

Volume 1, Issue 3, November 2017

Economic Equality and Female Marginalisation in the SDGs Era: Reflections on Economic Rights of Women in Africa

Meskerem Geset Techane

Research Articles*

DOI:

10.14658/pupj-phrg-2017-3-2

How to cite:

Techane M.G. (2017) 'Economic Equality and Female Marginalisation in the SDGs Era: Reflections on Economic Rights of Women in Africa', *Peace Human Rights Governance*, 1(3), 333-364.

Article first published online

November 2017

*All research articles published in PHRG undergo a rigorous double-blind review process by at least two independent, anonymous expert reviewers

Economic Equality and Female Marginalisation in the SDGs Era: Reflections on Economic Rights of Women in Africa

*Meskerem Geset Techane**

Abstract

Most women in Africa are subjected to various forms of gender-based discrimination, and remain marginalised in many spheres, including the enjoyment of economic rights. In spite of their active roles in the economic sector, they own or control less of the land, capital or other asset and earn the lowest of the income. Discriminatory laws, cultural and/or religious norms, and traditions that perpetuate their exclusion from access, and control over resources continue to adversely affect their economic status within the family and the society. Across the Continent, constitutions and laws often enshrine the principle of equality and non-discrimination, and further guarantee a range of economic, social and cultural rights for women. However, the gendered dimensions of economic inequality remain vigorous. Weak laws as well as lack of enforcement reinforce discrimination against women, and perpetuate their inequality in the economic sphere. The paper primarily focuses on the larger problem of property rights regimes in the family context that impede women's access to and control over assets in Africa. The discussions are framed from international human rights law perspective, giving a reasonable attention to the Sustainable Development Goals (SDGs). It finds gaps in constitutional protections as well as family and inheritance laws along with discriminatory customary rules and practices that prevail over the dictates of formal laws, perpetuating the marginalisation of women from economic resources.

Keywords: economic rights, property, SDGs, women's rights, discrimination

* Doctoral Researcher, Human Rights Centre, University of Padova, e-mail: meskeremgeset@unipd-centrodirittiumani.it; meskeremgeset@yahoo.com

‘Improving women’s access to and control over economic resources has a positive effect on a range of development goals, including poverty reduction and economic growth’.
(FAO, 2011)

Introduction

Most women in Africa endure chronic economic disadvantages compared to men, leveraging limited access to economic resources and opportunities. They suffer various forms of gender-based discrimination and remain marginalised in many sectors. Discriminatory laws, cultural and/or religious norms and traditions that perpetuate their exclusion from access and control over assets continue to adversely affect their economic status within the family and the society.

Notwithstanding the impressive record of African women in achieving legislative positions¹ and their notably high participation in the economic sector,² they still face formidable challenges in many areas of economic, social, cultural and political life. Whilst their dynamic role as economic drivers,³ they own or control less of the land, capital or other asset and earn the lowest of the income (ADB 2015). Across the Continent, constitutions and laws not only enshrine the principle of equality and non-discrimination, but further guarantee a range of economic rights. However, the gender-differentiated effects of economic equality remain vigorous in the region. Lack of enforcement as well as gaps in existing laws reinforce discrimination against women, and perpetuate their inequality in the economic sphere.

The predominant phenomenon of depriving a woman’s right to inherit or own land and other property is one of the major barriers to the realisation of women’s economic rights in Africa. In many African traditions, matters of land/property use, ownership, and transfer within the family are governed by customary laws that often disbar women and girls from ownership and inheritance. Further, exclusionary laws and practices related to marriage and widowhood essentially deprive women of their equal access to matrimonial property including land, adding to other violations of fundamental rights.

¹ Africa has higher female participation in many legislatures than in other parts of the globe, with Rwanda as number one in the world, and Senegal and South Africa in the top 10; and a number of African countries are rated to rank ahead of some Western countries (15 ranked ahead of UK and France, and 24 ahead of the US) (AUC and UNOHCHR, 2017).

² The recent report *Women’s Rights in Africa* (AUC and UN-OHCHR, 2017) established that women in Africa are more active in the economic sector than anywhere else in the world.

³ According to FAO (2011), women in Africa actually perform the majority of agricultural activities, and in some countries, they even make up over 60 percent of employees engaged in rural labour markets.

Gendered inequalities, gender insensitive family and land laws, and tenure insecurity constitute major sources of feminisation of economic exclusion and poverty on the Continent.

Within the general scope of women's equal access to economic resources and opportunities, the paper primarily focuses on the larger problem of property rights regimes in the family context that impede women's access to and control over assets in Africa. Hence, other important economic rights issues such as employment, access to credit and finance, participation in formal and informal business, and investment are not discussed in the paper. The deliberations on economic disadvantage and gender inequality are framed from a legal (international human rights law) point of view; and a comparative focus is drawn to the possible link between economic rights and the Sustainable Development Goals (SDGs). Adopting a legal analysis approach based on the conceptual framework under international human rights law, the paper mainly reviews laws and research findings relevant to the economic rights of women on the Continent for the purpose of depicting and analysing the underlying issues. Country and legal system diversity, temporal variations of legal frameworks, and available research or information are taken into consideration. Yet, the paper claims no comprehensiveness in the assessment of African laws and practices herein, and admits leaving outstanding issues for future research.

1. Economic Rights, Women, and Sustainable Development

International human rights law has duly recognised the obligation of States to guarantee the enjoyment of women's economic rights equally without any form of discrimination. The equal right of women to the enjoyment of economic rights (all rights for that matter) stands as one of the fundamental principles enshrined in the main international human rights instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) article 3 provides for the equal right of men and women to the enjoyment of the rights under the Covenant.⁴ The African Charter on Human and Peoples' Rights (African Charter) which includes an array of economic rights similarly provides for the principle of equality and freedom from discrimination based on sex in the enjoyment of the rights under the Charter (Article 2). Further, article 18 of the Charter imposes an obligation on states to ensure the elimination of every form of discrimination against

⁴ The Committee on Economic and Social Rights (CESCR), in its *General Comment No.16* CESCR (2005), elaborated the equal rights of women to the enjoyment of all the rights under the ICESCR.

women and ensure the protection of the rights of women. Moreover, women-specific human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination (CEDAW) and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) emphasise on a range of economic rights that shall be equally enjoyed by women.⁵

Nonetheless, women in most parts of Africa continue to face persistent discrimination in economic life (as in other areas of life), perpetuating their poverty and deteriorated economic status. The feminisation of poverty – that women are far more likely to be poor than men – has already been noted in 1995 in the Beijing Declaration and Platform of Action (Beijing Declaration),⁶ and a concern that it still persists has been echoed by the Commission on the Status of Women (CSW) (CSW, 2016). Without refuting the great disparities in women's experience across regions and countries, and based on social and economic status, age, ethnic origin, and other factors, their vulnerability to poverty remains to be a crosscutting issue in women's life (UNWGEDA 2014). Despite women's active role in, and positive contribution to, the economic sector, the 'systematic discrimination' they face in controlling assets and in several other socio-economic fields has rendered them poor and vulnerable (UNWOMEN 2014); thus creating a huge gender gap in economic equality.

In general terms, economic inequality is labeled to be 'the most pressing human rights and development issue of the 21st century' (Whiteman 2014, 95). In tandem with gender inequality, it was identified among Africa's sustainable development issues (UNECA 2015). Correspondingly, the global development agenda – Agenda 2030 (the SDGs framework) – has given due attention to reducing economic inequalities.⁷ Arguably, international human rights law has also provided protection from economic disadvantage that causes inequality. Many of the rights contained in the international human rights framework – the range of economic rights and the rights to equality and non-discrimination – are instrumental in protecting people from economic exclusion or inequality (Whiteman, 2014). It may logically follow that, secure economic rights are important to address economic disadvantage that fuels economic inequality among people in general and among men and women as well.

Economic rights recognised under the relevant international and regional instruments include the right to property of any kind. The equal access to

⁵ See Articles 10-16 of CEDAW and Articles 12-24 of the Maputo Protocol.

⁶ Some estimates assert that women make around two-third of the world's poor (UNDP 2009).

