

# Deprivation of Land Tenure to Daughters of Mother Earth: The Case of Eswatini

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## SHORT BIO

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## ABSTRACT

The judicial system in Eswatini operates on the basis of Roman-Dutch common law and Swazi customary law and administers land occupancy through the dual landholding system of freehold title and Swazi nation land. Tenure over Swazi nation land is governed by Swazi customary law and not defined by legislation. Instead, land is controlled and held in trust by the King and is allocated by chiefs according to traditional non-codified provisions. Whilst Section 211 of the Swazi Constitution (2005) provides that "a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes", traditional leaders, who routinely run the administration of the Swazi nation land and customary land tenure, often ignore it. Ordinarily, only male household heads are eligible to secure land through the customary process known as "kukhonta" that initiates males into the chiefdom and marks their commitment and allegiance to the chief. Under Swazi law and custom, a woman can only be granted land rights by the chief through her husband, male relatives, or male children. This paper argues that women are alienated from the land rights that Mother Earth has bequeathed to all humanity despite the similarities of women's lived experiences and that of the environment. Three (3) scenarios found through library research are cited as examples of Swazi women's lived experiences with regard to land accessibility. The paper concludes by noting that the implementation of Agenda 2030 for sustainable development, and particularly Sustainable Development Goal number 5 (SDG 5), which is geared towards establishing gender equality and empowering all women and girls, can amongst other initiatives be achieved through equal land rights granted to all the children of Mother Earth. However, unless and until societal constructs on land acquisition and ownership are reinterpreted, Emaswati women will continue to receive only the breadcrumbs that fall from the master's table.

## KEYWORDS

Daughters; judicial system land rights; land tenure; mother earth; patriarchy; Swazi law; custom

## Introduction

Mother Earth, also referred to as Mother Nature or the Earth Mother, is the personification of nature that emphasizes its life-sustaining and nurturing qualities by adopting the profile of motherhood. Theological literature is replete with discussions that argue for the sacredness and deserved

reverence of Mother Earth.<sup>1</sup> Yet, despite these theological pleas, Mother Earth continues to experience great stress. Her critical resources are being only plundered, squandered, and depleted, causing irreversible damage and risk to her survival.<sup>2</sup> Global trends such as the commodification and financialization of land, climate change, biodiversity loss, land degradation, and urbanization continue to exacerbate the pressure on the land and its natural resources, housing, and livestock.<sup>3</sup> Consequently, Mother Earth has responded to such adverse conditions by an increase in temperature, adverse weather, and population, becoming more violent and unfriendly by the day.<sup>4</sup> Human beings are the chief culprits in the exploitation of her invaluable resources, forgetting “that as much as we occupy a unique niche in the biosphere, we still have that responsibility to take good care of the environment”.<sup>5</sup> The unique presence of humans on Earth should not be misconstrued as a divine right to exploit nature. As confirmed by Swanson, “we have exploited earth for our own interests and today the planet we call our mother, faces the threat of extinction of life on its soil just because of our ill practices”.<sup>6</sup>

By exploring Eswatini familial contexts, this paper presents another type of exploitation whereby one gender is deprived of the rights that Mother Earth has plentifully granted to all her progeny. As she helplessly watches the discrimination against women through land deprivation, her spirit groans in pain for the women that are her replica and human embodiment. I use the term “daughters” to refer to Swati women as people that relate closely with the environment because of shared experiences. Yet, paradoxically, they are victims of socially constructed norms and practices that deprive them of what Mother Earth offers. Given the patriarchal Eswatini laws, the men see themselves as the rightful beneficiaries to land rights. Since land is regarded as the most fundamental resource for women’s living conditions, being

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<sup>1</sup> Lori J. Swanson, “A Feminist Ethic That Binds Us to Mother Earth,” *Ethics and the Environment* 20, no. 2 (2015): 83 –103.

<sup>2</sup> Swanson, “A Feminist Ethic That Binds Us to Mother Earth,” 89.

<sup>3</sup> Realizing Women’s Rights to Land and Other Productive Resources (New York & Geneva: UN Women, 2013).

<sup>4</sup> Sonene Nyawo, “Are Prayers a Panacea for Climate Uncertainties?: An African Traditional Perspective from Swaziland,” *The Ecumenical Review* 69, no. 3 (2017): 362 – 374. <https://doi.org/10.1111/erev.12299>

<sup>5</sup> Nyawo, “Are Prayers a Panacea for Climate Uncertainties?,” 268.

