





## Chapter Nine

# African Women's Land Rights Struggle in Traditional Societies

**Lesego Louisah Mosweu** 

*Centre for Race, Gender and Class,  
University of Johannesburg   
Johannesburg, South Africa  
Lmosweu54@gmail.com*

**Tinuade Adekunbi Ojo** 

*Centre for Race, Gender and Class,  
University of Johannesburg   
Johannesburg, South Africa  
tinuadeo@uj.ac.za*

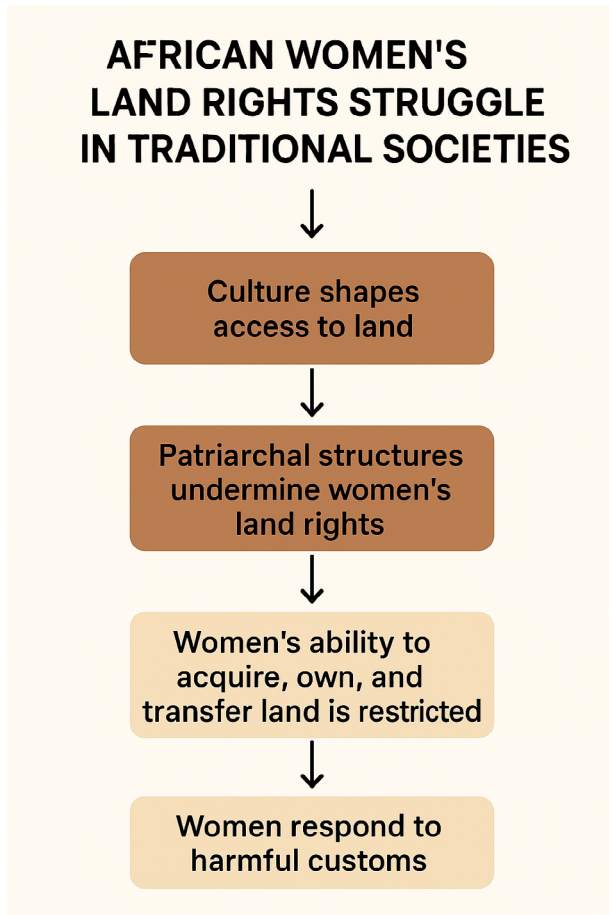
### Introduction

Culture plays a critical role in shaping the dynamics of African societies, including how access to land is organised and regulated. It influences values, belief systems, behaviours, and decision-making processes, providing communities with a sense of meaning and purpose. Culture can offer ethical frameworks that guide the behaviour of its members and foster social cohesion. However, when manipulated through patriarchal structures, it can entrench inequalities and undermine the rights of specific groups, particularly women. Cultural traditions have often been used to subordinate women, perpetuating harmful practices that affect their well-being and limit their ability to claim land (Durojaye & Adebajo, 2014; Iryana, 2023).

Within traditional societies, men empowered by patriarchal norms often exert control over women, reinforcing systemic inequality. This manipulation has contributed to



the persistence of human rights abuses, especially in African contexts where women are frequently denied equal access to land and other resources (Chipenda & Tom, 2022). Land remains one of the most contested resources in South Africa, and struggles over access reflect broader issues of power, identity, and gender.



**Figure 1:** African Women's Land Struggle in Traditional Societies. Source: Authors, 2025.

This chapter argues that traditional practices remain a significant barrier to women's land rights in South Africa,

as they restrict women's ability to acquire, own, and transfer land. Such practices have historically marginalised women and continue to reinforce gender inequality in rural and customary settings. Building on this argument, the chapter examines the specific challenges women face under traditional systems, considers the impact of policy interventions, and explores how women have responded to harmful customs. The discussion draws on secondary qualitative research, using books, academic journals, and newspaper articles. By examining the intersection of traditional practices, patriarchy, and women's land rights, this chapter contributes to ongoing debates on land reform and gender justice in Africa, highlighting the structural barriers women face and the strategies they employ to resist marginalisation in traditional societies.

### **Women's Challenges to Land Access in Traditional Settings**

Culture and tradition, while often used interchangeably, are distinct concepts. Culture refers to the shared practices, beliefs, values, and norms within a group or society, which evolve over time through communal participation and adaptation. As these cultural practices persist, they transform into traditions amalgamated from a mixture of ideologies, practices, and beliefs (Tri, 2024), becoming deeply embedded in the social fabric of a community. The concept of tradition, therefore, reflects a process of inheritance, where memories, stories, values, and identities are passed down from one generation to the next (Bevir, 2000). While traditions are commonly perceived as natural and immutable, they are subject to change over time. Societies may reject, modify, or extend certain traditions in response to new values, challenges, or social movements (Bevir, 2000).

In many African societies, control and access to land are central to women's socioeconomic development. However, women in these contexts often face significant barriers to equal access to land, particularly in traditional settings where gender dynamics reinforce male dominance. While land ownership

and access are crucial for economic empowerment, the cultural practices that govern these rights frequently marginalise women, depriving them of their rightful ownership and control over resources. Many harmful cultural practices are rooted in the belief that men are superior to women, leading to the distortion of genuine cultural customs into practices that justify the exploitation of women (Msuya, 2019). In these patriarchal settings, the perpetuation of traditional norms impedes meaningful progress for women, reinforcing gender inequality and limiting their opportunities for advancement.

Customary law, which is often based on traditional beliefs, perpetuates patriarchal structures by designating men as the rightful owners and guardians of land. This system marginalises women, denying them the rights to acquire, own, or use land in ways that could benefit them and their communities (Msuya, 2019). In these contexts, women's rights to land are consistently undermined, leading to broader social and economic inequalities. The persistent marginalisation of women in land ownership is not only unjust but also detrimental to the wider society, as it hampers the full potential of half of the population. Without access to land, women cannot secure their livelihoods, support their families, or contribute to the economic development of their communities in meaningful ways.

