within the scope of their relationship to male members of the household. There are further provisions within the initiative to prioritize households such as those that are landless, have lost land to river erosion, or are female-headed by a widow or divorced woman. However, as Sourav (Sourav, 2015) points out, the systems of legal registration are complex and policed by middle-men.

8. Conclusions

On the whole, there is ample evidence of discrimination against women both in inheritance law as well as everyday practices of ownership, control, and access to land. Even in cases where progressive reforms have been implemented (e.g. through joint titles), women's right to land remains fettered to their relationship with male relatives. Gender norms pertaining to marriage, and social beliefs and values derived from patriarchal mindsets pose structural barriers to women's landownership. In the case of South Asia, one of the ways this can be addressed is through the facilitation of collective ownership by women's groups. This can also address the problems of land fragmentation, inelastic land markets, and very little public land being available for redistribution.

In the case of Sub-Saharan Africa in particular, legal pluralism, poor legal infrastructure, low awareness and limited administrative and technical capacity pose challenges to implementing statutory law which in some cases (such as Rwanda) has a strong gender equalizing intention. Common to the remainder of the African countries (Uganda, Kenya, Nigeria and Madagascar) is that patriarchal customary law prevails in practice, with consequences for tenure rights and access to land more generally, property rights within and upon dissolution of marriage and laws of succession.

The first conclusion is that the presence of personal law codes (specific to each religious community in the case of South Asia) and the upholding in practice of customary law in the case of most of the African countries covered by the study, are the key structural barriers to equal inheritance rights and/or land tenure rights for women. However, this is a politically charged issue and cannot be approached from a purely policy-driven perspective. Therefore, we must turn our attention to the other structural barriers, within society and everyday practice. One of the interventions could be to spread awareness about the provisions that are already present within current legal frameworks and encourage people to utilize them. This includes changing opinions and perceptions about the role and rights of married daughters within the natal family and the meaning of marriage as an institution. Another important intervention could be to facilitate the formation of women's collectives, especially among landless and wage-laboring communities, to lease or purchase agricultural land as a group.

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