<sup>6</sup> Swanson, “A Feminist Ethic That Binds Us to Mother Earth,” 87.

deprived of land rights renders them vulnerable to exploitation and discrimination.<sup>7</sup>

Writing on land reforms in Zimbabwe, Enna Gudhlanga and Chipo Chirimuuta<sup>8</sup> confirm that land-based livelihoods are vital to improving both rural and urban people's economic and social status. Their gendered perspective of the land reform program in Zimbabwe posits that when Zimbabwe attained independence she inherited the racially skewed land distribution pattern that had favored the white colonialist society living in Zimbabwe. The post-independence land reform program largely focused on rectifying racial imbalances yet neglected to address gender inequalities in land ownership.<sup>9</sup> Women, therefore, doubly suffered the imbalances, being disadvantaged in both land distributions and through inheriting the patriarchal, customary laws and colonial institutions and policies that continue to exclude women. These are cited by Enna Gudhlanga and Chipo Chirimuuta as the main contributing factors to women's suffering.<sup>10</sup> Yet, as emphasized by Enna Sukutai Gudhlanga, Josephine Muganiwa, and Musa Dube<sup>11</sup> in an edited collection, *Mother Earth and Religion*, women have an intimate connection with the environment. that despite their presence and contribution throughout history they, like Mother Earth, are exploited, oppressed and marginalized. Essays in *Mother Earth and Religion* argue that environmental degradation correlates closely to women's suffering, thus suggesting that women have a special bond with the natural resource systems of the Earth.<sup>12</sup> According to the authors in the volume, the profound identification of Mother Earth with women is well captured in African myths,

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<sup>7</sup> Gladys Mutangadura, "Women and Land Tenure Rights in Southern Africa: A human rights-based approach," Paper presented at *Land in Africa: Market Asset, or Secure Livelihood?*, Westminster, London, 8-9 November 2004. <https://pubs.iied.org/sites/default/files/pdfs/migrate/G00173.pdf>.

<sup>8</sup> Enna Gudhlanga and Chipo Chirimuuta, "Are we not beneficiaries also? Portrayal of gender and land reform in Davie Mutasa's *Sekai minda tave nayo*." *Gender Behaviour Journal* 10, no.2 (2012): 4734.

<sup>9</sup> Gudhlanga and Chirimuuta, "Are we not beneficiaries also?," 4736.

<sup>10</sup> Gudhlanga and Chirimuuta, "Are we not beneficiaries also?," 4736.

<sup>11</sup> Enna Gudhlanga, Josephine Muganiwa, and Musa Dube, eds., *African Literature, Mother Earth and Religion* (Wilmington, Delaware: Vernon Press, 2022), xxiii.

<sup>12</sup> Anne Jerneck, "What about gender in climate change? Twelve feminist lessons from development," *Sustainability* 10, no. 3 (2018): 1 – 20. <https://doi.org/10.3390/sui10030627>.

folklores, legends, rituals, sacred songs, and incantations. They argue that women are better placed to comprehend the challenges imposed by the global environmental crisis, familiar with having to walk long distances to fetch water, firewood, and food to sustain their families.<sup>13</sup> Nevertheless, the volume offers hope as it posits that women, despite being victims of the environmental crisis, have the potential to be used as agents of change and spearhead the preservation of the environment through religion and the creative arts.<sup>14</sup>

By focusing on women's deprivation of land rights, I argue that women's economic and physical securities are at risk when they are denied land rights, demonstrating how women's access to land and resources supports their independence and autonomy. Indeed, it provides for their daily necessities and the needs of their families. It is also a crucial component of the 2030 Agenda for Sustainable Development's gender-responsive implementation.<sup>15</sup> Therefore, this paper argues that gender inequalities undermine women's ability to exercise their rights to land in Eswatini, in contradiction to the Sustainable Development Goal 10 that aims to reduce inequalities by granting equal land rights to both women and men. The paper shares the understanding of the term 'land' with the publication of UN Women 2020 that defines land as that which "encompasses farmland, wetland, pasture, rangeland and forests, as well as harvesting, hunting and fishing territories".<sup>16</sup> As such, "women's rights to land" refers to both women's rights to secure land tenure *and* their ability to own, use, access, control, transfer, and make decisions about the land and related resources.<sup>17</sup>

## **Theoretical Considerations: African Feminist Framework**

At the heart of this article is the consideration that land control and ownership is stratified and based on hierarchical and segregating systems in Eswatini. The disadvantaged are always women who languish helplessly at the bottom of the pyramid without security that they would have gained from land

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<sup>13</sup> Gudhlanga, Muganiwa, and Dube, *African Literature, Mother Earth and Religion*, xxiv.

<sup>14</sup> Gudhlanga, Muganiwa, and Dube, *African Literature, Mother Earth and Religion*, xxvii.