Given these barriers, land inheritance through marriage has become a critical means by which women can gain access to land. Widows, for example, may retain the right to use their deceased husband's land under certain conditions, such as not remarrying (Wily, 2011). However, this right is often limited, and widows face numerous restrictions. If a widow has male children, she must share the land with them, diminishing her ownership rights (Bunelli et al., 2015). Furthermore, divorced women lose their right to use their former husband's land, highlighting the gendered nature of land access in many African societies. The issue lies in the fact that women are often unable to fully enjoy their land rights because of entrenched traditional practices, such as the male primogeniture rule, which dictates that males are the rightful heirs of a deceased person's estate (Human Rights Watch, 2017). This rule perpetuates the notion

that men are superior to women and reinforces the exclusion of women from land ownership and inheritance.

The subordination of women in African societies was further entrenched by colonial forces, which codified harmful cultural practices into formal legal frameworks under customary law. During the apartheid era in South Africa, for example, the state's legal system reinforced male dominance by transferring the property of deceased men to local authorities, where male chiefs or village authorities managed it. Under the legal framework established by colonialism, women had little say in the management or distribution of property. As stated in the 1927 South African Union Act, movable property of a deceased man was to be "administered under native law and custom," (Black Administration Act 38 of 1927) often without regard for the woman with whom he had lived. This system ensured that women were excluded from inheriting property, reinforcing their dependence on male relatives and local authorities. The authority vested in male chiefs illustrated the multi-layered oppression of Black women, who were denied agency and opportunities for economic independence within the society.

Amongst the cultural practices restricting women's access to land, the male primogeniture rule has been especially influential in traditional settings. This practice dictates that the oldest surviving male, whether from a monogamous or polygynous family, inherits the deceased's estate, systematically excluding women and children born from female lineage (Chuma, 2005; Himonga, 2004). African men adopted the practice for its material benefits rather than its authenticity as a pre-colonial tradition. Thus, the persistence of this practice often reflects power dynamics disguised as social norms, with women accepting such discrimination as an unchallenged part of tradition.

Maluleke (2012) argues that male primogeniture was not a pre-colonial customary law but a construct introduced during colonial times, particularly through the Natal Code of Zulu Law, which placed men in positions of power and established a gender hierarchy. The colonial state further reinforced it to

simplify property transfer, negotiating primarily with a single male family representative rather than engaging multiple family members. However, other scholars, including van Niekerk (2005, cited in Maunatlala & Maimela, 2020) and Himonga (2004), argue that the rule was initially intended to safeguard the family legacy and ensure the continuity of lineage rather than to discriminate against women.

The male primogeniture rule persisted through apartheid and colonial-era legal frameworks, further entrenching women's marginalisation in matters of inheritance and land rights. During apartheid in South Africa, male chiefs or local authorities administered the property of deceased men, leaving women with little say in its distribution. The 1927 South African Union Act stipulated that movable property of a deceased man was to be "administered under native law and custom" (Black Administration Act 38 of 1927), often excluding women and reinforcing their dependence on male relatives.

The post-apartheid legal reforms, particularly the 2004 Constitutional Court ruling in *Bhe and Others vs The Magistrate*, marked a significant shift in this system. The court declared the male primogeniture rule unconstitutional, affirming women's right to inherit property and challenging long-standing injustices embedded in customary law (Himonga, 2004). This ruling illustrated how legal reforms could confront entrenched gender norms and offered hope for transforming cultural and legal practices to ensure equal rights for women. Nevertheless, the persistence of cultural practices such as male primogeniture highlights that legal change alone is insufficient; meaningful gender equality in land access requires legal reform and the transformation of societal attitudes.

The ongoing influence of male primogeniture serves as a reminder of how deeply embedded cultural practices can shape societal behaviours and socio-economic positioning, even after legal abolition. Critically examining this practice is essential to understanding the broader struggle for women's land rights and the continued effort to challenge patriarchal norms in African societies.

## **Women as Custodians of Traditions Vis-à-Vis their Subjectification**

Women are often seen as the guardians and transmitters of cultural traditions; however, these same traditions frequently serve to subjectify them. The term “subjectification” refers to the process by which individuals are identified with or interpreted through their subjective experiences (Merriam-Webster Dictionary, 2025). In the context of gender dynamics, subjectification occurs when men, based on their own societal experiences, assert power over women, viewing themselves as superior and relegating women to inferior positions. This results in the control of women by a patriarchal system that reinforces male dominance. As Wadesango et al. (2011) argue, harmful traditional practices are deeply rooted in discriminatory perceptions of women’s roles in society. These practices not only undermine women’s status but also perpetuate prejudice against them, framing their subordinate position as legitimate and natural.

In many communities, this subjugation is reinforced through cultural norms that deny women the agency to make autonomous decisions regarding their sexuality, marriage, childbearing, and even the religion, nationality, and citizenship of their children (Msuya, 2019). Msuya (2019) further contends that these practices create a stark dichotomy where women must navigate a complex choice between their cultural obligations and their inherent rights, an issue largely absent for men. This ongoing tension plays a crucial role in shaping women’s self-identity within their cultural contexts, where they are often made to conform to power structures that limit their autonomy.

Hingston and Asuelime (2019) similarly assert that these harmful cultural practices actively promote patriarchy and hegemonic masculinity. The continued emphasis on male dominance and the exclusion of women from key decision-making processes not only diminishes their power but also entrenches their marginalised societal position. Ultimately, this subjugation is not merely a product of tradition but rather

a systematic and entrenched process that influences women's self-perception and their standing within their communities.

### **The Infiltration of Colonial Forces and Role of Patriarchy in African Women's Loss of Land Rights**

Patriarchy and male primogeniture have long impeded the development of women, especially in African societies. These systems limit women's access to economic resources, power, and position. The infusion of patriarchal beliefs from colonial influences has further marginalised African women, restricting their opportunities and societal roles. Women in many African societies have traditionally been seen as the "other," particularly when inheritance practices favour men, excluding women from owning land or property. As these colonial beliefs were passed down, African cultural practices were altered, often to the detriment of women. Despite these challenges, efforts to reform societal structures and reintegrate women into the economy are ongoing. However, modern African women struggle to find their identities within these transformed communities.