⁷ See SDGs Goal 10.

and acquisition of assets through their labor or inheritance is important to improve women's economic power. Cooper (2012,642) asserts that 'owning assets may give women additional bargaining power not just in the household, but also in their communities and other public arenas, which encourages the perpetuation of their social, economic and political empowerment'. Secure rights over resources, including, land, housing, and other property are essential to women's equality and well-being, and to their economic independence and autonomy (UNWGEDAW 2014; CSW 1998). The World Bank also noted that 'security of property rights is central to preserving livelihoods' and reducing poverty (World Bank 2011, 1 and 2001). Several international and regional instruments including the CEDAW and the Maputo Protocol have specific provisions for the protection, respect, and promotion of women's property rights.⁸

In the African context, where most of the livelihood is based on subsistence agriculture,⁹ the importance of land rights for women as an intrinsic component of their property rights cannot be overstated. Women's land ownership (right to land) constitutes a critical factor in social status (AWRO 2012) and 'leads to improvements in their welfare, productivity, equality and empowerment' (Cooper 2012, 642). Both the CEDAW (Article 14) and the Maputo Protocol (Article 15) stress the importance for women to have equal access to land, including equal tenure rights.¹⁰ The enjoyment of the right to land is instrumental not only to economic power, but equally to the enjoyment of other rights. The realisation of the right to food, for example, is highly dependent on the right of access to and control over land, among other resources.¹¹ Ensuring the right to an adequate standard of living which includes the right to adequate housing and adequate food '...requires that women have a right to own, use, or otherwise control housing, land, and property on an equal basis...' (CESCR 2005, 28). In the same vein, the CESCR (2005, 27) elaborated that protection of the family requires ensuring '... women have equal rights to marital property and inheritance...'. Women's right to sustainable economic development, as recognised under the Maputo

⁸ The Solemn Declaration on Gender Equality in Africa (2004) emphasises on guaranteeing women's rights to land, housing, property and inheritance (See section 7). The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2010) also recognises the principle of gender equality and women's equal rights to property and land (see para. 55 (viii)).

⁹ See FAO (2011).

¹⁰ It is important to note that the African Commission (2013) as well as the CEDAW Committee (2016) have further elaborated on women's land rights.

¹¹ The UN Special Rapporteur on the Right to Food emphasised on the close link between access to land and tenure security, and the enjoyment of the right to food (UNGA 2010).

Protocol (Article 19), is also inevitably tied to access to productive resources such as land.

The significance of women's economic empowerment through economic rights, in particular, property rights, has already gained resonance in the international development agenda. The 2030 Agenda for sustainable development (the SDGs) provides a progressive framework for closing the gender gap in economic equality.¹² It bestowed due attention to the economic empowerment of women both from poverty reduction as well as equality perspectives by directly addressing women's secure property rights through specific goals and targets.¹³ The 'gender equality goal' (Goal 5) calls for states to '*undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources*' [emphasis added]. Likewise, the 'poverty reduction goal' (Goal 1) has, in a more or less the same wording, entrenched women's equal access to economic resources at the center of the agenda.¹⁴ The Agenda 2063 for Africa¹⁵ also aspires to achieve women's empowerment and gender equality in all spheres of life for the growth and transformation of the Continent (paragraph 49). More precisely, it targets at ensuring equal economic rights of women through access to productive assets and secure property rights (paragraph 50).¹⁶ Bearing in mind the significant proportion and particular context of rural women in the Continent, the Agenda notably dedicated emphasis to this group of women. What is more, under the SDGs framework (Goal 16), states are urged to put in place sound policies and enforceable legislation in order to ensure the achievement of the targets under the Agenda. This

¹² The Millennium Development Goals (MDGs) did not explicitly address women's land and property rights. Goal 3 which aims to *promote gender equality and empower women* and Goal 1 which seeks to *eradicate extreme poverty and hunger* incorporated no specific target in relation to these rights.

¹³ It must be noted that gender equality is anchored in this global development agenda as a standalone as well as a crosscutting issue throughout the framework. This echoes the consensus that gender equality is not simply important, rather 'key to achieving inclusive growth and resilient societies' (Hallward-Driemeier and Hasan 2012, 5).

¹⁴ Goal 1 (1.4) reads '*ensure that all men and women have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, new technology and financial services*' [emphasis added]. Goal 2 also accentuates women's secure and equal access to land and other productive sources for achieving food security.

¹⁵ A strategic framework of the African Union outlining Africa's long-term vision for the socio-economic transformation of the Continent (African Union 2015).

¹⁶ Paragraph 50 reads: '*The African woman will be fully empowered in all spheres, with equal social, political and economic rights, including the rights to own and inherit property, sign contracts, register and manage businesses. Rural women will have access to productive assets: land, credit, inputs and financial services.*' [emphasis added].

commitment corresponds to states' obligations under human rights treaties 'to take appropriate steps' towards the realisation of economic rights as well as women's rights.¹⁷ Clearly, both the 2030 Agenda and the 2063 Agenda agree that enhancing women's rights to land and other property engender broader socio-economic and development gains. Duly acknowledging the vital role women play as agents of development, the CSW also reiterated the fact that women's equal economic rights and economic empowerment remain essential to the achievement of the global development agenda (CSW 2016).¹⁸ Accentuating the benefits to be accrued through improved women's property rights, Gomez and Tran (2012, 2) affirmed that:

These rights... go hand in hand with many sustainable human development goals, including women's social and economic empowerment, poverty eradication, food security, and sustainable agriculture. The gains to be made would lift up women, first and foremost, as well as entire families, communities and societies.

Nonetheless, discriminatory legislation or policy, and/or ineffective implementation of good laws result in the negation of women's rights to economic resources, and the impending development gains as will be highlighted in the forthcoming discussions.

2. Patterns of Discrimination in *De Jure* Economic Rights

De jure rights, though not an end on their own, are very important starting points as they can provide an opportunity to use the law to challenge discriminatory behaviors and practices. Without a doubt, Constitution is an important source of *de jure* rights for women. Beyond and below that, the areas of law that govern the roles and relationships within families and society play a defining part in women's economic rights. These areas include family and inheritance laws, among others, which are expected to be fashioned by the principles in the constitution and international treaties ratified by the state.

2.1. Constitutions

Constitutionally entrenched non-discrimination and gender equality provisions serve as important guarantees for women's economic rights.

¹⁷ See ICESCR (Article 2); CEDAW (Article 2), CRC (Article 2), African Charter (Article 1), African Charter on the Rights of the Child (Article 1) and the Maputo Protocol (Article 2).

¹⁸ Emphasis is given to the need for legislative and other measures towards achieving the equal rights of women and girls to access economic and productive resources, including land and natural resources, property and inheritance rights, among others (paragraph 10).

As constitutions provide the guiding principles for the legal system, the extent to which they provide for non-discrimination based on gender/sex is crucial. Even more, enshrining the principle of gender equality institutes a much stronger standard; going beyond banning discrimination, it provides grounds for positive action to address gender equality (Hallward-Driemeier and Hasan, 2012). Being the supreme law in most legal systems, a constitution serves as a solid standard against which the validity of other laws can be measured.

All most all African constitutions have incorporated non-discrimination based on sex and/or equality before the law as a general principle. With few exceptions, many African constitutions also contain a specific gender equality clause.¹⁹ Notwithstanding, it must be noted that such clauses do not necessarily guarantee that all domestic laws are in compliance with the constitution. Several cases are noted where statutes in force contradict constitutional provisions.²⁰ Even worse, constitutions make an exception for the application of customary or religious law which may not adhere to the principles of non-discrimination and gender equality. It's true that '[s]trengthening the constitution is an important first step...' but it must be duly recognised that warranting its primacy over statutes remains to be most '...critical to give it force...' (Hallward-Driemeier and Hasan 2012, 46).

With respect to equal property rights, it is observed that, in spite of almost 80 percent of African constitutions provide general protection to property rights for all, only a few countries explicitly provide for women's right to *own* property (Hallward-Driemeier and Hasan 2012). A minority group of countries (such as Ethiopia, Guinea-Bissau, Kenya, Liberia, Malawi, Senegal, Swaziland, and Zimbabwe) have constitutional provisions wherein women's equal rights to property are specifically mentioned. More so, a handful of African constitutions expressly guarantee women's equal right to land. Even though gender/sex neutral constitutional guarantees apply for all people, not rarely that they are implemented differently to men and women. Hence, explicit provisions setting out women's rights to property, including land, are very important legal guarantees a gender-sensitive constitution should provide. Nonetheless, such provisions are missing in many African constitutions.

¹⁹ See Figure 2.3 and discussion in Hallward-Driemeier and Hasan (2012, 47-48). For example, the constitutions of Botswana, Cape Verde, Ghana, Liberia and Mauritius, do not have a gender equality clause.

²⁰ For example, family laws in Cameroon and Sierra Leone statutes in entitle men to administer matrimonial property without the consent of their wives; statutes in Sierra Leone and Swaziland recognise women as legal minors.

