

Briefing

Land acquisitions and rights

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Policy pointers

Innovations in land tenure need to include women in all stages and of all socioeconomic, age and ethnic groups.

Ensuring access to land is not enough: women also need representation in, and control over, land-based decision making at household and community level.

So for innovations to have traction, practitioners must work with whole families, communities and traditional authorities — not women alone — to explore gender dimensions of community land and household property rights and decision making.

Building on local practices and capturing progressive shifts in gender relations can advance land governance in an inclusive and culturally sensitive way.

Mechanisms are needed to ensure women can access and use new land tools such as land transfer documents. An example might be training paralegals with this mandate.

Gender-equitable land tool development in West Africa

Addressing women and men's unequal land tenure rights is one of the most pressing issues in development in West Africa, particularly in the region's rapidly changing demographic, social and ecological contexts and with increasing competition for land and natural resources. Yet technical tools for achieving inclusive and equitable land governance always operate within complex social and family situations. These social dimensions need to be at the forefront of analysis and debate, and should be the starting point for building solutions. This paper reviews innovations in Ghana and Mali that have attempted to develop gender sensitive 'land tools' that seek ways to improve women's access to land.

Many populations of rural West Africa are experiencing increasing pressures on their land and natural resources. These pressures come from both within and outside communities and include demographic change, climatic change, expanding land markets, and increasing commercial exploitation of natural resources. Women's access to land can be particularly vulnerable to these pressures, but may also be hampered by well-intentioned initiatives to secure land tenure that are 'gender blind' — that is, they do not recognise and respond to underlying social factors determining who can access land and under what conditions.

Efforts to secure rural land access and tenure need to recognise the 'politics of difference' within communities and households at the local level. Different groups have different needs, and this is relevant to women too. In this context, local, national, state and customary authorities need to represent and be accountable to all. Interventions must respond to the needs of different groups. For this reason, bottom-up and iterative approaches to designing and testing land tools stand a greater chance of delivering more equitable, accessible

and empowering tools (see our related briefing, 'Developing tools to secure land rights in West Africa: a 'bottom up' approach').

This briefing highlights how considering land tenure's social dimensions, and understanding men and women's different land relations, can help develop tools that make access to land more secure for women, men and children of all socioeconomic groups.

Women's land rights in West Africa

In West Africa, customary gender relations within families and communities typically give women weaker land tenure than men. Women's and men's land relations also relate to socioeconomic status, age and ethnicity. Modes of land access and unequal tenure security also vary with location. Local customs shape divisions of labour in rural livelihoods and also farming practices, household and community decision making and inheritance systems.

Broadly speaking, women tend to hold secondary or 'derived' rights, and their access to land is usually mediated by men. This may be through

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marriage, through borrowing or sometimes by inheritance. In much of the Sahel women are simply not allowed to own land unless they are married and when they do have access it tends to

be insecure or granted only for a short time. In Ghana the plots that women access are often smaller and of poorer quality. Customs may limit whether they can negotiate access to land by themselves, plant tree

crops on their land, and so on. Widows often lose out when their husbands die.

And although customary systems are evolving, this does not always represent good news for women: chiefs' accountability to their communities is breaking down; clan systems are also breaking down, leaving land to be managed by the 'family' — a move that can entail concentrating power on the head of the household and implicitly limiting women's decision-making ability over that land. In some cases women are losing access to land as men become increasingly involved in agriculture.¹

Many efforts to secure rural land tenure have focused on formalising individual, household or communal property rights. These efforts can severely undermine women's position unless the

rules, the processes associated with their development and implementation and those implementing them are gender sensitive.

There is now greater recognition that responsible governance of land tenure must include equal rights for women, and that a gender blind approach is at best insufficient and at worst damaging.² Across Africa, legal frameworks are being reformed to provide more recognition for women's land rights. Yet, in practice, there is a huge gap between the access and inheritance rights enshrined in constitutions, land laws and family laws, and the reality many women face.

Some practical approaches

Formalising progressive practices through inclusive dialogue. Communities are more likely to support and embrace gender sensitive approaches to securing land tenure when they focus on consolidating and formalising progressive local practices and innovations, rather than generating entirely new ones. For example where land is starting to be managed more at the nuclear family level, there may be more space to engage in dialogue and establish mechanisms for women's participation in decision making on land management, or where women have already had success in negotiating access to plots independently of men. To do this, it is essential to start with community-based dialogues that discuss traditional systems, changing contexts, forms of

Box 1. Mali: not just land access for women, but control

In three communes in the Sikasso region of Mali, local NGOs worked with communities to develop village level 'local conventions' to clarify rules of, and govern, land management (See related briefing, 'Securing land rights in Mali: practical local solutions to thorny national problems' for more on participatory local conventions). The local conventions emerged out of focus group discussions with different constituent groups that fed into plenary discussions.