<sup>15</sup> UN Women, *Towards a gender-responsive implementation of the Convention on Biological Diversity* (New York: UN Women, 2018), 4–16.

<sup>16</sup> UN Women, *Towards a gender-responsive*.

<sup>17</sup> UN Women, *Realizing Women's Rights*.

ownership. To further theorize the deprivation of the women's rights and ability to enjoy the gifts given to humanity by Mother Earth, this article premises its argument on the African feminist framework. African feminist theory concerns itself with the realities of the challenges that women encounter in their daily lives that can be traced to cultural injustices, thus positing culture as an important factor in navigating women's deprivation of land tenure.<sup>18</sup> Inequalities in accessing productive resources, including land, continues to be a concern for African feminists involved in the gender debate.<sup>19</sup> Despite the diverse cultural values across Africa, African feminist theorists argue that certain belief systems run through most communities, such as the denial of women's land rights and the patriarchal nature of African societies.<sup>20</sup> Indeed, Isabel Phiri asserts, "Unfortunately African cultures have viewed women as less important than men, thereby making it difficult for women to have valid relationships with self, others, creation and God".<sup>21</sup> Furthermore, Mercy Oduyoye,<sup>22</sup> Isabel Phiri, and Sarojini Nadar<sup>23</sup> theorize that the African feminist perspective gives women the power to reject life-denying aspects of culture, whilst also empowering them to identify life-affirming ones. The emphasis African feminist theory places on gender dynamics and its examination of how patriarchal laws and practices shape women's identities and sense of belonging makes it the appropriate lens through which to examine this subject on women's land deprivation. In this article, I argue that there are modified legal frameworks in Eswatini that address women's land rights on paper but fails to actualize the policies in real life. Employing aspects of African feminist theory to empower Swati women on land control and ownership will make these legal frameworks relevant to contemporary realities.

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<sup>18</sup> Wangari Maathai, *The Challenge for Africa* (New York: Pantheon Books, 2009).

<sup>19</sup> Adeoye O. Akinola, "Women, Culture and Africa's Land Reform Agenda," *Front. Psychol* 9 (2018): 1 – 8. doi:10.3389/fpsyh.2018.02234.

<sup>20</sup> Akinola, "Women, Culture".

<sup>21</sup> Isabel Phiri, "African Women's Theologies in the New Millennium", *Agenda* 61, Religion & Spirituality (2004): 16 – 24.

<sup>22</sup> Mercy Oduyoye, *Introducing African Women's Theology* (Sheffield: Sheffield Academic Press, 2001): 19.

<sup>23</sup> Isabel Phiri and Sarojini Nadar, "What's in a Name? Forging a Theological Framework for African Women's Theologies," *Journal of Constructive Theology* 12, no.2 (2006): 5 – 24.

## Methodology

The African feminist theory that premises my argument draws on the lived experiences of African women, interpreting their reality, defining their unique standpoint, and facilitating their emancipation from hegemonic forces like sexism.<sup>24</sup> This paper is based on an examination of literature located from library catalogues that discuss Swati women's life experiences, literature reviews, local newspaper publications, and other similar sources. From the many scenarios that depict the denial women land rights, I have selected three (3) women from the three (3) most rural regions of Eswatini as examples. Excerpts on their experiences of the deprivation of their land rights are provided in a later section.

## Locating context

Eswatini has ratified and is bound by international and regional treaties to eliminate laws that harm and discriminate against women on property rights. These include the African [Banjul] Charter on People's and Human Rights (African Charter), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC).<sup>25</sup> To comply with these legal frameworks, in 1999 Eswatini drafted, among other initiatives, a land policy. The development of an effective, efficient, and complete system of land administration, rangeland management issues, and gender parity of land allocation and the preservation of property rights were among the challenges it was intended to address. Unfortunately, despite its formal endorsement, the most divisive concerns with the national policy are about land tenure and land reform. Nevertheless, the government has taken steps (albeit small ones) towards achieving a gender-inclusive future facilitated through national reviews that

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<sup>24</sup> Ingrid Yngstrom, "Women, Wives and Land Rights in Africa: Situating Gender Beyond the Household in the Debate Over Land Policy and Changing Tenure Systems," *Oxford Development Studies* 30, no.1 (2002): 21 – 40. <https://doi.org/10.1080/136008101200114886>

<sup>25</sup> See The International Women's Human Rights Clinic Georgetown University Law Center, "Women's Equal Property and Land Rights Hold Key To Reversing Toll of Poverty and Hiv/Aids in Swaziland: A Human Rights Report and Proposed Legislation," accessed 27 September 2022. <https://www.law.georgetown.edu/international-law-journal/wp-content/uploads/sites/21/2018/08/1-Womens-Equal-Property-508.pdf>.

examine the conformity between the country's 2005 Constitution and customary laws on land rights. The Third Cycle National Report of the Kingdom of Eswatini, compiled by the working group of the Universal Periodic Review (UPR) and validated in May 2021, shows some development in the legislative and policy frameworks.<sup>26</sup> The report implements 133 recommendations gathered through the interactive dialogue during the Second Cycle Review that took place in May 2016. For the purposes of this discussion, I will, in broad strokes, refer to sections of the report that relate to discrimination against women and their denial of land rights.

