

Policy pointers

Single-prong solutions — specifically around systematic individual or joint certification for women and titling — have failed to address complexities such as the prevalence of collective tenure in Africa, rendering them less effective.

Governments and development actors working on women's land rights in sub-Saharan Africa must develop context-specific strategies that reflect local realities and how they impact on women's use of land, including legal pluralism and complex tenure systems and arrangements.

Governments should adopt adequate measures to protect women's equal rights to land in customary tenure, including through dialogue with men and community leaders.

To enhance sustainable gender equality outcomes in land governance, government and development actors must assess options for changing gendered social behaviours among men and women at scale.

Why simple solutions won't secure African women's land rights

For the past few decades, efforts to strengthen women's land rights in many sub-Saharan African countries have primarily focused on a single approach: systematic registration through individual/joint certification or titling. While registration — individually or with a spouse — may support tenure security in specific contexts, the sheer complexity of land governance practices and tenure arrangements across the continent (both formal and customary) often render an emphasis on systematic titling inadequate. We look at why the dominant approach isn't necessarily delivering change for women, reviewing the multifaceted realities encompassed by the generic term 'women's land rights'. We suggest that governments and development actors adopt context-specific complementary strategies, able to react to local complexity, and deliver effective sustainable support for women seeking to secure land in sub-Saharan Africa.

The need to secure women's land rights is now widely recognised as a global and regional priority. The Sustainable Development Goals include women's land ownership and secure tenure rights as indicators for measuring gender equality, poverty eradication and ending hunger; the African Union's blueprint for change, Agenda 2063, recommends that 20% of rural women have access to and control of land by 2023.¹ But despite high-level backing, tenure security remains a challenge for most women in sub-Saharan Africa.² To achieve the desired change, development organisations and government agencies must establish a deeper understanding of what is encompassed within the generic term 'women's land rights' in sub-Saharan African countries. Before designing programmes of work, we must ask: what realities are at stake and how should they be protected?

Seeing the full picture

Most sub-Saharan African states are characterised by legal pluralism and complex tenure systems and arrangements; land claims by rural women are embedded in this intricate picture. Although most countries have adopted statutory systems leaning towards more individualised forms of tenure, local customary and indigenous systems and practices are very much alive and widespread, especially in rural areas. These systems often encompass a diversity of rights and interests, individual and collective, temporary or permanent, sometimes overlapping, and all interlinked.

Within a single country, different communities will experience different tenure arrangements, depending on land use, climate, population growth, ancestral local practices and migration

In many countries, statutory individual land certification programmes have little success, especially with women

patterns. Forest or rangeland tends to be dominated by collective tenure; peri-urban areas are likely to see more individual claims. Local land tenure practices may involve multiple uses and

claims over the same area held by individuals, households or groups within the community. In pastoralist areas, the same land is sometimes used to cultivate crops or graze livestock, depending on the season. In farming areas, tenure tends to be mixed: while

long-term use and management rights may be granted to individuals, groups or families for growing crops or for housing, other tracts such as woodlands will be used collectively for foraging or gathering timber products.³

Despite the diversity in traditional tenure arrangements, land rarely becomes private property, even when use and management rights are granted to individuals or families. Tenure is usually collectively held in trust by the community for future generations and cannot be transferred to outsiders without consent from local or traditional authorities. However, where pressure on land is high and it becomes commodified, ancestral customary tenure might be progressively replaced by practices that respond to current social and economic needs (such as the expansion of informal land markets). In these

instances, individual ownership and more formalised tenure arrangements are likely to be on the rise.⁴

Women's land claims are embedded in this complex and evolving picture: through them, women seek the legally or socially recognised status of land rights (be that access to, control of or withdrawal from land). While we know that most women in sub-Saharan Africa rely on a combination of more individualised and collective tenure arrangements to sustain their livelihoods, the exact nature of a claim will depend on the specific geography. Their protection therefore relies on tailored, context-specific strategies.