This extensive community debate and dialogue included household level decision-making processes for land and resource management. In particular it covered how land gets transferred from one family to another, or to an outside private individual, or how a wife loses access to land when her husband dies (land alienation). The community dialogues in turn led to a collective agreement to establish and formalise rules that require women and youth's representation in household level decision making for land transactions.

There were debates among traditional authorities and community members as to who was best placed to represent women's interests: the female head of family, a single or divorced women living with her paternal family, daughters in law/women who have married into the family, or all women. In each case the risks of changes to custom and benefits of greater participation were discussed.

Each village settled on who should be present at family meetings for land-related decision-making. This was captured in their local convention. All family members present at family meetings must now sign an agreement before land can be transferred. While this meant a considerable change, household heads and men were broadly in favour of it because the debates were open and inclusive. As well as getting a greater voice for women and young family members in decision making, a number of other benefits were identified by participants:

- More widespread awareness of land management decisions because women participants communicating discussions to their children
- Greater awareness of the type of tenure the family holds on different parcels of land
- Improved transparency over new transactions taking place.

inequality in access to land and roles in decision making, and sources of conflict. They help clarify women and men's rights under state, customary and religious systems. They also provide a space to analyse how far these rights are implemented, how different people are affected by the current arrangements, and how challenges and opportunities will evolve as context and pressures change.

In Niger, an NGO has facilitated local debates on inheritance practices. The debates clarified the possible ways for women to access land and secure title rights. This included women being able to buy land, not just secure a 'pledge' to it. In another to become landholders securing land for their children.³ Such possibilities provided women with genuinely secure tenure, strengthening their economic base and their social status. In Mali, NGOs have facilitated village level debates that led communities to decide to increase and formalise women's representation in decision-making processes around family land. Some of these villages and communes have agreed to include women in land management decisions by including specific clauses in their local conventions (See Box 1).

The debates allowed time to resolve any disagreements. The result was that debates firmly established the idea that there is a real need to ensure secure land access for all, and that this would be achieved only if all social groups were involved in land-related decisions. The facilitating NGOs in Mali have helped established local monitoring committees to monitor implementation of these local conventions on an ongoing basis but because these have been only recently adopted it is difficult to assess their full impact. However, many community members consider these local conventions a major advancement.

Securing inputs. In the Sahel, a common way for women to access land is through horticulture plots held by groups. However, women cannot be sure that they will be allocated plots of adequate quality nor can they be sure that they will have access to the same plots over time. The former is a problem because in order to obtain adequate yields women may need to invest funds that they do not have. The second is a problem because it discourages women from making long-term decisions and investments. Ultimately, they both hamper productivity. In addition, women's groups are often unable to obtain inputs such as fencing, seeds and fertiliser. Worse, if they do succeed and their plots become productive, male relatives may take the plots over.

For these reasons, in Southern Mali two local NGOs piloted securing formal permanent titles

Box 2. Not just the tool, but the power to use it: Spousal transfer agreements in Ghana

'Spousal transfer agreement templates' are an innovation the Land Resources Management Centre is piloting in Ghana to reduce the conflicts that can occur over family land when a husband dies. In a matrilineal system, family land should not pass to a wife or children. Widows can often lose out, even on land they have helped to establish and cultivate.

Through training sessions and community dialogue, consensus can build around widows' rights to family land. Involving men and women in discussions on gender and land issues can result in men supporting formal rights for their spouses to land they collectively establish and cultivate, particularly if discussions highlight the implications for their children.

Certainly, some women say they would feel more confident in their longer term tenure and livelihood security if they had a legal spousal transfer document. A spousal transfer agreement was developed and validated with villagers and authorities. It remains, however a hotly debated tool; for some, it signifies a transition towards the nuclear family or the break-up of family land — both sensitive issues. There are also some implementation challenges, including the need for women to feel confident enough to raise the issue and demand a formal agreement from their husbands.

for plots held by women's groups that are supported by collective negotiations between communities and authorities. Understanding that secure rights to land cannot yield the expected benefits without access to other resources, the facilitating NGOs then worked with the women's groups with titles to access inputs, markets, and strategic advice to improve their plots' productivity.