Regarding Eswatini's jurisprudence on eliminating discrimination and inequality, the report states that the country has made positive strides thereby protecting and promoting the rights of women. It argues that sections 20 and 28 of the constitution have now been interpreted to effect the provisions of the CEDAW and other similar instruments. It cites cases where the court ruled in favor of women who were discriminated against by their marital families and declared the common law doctrine of marital power to be discriminatory towards women, arguing that it transgresses the constitutional right to equality before the law and the right to dignity, rendering it invalid. The court further declared that spouses married under the terms of the Marriage Act of 1964 and in Community of Property have equal capacity and authority to administer marital property. However, under common law marital authority, a married woman cannot administer property, including land, or enter contracts without her husband's consent nor can she represent herself in court. This limits her ability to enter contracts of financial credit, mortgages, and bank loans. Consequently, married women are reduced to the legal status of juveniles under the guardianship of their husbands due to common law marital power. What follows is a discussion on the dualism of the legal system in the country that contributes to women's deprivation of land rights in Eswatini.

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<sup>26</sup> D.T Vollmer and S.C Vollmer, "Global perspectives of Africa: Harnessing the universal periodic review to process sexual and gender-based violence in SADC member states," *Stellenbosch Law Review* 33, no. 1 (2022): 100 – 122.

## Dualism in the Legal Framework

Eswatini has two legal systems that operate simultaneously: the Roman-Dutch Common Law system used by the Constitutional courts and the Swazi Customary Law administered by the Swazi courts.<sup>27</sup> However, neither has authority over concerns pertaining to customary land. Rather, these are under the control of His Majesty King Mswati III, whose subordinate chiefs and their local councils govern (in trust) the management, distribution, and conflict resolution of Swazi customary land. Though system is governed by the Native Administration Act (No. 79 of 1950), it is ambiguous and flexible. As such, the Act is subject to the chief's interpretation as it is refracted through Swazi Customary Law, a set of unwritten provisions passed from generation to generation.<sup>28</sup>

While Section 211 of the Swazi Constitution provides that “a citizen of Swaziland, without regard to gender, shall have equal access to land for normal domestic purposes”, traditional leaders who are responsible for the administration of Swazi nation land and customary land tenure often ignore this provision.<sup>29</sup> Under the patriarchal Swazi law and custom, women only have the right to land-use through their husbands, male relatives, and the exclusive specifications of male political and legal authorities (that is, [chiefs](#)). Indeed, the right to land ownership is reserved for males who exercise it through a customary process known as *kukhonta*, a practice that initiates men into chieftom and marks their allegiance to the chief.<sup>30</sup> Moreover, women are restricted from presenting themselves directly to the chief, and instead must be represented by their husbands or sons in cases of land disputes. This lack of agency and protection on communal land makes women vulnerable as they depend on the goodwill of their husbands, in-

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<sup>27</sup> Ronald T. Nhlapho, *Marriage and divorce in Swazi law and custom* (Swaziland: Mbabane Websters pty ltd, 1992): 37.

<sup>28</sup> Alfred Mndzebele, “A presentation on land issues and land reform in Swaziland.” In *Southern African Regional Poverty and Development Network Conference on Land Reform and Poverty Alleviation in Southern Africa*, Human Sciences Research Council, Pretoria, June 2001: 4-5.

<sup>29</sup> Hloniphile Simelane, “Urban Land Management and its Discontents: A Case Study of the Swaziland Urban Development Project (SUDP),” *Journal of Development Studies* 52, no. 6 (2016): 797 – 812. doi: 10.1080/00220388.1098632.