Bertolt (2018) asserts that the oppression of women can be traced back to the European imperial project, which was heavily shaped by a patriarchal worldview. Locher-Scholten (2000) reveals that European women, particularly in the Dutch colonial context, were expected to adhere to domestic roles, limiting their professional and economic agency. These gendered norms, enforced through colonialism, displaced African women from their productive roles, particularly in the agricultural sector. Hill (2022) highlights that those colonial powers reduced African women to dependent status, stripping them of their rights to own property, earn wages, and fully participate in the economy. The colonisers' belief in the inferiority of African women led to policies that sought to diminish their power and influence in the household and broader society (Msuya, 2019).

The loss of land and autonomy had severe economic consequences for African women, forcing them into dependency on men and the informal economy (Wachira, 2010). This shift not only eroded their economic power but also reinforced gender

inequalities. The idea that women were inherently inferior to men was normalised through colonialism, a belief that did not arise from African traditions but was an invention of the colonial system. Saungweme (2021) argues that while patriarchy existed in Africa before colonialism, it was not as pervasive or entrenched as it became under colonial rule. Women enjoyed varying degrees of autonomy, and their societal roles were not as rigidly defined as they would become under European influence (Saungweme, 2021).

Colonialism imposed a particularly harmful form of patriarchy, reshaping gender roles and marginalising women to a degree that was previously unknown. Lugones (2016) notes that colonialism co-opted men into patriarchal roles that were carefully constructed by colonisers, replacing indigenous forms of governance, which in many cases were matriarchal or more gender equal. According to Saungweme (2021), this shift resulted in a profound loss of women's political and economic autonomy, particularly through the dispossession of land, which had once provided women with independence and a means to secure livelihoods. The erosion of matriarchal and gender-equitable practices paved the way for male dominance and neglect of women's pre-colonial political activity (Bertolt, 2018).

Colonialism introduced new values such as individualism, capitalism, and the erosion of collective African traditions, which had previously fostered community solidarity and gender equity (Locher-Scholten, 2011). As Maluleke (2012) suggests, South Africans need to critically examine their cultural practices in light of the historical legacies of colonialism and apartheid. Such critical analysis is essential to distinguishing between traditions that continue to serve the community's development and those that perpetuate harm, especially regarding women's rights (Ntuli, 2019). Msuya (2019) argues that meaningful change must come from within the community, involving traditional justice institutions and policymakers in a dialogue about harmful practices and their impacts on women.

The role of traditional and religious leaders in rural communities is central to transforming harmful cultural

practices (Mantshi et al., 2010). These leaders hold significant influence over the customs and values of their communities and can serve as advocates for change, particularly in addressing violence against women. Empowering such leaders to challenge patriarchal norms can lead to a shift in community attitudes towards women and gender-based violence.

South Africa's African customary law, rooted in the values of different ethnic groups, has been heavily influenced by patriarchy, which often leaves women vulnerable to abuse with little recourse (Mubangizi & Tlale, 2023). Like all legal systems, customary law must adapt to contemporary socio-economic realities, including gender equality (Bourque & Warren, in Msuya, 2019). International advocacy has been crucial in bringing attention to women's rights, leading to legal protections for women and children in many African countries. However, integrating international human rights standards with traditional cultural values remains a complex issue. Maluleke (2012) emphasises the importance of distinguishing between past practices that served a functional purpose and those that are no longer relevant because of changes in the global socio-economic landscape.

Although cultural traditions may seem static, they are, in fact, subject to change. The resistance to altering harmful practices reflects a fear of Western cultural imperialism, a sentiment expressed by Msuya (2020), who notes that some communities perceive any shift in their cultural practices as an imposition of foreign ideologies. This resistance often contributes to the persistence of harmful gender norms and practices, particularly in the context of land tenure, where men have assumed custodianship of land, excluding women from farming contracts and economic participation (Ainslie & Kepe, 2016; Akinola, 2018). While international institutions continue to pressure African governments to meet human rights standards, the balance between global advocacy and the protection of cultural traditions remains a contentious issue.

Thus, the intersection of colonialism, patriarchy, and African traditions has created a complex landscape for gender

equality in Africa. The legacy of colonial rule continues to shape gender relations, particularly through the control of land and economic resources. However, the ongoing struggle for women's rights and empowerment highlights the possibility of change, with local leaders, policymakers, and international advocacy playing critical roles in reshaping cultural practices to promote gender equity and justice.

### **The Persistence and Entrenchment of Patriarchy in Traditional African Societies**

Broadly speaking, women experience exclusion, particularly within the confines of tradition, where their marginalisation is entrenched and justified. This creates an imbalance of power between men and women, with tradition often serving as a tool of discrimination. The failure of the law to adequately address these disparities highlights the complexities surrounding gender inequality. Traditional practices, which are commonly perceived as fixed and immutable, are frequently employed to perpetuate the discrimination of women. These entrenched social constructs are often seen as natural, though this perception is misguided. It seems that these inventions or external influences have been manipulated over time, shaping the modern societal structures that we struggle to reform today.

While modernisation has led to many women's liberation, it has not yet fully achieved this for all. This notion, evident in the 20<sup>th</sup> century and still relevant today, especially in some African societies, illustrates the persistence of harmful traditional practices (HTPs) that limit women's ability to enjoy their rights fully (Glover, et. al. 2018). Deep-seated socio-cultural beliefs often bolster the continued prevalence of these practices. For instance, consent may be viewed as a sign of respect for tradition or religion, and HTPs may be perceived as an integral part of cultural life. Communities often coerce individuals into accepting or tolerating these practices, fearing sanctions or communal humiliation. In some cases, women may also see these practices as a form of protection for their family's dignity or a means to alleviate poverty through financial support

(Hingston & Asuelime, 2019). This creates a significant challenge in reconciling customary practices with civil law, particularly in countries like South Africa, where the Constitution guarantees the right to live free from harm while acknowledging the right to practice one's culture. However, the persistence of traditional practices continues to impede legal reforms, suggesting that the legal system must find ways to balance these competing rights better (Hingston & Asuelime, 2019).