Templates for formal agreements. In Ghana, the increased frequency of court cases related to local land conflicts and tenancy agreements (for example for sharecropping or caretaking) suggest that traditional systems are breaking down and the competition for land is increasing. Court cases are long and costly. In Mali, conflicts over the terms of land transfers (for example loans, pledges, gifts) are on the rise as people begin to pay less heed to traditional oral agreements. This is due to pressures on land increasing. And as older generations, who struck past deals, pass on there is more space for descendants to pursue their own interest over honouring an agreement. In both Ghana and Mali only some farmers have documented their transfer or renting of local land with written contracts that have been signed by both parties in the presence of witnesses. Furthermore, where documentation is happening the contracts do not always clarify the boundaries, the terms of tenancy or use, or conditions for terminating agreements. The lack of proper documentation of land transfers can put parties, including women, in a vulnerable position when negotiating rights to crops or other resources on contested land.

For this reason, organisations in Mali and Ghana sought to pilot options for improving how tenancy agreements and land transfers are documented. In both countries, farmers increasingly recognise that standardised templates can ensure such agreements are comprehensive and accepted by the authorities and local courts. Well-designed agreement templates can be simple and accessible to those most in need of officially documented rights. For example, templates can require both spouses to sign land transfer agreements or they can include a clause to confirm that illiterate people know the content of a contract they are signing (see related IIED briefing, 'Developing tools to secure land rights in West Africa: a 'bottom up' approach'). During the dialogue process in Ghana farmers came to realise that formalising arrangements between spouses may also be helpful, in this case for mitigating many of the difficult issues families and in-laws can face when a husband dies (See Box 2).

Lessons for policy and practice

There is no short-cut to inclusive and gender-equitable land governance but one thing is clear: technical tools are always enmeshed in complex social and family relations. Therefore, these social dimensions need to be at the forefront of the analysis and debate, and they should be the starting point for building solutions.

Several approaches can help develop tools for gender-equitable land governance, and the way tools are developed affects the nature of the approach. The time taken in discussion, and the people present, will dictate which sources of conflict are addressed and how. Inclusive processes with careful facilitation are not easy. Even processes that set out to be participatory and inclusive face challenges in securing the active participation of women of different age, socio-economic status and ethnicity. But participatory and inclusive approaches are crucial for analysing vulnerabilities, conflicts and strategies, and when designing documents, linking land access to livelihood opportunities. The processes must also be iterative. Focus

groups and dialogues take time to consolidate their diverse inputs, which must then be verified with all community members and authorities.

Working with women alone, for example, will not ensure changes in practice. Debates and design processes for template agreements for instance need to respond to the aspirations of both women and men, young and old. Regular interaction and dialogue with customary and state authorities at all levels is also required. If there is no buy-in from authorities for formal agreements for documenting land transactions and spousal transfers, then such innovations are unlikely to be sustained.

And where tools and approaches seek to instigate new changes, rather than consolidating progressive change that is already emerging in society, uptake is likely to be slow. How empowered particular women feel to make use of innovations or new services is fundamental to uptake and impact. Specific forms of information dissemination, for example guidance being provided by legal aid services or notary publics, need to have resources tailored for specific target groups (women, youth, traditional authorities).

Finally, because in practice gender equitable land governance is more about societal shifts than technical tools, monitoring is needed and should focus on mapping and following changes in behaviour and perspectives, so that reasons for low uptake or engagement and also outcomes can be carefully assessed.

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This briefing is part of IIED's Securing Land Rights in West Africa project. Related briefings include:

Developing tools to secure land rights in West Africa: a 'bottom up' approach. <http://pubs.iied.org/17216IIED>

Securing land rights in Ghana: building on local aspirations and innovations. <http://pubs.iied.org/17214IIED>

Securing land rights in Mali: practical local solutions to thorny national problems: <http://pubs.iied.org/17222IIED>



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Notes

¹ Doka, M and Monimart, M (2004) Women's Access to Land: The De-Feminisation of Agriculture in Southern Niger? IIED, London. / ² FAO (2013) Governing Land for Women and Men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure. / ³ Doka, M (2011) Sécurisation foncière : Quel statut pour les femmes ? Note prepared for the Securing land rights in West Africa project. www.iied.org/securing-land-rights-west-africa