<sup>30</sup> Simelane, “Urban Land Management and its Discontents,” 797 – 812.

laws, and chief who could expel them for any reason, including adultery, witchcraft, and the failure to bare male children.<sup>31</sup>

The dualism in the legal framework mentioned above extends to land occupancy where it is divided in two, Swazi National Land (SNL) and Title Deed Land (TDL), that account for 54% and 46% of land in Zimbabwe respectively<sup>32</sup>. The dual landholding system was a result of a series of laws passed by colonial administrators between the early 1900's and 1968. As observed by Hugh MacMillan,<sup>33</sup> pre-independence legislation established a large part of the groundwork that allowed for the dual system of land law. Land leased through concessions could be converted to individual freehold titles, attributable to the Concessions Partition Act of 1907, despite the fact that Swazi Nation land was managed in accordance with customary law by the monarch through the chieftaincy system.<sup>34</sup> There is no written law defining who has ownership of SNL. Rather, it is officially under the King controls, who holds it in trust and distributes it to tribal chiefs in accordance with tradition. Therefore, for men to access SNL, structures connected to the local chieftaincy must give their consent. A household that receives land is required to practice *kuhlehla* or provide services to the chief's home and his fields in return for these rights. Moreover, according to Swazi customary law, a man's male descendants may inherit this land.<sup>35</sup> The traditional "landholding" rights and tenure of families is strong and secure, especially for male household heads, even though chiefs maintain the authority to evict and/or re-allocate a household in the community if suspected of a crime or witchcraft.<sup>36</sup>

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<sup>31</sup> Simelane, "Urban Land Management and its Discontents," 797 – 812.

<sup>32</sup> Absalom Manyatsi and Saico Singwane, "Land governance in Eswatini." In *NUST-NELGA Land Symposium: Land Governance Challenges and Opportunities in Southern Africa*, Windhoek, Namibia, September 3-4, 2019.

<sup>33</sup> Hugh MacMillan, "Swaziland: Decolonisation and the Triumph of 'Tradition,'" *The Journal of Modern African Studies* 23, no. 4 (1985): 643 – 666.

<sup>34</sup> Simelane, "Urban Land Management and its Discontents," 797–812.

<sup>35</sup> Sean Johnson, "Sustainable Land Administration and Management: Eswatini," *EU* 19, 2019.

<sup>36</sup> Daisy Dlamini and Micah Masuku, "Land tenure and land productivity: A case of maize production in Swaziland." *Asian Journal of Agricultural Sciences* 3, no. 4 (2011): 301 – 307.

Routine practice generally restricts women's access to land and personal property and discriminates against them based on their gender, and marital status and regime.<sup>37</sup> As mentioned above, a chief may only grant a woman communal SNL through her husband, male relatives, or male children, in accordance with Swazi law and custom, as only men can own land. As such, women have no security at all on communal land. Moreover, women struggle to gain possession of private property as they lack sufficient economic resources to purchase land. Those few who afford to buy land cannot register the land in their name if they have been married under civil law, but instead require their spouses' permission to manage the land. Additionally, a husband married under civil or customary law may use his marital authority to manage his wife's personal property as well as her income without first getting her permission, treating her like a juvenile. Without her husband's consent, a married woman cannot sell her own animals or crops, get rid of her household belongings, or apply for a bank loan. Penelope Andrews<sup>38</sup> best describes this scenario as "women always being under the perpetual tutelage of a male". At the nullification of marriage, a woman is deprived of the property to which she has contributed because ordinarily she owns nothing of value; her husband can unilaterally dispose of property to deprive her of her share and the traditional authorities and civil courts most often unfairly divide the marital estate.<sup>39</sup> Women's deprivation of land rights is not unique to Emaswati. Indeed, women in other African countries have similar experiences. The following summarizes the findings of a study that brings to the fore the motif that equality between women and men on land ownership only exists on the pages of legal documentation, but not in practice. These findings resonate with the experiences of Swati women represented in three (3) excerpts cited below.

## **Gender Dynamics of Land Ownership in Southern Africa**

Many states in Africa have modified their legal structures to accommodate women's land rights, but cultural impediments remain an obstacle to this development. As noted by Adeoye Akinola, land reforms do not benefit

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<sup>37</sup> Nhlapho, *Marriage and divorce in Swazi law and custom*, 40.

<sup>38</sup> Penelope Andrews, "The Stepchild of National Liberation: Women and Rights in the New South Africa," in *Post-Apartheid Constitutions: Perspectives on South Africa's Basic Law*, ed. Penelope Andrews and Stephen Ellmann (Johannesburg: Witwatersrand Press, 2001), 327.