Many African states have sought to implement legal reforms to promote women's inclusion in response to past injustices. These reforms often involve redrafting or introducing new laws and policies. However, it can be argued that the implementation of these reforms has been inconsistent, and many women across the continent continue to suffer from oppression and gender-based violence (Glover et al., 2018). In South Africa, the drive for legal reform was initially fuelled by the nationalist anti-colonial struggle, which sought to include gender issues as part of the broader transformative project (Clarno & Vally, 2023). The inclusion of gender in the liberation struggle was partly the result of women's insistence on integrating gender concerns into the national agenda, ensuring that gender equality became a cornerstone of the post-apartheid legal framework (Magubane, 2013). Without women's active role in this process, gender issues might not have been incorporated into the reform agenda.

Despite the inclusion of gender equality in South Africa's post-apartheid legal framework, significant gaps remain. Existing laws, while progressive, are insufficient to address the complexities of gender-based discrimination fully, and they must be bolstered by more comprehensive legal measures to effectively criminalise practices that contravene individuals' constitutional rights (Jokani et al., 2018). There is a clear need for a legal framework that protects women from harmful traditional practices and provides robust enforcement mechanisms. Gender equality, a fundamental aspect of liberation, requires continued legal and societal efforts to challenge and eradicate entrenched discriminatory practices. Thus, while progress has been made, further action is needed

to ensure that women's rights are fully realised and protected under the law.

## **South African Policy Efforts**

South Africa recognises multiple forms of customary law, which influence land rights in distinct ways. Codified customary law refers to rules formally recorded, often during colonial or apartheid-era legal frameworks, and applied rigidly by authorities. Living customary law, in contrast, consists of practices that evolve over time, shaped by community members in their daily lives and adaptable to contemporary values and constitutional principles. More broadly, traditional/customary law encompasses the inherited norms and practices within communities, whether codified or dynamic. Distinguishing these terms is important for understanding how legal reforms interact with rigid and evolving customary practices, particularly in addressing women's land rights. Within this framework, South Africa has implemented various land reform and restitution policies aimed at redressing historical injustices. These policies attempt to reconcile statutory law with customary practices while promoting gender equality.

### **Land Reform and Restitution**

The Provision of Certain Land for Settlement Act (No. 126 of 1993) regulates the allocation and settlement of land, providing mechanisms for planning, development, and financial support for land reform purposes (South African Government, no date). Similarly, the Restitution of Land Rights Act (No. 22 of 1994) established a Commission on Restitution of Land Rights and a Land Claims Court to restore rights to individuals and communities dispossessed of land after 19 June 1913 because of racially discriminatory laws (South African Government, no date). The Provision of Certain Land for Settlement Act, No. 126 of 1993 (RSA, 1993), states that.

This Act makes provisions for the designation of certain land, the regulation of the subdivision of such land, and the settlement of persons thereon. In addition, it provides

for the acquisition, maintenance, planning, development, improvement and disposal of property and the provision of financial assistance for land reform purposes (South African Government, no date).

The Restitution of Land Rights Act, No. 22 of 1994 (RSA, 1994), states that.

The Act makes provision for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1913 due to past racially discriminatory laws or practices. The Act established a Commission on Restitution of Land Rights and a Land Claims Court to administer this task. The Minister is authorised to purchase, acquire, or expropriate land or rights in land for restitution awards (South African Government, no date).

Despite these legal frameworks, the land reform process has been slow, hampered by political corruption, patronage, and bureaucratic delays. Many beneficiaries remain disadvantaged, and the 30% land redistribution target set in 1994 has now been moved to 2030 (NPC, 2011; Kirsten & Sihlobo, 2025). In rural areas, traditional authorities often favour men in land allocation, further limiting women's access to land and reinforcing patriarchal control. To stimulate the process, the South African government seeks to create the Land Reform and Agricultural Development Agency alongside agricultural programmes that aim to assist emerging Black farmers. Another limitation in the land reform process in rural areas is that traditional authorities tend to favour men over women, thus centralising land allocation.

### **Traditional Courts Bill**

Scholars such as Wall (2015), Claassens (2014), and Mnisi-Weeks (2012) have highlighted the inconsistencies between customs and civil law in South Africa. The Traditional Courts Bill (TCB) (Department of Justice and Constitutional Development, 2008) previously failed to recognise the existing prejudice against women in traditional courts. The Bill has been presented

to Parliament multiple times, most recently on 8 September 2022. The current version of the Traditional Courts Bill does not reflect the vision that rural communities had suggested before the amendments (Tait & Taylor, 2023).

A primary concern is that citizens' democratic rights may be compromised if the Bill does not include an explicit opt-out clause, effectively forcing individuals "into the jurisdiction of a traditional leader and court without any choice" (Harrison, 2022). In addition, some rural communities are geographically restricted to dealing with leaders they may not recognise, as these leaders were imposed during apartheid (Harrison, 2022). Harrison further notes that the Bill undermines the nature of living customary law and the freedoms guaranteed by the Constitution.

Nyembezi (2022) warns that the Bill has the potential to perpetuate abuse and discrimination against rural citizens. He argues that rural democracy and rights should not be treated as a nuisance by the parliamentary executive or legislature but rather as areas requiring practical reform. Harrison concurs, noting the Bill's current impracticality because of limited accessibility to justice for rural populations (Harrison, 2022). The Stop the Bantustans Campaign, initiated by the Alliance for Rural Democracy (LRS, 2018), advocates for voluntary affiliation, constitutional rights, and living customary law to form the foundation of the Bill. They emphasise that the Bill must be drafted in consultation with rural communities to preserve the integrity and dignity of traditional courts (Tait & Taylor, 2023).