2.2. *Inheritance*

Inheritance is one of the major channels that link women and assets, providing the opportunity to access, acquire, control, and transfer property. Gomez and Tran (2012, 6) asserted that ‘property inheritance is fundamental to how wealth is transferred within a society, it directly relates to the protection of a woman’s economic livelihood and long-term security’. On the other hand, inheritance poses among the principal sources of women’s marginalisation from land rights mostly perpetuated by patriarchal customary laws and practices. More so, it constitutes the primary ground based on which women undergo the ugliest forms of property disputes.²¹ The multifaceted problems arising out of inheritance can have a detrimental effect on family and community, but more particularly on women. Cooper (2012, 643) stressed that inheritance is a complex matter:

[It] evokes some of the most sensitive political-economy questions in many sub-Saharan African societies, including the status of women, land ownership and control, and the social legitimacy and capacity of statutory and customary systems of governance.

Many women in Africa encounter discrimination in inheritance by law and/or practice, depriving them of their heirship based on their status as a female child, a widow, a childless wife, or even a married woman. Inheritance laws may impose differential treatment on the basis of gender/sex. In some jurisdictions, a female child does not have the same right to inherit as a male child. Similarly, in some legal systems, a widow may have only user rights over her deceased husband’s immovable property which may even end if she remarries, whereas a widower may have full rights of ownership over property left by his deceased wife (Hallward-Driemeier and Hasan 2012; Cooper 2012). Other discriminatory regimes include the exclusion of mothers from inheriting the estate of their deceased sons—the property of an intestate who dies without a spouse or a child passes first to the father, and it may only devolve to the mother if the father is not alive.²²

African states have recognised the equal right of women to inheritance by virtue of signing international and regional human rights instruments that

²¹ Various studies recounted inheritance disputes between close family members such as sons and mothers, siblings, widows and in-laws, co-wives, etc. (See studies referred in Cooper (2012, 643)). Also, looking at a specific example, a study in Rwanda’s Bugesera district, part of the country with the highest number women’s land disputes, found that the most common cause of disagreement was women trying to enforce their right to inherit land and that majority of the disputants were their male relatives and spouses (Rwanda Women Network, 2010).

²² See for example, the Succession Act of Kenya (1981) Section 39 (1).

guarantee the right (even if not all have it in their Constitution). However, the same commitment may not have necessarily been infused into the domestic legal system in all these countries. The problem is, either the customary laws or other formal laws in force have provisions that contradict standards enshrined under international human rights law. For example, in Botswana, Cameroon, Nigeria, and Swaziland, some of the laws (often customary laws) deny women/girls equal inheritance right over their deceased parents' estate as opposed to unfettered rights enjoyed by their male counterparts in the family.

Customary rules were supposed to be applicable only if they were not contrary to constitutional principles and international standards. In practice, however, we find cases where customary law was applied whilst contradictory to these tenets and statutory laws. In Cameroon for example, contrary to, not only the commitment under international law, but most importantly, the constitutional principle of non-discrimination between the sexes, courts often enforce customary laws that uphold discriminatory rules, prohibiting women from inheriting either from parents or from deceased husband.²³ For instance, in the *Florence Zamcho* case, after the High Court of Mezam had granted Florence Letters of Administration over the deceased father's estate, the Court of Appeal reversed the decision of the High Court on grounds that as a married daughter, Florence could not inherit property from the father's estate. The approach followed by the courts, hence, promoting and intensifying sex discrimination on the basis of customary law. There are similar cases from different African courts that uphold discriminatory rules of customary law favouring men over women in the face of clear contradiction with their respective constitutions.²⁴

The other side of the problem is that, in some countries, though women's equal right to inheritance is expressly guaranteed under the domestic legal system, it may not always cover inheritance of land. It is not rare to find inheritance laws that exclude land from being passed on to women by deferring to customary law in respect to land (mostly family land) related issues. Such a problematic normative framework is best described as 'a double-edged sword which somewhat serves women by providing inheritance rights, but denying them inheritance rights equal to those of men' (FIDA-Kenya and IWHRC 2008, 20). In Kenya, for instance, despite a progressive Constitution in terms of women's rights and also land rights, the Law of Succession Act (1981), upholds discriminatory provisions when it comes to inheritance of

²³ According to Section 27(1) of the Southern Cameroon High Court Law (1955) customary laws can be applied only if they are not contrary to any written law or statute.

²⁴ See for example, the Zimbabwean case of *Magaya v. Magaya*.

lineage land.²⁵ Intestate succession laws in some countries, such as Ghana, Uganda, and Zambia, exclude family land, or customary land from property women can inherit. Instead, the land follows customary rules of inheritance, usually going to a male heir. Coupled with this, some land laws and policies also assign family land to customary land administration. Tanzania's National Land Policy (199), for instance, defers inheritance of clan or family land to be governed by custom. Considering a significant percentage of land in several African countries is assigned as customary land,²⁶ this exclusion represents a major impediment for most women in Africa to have access to land (Hallward-Driemeier and Hasan 2012). The CEDAW Committee, duly concerned, highlighted the issue of such discriminatory inheritance laws in its recommendation to African governments on several occasions.²⁷

Even more, this has far greater impact on widows. Most widows in several African societies remain vulnerable to property 'grabbing' by virtue of, their temporary status on the family land. Described perfectly in the words of the Government of Kenya (CEDAW 2007, 81)²⁸ '[u]nder the customary law ... a woman cannot inherit land, and must live on the land as a guest of male relatives by blood or marriage'. It's daunting to note the many accounts of widows being routinely evicted from their marital house or land in the aftermath of their widowhood, leading them to destitution, homelessness, and loss of livelihood.²⁹

2.3. *Matrimonial Property*

Family law is an important area of the domestic legal regime relevant to women's economic rights, in particular matrimonial property. It's central in defining who can control or own, or transfer assets, which has a greater implication on women's economic capacity and decision making in marriage. More so, it appears to be the area of law that allows wider distinction between men and women based on both gender and marital status. It's argued that 'family law, rather than business law, is generally the area in which women's economic rights differ most from men's' by virtue of overlapping

²⁵ For example, it provides that agricultural lands within designated areas are governed by customary law and hence are excluded from being distributed according to the Law of Succession Act (See Section 32).

²⁶ According to UNECA (2003) the percentage can go as high as 60 percent in Swaziland, 72 percent in Malawi, 80 percent in Mozambique, and 81 percent in Zambia.

²⁷ See eg. CEDAW (2002 and 2010) with respect to Uganda, and CEDAW (2007) CEDAW (2015) with respect to Kenya and The Gambia respectively.

²⁸ A similar assertion was made by the Government in its Initial Report Submitted to the CESCR.

²⁹ In *Women 2000* one notes painful experiences of widows from developing countries.

discriminatory provisions applying to women as married women, rather than just as women (Hallward-Driemeier and Hasan 2012, 27).

Management of Matrimonial Property

Marriage changes the power balance for women in economic rights as well as other aspects of their lives. It is argued that marriage often weakens women's legal capacity and the strength of their property rights (CEDAW Committee 2009). Though human rights standards have established the equality of women in marriage, and that marriage should not be a basis for discrimination and insecure rights for women,³⁰ they lose their rights due to marital status.

One of the major challenges for African women in the context of marriage is the head-of-household law that gives husbands rights to control matrimonial property as well as wives' property or economic activities. This is a typical legal regime that diminishes women's economic status and decision making in marriage by 'conferring legal capacities and responsibilities on husbands and removing them from wives' (Hallward-Driemeier and Hasan 2012, 41). The irony is that constitutionally entrenched gender equality provisions do not necessarily ensure a family law provision for equality of spouses, and neither lower the gap in women's economic rights within marriage. Empirical evidence shows that more than one-third of the African countries with head-of-household statutes also have a gender equality constitutional principle.³¹ Countries such as Burundi, Democratic Republic of Congo, Guinea, Mali, Sudan and Tanzania still have family codes that discriminate against women in marriage related affairs (AUC and UNOHCHR 2017). Even in the cases where family law or other formal law does not discriminate, administrative procedures commonly foil women's effective control over land. For example, in Nigeria, although the Land Use Act does not exclude wives' land ownership, land titles allow space only for a husband's name to appear; thus 'putting women's claims on land on unequal footing with men's' (USAID 2010).

Women in Cohabiting Unions

Property rights regimes in Africa can be unfavorable to those in cohabiting unions. The statutory laws of some African countries such as Ghana, Kenya, Rwanda, Liberia, and Uganda do not protect the rights of women in cohabiting unions to a common property (Cooper 2012). This leaves cohabiting women

³⁰ The UN Human Rights Committee UNHRC (2000,19) also unequivocally asserted that '[t]he capacity of women to own property ... may not be restricted on the basis of marital status or any other discriminatory ground'.