<sup>39</sup> Johnson, "Sustainable Land Administration and Management," 12.

women due to customary law practices that deny women's access to land. These laws are guided by historical practices and unwritten procedures based on traditional norms and cultural affiliation.<sup>40</sup> Gladys Mutangadura, in a research study entitled "Women and Land Tenure Rights in Southern Africa: A human rights-based approach", explores the deprivation of land to women in six countries in southern Africa. A summary of her findings on each country follows.<sup>41</sup>

Almost all agricultural land in Lesotho is held through traditional tenure, where women are considered minors and are not permitted to inherit land or decide how to manage or utilize it. If there are no male relatives to inherit, the land reverts to the chieftainship for reallocation upon the holder's death. Daughters are not permitted to inherit their father's fields. In Botswana, every male head of a household was traditionally entitled to three pieces of land. When a man died, his male children inherited his land. No matter their marital status, age, or other circumstances, women could never independently purchase land or other landed property. They were required to reside with their sons, spouses, or parents. While some laws permit wives to purchase property, marital power, nevertheless, dictates that wives cannot obtain a loan to successfully use the land without their husband's written agreement. Mozambique's constitution, which states that all citizens are equal before the law, enjoy the same rights, and are subject to the same obligations, regardless of color, race, sex, ethnicity, place of birth, religion, level of education, social status, marital status of parents, and profession, has upheld the principle of gender equality since 1975. However, despite the constitution of Mozambique being non-discriminatory, some legislations continue to largely discriminate against women on land ownership and control due to the application of customary law in the patrilineal societies.

In South Africa, women are discriminated against in both statutory and customary tenure systems, despite constitution prohibiting it. Even though community tenure systems greatly vary, women are often ineligible to hold land separately from men. Inheritance and access laws typically favor men over women and women with children over women without children. In Malawi, the type of marriage affects the women's rights to land under

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<sup>40</sup> Akinola, "Women, Culture," 2.

<sup>41</sup> Mutangadura, "Women and Land Tenure Rights in Southern Africa," 5.

customary tenure. In a patrilineal marriage, only the male line can inherit land, and women can only gain access to it through their husbands and sons. The woman must move back to her native village after divorcing her husband, losing the privilege to work her farm. After her husband passes away, the widow can continue to utilize the land he owned as long as she remains single. As her sons get older, she must share the land with them, but remains at risk of eviction subject to the will of her sons.

The type of marriage similarly affects the women's rights to land under customary tenure in Zambia. Land rights belong entirely to the wife in an uxorilocal marriage (where the husband settles in the wife's village), and the man must return them in cases of the dissolution of the union. In contrast, the rights are entirely held by the husband in a virilocal marriage (where the wife settles in the husband's village). In the case of divorce or the husband's death, the woman must leave the field and return to her own village. The most common type of marriage in rural areas is a virilocal union, suggesting that, overall, more women than men are victims of unstable land tenure as a result of marital custom.

Like the women's experiences highlighted in these summaries, Swati women, are deprived of land ownership rights. Yet, for them, land ownership is a crucial form of security and income increasing empowerment that decreases poverty. Below are three (3) excerpts extracted from narratives available in the public domain on Emaswati women that, like their sisters in the six (6) countries in Mutangadura's report, are secondary claimants and beneficiaries of land rights. These women represent the experiences of hundreds of Swati women that are denied land rights in their communities.

### **Scenario 1**

*A widow in the Lubombo region faced the threat of being evicted by her brother-in-law from land that he claimed he had control over as "the head of the family" following the death of her husband. The violations persisted and increased during lockdown because the women's rights and legal aid organizations that would normally come to her rescue were not accessible to her nor did she have access to the courts. As a result, her brother-in-law*

*took advantage of the lockdown to accelerate and assert his claim over the land.*<sup>42</sup>

### **Scenario 2**

*Abigail Fakudze, a teacher, explained that despite a woman working the fields for her family, it legally remains the property of her husband who controls the land and anything that comes from the land: “[O]ur history says that a woman doesn’t have land...she doesn’t own, she tills the land until sunset, but she doesn’t own [it]. When it’s time for harvest, it’s the man who goes [and sells] at the market with the van that’s full of cotton or maize. But she’s been tilling the land and making sure that the crop sees the light of day”.*<sup>43</sup>

### **Scenario 3**

*An elderly, widowed, Swazi woman’s land, where she had installed a fence and build a pit latrine toilet, was taken away from her by a chief,. No one could help her repossess her field despite it being located at her residence as that had also been stolen by the leader of the community.*<sup>44</sup>

## **Discussion of the Scenarios in Context**

The scenarios illustrate the marginalization women’s rights in Eswatini, as well as the significant gender gaps in land management and rights to use land as collateral.<sup>45</sup> The three (3) women cited above have no control over any land and, consequently, are in insecure positions within their family structures. Instead, land ownership and access to them are largely vested in lineages, clans, and families. Women then are secondary claimants of land property, accessible only through their male relatives. Such limited access is quickly lost when their husbands die, as captured in scenario three (3),

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<sup>42</sup> Betty Claire Mubangizi, and John Cantius Mubangizi, “COVID-19, Rural Livelihoods and Human Rights: A South African Perspective,” *Journal of Southwest Jiaotong University* 56, no. 3 (2021): 216 – 228.

