

Gender Dimensions in tenure security: A review of African Legal and Administrative documentation and Perception Studies

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Sub-theme 4: Women's access to land and security of tenure – addressing persisting bottlenecks and capitalising on opportunities

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Abstract

Gender

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1. Introduction

The extant literature on tenure security shows are direct benefits flowing from improved tenure security. Deineinger and Chamorro (2004) observed investment and equity effects of land regularisation. In another study, Deineinger et al., (2011) show how land certification affects tenure security, investment and land market participation in Ethiopia. It is also associated with spurring agricultural investments and productivity (Ghebru et al., 2016). While there are numerous benefits, particularly flowing from the tenure security of women and the attendant impact on household outcomes as well as poverty reduction and economic growth at a macro-level (FAO, 2011; Lanz and Daley, 2016; Meinzen-Dick et al., 2017), the critical aspects of ensuring the mainstreaming of gender in these initiatives remain largely unexplored. Doss et al., (2013) and Lawry et al., (2014) point to the scarcity of rigorous empirical evidence that explores the effect of tenure interventions. In this paper, gender dimensions of tenure security in the context of SDG5 and Agenda 2063 are explored.

Addressing the issue of ownership of productive assets, particularly land has been on the global agenda for over two decades, after the 1995 Beijing Fourth World Conference on Women: Action for Equality, Development and Peace. The gender mainstreaming discourse has resulted in various gender related terminologies such as gender equity, gender equality – all with an influence in land allocation processes, land tenure systems and property rights designing. Gender equality is well understood to be inclusive of both men and women. However, due to socio-political influences, religious-ideological value systems, cultural norms and patriarchal systems, women have been left behind with regards to ownership and control of land. If the 2030 Sustainable Development Goals (SDGs) objective of leaving no one behind is to be met, the lessons drawn from this study will assist in initiating crucial conversations, shaping policies and advancing the security of tenure for women. At the same time furthering the Agenda 2063 aspiration number 6 focusing on “An Africa whose development is people driven, relying on the potential offered by African people, especially its women and youth, and caring for children” (AU, 2013: 22). Furthermore, the AU Declaration on Land has a target of 30 percent documented land rights for women by 2025.

Within the context of the global sustainable development goals (SDGs), gender and land related aspects are encapsulated in Goal number one (SDG1) and Goal number five (SDG5). Related to these goals are specific targets and indicators that address the issue of gender and security of tenure. The Inter-agency and Expert Group on SDG indicators (IAEG-SDGs) came up with indicators for these as illustrated in Table 1.

SDG target	Indicator
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<p>1.4 By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance</p>	<p>1.4.2 Proportion of adult population with secure tenure rights to land, (a) with legally recognised documentation, and (b) who perceive their rights to land as secure, by sex and type of tenure</p>
<p>5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws</p>	<p>5.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure</p>

- Source: Adapted from UN – IAEG-SDG (2019)

An extensive review of literature on policies and guidelines at the global, continental, the eight regional economic communities (RECS) recognised by the African Union and national level documents is undertaken. The main aim is to analyse the documents with gender lenses to trace the extent to which gender dimensions have been factored in. The main sources of information are summarised in Table 2.

Table 2: Profile of global, continental, regional and national land tenure policy frameworks

<p>International (Global)</p>	<ul style="list-style-type: none"> • There are no legally binding international guidelines on land policy • Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT) • The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • The food and Agriculture Organisation (FAO) Gender and Land Rights Database • The Demographic and Health Survey (DHS) • The living Standard Measurement Surveys: Integrated Surveys on Agriculture (LSMS-ISA)
<p>Continental</p>	<ul style="list-style-type: none"> • The African Charter on Human and People’s Rights (ACHPR) • The Protocol to the African Charter on Human and Peoples’ Rights of Women in Africa (Maputo Protocol) • The AU Framework Guidelines on Land Policy in Africa – a joint product of the African Union (AU), the UN Economic Commission for Africa (UNECA) and the African Development Bank (AfDB) • The African Union’s Declaration on Land (AU, 2009)

2. Evidence from the FAO Gender and Land Rights Database

In this section, focus is on the legal framework landscape at a national level, the extent to which rights are entrenched in to the constitution, in personal laws, inheritance mechanisms, land legislation and policies or institutional mechanisms that prevent women's land rights.

With the profile of legislation highlighted in Appendix 1, it remains critical that some form of assessment tool is used to consolidate the various activities that appear to be quite heterogeneous across the 35 African countries whose data is readily available¹. A mosaic of tenure arrangements emerges – revealing different colonial state policies and the interface between customary and statutory tenure. Furthermore, it is clear that the rights to land have evolved over time.

Using 30 legal indicators FAO's legal assessment tool (LAT) provides a framework for the assessment of the extent to which countries have made progress toward the achievement of gender equitable land tenure (FAO, 2019). LAT assessments are based on three sources of law. Namely, constitution, statues and regulations. The assessments allow for a de jure analysis of the gender and land related legislation. SDG 5.a. emphasizes reform. This is well captured in the LAT assessment which specifically breaks down the different stages in policymaking. As a result allowing for an evaluation of both the policy environment and legal frame work simultaneously. The scores are allocated as follows:

Table 2: Legal Assessment Tool Scores

Rationale	Stage
Absence of the indicator in the legal framework	0
A policy is being developed	1
A policy is in place	1.5
A draft legislation is to be submitted for deliberations	2
The indicator appears in primary law	3
The indicator appears in multiple legal instruments	4
Not applicable	N/A

Source: FAO website (Accessed 04-08-2019)

Very few African countries have had LAT assessments carried out. These are namely: Ethiopia, Ghana, Kenya, Madagascar, Mali, Morocco, Rwanda, Sierra Leone, South Africa and Tunisia. The performance on various countries is as consolidated in Tables 2.1 to 2.8.