Despite the Bill's reform intentions, Kunene (2022) observes that it cannot achieve its objectives yet. Former KwaZulu-Natal Premier Nomusa Dube-Ncube stated that during a Provincial Executive Council meeting, strong concerns were expressed regarding the perception that the Bill infringes upon women's rights and freedom of choice (Kunene, 2022).

South Africa appears committed to protecting women, despite implementation challenges. Historically, customary law was subordinate to the Constitution, but this has changed, and it is now binding on the state and courts (Doubell, 2020). As

a signatory to the Maputo Protocol and CEDAW, the country also faces international obligations to ensure that women are effectively consulted and involved in policy decisions affecting them (Doubell, 2020). Practical measures to support women include financial literacy initiatives, access to machinery funding, and improved capital availability for women farmers, helping them strengthen their small agri-businesses and gain greater economic independence.

## **Living Customary Law**

### **Definition and Evolution**

Living customary law refers to customary practices that have evolved and are continually shaped in accordance with the South African Constitution of 1996. Unlike codified customary law, which predates 1996 and is formally recorded, living law reflects the dynamic and adaptive nature of custom as applied in daily life. The Constitutional Court has emphasised that living customary law must allow flexibility and change, expanding the definition of custom beyond chiefs and officials to include all who engage with and shape it in practice (Claassens, 2013).

Since 2003, Parliament has introduced legislation, including the amended Traditional Leadership and Governance Framework Act (TLGFA) of 2011 and the Traditional Courts Bill (TCB) of 2017, that arguably consolidate power in traditional authorities. These laws have enabled traditional leaders to unilaterally define living customary law, thereby influencing land allocation and customary practices, and altering the balance of power in rural areas (Claassens, 2013).

### **Power Dynamics and Gender Inequality**

Discrimination has been a persistent feature of customary law in South Africa, from its historical foundations to contemporary practice. Women are often overlooked as equals and are subjected to biased rulings in customary courts. The TCB and related legislation, despite constitutional safeguards, have reinforced patriarchal structures by failing to explicitly protect

women's rights to representation and participation (Mnisi-Weeks, 2012; Claassens, 2013).

Women acquire land under customary law primarily through marriage, inheritance, or land tenure (Berniger, 2010). While statutory law supports women's rights to buy, sell, inherit, and manage land, communal law remains controlled by patriarchal tribal committees, with some lands vested in the chief's trust (Pienaar, 2009). Consequently, laws such as the TLGFA and earlier versions of the TCB often perpetuate gendered power imbalances. Section 7 of the TCB, for example, allows representation by a person of choice but does not explicitly ensure that women can represent themselves, effectively continuing practices that limit women's agency (Mnisi-Weeks, 2012).

Top-down drafting of legislation has further exacerbated these inequalities. The 2017 TCB, while improving gender equality on paper, still failed to consult rural women during its formulation, leaving traditional leaders with disproportionate control over marginalised communities (Mnisi & Claassens, 2009; Louw, 2020).

### **International Obligations and Policy Gaps**

South Africa is bound by international agreements, including the Maputo Protocol and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979), which obligate the state to ensure rural women can access land, resources, and development opportunities. Article 14 of CEDAW specifically recognises rural women as a marginalised group requiring urgent attention in areas such as healthcare, education, financial services, technology, and livelihoods.

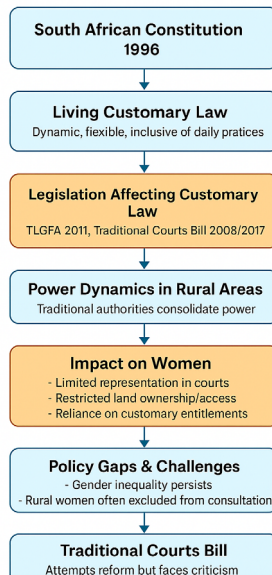
Despite these commitments, the practical implementation of policy often falls short. Laws intended to modernise customary practices and promote equality may inadvertently reinforce the power of traditional authorities while sidelining women. Claassens and Mnisi-Weeks (2009) caution that policies attempting to bypass customary structures may discourage

women who rely on customary entitlements as their primary means of asserting land rights. Scholars like Himonga (2005) and Sithole (2010) emphasise that analysing hierarchies within gendered communities is crucial to understanding women's subordination under living customary law.

### Transitional Note to Traditional Courts Bill

The tensions between statutory policy, constitutional mandates, and living customary law are evident in the ongoing debates surrounding the Traditional Courts Bill. While the Bill aims to reform customary justice, it continues to raise concerns about women's rights, rural representation, and the consolidation of power amongst traditional authorities. Understanding these dynamics is essential for evaluating the Bill's potential impact on rural women and their access to land.

#### Policy, Customary Law, and the Traditional Courts Bill



**Figure 2:** Policy, Customary Law, and the Traditional Courts Bill. Source: Authors, 2025

## Women's Responses to Harmful Traditions

Women have long resisted their subjugation within patriarchal systems, advocating for gender equality and equal access to land and resources. Despite the entrenched nature of harmful traditions, women continue to fight for their rights in various forms. One of the key challenges that women face within many African societies is the male-dominated traditional authority, which is heavily influenced by patriarchal ideologies that limit women's ability to access land. African cultures have historically acknowledged men's property rights, often neglecting women's capacity to own, inherit, claim, or commercialise land (Federici, 2011).