<sup>43</sup> Brook Kelly, Marika Maris, Nicolas Mitchell, and Karen Morao, “Women’s Equal Property and Land Rights Hold Key to Reversing Toll of Poverty And HIV/Aids in Swaziland: A Human Rights Report and Proposed Legislation,” *The International Women’s Human Rights Clinic at Georgetown University Law Centre* 40, (2012): 291 – 440.

<sup>44</sup> One Billion Rising, “Women must have access and control over land,” *Eswatini Observer*, October 9, 2021.

<sup>45</sup> Akinola, “Women, Culture,” 5.

where land ownership and management is transferred to the customary leader. In cases of resistance, the chief is legally able to repossess the land from the occupant if there is resistance as, officially, it rightfully belongs to him. Moreover, as shown in the second scenario, despite tilling the land and nurturing the crops, it is the man rather than the woman who manages the farm sales. Mary Kimani cites expert reports that claim women in Africa contribute 70 per cent of food production, nearly half of all farm labor, and 80-90 per cent of food processing, storage, and hoeing and weeding.<sup>46</sup> Nevertheless, women are routinely obliged to hand over financial responsibility of the harvests to men with little say on how the proceeds are used.<sup>47</sup> Mercy Oduyoye echoes this assertion in the preface of *Mother Earth, Mother Africa & African Indigenous Religions*:

Women do not own land, but only work on it at the pleasure of the husband. Even in the matrilineal communities where married couples do not have community of property, and where there is no fear of it being alienated because of marriage, it is the men of her matriclan who are direct custodians of the family land. So, by and large, the culture treats both women and Mother Earth as belong to the men of Africa.<sup>48</sup>

As previously mentioned, Eswatini has two types of land tenure (Eswatini Nation Land and Title Deeds Land), and Section 211 of the 2005 Constitution provides for equal access to land for women and men. It is important to note that there are four types of marital regimes possible in Eswatini, with varying property consequences for women. Thandabantu Nhlapo<sup>49</sup> lists them as follows: in community of property with marital power, where all property is jointly owned but registered solely in the man's name; out of community of property with marital power, where property is separately owned according to an antenuptial agreement but controlled by the husband; out of community of property without marital power, where property is separately owned according to an antenuptial agreement and controlled solely by the owner of

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<sup>46</sup> Mary Kimani, "Women Struggle to Secure land rights," *Africa Renewal* 22, no. 1 (2021): 10-21.

<sup>47</sup> Akinola, "Women, Culture," 8.

<sup>48</sup> Matholeni Nobuntu Penxa, Molly Manyonganise, and Boateng Georgina Kwamina, eds., *Mother Earth, Mother Africa and African Indigenous Religions* (Cape town: African Sun Media, 2020), xv.

<sup>49</sup> Thandabantu Nhlapo, *Marriage and Divorce in Swazi Law and Custom*. (Mbabane, Swaziland: Websters, 1992).

that property; and Swazi law and custom, where the husband has complete marital power over the wife's person and property. The above illustrate how, despite government efforts to enact laws that seek to relax certain restrictions on women, women are still deprived of their right over land.

The women in the highlighted scenarios above fit into three of the marital regimes, where land occupancy is a man's domain. The woman in the first is widowed, and marital power is transferred to her late husband's brother. He treats her as property to be kept of or disposed. The same applies to the woman in the second scenario whereby her husband exercises marital power over their property. Even after she has tilled the land and produced the harvest, it remains under her husband's purview to control and manage the sales. Even in scenario three, the widow loses possession of "her" land to the chief who has land rights transferred to him from the woman's deceased husband. For the daughters of Mother Earth, this deprivation of land rights is paradoxical to the a strong attachment they share with the land; they play with it, they talk with it, and mourn with it. It is, therefore, the experience of women's marginalization in land control and ownership that connects them with Mother Earth who is also travailing in pain as a result of stressful global trends.