Individual or joint certification: no magic bullet

Pursuing formal individual or joint tenure has been the dominant approach to land reform in Africa for decades — especially when it comes to efforts to strengthen women's land rights (see Box 1). The formalisation of individual or joint rights could help increase women's tenure security under certain circumstances, for instance in the event of widowhood or divorce in areas where pressure on land is high. But our analysis of land tenure arrangements and land-use patterns in sub-Saharan Africa shows that:

- A single form of tenure cannot cater to the complexity of arrangements across the region, and
- A wider array of rights need protecting.

There is also evidence that poorly informed titling interventions can actually dispossess women and other groups.⁹ Even where access is more individualised, formal land registration processes are often at odds with local realities^{8,10}: they frequently involve high transaction costs and cumbersome administrative arrangements that must be completed at specific public offices, often far from the registrant's location. This is challenging for any vulnerable community member but specifically for women, who tend to have less education and fewer financial resources. Besides, land claims are also embedded in social relationships, so women are unlikely to find holding a formal title effective if it is obtained at the expense of connections that provide other forms of security.¹¹

Ultimately, the data⁸ shows that in many countries, unless development programmes offer incentives, statutory individual land certification programmes have little success, especially with women. In Tanzania, 'land regularisation' programmes seeking to issue certificates of customary rights of occupancy

Box 1. A simple answer failing a complex problem

For more than two decades, the majority of international actors' support for women's land rights in sub-Saharan Africa has concentrated solely or primarily on individual and joint land certification for women, despite patchy results. There are two key reasons why.

The assumed desirability of individualised land tenure, titling and registration — linked to the liberalisation of sub-Saharan African economies⁵ — has long dominated debates and action on land tenure reform. As registered individual tenure became a major objective, a number of countries across the region embarked on programmes that focus on the formal individual or joint titling or certification of land (including certification of customary rights), often supported by international development actors.

Meanwhile, in the women's land rights arena, acknowledgment that gendered customary practices in many geographies tend to disadvantage women (especially as pressures on land have increased and land use has changed) led many African and Africanist feminist lawyers to consider legally backed individual land ownership as critical to rural women's empowerment.⁶ This helped establish a narrative among many development agencies: individual tenure and titling or certification would provide women with equal opportunities to access land⁶ as well as to formal credit and the banking system.⁷ For example, in Tanzania, women and poorer people were presented as the primary beneficiaries of the formalisation process; improving women's rights was a stated objective of the programme.⁸

failed to hit high numbers in districts where development initiatives were not present.⁸ To strengthen women's land rights more effectively, actors need to tailor their strategies far more closely to local realities, which precludes a one-size-fits-all approach.

Women's rights and customary practice

One key issue that requires greater attention from governments and development actors is the recognition and protection of customary and indigenous tenure systems. These are widespread and socially embedded across sub-Saharan Africa. Although progress has been made, the customary and indigenous tenure systems that many men and women rely on to access and use land are not legally recognised or effectively protected in a number of countries (Senegal, Guinea and Cameroon, among others). While the potential loss of 'illegal' tenure hangs over whole communities, women tend to be particularly affected. They rely heavily on traditional and customary tenure systems to access land individually (see Box 2) as well as collectively, meaning women's land tenure security is inextricably linked to the recognition and protection of these systems.

Governments are responsible for ensuring that all legitimate tenure rights are recognised, protected and respected both in law and in practice, including indigenous and customary rights.¹³ Enacting this can prove challenging; development actors can support governments with financial and technical assistance. Diverse approaches have been taken across the continent, from the minimalist (whereby customary rights are recognised without any further interference) to the more hands-on (where customs become codified¹⁴). The most appropriate approach to realising indigenous and customary rights in practice will depend on context, although in general the codification of customs is problematic, as customary norms are always evolving. Context-specific research is needed to better understand which approach would work best where.