³¹ See Figure 2.3 & 2.13 Hallward-Driemeier, and Hasan (2012) 48 & 63.

in a difficult scenario upon the death of their partner, lacking a position to claim the common house and other properties of the couple without regard to their contribution to the acquisition of the asset. This is a pressing problem in the African context where many customary marriages are unregistered, and consequently, many women might end up as cohabiting partners for the purpose of the law in the event they fail to prove marriage. The agony is not the mere loss of marital title, but the demise of rights attached to a marriage recognised by law. Noticeably, women whose marriages lack formal recognition 'have typically more tenuous rights to land' (Gomez and Tran 2012,5). For example, a closer look at Zimbabwe and South Africa whose legal systems struggle with a large number of unregistered marriages alludes the associated negative implications for property entitlements of women in such unions (Human Rights Watch 2017). Even though some courts have recognised cohabiting spouses' entitlements to their shared property, the overall judicial practice has not been consistent.³²

Wives in Polygamous Unions

Some African societies allow polygamous marriage and in some cultures, it is predominantly practiced. In most cases, women in polygamous unions have difficulties ascertaining their property rights (FIDA-Kenya and IWHRC 2008; Human Rights Watch 2017) and remain vulnerable to insecure land rights (Giovarelli et al. 2013; Doss et al. 2011). The Maputo Protocol (Article 16) provides that the rights of women in polygamous marriages should be protected. Though the Protocol does not necessarily encourage or approve polygamy, is congruent of the existing practice in African societies and the practical problems women face in this type of marital union.

Though formal laws in such countries give room for the recognition of religious and customary marriage, including polygamy, they do not provide details for administering the vying rights of wives. As a result, polygamy often leaves the wives in a much worse situation during, and even messier after, the marriage. It gets problematic while 'multiple widows competing against each other and their husband's family for property, a larger and more complicated fight can commence for a smaller share of the property' (Human Rights Watch 2017, 17). Even in countries that have detailed provisions on polygamy, such as Kenya, there might still be gaps that are left unaddressed. Under Kenyan law spousal consent requirement for disposing of matrimonial property seems to be mandatory only in case of monogamy.³³

³² For example, there are certain cases in which the courts in Kenya, Ghana and Uganda have recognised the rights of women in such unions (See Cooper 2012, 645- 647).

³³ The Matrimonial Property Act of Kenya (2013) Section 12(1) provides 'Matrimonial property cannot be sold, leased or mortgaged during a *monogamous marriage* without the consent of

It is evidently shoddier in legal systems where polygamy is not recognised while the practice persists. Burundi and Mozambique, for example, do not recognise polygamous marriages; in such a case the first wife alone would be entitled to inherit the land, leaving the fate of the subsequent wives to be determined by clan elders (Giovarelli et al. 2013). This, according to Doss et al. (2011), has intensified female poverty and household food insecurity.

Termination of Marriage and Division of Property

The effects of marriage on women's economic rights are not restricted to the duration of the marriage; and might continue even after termination of marriage either upon divorce or the death of a spouse.

The right of women over matrimonial property upon termination of marriage depends on the property regime adopted by the particular family law. Some legal systems such as Ethiopia and South Africa provide for a *default regime* (community of property regime), where equal contribution and hence equal entitlement is presumed by the law.³⁴ Some other countries such as Kenya and Zimbabwe³⁵ provide for a *contribution-based regime* where each spouse is entitled according to the proportion of contribution to the family estate. The requirement of proving contribution to marital property often complicates women's claim over property. A default community of property regime is normally advantageous to protect women's property rights; it 'offers women a better chance of maintaining their property rights on dissolution of marriage ...because it entitles them to a portion, generally half, of the property without having to make proof of contribution' (Hallward-Driemeier and Hasan 2012). This is important given the fact that a significant majority of women in Africa contribute to marital property through unpaid activities, mostly household chores and subsistence agriculture.³⁶

It must also be noted that, despite the property regime in the family law, in some countries, as already discussed above, family land is exempted from division. This is a typical case where customary land governance excludes family land from matrimonial property that can be shared upon termination of marriage.

both spouses' [emphasis added]. The explicit reference to monogamous marriage should be noted.

³⁴ See The Revised Family Law of the Federal Democratic Republic of Ethiopia (2000) and the Matrimonial Property Act of South Africa (1984).

³⁵ The Married Persons Property Act (1928) (sec. 2(1)) states that marriages in Zimbabwe are not automatically community property institutions and no presumption that property in the marriage is jointly owned and inheritable by either spouse. See also Matrimonial Act of Kenya (2013) Sec 2.

³⁶ See FAO (2011).

3. Closing Gender Gap in Economic Rights: Positive Trends in Law Reform

There are some promising trends in Africa towards gender equality and women's empowerment. It is encouraging that '*...there is a momentum towards gender equality on the continent ...*' (AUC and UNOHCHR 2017, 54). According to the Global Gender Gap Index (2016),³⁷ Rwanda is ranking among the top five in the globe, crossing the threshold of closing 80 percent of its gender gap. The overall regional picture, however, is far from complacency as the majority of African countries are remotely behind in the rank.

Constitutional as well legislative reforms have taken place that are hoped to add positive impact to the ongoing efforts towards achieving equal economic rights for women. The wave of legal reform has become apparent with several African countries having amended their laws to incorporate the equal rights of women or having abolished laws that discriminate against women on the basis of sex. Such reforms in formal law are important steps since the absence of legal safeguards means that an important avenue for redress is closed (Hallward-Driemeier and Hasan 2012).

3.1. Empowering Women through Constitutions

Looking at African constitutions adopted or revised in recent years, for example, Sierra Leone amended a discriminatory provision from the constitution that allow gender discrimination based on custom.³⁸ Guinea's latest constitution (2010) introduced a provision for equality between men and women (Article 5). Though this is more of a general provision, it is applicable to all areas including economic rights, and it is important to have a constitutional guarantee of gender equality. On the other hand, the 2013 Constitution of Zimbabwe (Section 17(1) (c)) provides that 'the State and all institutions and agencies of government at every level must take practical measures to ensure that women have access to resources, including land, on the basis of equality with men'. Similarly, the Constitution of Kenya (2010) and that of Zambia (2015) also brought a push towards the protection of women's equal rights in inheritance, land, and family.

Though ensuring the consistency of statutes as well as guaranteeing *de facto* equality requires more, such constitutional safeguards constitute a

³⁷ The index has economic participation and opportunity, political empowerment, educational attainment, and health and survival indicators (see World Economic Forum (2016).

³⁸ Under section 27(4), the prohibition on discrimination is exempted with respect to adoption, marriage, divorce, burial, devolution of property on death, or other personal law issues (2001 Act).

critical starting point. As discussed in the preceding section, the constitution has an important role as a supreme law embodying highest standards. No doubt that ‘constitutional entrenchment is an important step toward ensuring that states eliminate gender-based discrimination and affirmatively advance women’s rights’ (UNWomen 2012). Explicit provisions that extend non-discrimination guarantees to all personal and family matters, and that ensure: non-discrimination based on marital status, gender equality in property ownership; and equal right to inherit all types of property, are indispensable.

3.2. Empowering Women through Land Title

Africa has witnessed a wave of land reform as initiatives have taken place or have commenced in several countries (such as Ghana, Kenya, Liberia, Malawi, Tanzania, Uganda and Zambia, among others). It is important that such land reforms seek to ensure the equal rights of women over land.

Land titling in Ethiopia has impacted positively the proportion of women who have directly enforceable rights over land (Barne 2010, Deininger et al. 2008). Reportedly, the land-certification program introduced by the government in 2008 has transformed the lives of millions of Ethiopian women by lifting their economic and social status. Women benefited from mandatory joint titling when the land certificate made space for two people instead of only one, allowing a husband and wife to register joint ownership. The program privileged both women and men, but was notably significant for women, marking the first time that they have acquired legal title over land (Barne 2010). A key AU report (AUC and UNOHCHR 2017) estimated that 60 percent of Ethiopian rural women own land which represents a substantial progress. Barne (2010, 7) commends:

The most important byproduct of the program has been women’s empowerment. There are significant changes in women’s roles and relationships. Previously women couldn’t own economic property like land so that really put them in a very weak position in society.