Moreover, the post-independence efforts by democratic governments to reform laws to include women in the land distribution process have had limited success. The delegation of land distribution powers to chiefs or kings has perpetuated the notion that men are the primary custodians of land. Thus, despite legal reforms aimed at creating gender equality, the reality remains that traditional authority structures continue to be male-dominated, ensuring that women's access to land remains restricted. In societies where tradition negatively impacts women's ability to flourish, women often find creative ways to negotiate access to land. Some engage in non-traditional practices, such as same-sex marriages or mother-and-son partnerships, to navigate customary land laws. Others may work through trusted male relatives or formal cooperatives to gain access to land ownership (Makhetha & Hart, 2018). Federici (2011) highlights that those women who can afford to buy land often use informal savings to secure land ownership, protecting their assets in the event of their husbands' deaths, which highlights the need for financial independence and security.

While these strategies have enabled some women to acquire land, their resistance to traditional practices often threatens the cultural values that sustain their communities. This perception can discourage women from challenging patriarchal norms, and as a result, their efforts to achieve

gender equality are frequently met with opposition. Jokani et al. (2018) argue that reframing the intent of traditional practices is not impossible. Cultural practices can be restructured to respect human rights and promote gender equality. The backlash from men against gender equality can be understood as an “aggrieved entitlement,” where men perceive their dominance being undermined by the push for equal rights (Jokani et al., 2018).

The resistance to change is not without consequences, as it negatively affects men and women. In this context, the principle of gender equality was introduced during the anti-colonial struggle and became a central aspect of liberation. Women’s activism played a crucial role in drafting the 1994 South African Constitution, which is regarded as one of the most progressive legal frameworks globally. This Constitution enshrines gender equality as a fundamental right, making strides towards a more inclusive and equitable society.

Despite legislative gains, rural women continue to experience substantial challenges. Although women’s activism has driven progressive legal reforms at the national level, these changes have brought slight tangible improvement to the everyday lives of rural women. The legislation intended to protect women’s rights has not consistently been effectively implemented in their daily lives, and rural women, in particular, struggle to access these legal protections. The transition to democracy in South Africa in 1994, while creating new opportunities for women, also resulted in new power dynamics in rural areas, which, in some instances, have empowered women to claim land. Nevertheless, women’s struggle for land rights remains fraught with challenges.

Women’s agency and activism have been central to the push for gender equality in South Africa and across Africa. While progress has been made, particularly regarding legal reforms and the inclusion of women in traditional councils, women continue to face significant barriers. Despite the reform of customary laws and the formalisation of women’s participation in traditional councils, sexual violence, inequality, and discrimination persist, especially in rural areas (Jokani et al.,

2018). Women's activism, while essential, is still undermined by entrenched patriarchal practices that continue to limit their rights and access to resources. Consequently, while women's agency is widely recognised, significant challenges remain in achieving true gender equality in land ownership and other areas of life.

## **Conclusion**

In conclusion, African women's struggle for land rights in traditional societies is a complex intersection of cultural norms, legal frameworks, and historical influences. Traditional practices, particularly male primogeniture, have long reinforced gender inequalities by restricting women's access to land, ownership rights, and the ability to transfer land. These entrenched practices not only marginalise women but also limit their economic and social mobility, perpetuating a cycle of poverty and disempowerment. Furthermore, colonial legacies have compounded these disparities, exacerbating women's marginalisation and making it more difficult to challenge these patriarchal norms.

Although some legislative reforms, such as South Africa's Traditional Courts Bill, have been introduced to address these inequities, the deep-rooted nature of patriarchal structures means that such legal efforts have had limited success in effecting meaningful change. Rural women, in particular, continue to face barriers that prevent them from fully accessing and benefiting from these reforms. These challenges demonstrate that while legal frameworks are essential in promoting gender equity, they must be accompanied by cultural shifts that challenge and transform traditional practices.

In the end, the struggle for women's land rights in Africa is not only about securing legal recognition but also about dismantling the power imbalances that have been institutionalised through centuries of patriarchal traditions and colonialism. Thus, African women's struggle for land rights requires not only the reform of discriminatory laws but also a reconfiguration of cultural norms. True transformation

will depend on centring women's voices in policy and custom, ensuring that traditions evolve to reflect gender justice rather than perpetuate subjugation.

## References

- Ainslie, A. & Kepe, T. (2016). Understanding the resurgence of traditional authorities in post-apartheid South Africa. *Journal of Southern African Studies*, 42(1), 19–33. <https://doi.org/10.1080/03057070.2016.1121714>
- Akinola, A. (2018). Women, culture and Africa's land reform agenda. *Frontiers in Psychology*, 9, 2018. <https://doi.org/10.3389/fpsyg.2018.02234>
- Bertolt, B. (2018). Thinking otherwise: Theorising the colonial/modern gender system in Africa. *African Sociological Review/Revue Africaine de Sociologie*, 22(1), 2–17.
- Bevir, M. (2000). On tradition. *Humanitas*, 13(2), 28–53. <https://doi.org/10.5840/humanitas20001329>
- Bhe and Others v Khayelitsha Magistrate and Others (CCT 49/03) [2004] ZACC 17; 2005 (1) SA 580 (CC); 2005 (1) BCLR 1 (CC) (15 October 2004).
- Black Administration Act 38 of 1927. South African Government. Available at: [https://www.gov.za/sites/default/files/gcis\\_document/201505/act38of1927.pdf](https://www.gov.za/sites/default/files/gcis_document/201505/act38of1927.pdf)
- Bourque, S. C. & Warren, K. B. (1981). *Women of the Andes: Patriarchy and social change in two Peruvian towns*. Ann Arbor: University of Michigan Press. <https://doi.org/10.3998/mpub.23894>
- Bunelli, A., Moyo, M. & Nkomo, M. (2015). Women's rights to land in sub-Saharan Africa: Challenges and opportunities. *African Journal of Law*, 15(2), 130–145.
- Chapot, M. (2022). *What balance between cultures and the promotion of human rights? Grow Think Tank*. [Online]. Available at: <https://www.growthinktank.org/en/what-balance-between-cultures-and-the-promotion-of-human-rights/>.