The recognition of traditional tenure systems raises the complex question of gender inequities within them, a question central to the effective protection of women's land rights. While context varies, women's land claims under customary and indigenous systems are often shaped by their relationships with men: women can access and use land through their fathers and husbands but are unlikely to have control over or inherit it. These types of secondary interests were likely to be safeguarded when land was abundant and

Box 2. Land claims in Senegal: women favour customary practices

Recent data from Darou Khoudoss, a commune in the Thies Region, shows that capacity-building activities on land governance did lead to an increase in women making claims to land.¹² But interestingly, while the programme was built around legal and policy frameworks that support statutory land claims, 56% of the women now holding individual land rights in the area claimed them through inheritance. This is a socially embedded/customary mode of access that is not legally recognised. The data concluded that only 6% of the local women holding land rights claimed these formally, applying the training they had received to make an allocation request to the municipal council.

It is clear in this case that women rely heavily on informal but widely practised ways of accessing land, even when an alternative appears to be offered. When women were asked why they didn't choose to make formal applications for land, they explained that the process was complex and expensive; they also anticipated the possibility of gender-based discrimination from local authorities.

not considered a commodity,¹⁵ but the situation has changed as new demands are put on land by population increases and economic liberalisation. There is evidence that changes to land use (including new crops and forms of agriculture and commercial pressures) have jeopardised land claims made by women, increasing their insecurity.¹⁶

While the nature, scope and content of customary tenure arrangements varies greatly across countries, they should all provide the same opportunities to community members irrespective of gender. To support this, recognition of customary or indigenous tenure arrangements must be complemented with adequate measures ensuring gender equality. From a legal perspective, states should:

- Recognise gender equality as a key principle governing all land tenure arrangements within their territories

Box 3. Exclusion from community land governance: effects on women in Tanzania

In 2009, a UK-based company was granted a 99-year lease to set up a jatropha plantation in Kisarawe district. This large-scale acquisition affected land held by 11 villages,¹⁹ including areas used by local women to fetch firewood and practice worship. Although the project never became operational, the acquisition permanently revoked community members' rights to access the leased land. This total loss of access had not been properly communicated to those villagers who were formally consulted; without this information they were unable to give free, prior and informed consent.²⁰

A study into two of the affected villages by IIED's partner, the Tanzania Women Lawyers Association, revealed that local women had not been included in any consultation: the acquisition came as a surprise to most.²⁰ The study highlighted that many women were not involved in village meetings where these issues would normally be discussed.

- Adopt explicit legal provisions protecting women's equal rights to land, independent of marital status and supporting their inheritance rights
- Deem void any customary norm or practice that discriminates against women's rights to own, control or inherit land¹⁷, and
- Provide adequate financial and technical resources to implement these provisions.

Supporting resources — supplied either by government or development actors — should include legal literacy programmes for women and dialogue with men and community leaders¹⁸ at scale. These kinds of measures are critical to change gendered social behaviours (avoiding elite capture) and maintain the sustainability of potential gender equality outcomes.

Women's rights and collectively held land

Another issue worthy of greater focus is the protection of women's rights in collectively held land. As discussed, land tenure in sub-Saharan Africa is dominated by collective arrangements, and women in particular rely heavily on common resources such as communal forests to fulfil domestic chores. In order to protect women's land rights, collective tenure needs to be recognised and protected and women's nested rights within the collective need to be recognised and protected.

Alongside their names and rights appearing on the relevant collective certification, protecting women's stakes in collective land requires that they participate in its governance. Traditionally,

sub-Saharan African women have not been actively involved in decision-making about land, and this has resulted in their loss of access, especially when there are commercial pressures at play (see Box 3). Agencies working in this area must develop and implement effective approaches at scale if they are to ensure that women are represented by and can effectively participate in local land governance.²¹ This may first require the development of effective tools for general good land governance, including participatory processes and clear accountability mechanisms.

Conclusion

In sub-Saharan Africa, women's land claims are deeply embedded within complex land-use patterns, customs and social relations. Customary law and more formal legal frameworks co-exist, overlap and interlink in the region, meaning women's land rights are shaped by social and cultural relations as well as government policy. The development focus on strengthening women's land claims through individual and joint certification have failed to account for the full complexity of local contexts and the multifarious nature of land law in the region. Development actors and government agencies can design more effective interventions by adopting compound strategies that are able to react to specific local complexities and are sufficiently resourced to change gendered approaches to land at scale among both women and men.

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Notes

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