Certainly, the Ethiopian experience can pour relevant lessons to land reforms across the Continent. In 2013, Rwanda adopted a law for the protection of women’s equal rights on land access, ownership, and utilisation. The Land Law of 2005 was modified in 2013 (Law Governing Land of 2013) to ensure that women are guaranteed equal rights with men regarding access, use, and ownership of land and inheritance. The law provided a room for aligning customary titling as well. Moreover, the recognition of women as direct beneficiaries of land irrespective of their marital status is very crucial. It is

important to note at this point that Ethiopia and Eritrea grant land allocations to both women and men irrespective of marital status (Knox et al. 2006).

3.3. Empowering Women through Family Law

Progressive family laws upholding women's rights in relation to marriage are key to securing women's economic entitlements during and after the union.

Kenya's Matrimonial Property Act of 2013 is a step forward in the Continent when it comes to equal property rights of women in marriage. Beyond recognising the equal rights of spouses over matrimonial property, the Act defines 'contribution' to comprise monetary and non-monetary forms of contribution, the later 'including domestic work and management of the matrimonial home, child care, companionship, management of family business or property, farm work' (Section 7). This Act replaces the Married Women's Property Act of 1882 that governed matrimonial matters in Kenya which was discriminatory to women. By taking into account non-monetary contribution, it has done away with the infamous Court of Appeal decision in the *Echaria v Echaria*, wherein it was held that non-monetary contribution in kind did not count and that a wife had to prove direct financial contribution to the purchase of property. By virtue of this, Kenyan women's, in particular, non-salaried or home-stay wives', access to matrimonial property had been harshly quelled in the absence of proving actual financial contribution in respect to property registered solely in the name of the husband (FIDA-Kenya and IWHRC 2009).

The recent Matrimonial Law of Rwanda (2016) also marks important recognition for women's equal right to succeed. The new law gives equal succession rights of spouses including in cases where a person without children dies. Further, Article 28 prohibits parents from discriminating against either their sons or daughters in transferring property to them, while Article 54 provides that girls and boys have equal succession rights. Rwanda makes a good example in safeguarding women's inheritance rights including land both in its Constitution and subordinate legislation.

It's worth noting that South Africa's Recognition of Customary Marriages Act (2000) introduced novel system that allows the registration of marriages after the death of a spouse. The law was, undoubtedly, adopted to address the country's challenge with unregistered customary marriages³⁹ which in effect facilitated property grabbing from women due to difficulties of

³⁹ The Country struggles with unregistered marriages (HRW 2017) as is the case in several other African countries.

proving a marriage after the death of their husband. It also complies with the international standards require that all marriages must be registered,⁴⁰ and offers a model for many African countries still grappling with a considerable proportion of unregistered marriages.

3.4. Empowering Women through Secular Legislation

The introduction of neutral and prevailing civil laws that offset discriminatory provisions of religious laws remains instrumental to enforce the equality of women and girls in family and inheritance affairs. In Tunisia, legal reforms that counteract religious law in force have been introduced in cases where a deceased leaves no sons. The Personal Status Code (Amendment 1956) designates the paternal daughters and granddaughters as first rank heirs to succeed their father's total estate before all other eligible heirs. This is in lieu of the dictates of Sharia law for distribution of the estate to the paternal family (deceased's brothers and paternal uncles) in the absence of a male descendant. Under this legal framework the surviving spouse ranks first, followed by daughters and granddaughters in this precise order; and the estate of a deceased daughter goes to her children, rather than her surviving father (Knox et al. 2006). This law recognised the equal rights of female and male children as rightful heirs of their deceased father's estate. Besides, it also introduced the equal rights of women to pass property to their children in the event of their death. Such legislations governing personal matters, including marriage and its dissolution, inheritance, children, etc. that supersede discriminatory religious rules can go a long way for women to exercise their property rights on equal footing with men.

3.5. Empowering Women through Active Judicial Law-making

Courts can play a pivotal role through progressive judicial precedents. This is of particular relevance to countries with common law legal system owing to the significance judicial precedents have.

The Botswana High Court, in the case of *Mmusi and Others v Ramantele and Others*, rejected the tradition that entitles males as sole heirs and validated the equal right of women to inheritance in the country. The customary inheritance law was dubbed discriminatory towards women and hence was declared ruled unconstitutional. Highlighted by many as a ground-breaking case, it was hailed to mark 'a significant step forward for women's rights not only in Botswana but in the southern Africa region,

⁴⁰ See CEDAW Art 16(2) & Maputo Protocol Art 6.

where many countries are addressing similar discriminatory laws' (Human Rights Watch 2017, 19 quoting from Richard (2012)). In *Mojekwu v. Mojekwu*, the Nigerian Court of Appeal similarly held that (the Nnewi) custom of prohibiting the inheritance rights of females conferring inheritance to the eldest male in the family was discriminatory and unconstitutional. A comparative judicial precedent comes from the South African case of the *Bhev Magistrate Khayelitsha*, wherein the Constitutional Court ruled that an exclusively patrilineal property inheritance was inconsistent to the constitutional principle of non-discrimination based on sex, upholding the equal inheritance right of daughters. While addressing the specific issues at hand in relation to male lineage inheritance, these decisions discussed more broadly to gender equality and women's equal inheritance. On the other hand, the Constitutional Court of Uganda has declared the discriminatory provisions of the Uganda Succession Act (1978) unconstitutional, which took away the enforcement of the law in certain areas mainly concerning widows.⁴¹ The relevance of this body of jurisprudence to other countries in the respective sub-regions and on the Continent at large is manifest.

4. Key Challenges and Some Implications for the SDGs

4.1. Plural Legal Systems

The recognition of customary, religious and formal law as sources of law can pose a complex legal regime. The interplay between plural sources of law and the consequent challenges of compound legal systems can bring far-reaching implications for women. Multiple legal systems with various (often inconsistent) customary and religious rules on family and personal status may facilitate the basis for discrimination against women in law. Even though the rationale behind the adoption of plural legal systems is basically to accommodate cultural diversity (right to culture), their application can be detrimental to women (AUC and UNOHCHR 2017), and even more, can complicate the analysis of women's legal rights (Cooper 2012; Hallward-Driemeier and Hasan 2012; UNWGDW 2015).

The entrenchment of the principle of non-discrimination based on gender in the legal system being of particular importance to women, its application might be compromised by the recognition of inconsistent customary or religious laws. Many African countries have multiple sources of law where [c]ustomary... law, religious law, or both are recognized as formal –and often

⁴¹ See Asiimwe and Crankshaw (2011).

equal— sources of law...’ (Hallward-Driemeier and Hasan 2012, 50). Empirical data shows that a little less than half of Sub-Saharan African constitutions formally recognise customary law as a source of law, and a third officially recognise religious law as well; whereas the rest do so implicitly in statutes, particularly with respect to marriage or inheritance (Hallward-Driemeier and Hasan 2012). Though it may not hold true to claim that customary law is inherently discriminatory, it does not necessarily enshrine non-discrimination based on gender as one of its core values. What is worse, its application is mostly exempted from the principle of non-discrimination — many African constitutions explicitly emancipate customary law from the bounds of non-discrimination.⁴² Given the majority of countries in the region defer to customary law with respect to issues of marriage, property, and inheritance, Hallward-Driemeier and Hasan (2012, 52) rightly asserted that ‘such exemption strikes at the heart of [African] women’s ability to control assets and pursue economic opportunities’. This constitutes a flagrant obstacle to the operationalisation of the grand vision for economic empowerment of women as entrenched in the 2030 Agenda (SDGs Goals 1 and 5).

In principle, customary law should be interpreted in light of fundamental constitutional principles and international women’s rights instruments. However, the contrary has been adhered to by judicial practice in several countries where courts have adopted interpretations of customary law that stand against constitutional principles. In the famous Botswanan case of *Mmusi*, the judge called this practice ‘the most glaring betrayal’ of the Constitution to interpret customary law as an acceptable justification for discriminating against women.⁴³ Without disregarding the fact that customary laws are not devoid of a potential to advance women’s equality, practices show that they are conventionally applied to the disadvantage of women (Human Rights Watch 2017). The obligation to ensure non-discrimination — direct and immediate — States are required, under international human rights law, to respect, protect and realise women’s right to equality in the family, regardless of the source of family law (UNWGDAW 2015).

4.2. Traditional Practices

Outside the dictates of the law, discriminatory cultural attitudes and practices at the institutional and community level stand to the detriment

⁴² Among constitutions that recognise customary law, a third exempt it from the non-discrimination provision; and almost half of those that formally recognise religious laws do not limit it from potentially discriminating on the basis of gender (See Figure 2.7 & 2.8 in Hallward-Driemeier and Hasan 2012, 54 & 56).