## Chapter Nine

- Chipenda, C. & Tom, T. (2022). The youth and land access challenges: Critical reflections from post-fast track land reform Zimbabwe. In: Greiner, C., Van Wolputte, S. & Bollig, M. (eds.) *African futures*, pp: 185–196. Leiden: Brill. [https://doi.org/10.1163/9789004471641\\_016](https://doi.org/10.1163/9789004471641_016)
- Chuma, M. (2005). Male primogeniture and its impact on women's inheritance rights in South Africa. *South African Law Journal*, 122(4), 389–406.
- Claassens, A. (2013). Recent changes in women's land rights and contested customary law in South Africa. *Journal of Agrarian Change*, 13(1), 71–92. <https://doi.org/10.1111/joac.12007>
- Claassens, A. (2014). Denying ownership and equal citizenship: Continuities in the state's use of law and 'custom' 1913–2013. *Journal of Southern African Studies*, 40(4), 761–779. <https://doi.org/10.1080/03057070.2014.931061>
- Claassens, A. & Mnisi-Weeks, S. (2009). Rural women redefining land rights in the context of living customary law. *South African Journal on Human Rights*, 25(3). <https://doi.org/10.1080/19962126.2009.11865214>
- Clarno, A. & Vally, S. (2023). The context of struggle: Racial capitalism and political praxis in South Africa. *Ethnic and Racial Studies*, 46(16), 3425–3447. <https://doi.org/10.1080/01419870.2022.2143239>
- Department of Justice and Constitutional Development. (2008). Traditional Courts Bill. *Government Gazette No. 30902*. [Online]. Available at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/b15-08.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/b15-08.pdf)
- De Souza, L. M. (2020). Evolution of provisions relating to violence against women in South Africa's Traditional Courts Bill. *Acta Juridica*, 1(2020).
- Doubell, L. M. (2020). *The allocation of resources for realising women's rights: An analysis of Article 26(2) of the Maputo Protocol*. Doctoral thesis, Stellenbosch University.
- Durojaye, E. & Adebajo, A. (2014). Harmful cultural practices and gender equality in Nigeria. *Gender & Behaviour*, 12(1), 6169–6181.

- Federici, S. (2011). Women, land struggles, and the reconstruction of the commons. *Working USA*, 14(1), 41–56. <https://doi.org/10.1111/j.1743-4580.2010.00319.x>
- Glover, J., Liebling, H., Goodman, S. & Barrett, H. (2018). Persistence and resistance of harmful traditional practices (HTPs) perpetuated against girls in Africa and Asia. *Journal of International Women's Studies*, 19(2), 44–64.
- Harrison, D. (2022). *Regulating Vernacular Dispute Resolution Forums: Controversy concerning the process, substance, and implications of South Africa's Traditional Courts Bill*. *Mail and Guardian*, 13 September 2022. [Online]. Available at: <https://mg.co.za/opinion/2022-09-13-parliament-passes-problematic-traditional-courts-bill/> [Accessed 14 November 2022].
- Hill, R. (2022). *Decolonising Women*. OER Project. [Online]. Available at: <https://www.oerproject.com/OER-Materials/OER-Media/HTML-Articles/Origins/Unit8/Decolonizing-Women>.
- Himonga, C. (2004). The unconstitutionality of male primogeniture in South African law. *South African Law Review*, 121(1), 15–30.
- Himonga, C. (2005). The advancement of African women's rights in the first decade of democracy in South Africa: The reform of the customary law of marriage and succession. *Acta Juridica*, 82, 107–2005.
- Hingston, C. A. & Asuelime, T. L. (2019). Violated by heritage: African women and harmful traditional practices. *African Journal of Gender, Society & Development*, 8(Special Issue 1), 51–64. <https://doi.org/10.31920/2050-4284/2019/S1n1a3>
- Human Rights Watch. (2017). *'You Will Get Nothing': Violations of property and inheritance rights of widows in Zimbabwe*. Human Rights Watch, 24 January 2017. [Online]. Available at: <https://www.hrw.org/report/2017/01/24/you-will-get-nothing/violations-property-and-inheritance-rights-widows-zimbabwe> [Accessed 20 September 2020].
- Iryana, W. (2023). *Indonesian Islamic tradition is a wisdom that liberates society from the shackles of globalisation*. *Proceedings of the International Conference on Multidisciplinary Science, KnE Life Sciences*, pp: 407–422. <https://doi.org/10.18502/kss.v8i16.14057>

## Chapter Nine

- Jokani, M., Knoetze, E. & Erasmus, D. (2018). A criminal law response to the harmful practices of ukuthwala. *Obiter*, 39(3), 747-767. <https://doi.org/10.17159/obiter.v39i3.11332>
- Kirsten, J. & Sihlobo, W. (2025). *The uncomfortable truth about South Africa's agriculture*. Tracey McDonald Publishers.
- Kunene, M. (2022). Traditional Courts Bill won't pass muster. *Zulu Land Observer*, <https://zululandobserver.co.za/275903/traditional-courts-bill-wont-pass-muster/>
- Legal Resources Centre (LRC). (2018). *Stop The Bantustans Campaign*. LRC. [Online]. Available at: <https://lrc.org.za/wp-content/uploads/LRC-TKLA-englishWEB.pdf>
- Locher-Scholten, E. (2000). *Women and the colonial state: essays on gender and modernity in the Netherlands Indies 1900-1942*. Amsterdam: Amsterdam Univ. Press. <https://doi.org/10.5117/9789053564035>
- Louw, M. D. (2020). Evolution of provisions relating to violence against women in South Africa's Traditional Courts Bill. *Acta Juridica*, 1(2020).
- Lugones, M. (2016). The Coloniality of Gender. In: Harcourt, W. (eds) *The Palgrave handbook of gender and development*. London: Palgrave Macmillan. [https://doi.org/10.1007/978-1-137-38273-3\\_2](https://doi.org/10.1007/978-1-137-38273-3_2)
- Magubane, Z. (2013). Women and the struggle for gender inclusivity during the transition, 1990-1994. In: *The road to democracy in South Africa, Volume 6, 1990-1996*. South African Democracy Education Trust.
- Makhetha, E. & Hart, T. (2018) Hunger for farmland among female farmers in Limpopo province: bodies, violence and land. *Agenda: Empowering Women for Gender Equity*, 32(4), 65-77. <https://doi.org/10.1080/10130950.2018.1535042>
- Maluleke, M. J. (2012). Culture, Tradition, Custom, Law and Gender Equality. *Potchefstroom Electronic Law Journal*, 1(2012). <https://doi.org/10.4314/pelj.v15i1.1>
- Mantshi, T., Mullick, S. & Dlamini, P. C. (2010). *The role of traditional leaders in preventing and addressing sexual and gender-based violence: Findings from KwaZulu-Natal, Northwest and Limpopo provinces in South Africa*. Final report, Johannesburg: Population Council.