Furthermore, the scenarios illustrate a compulsory compliance with the dictates of patriarchy, that favor men over women in the acquisition of land rights. The discrimination against widows and the married women are evidence that men are given a higher status, pre-established and ready-made for them to step into. In contrast, women are expected to adopt a docile status that deprives them of enjoying the benefits of the land as children of Mother Earth. As mentioned earlier, in the Eswatini patriarchal space, a woman must ask her male relatives to represent her in traditional courts when it comes to land matters, regardless of whether she is married according to civil law or Swazi law and custom, or single. The expectation is that the male relatives will act on behalf of a woman, thus chaining her to the will of a man for her whole life: she is first under the guardianship of her father, and when she marries, she comes under the guardianship of her husband; if she divorces or is widowed, she either returns to the

guardianship of her father or other male relatives, most often her sons.<sup>50</sup> In other words, a woman's identity is always defined by the men around her where society ensures that she is not autonomous or independent. She lives in a male-controlled world even into adulthood.<sup>51</sup>

This patriarchal dependency syndrome indoctrinates women with characteristics that are thought to be feminine from an early age, asking warmth, expressiveness, care, and concern for others before themselves. In contrast, males are presumed (and allowed) to be independent, aggressive, direct, unemotional, dominant, and competent. Notably, society does not attach the same value to female traits where patriarchal orientation dictates that the masculine traits are deemed to be more valuable, and form the reference point for personhood in society.<sup>52</sup> Therefore, societal constructions force women to consciously and unconsciously accept anything to maintain their attachment to a man and live under their authority. The women's compulsory attachment to a man is also noted in scenarios where a single or divorced woman wants to acquire land through Swazi law and customs. Chiefs that have relaxed restrictions on land ownership by women, in compliance with the 2005 Constitution, compel women to entitle their homes after their father's names, and not their own. This is evidence that the male bias in the law persists. Even though women are allowed to occupy their designated land, they are more like refugees.

## **Conclusion**

Women's access to, use of, and control over land and other productive resources is essential to ensuring gender equality and an adequate standard of living, as intended by the Sustainable Development Goal 5 (SDG 5) of Agenda 2030. Depriving women of land occupancy is not only a direct violation of their birthright from Mother Earth, but contravenes the international protocols. Equality in land ownership is crucial for women as it ensures that women can provide for their day-to-day needs and those of

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<sup>50</sup> Joshua Mpfu. *Some Observable Causes of Women's Subordination* (Harare: Cass 1983):12.

<sup>51</sup> Sonene Nyawo, "Sowungumntfukenyalo' - 'You are Now a Real Person': A Feminist Analysis of How Women's Identities and Personhood are Constructed by Societal Perceptions on Fertility in the Swazi Patriarchal Family" (PhD diss., University of KwaZulu-Natal, 2014), 56.

<sup>52</sup> Nyawo, "Sowungumntfukenyalo'," 71.

their families and communities. That is to say that ownership of land and property empowers women by providing income and security not only for herself but her entire family. Tim Hanstad<sup>53</sup> underscores this observation by arguing that granting sufficient land rights to women has substantial advantages: women will be less likely to be victims of domestic violence; their children will be more likely to be educated, and stay in school longer; women will be less likely to contract and spread HIV and AIDS as they do not have to resort to prostitution to earn a living; and women will be better positioned to access microcredit. Moreover, land deprivation reduces their to perpetual dependence on male figures in their lives that, should there be an illness, instances of domestic violence, or death in the family, would otherwise leave them landless.<sup>54</sup>

Without resources, such as land, women have limited agency in household decision-making and no recourse to the assets during crises.<sup>55</sup> Thus, a gender approach to land rights is crucial to enable shifts in gender power relations and assure that all people, regardless of sex, benefit from and are empowered by development policies and practices that would improve people's rights to land.<sup>56</sup> This parity between genders, according to Noddings, requires more than what political or legal rhetoric currently offers, but rather calls for a commitment to reorientation or transformation of attitudes on societal norms.<sup>57</sup> It calls for a conscious effort from society to break the cycle of women's perpetual dependency on men that will also remove the male bias. Subsequently, each gender will treat the other as equal beneficiaries to what Mother Earth offers all humanity.

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<sup>53</sup> Tim Hanstad, Tasnuma Haque, and Robin Nielsen, "Improving land access for India's rural poor," *Economic and Political Weekly* 43, no. 10 (2008): 49 – 56. doi:10.2307/40277230.

<sup>54</sup> Carmen Diana Deere and Cheryl R. Doss, "Gender and the Distribution of Wealth in Developing Countries," *World Institute for Development Economics Research* 115 (2006): 1–27.

<sup>55</sup> Tchérina Jerolon, "Dismantling election-related sexual and gender-based violence in Kenyan politics," *LSE Women, Peace and Security*, April 26, 2021, <https://blogs.lse.ac.uk/wps/2021/04/26/dismantling-election-related-sexual-and-gender-based-violence-in-kenyan-politics/>.

<sup>56</sup> Briony McDonagh, "Women, Land and Property, Then and Now: An Afterword." *Journal for Eighteenth-Century Studies* 44, no. 4 (2021): 487 – 491.

<sup>57</sup> Nel Noddings. *Caring: A Feminine Approach to Ethics and Moral Education* (Berkeley, CA: University of California Press, 1986), 41.

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