⁴³ See *Mmusi and Others V Ramantele and Others*, para 20.

of women (AUC and UNOHCHR 2017). The use of religion and/or culture to justify harmful and violent practices that hamper women from full enjoyment of their economic rights are apparent in some communities. The intent here is not to blatantly condemn traditional practices; rather to highlight harmful or negative traditional practices⁴⁴ that have an adverse impact on the economic status of women. It goes without saying that not all African traditional or cultural practices are bad; and the value of ‘positive African cultures’ as emphasised under the African Charter shall not be undermined.⁴⁵

Widowhood related practices in some African traditions weaken the social position of women and lead to their economic oppression. Sossou (2002) recounts the dominant widowhood related practices in many West African countries such as Ghana, Nigeria, Ivory Coast, etc. that are prejudicial to women’s *de jure* and *de facto* rights. Studies show that other parts of the Continent are not also immune to such practice.⁴⁶ Describing the misery of widows in Nigeria, Olowokere et al. (2015, 8) stated:

... every movable items are often transported homewards by the in-laws, leaving the poor widow empty handed. ... denying her access to their property including their residence where both couples lived with their children. Thus, rendering the widow with children homeless at the demise of their husband and father.

Some widows are even more vulnerable due to their social and other personal status. In some societies, a childless widow, or a widow without a son may run the risk of particular marginalisation under customary law from retaining land she shared with her husband. The same applies to older widows. As noted by the CEDAW Committee (2010, 3) further ‘widowhood further exacerbates discrimination’, intersecting with age and gender discrimination. On a personal level, a woman of ‘bad character’ who is liable to certain accusations, such as being sexually promiscuous, drinking alcohol or behaving rude towards in-laws, might face hardships to exercise her rights over marital property (Cooper 2012, 649). Some widows are vulnerable to witchcraft accusations and consequently to witch hunting attacks—most frequently attacked have been elderly and lower-class women, according to Federici (2010).

‘Widow inheritance’ through which a widow might be ‘inherited’ by a male relative of her deceased spouse to become his wife together with

⁴⁴ See Maputo Protocol Article 1 for definition of harmful traditional practices.

⁴⁵ See preamble.

⁴⁶ See for example, Human Rights Watch (2017) on Zimbabwe; FIDA-Kenya and IWHRC (2008) on Kenya; International Justice Mission (2014) on Uganda.

the property from her husband's estate is another customary practice that has rendered widows vulnerable. This custom is said to have its roots in serving as a protection scheme for widows and their children by ensuring their maintenance and survival upon the death of the family provider (FIDA-Kenya IWHRC 2008), which has also equally served to keep land and other property within the deceased husband's family (Cooper 2012). This goes back to the fact that women are devoid of their inheritance rights, particularly in a patrilineal inheritance regime that practice decent exclusively through males. In the event that a widow is not willing to be 'inherited', she is likely set to lose access to the matrimonial property, be it land or house.

In one way or another, due to traditional beliefs or attitudes, widows suffer the deprivation of their property in full or in significant portion; in fact, it was argued that 'some widows only inherit a piece of land large enough to serve as her husband's burial plot' (FIDA-Kenya and IWHRC 2008, 19). Describing the ugly truth about such alienation from property, including housing, land and other productive resources, studies explain its link to 'economic vulnerability, poverty traps, chronic poverty and the intergenerational transmission of poverty' (Cooper 2012, 641). This clearly goes against the fervent goal under the SDGs aiming to reduce the impoverishment of women as deeply entrenched at the heart of poverty reduction goal (Goal 1) with specific targets and indicators towards ensuring property rights of women.

International human rights standards oblige states to take measures to eliminate harmful or and discriminatory traditional practices.⁴⁷ The Maputo Protocol further provides for measures of special protection to widows, older women, and vulnerable women (Articles 20-24). The UNWGDW (2015, 15) also stated that 'the obligation of the State to protect women and girls' right to equality in the family compels the authorities to prevent discrimination by private actors' which is important with respect to traditional practices perpetrated by private individuals or groups. Elimination of harmful practices is also adopted as SDGs commitment within the broader theme to ensure healthy life and wellbeing for women (Goal 3).

Against the background of existing protective laws, the practice continues to be deeply engrained in some African communities. In the case of Nigeria, for example, there are certain laws enacted by local states guaranteeing human rights and prohibiting harmful widowhood rites.⁴⁸ Nevertheless, the practice still remains widespread in those states. This presents a typical

⁴⁷ See CEDAW Article 2 and Maputo Protocol Article 5.

⁴⁸ These laws include, The Prohibition of infringement of a Widow or Widower's fundamental rights of Enugu State 2001 and Malpractices Against Widows and Widowers (Prohibition) Law of Anambra State 2005 (See Olowokere et al. 2015, 11).

implementation gap while protective laws are available. Acknowledging this gap, the SDGs called for states not just to adopt laws, but also to ensure the effective implementation of such laws through independent institutions (Goal 16).

4.3. Violence Against Women

The CEDAW Committee (2005, 27) acknowledges that '[g]ender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality'. The prevalence of violence against women often bars women's equal control of assets and their participation in economic activities, diminishing their freedom and productivity. UNWGDW (2014, 20) also notes that 'domestic violence and economic violence by intimate partners can severely impact and restrict women's economic potential throughout their life cycle'.

The recent study by AUC and UNOHCHR (2017) revealed the general lack of legal protection for violence against women in Africa.⁴⁹ In as much as the lack of economic power may fuel violence against women, at the same time, violence against women perpetuates their economic disadvantage. According to FIDA-Kenya and IWHRC (2008) the risk of domestic violence is high for women in cases where administration of matrimonial property lies solely in the hands of men. It is further illuminated (FIDA-Kenya and IWHRC 2008, 22):

Existing laws and practices force women to choose between their rights to life, dignity, and equality or their rights to property and an adequate standard of living, including health and housing. Husbands force wives to relinquish their property, and wives feel that they must remain in abusive marriages because they will have no property and are thus dependent on their husbands.

The existence of physical, emotional, and economic violence places women in a weaker position to bargain for their economic entitlements. The right to be protected from violence of any form being a fundamental right, the elimination of violence is rightly embedded in the SDGs framework (Goal 3) as an essential step towards ensuring healthy life and wellbeing for women. In line with this, States have recognised important goals to promoting a culture of peace and non-violence, and gender equality through education (Goal 4.7), and to

⁴⁹ It, in particular, indicated that some countries (such as Burkina Faso, Ivory Coast, Egypt, Lesotho, Mali and Niger) do not have any legal protection for women against domestic violence.

ensuring the existence of institutions for violence prevention and access to justice (Goal 16.11).

4.4. Land Commercialisation

The euphoric wave of land commercialisation in Africa and its gender dimension must be brought into perspective. Women's insecure land tenure and property rights in Africa can be linked to the growing phenomenon of large-scale land acquisitions (FAO 2007; Anseeuw et al. 2012). Due to increasing demand for land for the purpose of large-scale agricultural investments, construction of industries and infrastructures, and urbanisation, the commercialisation of land (including agricultural land) has grown and rights of smallholders and communal (kinship-based) holdings diminished (FAO 2007; World Bank 2011). This phenomenon has a particular negative bearing on the already feeble position of women's land rights in many legal systems. Benbih and Katz (2016, 20) noted:

The rise of land value due to investment and the stress on individual property gives more incentive for tribal leaders and individuals in general to pursue land titling on their own, neglecting the obligation that their customs bestow on them and making women a vulnerable group as their benefit from land has been a somewhat indirect one.

Formal land governance laws also offer weak protection as evidenced by several cases of forced evictions of smallholders from their land without adequate and alternative means of livelihood. This depicts a classic case of government's development policy and human rights commitments running in conflict. While the clear message engrained in the 2030 Agenda is to 'leave no one behind', development-induced land commercialisation tends to leaving women in desperate situation by taking away their means of livelihood. It must be duly noted that the SDGs required of states adopting gender-sensitive development strategies (Goal 1.7).

4.5. Weak Institutions and Limited Access to Remedy

Studies show that, in cases where good laws exist, they are often not enforced due to weak institutions; institutional mechanisms to promote the human rights of women are lacking or often underfunded (AUC and OHCHR 2017). Owing to this, women mostly encounter major barriers that curtail their access to justice and remedies (Human Rights Watch, 2017). The existence of weak institutions deteriorates women's recourse to remedy in cases where their legal rights are violated.