## African Women in Governance

- Maunatlala, K. & Maimela, C. (2020). The implementation of customary law of succession and common law of succession, respectively: With a specific focus on the eradication of the rule of male primogeniture. *De Jure Law Journal*, 53(1), 36–53. <https://doi.org/10.17159/2225-7160/2020/v53a3>
- Msuya N. H. (2019). Challenges Surrounding the Adjudication of Women's Rights in Relation to Customary Law and Practices in Tanzania. *PER / PELJ*, 22(2019). <https://doi.org/10.17159/1727-3781/2019/v22i0a5012>
- Msuya, N. H. (2020). Advocating Positive Traditional Culture to Eradicate Harmful Aspects of Traditional Culture for Gender Equality in Africa. *Obiter*, 41, 45–62. <https://doi.org/10.17159/obiter.v41i1.10547>
- Mubangizi, J. C. & Tlale, M. T. (2023). How gender-based cultural practices violate women's property rights and inhibit property ownership: A South African perspective. *Women's Studies International Forum*, 96. <https://doi.org/10.1016/j.wsif.2023.102678>
- National Planning Commission (NPC). (2011). *National Development Plan 2030: Our Future - Make it Work*. Pretoria: National Planning Commission. Found at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/ndp-2030-our-future-make-it-workr.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/ndp-2030-our-future-make-it-workr.pdf)
- Ntuli, H. S. (2019). Conflict between Traditional Cultural Practices for Women and South African Government Laws. *Gender & Behaviour*.
- Nyembezi, N. (2022). *Traditional Courts Bill mocks rights of rural citizens*. IOL, <https://www.iol.co.za/capetimes/opinion/traditional-courts-bill-mocks-rights-of-rural-citizens-ccad62c2-e596-47da-9506-ab6e133de2ac>
- Republic of South Africa (RSA). (1993). Provision of Certain Land for Settlement Act, No. 126 of 1993. *Government Gazette No. 14992*. [Online]. Available at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/act126of1993.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act126of1993.pdf)

## Chapter Nine

- Republic of South Africa (RSA). (1994). Restitution of Land Rights Act, No. 22 of 1994. *Government Gazette No. 16106*. [Online]. Available at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/act22of1994.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/act22of1994.pdf)
- Republic of South Africa (RSA). (2003). Traditional Leadership and Governance Framework Amendment Act, No. 41 of 2003. *Government Gazette No. 25855*. [Online]. Available at: [https://www.gov.za/sites/default/files/gcis\\_document/201409/a41-03.pdf](https://www.gov.za/sites/default/files/gcis_document/201409/a41-03.pdf)
- Saungweme, F. J. S. (2021). *A Critique of Africa's Post-Colonial Freedoms Through a Feminist Lens: Challenging Patriarchy and Assessing the Gains*. Heinrich-Böll-Stiftung, Cape Town.
- Sithole, M. P. (2010). Modernity and traditionality in African Governance. *African Insight*, 39(4). <https://doi.org/10.4314/ai.v39i4.54661>
- Merriam-Webster.com. (2025) *Subjectification*. Merriam-Webster Dictionary, [Online]. Available at: <https://www.merriam-webster.com/dictionary/subjectification> [Accessed: 9 Sep 2025].
- Tait, K. & Taylor, W. K. (2023). The Possibility of Rights Claims-Making in Court: Looking Back on Twenty-Five Years of Social Rights Constitutionalism in South Africa. *Law & Social Inquiry*, 48(3), 1023-1052. <https://doi.org/10.1017/lsi.2022.63>
- Tri, N. (2024). *Culture as a dynamic product of socially and historically situated discourse communities: A review of literature*. Ministry of Science and Technology, Vietnam. 66. 121-128. [https://doi.org/10.31276/VMOSTJOSSH.66\(1\).121-128](https://doi.org/10.31276/VMOSTJOSSH.66(1).121-128)
- United Nations (UN). (1979). *Convention on the Elimination of All Forms of Discrimination Against Women*. UN, New York, 18 December 1979. [Online]. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>.
- Wachira, G. M. (2010). Indigenous peoples' rights to land and natural resources. In: Dersso, S. (ed.) *Perspectives on the rights of minorities and indigenous peoples in Africa*. Pretoria: Pretoria University Law Press, pp: 297-347.

## African Women in Governance

- Wadesango, N., Rembe, S. & Chabaya, O. (2011). Violation of Women's Rights by Harmful Traditional Practices. *Anthropologist*, 13(2): 121-129. <https://doi.org/10.1080/09720073.2011.11891187>
- Wall, D. (2015). *Customary Law in South Africa: Historical Development as a Legal System and its Relation to Women's Rights*. [Online]. Available at: <http://www.sahistory.org.za/topic/south-african-history-online-and-southern-methodist-university-partnership-project>
- Wily, L. A. (2011). 'The law is to blame': The vulnerable status of common property rights in sub-Saharan Africa. *Development and Change*, 42(3), 733-757. <https://doi.org/10.1111/j.1467-7660.2011.01712.x>