For legal rights to be enforceable the law must be reliable and the legal system must be effective. The strength of formal economic rights is thus determined by, not just the content of formal laws, but also by the effectiveness of the formal institutions (Hallward-Driemeier and Hasan, 2012). Evidently, legal reform to protect equal economic rights between women and men will not automatically result in *de facto* equal access to economic resources and opportunities for women. Strong and effective Institutions that operationalise *de jure* rights should be in place. It has long been established under international human rights law that states must take not just legislative measures but ‘all appropriate measures’. This, obviously, includes establishing and strengthening relevant institutions to redress as underlined under the SDGs Goal 16 as well. The African Charter (Article 28), in fact, explicitly makes it imperative for states to establish and improve relevant domestic institutions for the promotion and protection of the rights enshrined therein. UNGDAW (2014, 6) stated that effective elimination of discrimination against women in economic life necessitates ‘gender-responsive and effective accountability systems’ and access to these mechanisms ‘must be guaranteed at the legislative and institutional levels’.

Concluding Remarks

It is encouraging to note that African states have made progress in the formal recognition of women’s economic rights by adopting international standards, entrenching constitutional guarantees, and introducing protective and gender-sensitive laws. The motion of shifting norms is itself a significant step forward, though not an end in itself. The examination, in this paper, of disparities in legal rights across countries and of legal reforms through period illuminates how family and inheritance laws can weaken or strengthen women’s economic rights.

Irrespective of some of the positive trends observed, evidence from most countries on the Continent shows that women remain marginalised from economic resources, and have yet a long way to go for standing on equal footing with men in all areas of economic rights (AUC and UNOHCHR 2017). This suggests that African states are lagging far behind their human rights commitments as well as their development goals with respect to women’s economic empowerment. If states are to fulfil their commitments under international human rights law and the SDGs framework, harmonisation of statutory, customary, and religious laws remains to be indispensable.⁵⁰ A

⁵⁰ The CEDAW Committee has repeatedly urged states on this matter in its examination of periodic reports. For example, in the 2007 review of Kenya, and urged Kenya to ‘harmonize

comprehensive reform would be instrumental to ensure that all legislation concerning family and inheritance matters run consistently with principles of gender equality. States should not only repeal all discriminatory statutory laws but must ensure the primacy of the constitution and international standards over customary or religious law. Moreover, appropriate legal and other pertinent measures are needed to eliminate discriminatory cultural practices and violence that exacerbate women's economic disadvantage, and to improve the *de jure* and *de facto* economic position of women.

The potential influence of the judiciary through interpreting laws which speaks to the larger public policy issues should not be underestimated (Cooper 2012). States should intensify their support towards strengthening independent and effective judicial and other institutions relevant to gender equality and the empowerment of women—a key obligation already anchored in human rights instruments and the SDGs framework. Strong institutions, including National Human Rights Institutions as envisioned by human rights standards and the SDGs, need to be in place to support government bodies and provide effective remedy for victims of rights violations.

Grounding all efforts to the realisation of women's economic rights on the 2030 Agenda and the 2063 Africa vision, African states need to commit to specific targets towards ensuring women's equal rights to economic resources. National human rights action plans and national SDGs targets should be intertwined and go hand in hand in implementation. National adaptation strategies for the SDGs should give adequate attention to facilitating women's access to ownership and control over land and other forms of property, be it by way of inheritance or other entitlements. The enabling environment facilitated by regional policy initiatives and the African Union's greater attention to women's empowerment need to be seized and translated into tangible commitments that transform the lived reality of women in Africa.

References

- African Commission on Human and Peoples' Rights (2010) Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights.
- African Commission on Human and Peoples' Rights (2013) Resolution on Women's Right to Land and Productive Resources, ACHPR/Res.262/2013.

civil, religious and customary law with article 16 of the Convention (See, para 66).

- Africa Development Bank (2015) 'Empowering African Women: An Agenda for Action' *Africa Gender Equality Index 2015*, Abidjan: Africa Development Bank Group.
- African Union (2015) Agenda 2063, retrieved from: <https://au.int/en/agenda2063> (accessed: 12 July 2017).
- African Union Commission and United Nations Office of the High Commissioner for Human Rights (AUC and UNOHCHR) (2017) 'Women's Rights in Africa', Addis Ababa: AUC/UNOHCHR.
- Africa Women's Rights Observatory (AWRO) (2012) 'Women's Rights to Own, Access and Control Land in Africa', retrieved from: <http://www1.uneca.org/Portals/awro/Publications/31WomenRight%20to%20Access%20and%20Control%20Land%20in%20Africa.pdf> (accessed: 22 June 2017).
- Agarwal, B. (2001) 'Land Rights and Gender', in Smelser, N. and Balte P. (eds.), *International Encyclopedia of the Social & Behavioral Sciences* 12. Amsterdam: Elsevier.
- Anseeuw, W., Wily, L.A., Cotula, L., and Taylor, M. (2012), 'Land Rights and the Global Rush for Land: Findings of the Global Commercial Pressures on Land Research Project', ILC: Rome.
- Asimwe, F.A. and Crankshaw, O 'The impact of customary laws on inheritance: A case study of widows in Urban Uganda' *Journal of Law and Conflict Resolution* 3(1), 7-13.
- Barne, D. (2010) 'Ethiopian Women Gain Status through Landholding' *Gender and Land Rights*, World Bank, retrieved from: <http://siteresources.worldbank.org/INTGENDER/Resources/October2010-4.pdf> (accessed: 12 August 2017).
- Benbih, K. and Katz, J. (2016) 'Land Tenure Rights for Women under Customary Law', Global Housing Indicators, retrieved from: <http://globalhousingindicators.org/sites/globalhousingindicators.org/files/Land%20Tenure%20> (accessed: 12 August 2017).
- Bhe and Others v The Magistrate, Khayelitsha and Others*, Constitutional Court of South Africa, Case CCT 49/03, October 15, 2004.
- CESCR (2005) General Comment No. 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights. U.N. Doc. E/C.12/2005/.
- CESCR (2007) Government of Kenya, Initial Report of States Parties to the Committee on Economic, Social and Cultural Rights(2006). U.N. Doc. E/C.12/KEN/1.

- CEDAW (2002) *Consideration of reports submitted by States parties under article 18 of the Convention, Third Periodic report of Uganda, CEDAW/C/UGA/3.*
- CEDAW (2007) Republic of Kenya, Combined Fifth and Sixth Periodic Reports of States Parties to the Committee on the Elimination of Discrimination Against Women (39th Sess., 2007) U.N.Doc. CEDAW/C/KEN/6.
- CEDAW (2010a) Republic of Uganda, Concluding observations. Combined Fourth to Seventh Periodic Reports of State Parties, CEDAW/C/2010/II/WP.2/R.
- CEDAW (2010b) General Recommendation No.27 on older women and protection of their human rights' CEDAW/C/2010/II/WP.2/R.
- CEDAW (2013) General recommendation on article 16 of the Convention on the Elimination of All Forms of Discrimination against Women, Economic consequences of marriage, family relations and their dissolution. CEDAW/C/GC/29.
- CEDAW (2015) Concluding Observations on combined fourth and fifth periodic reports of the Gambia, CEDAW/C/GMB/4-5.
- CEDAW (2016) General recommendation No. 34 on the rights of rural women, CEDAW/C/GC/34.
- Chibikom Peter Fru & 4 Ors v. Zamcho Florence Lum*, Supreme Court Judgment No. 14L, February 14, 1993.
- Cooper, E. (2012) 'Women and Inheritance in Sub-Saharan Africa: What Can Change?' *Development Policy Review*, 30 (5), 641-657.
- CSW (1998), Report on the forty-second session (2-13 March 1998), Economic and Social Council Official Records, 1998, Supplement No. 7, UN.Doc. E/CN.6/1998/12, retrieved from: <http://www.un.org/documents/ecosoc/docs/1998/e1998-27.htm> (accessed: 21 August 2017).
- CSW (2016) 'Women's empowerment and the link to sustainable development' CSW60 Agreed Conclusions, retrieved from: <http://www.unwomen.org/media/headquarters/attachments/sections/csw/60/csw60%20agreed%20conclusions%20conclusions%20en.pdf?la=en&vs=4409> (accessed 12 September 2017).
- Deininger, K., Ali, D.A., Holden, S., and Zevenbergen, J. (2008) 'Rural Land Certification in Ethiopia: Process, Initial Impact, and Implications for Other African Countries' *World Development* 36 (10), 1786-1812.
- Doss, C. (2011) 'Intrahousehold bargaining and resource allocation in Developing countries', Background paper, *World Development Report 2012*, retrieved from: <http://siteresources.worldbank.org/INTWDR2012/>

- Resources/7778105-1299699968583/77862101322671773271/Doss-Intrahh-bargaining. pdf (accessed: 25 July 2017).
- Doss, C., Truong, M., Nabanoga, G., and Namaalwa, J. (2011) 'Women, marriage, and asset inheritance in Uganda', Chronic Poverty Research Centre, retrieved from: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.371.249&rep=rep1&type=pdf> (accessed: 02 August 2017).
- Federation of Women Lawyers (FIDA-Kenya) and the International Women's Human Rights Clinic (IWHRC), Georgetown University Law Center (2008) 'Kenyan Laws and Harmful Customs Curtail Women's Equal Enjoyment of ICESCR Rights. A Supplementary Submission to the Kenyan Government's Initial Report under the ICESCR, scheduled for review by the Committee on Economic, Social, and Cultural Rights during its 41st session (Nov. 3-21, 2008). retrieved from: <http://www2.ohchr.org/english/bodies/cescr/docs/info-ngos/FIDAKenya41.pdf> (accessed: 08 August 2017).
- Federici, S. (2010) 'Women, Witch-Hunting and Enclosures in Africa Today' *Sozial.Geschichte Online* 3, 10–27, retrieved from: <http://www.stiftung-sozialgeschichte.de> (accessed: 22 August 2017).
- Giovarelli, R., Wamalwa, B., and Hannay, L. (2013) 'Land Tenure, Property Rights, and Gender. Challenges and Approaches for Strengthening Women's Land Tenure and Property Rights', *USAID Issue Brief*, Washington DC: USAID, (accessed: 05 August 2017).
- Gomez, M. and Tran, H. (2012) 'Women's Land and Property Rights and the Post-2015 Development Agenda', Addressing Inequalities, The Heart of the Post-2015 Development Agenda and the Future We Want for All, Global Thematic Consultation, October, 2012, retrieved from: <http://globalinitiative-escr.org/wp-content/uploads/2012/10/28102012-FINALInequalities-Paper-on-Womens-Land-and-Property-Rights-GI.pdf> (accessed: 08 August 2017).
- Hallward-Driemeier, M, and Hasan, T. (2012) 'Empowering Women: Legal Rights and Economic Opportunities in Africa', *Africa Development Forum Series*, Washington DC: World Bank.
- Human Rights Watch (2017) ' "You Will Get Nothing" Violations of Property and Inheritance Rights of Widows in Zimbabwe', retrieved from: https://www.hrw.org/sites/default/files/reportpdf/zimbabwe_0117web.pdf (accessed: 12 August 2017).
- International Justice Mission (2014) 'Property Grabbing from Ugandan Women and the Justice System', Washington, DC: IJM.

- Kenya National Human Rights Commission (2016) *Compendium of Submissions to the Committee on International Covenant on Economic, Social and Cultural Rights*, Nairobi: KNHRC.
- Knox, A., Duvvury, N., and Milici, N. (2006) 'Connecting Rights to Reality: A Progressive Framework of Core Legal Protections for Women's Property Rights', International Center for Research on Women, retrieved from: <https://www.icrw.org/wp-content/uploads/2016/10/Connecting-Rights-to-Reality-A-Progressive-Framework-of-Core-Legal-Protections-for-Womens-Property-Rights.pdf> (accessed on: 22 August 2017).
- Magaya v. Magaya* (1999), 3 LRC 35.
- Mmusi And Others V Ramantele And Another* (2012), 2 Blr 590 HC.
- Mojekwu v. Mojekwu* (1997), 7 NWLR 283.
- Olowokere, H.O., Dickson-Olorunda, C.O., and Nwufo, C.C. (2015) 'Human Right of Women with Focus on Widowhood Practices in Nigeria: A Call For Proper Human Right Education in Nigeria' *6th International Human Rights Education Conference*, retrieved from: <http://www.Ihrec2015.org/sites/default/files/Panel%2018.%20Emily%20Alemika%20-%20paper.pdf>(accessed: 12 August 2017).
- Peter Mburu Echaria v Priscilla Njeri Echaria* [2007] eKLR.
- Richard, L. (2012) 'Huge Boost for Women's Rights in Botswana', Johannesburg: Open Society Initiative for Southern Africa.
- Richardson, A.M. (2004) 'Women's Inheritance Rights in Africa: The Need to Integrate Cultural Understanding and Legal Reform' *Human Rights Brief*, 11(2), 19-22.
- Rwanda Women Network (2010) 'Customary law and its Implications for Women's Access to Land. Women's Land Rights Gains Eroded by Cultural Practices and Negative Attitude: The Rwanda Case', retrieved from: www.idrc.ca/en/ev-158124-201-1-DO_TOPIC.html(accessed: 12 August 2017).
- Sossou M-A.(2002) 'Widowhood Practices in West Africa: The Silent Victims' *International Journal of Social Welfare*, 11, 201-209.
- United Nation Commission on Human Rights (2005) 'Women's Equal Ownership, Access to and Control over Land and the Equal Rights to Own Property and to Adequate Housing' UN Doc. E/CN.4/2005/RES/25.
- United Nations Development Program (UNDP) (2009) 'Facts and Figures', retrieved from: <http://www.undp.org/content/dam/undp/library/>

- corporate/fast-facts/english/FF-gender-equality-2009-EN.pdf (accessed 10 August 2017).
- United Nations Division for the Advancement of Women (2001) *Women 2000 Widowhood: invisible women secluded or excluded*. New York: DAW.
- United Nations Economic Commission for Africa (UNECA) (2003) 'Land Tenure Systems and Sustainable Development in Southern Africa' Lusaka: UNECA.
- United Nations Economic Commission for Africa (UNECA) (2011) *Africa Gender and Development Index 2011, Promoting Gender Equality*, Addis Ababa: Ethiopia.
- United Nations Economic Commission for Africa (UNECA) (2015) *Africa Regional Report on the Sustainable Development Goals, Summary*, Addis Ababa: UNECA.
- United Nations Food and Agriculture Organization (FAO) (2011) *The State of Food and Agriculture: 2010-2011. Women in Agriculture: closing the gender gap for development*, Rome: FAO.
- United Nations General Assembly (UNGA) (2010) Report of the Special Rapporteur on the right to food, 65th General Assembly of the United Nations, UN Doc A/65/281, retrieved from: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=17640 (accessed: 10 August 2017).
- United Nations General Assembly (2015) 'Transforming Our World: the 2030 Agenda for Sustainable Development,' A/RES/70/01, retrieved from: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (accessed:12 June 2017).
- United Nations Human Rights Committee (2009) General Comment No 28: Article 23 (The equality of rights between men and women) UN/Doc/HRI/GEN/1/Rev.9(VOL.I)PP.
- UNOHCHR and UN WOMEN (2013) 'Realizing Women's Rights to Land and Other Productive Resources' Geneva/New York: UNOHCHR/UNWOMEN.
- UNWGDAW (2015) Report of the Working Group on the issue of discrimination against women in law and in practice, Thematic analysis: eliminating discrimination against women in cultural and family life, with a focus on the family as a cultural space, Human Rights Council Twenty-ninth session, A/HRC/29/40. Retrieved from: <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/Annual-reports.aspx> (accessed 10 August 2017).

- UNWGDAW (2014) Report of the Working Group on the issue of discrimination against women in law and in practice, Human Rights Council Twenty-six session A/HRC/26/39 http://www.ohchr.org/Documents/Issues/Women/WG/ESL/A-HRC-26-39_en.doc (accessed 10 August 2017).
- UN Women National Committee Aotearoa New Zealand (2014) Economic Empowerment, retrieved from: <https://unwomen.org.nz/economic-empowerment> (accessed: 27 July 2017).
- UN Women (2012) 'Women's Human Rights and National Constitutions, Leadership and Political participation' Guidance Note, New York: UNWOMEN.
- USAID (2010) 'Nigeria: USAID Country Profile: Property Rights and Resource governance', retrieved from: <https://usaidlandtenure.net/country-profile/nigeria/>(accessed: 12 August 2017).
- Whiteman, J. (2014) 'Tackling Socio-Economic Disadvantage: Making Rights Work' *The Equal Rights Review*, 12, 95-108.
- World Bank (2001) World Development Report 2000/2001: Attacking Poverty, Washington DC: World Bank.
- World Bank (2011) 'Land Policy: Securing Rights to Reduce Poverty and Promote Rural Growth' *World Bank Working Paper* 83199, 1, Washington, DC: World Bank.
- World Economic Forum (2016) *The Global Gender Gap Report 2016*, Geneva: World Economic Forum.