¹ Given resources, the FAO database could be extended to further explore the rest of the African Countries which are not covered in this analysis, namely, Benin, Burundi, Central African Republic, Chad, Comoros, Djibouti, Gabon, Guinea, Guinea-Bissau, Libya, Mauritius, Saharawi-Arab Republic, Sao-Tome and Principe, Seychelles, South Sudan, Swaziland, Tanzania and Togo.

2.1. Ratification of the Human Rights instruments

	Ethiopia	Ghana	Kenya	Madagascar	Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia
1. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is ratified	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
2. The African Charter on Human and People's Rights (ACHPR) is ratified	Y	Y	Y	Y	Y	N/A	Y	Y	Y	Y
3. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) is ratified	Y	Y	N	N	Y	N/A	Y	N	Y	Y

Source: Author – compiled from FAO (2014)

2.2. Elimination of gender-based discrimination in the Constitution

	Ethiopia	Ghana	Kenya	Madagascar	Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia
4. The constitution prohibits gender based discrimination	3	3	3	3	3	0	3	3	3	N
5. The constitution recognises customary law but states that gender-based discrimination in customary law is superseded by the principle of non-discrimination in the constitution.	3	0	3	0	0	N/A	3	0	4	N/A
6. The constitution recognises religious law but states that gender-based discrimination in religious law is superseded by the principle of non-discrimination in the constitution.	0	0	0	N/A	0	0	N/A	0	4	N/A
7. The constitution promotes the adoption of special measures for the advancement of women	3	0	3	0	0	0	3	0	0	3

Source: Author – compiled from FAO (2014)

2.3. Recognition of women's legal capacity

	Ethiopia	Ghana	Kenya	Madagascar	Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia

8. Men and women have the ability to conclude contracts under the same basic conditions, rights and obligations	3	0	4	4	3	3	4	4	4	3
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Source: Author – compiled from FAO (2014)

2.4. Gender equality of rights with respect to nationality

	Ethiopia	Ghana	Kenya	Madagascar	Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia
9. Men and women are able to apply for identity documents under the same conditions.	3	3	4		N/A	4	4	3	3	3
10. A female national can confer citizenship to her non-national spouse under the same conditions as the male national	3	4	4	0	3	0	4	0	3	3
11. Women can confer citizenship to their children under the same conditions as men.	3	4	4	0	3	3	4	3	3	3

Source: Author – compiled from FAO (2014)

2.5. Gender equality in property rights

	Ethiopia	Ghana	Kenya	Madagascar	Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia
12. The law recognises gender-equality in the right to own or control property regardless of the type of marriage	4	2	4	4	3	3	4	0	4	4
13. The law recognises full or partial community of property as the default marital property regime	3	0	0	3	0	0	3	0	4	0
14. Spousal consent is mandatory for any transaction involving matrimonial property	3	2	0	3	3	0	3	0	3	0
15. The law establishes a presumption of joint ownership of property in consensual unions	3	2	0	0	0	0	2	0	0	0
16. The legal framework includes provisions for the promotion of women's rights to land, property, and/or productive resources	4	0	3	0	3	0	3	0	3	0

Source: Author – compiled from FAO (2014)

2.6. Gender equality in inheritance

	Ethiopia	Ghana	Kenya	Madagascar	Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia

17. The surviving spouse is granted user rights to the matrimonial home for life	0	2	0	0	3	0	2	3	3	0
18. Under the law of succession, the surviving spouse is entitled to a minimum share of matrimonial property.	0	3	3	0	3	0	2	3	4	3
19. The law allows partners living in consensual union to inherit from each other.	0	2	0	0	0	0	2	3	0	0
20. Brothers and sisters have an equal right to inherit	4	3	3	3	3	3	2	3	4	3
21. Brothers and sisters have an equal share of inheritance	4	3	0	3	0	0	2	0	4	0
22. A right to compensation of other siblings giving up their claims on the family property exists.	0	0	0	3	3	0	2	0	0	0

Source: Author – compiled from FAO (2014)

2.7. Gender-equitable implementation, dispute mechanisms and access to justice

	Ethiopia	Ghana	Kenya	Madagascar		Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia
23. Decentralisation of land administration services is effected through recognised customary land institutions	0	4	2	N/A		3	N/A	3	4	4	N/A
24. Decentralisation of land administration services is effected through formal land institutions	3	4	4	4		4	4	3	N/A	4	4
25. The law guarantees equality before the law	3	3	3	3		3	3	3	3	4	4
26. The law guarantees equal access to judicial systems and statutory or customary dispute resolution mechanisms to resolve disputes over tenure rights.	3	4	3	3		0	3	3	0	4	4
27. The law makes provision for legal support in civil procedures	0	4	2	4		3	3	3	3	2	4
28. A human rights commission or gender specific institution is in place	3	4	4	3		3	2	4	3	4	2

Source: Author – compiled from FAO (2014)

2.8. Women's participation in national and local institutions enforcing land legislation

	Ethiopia	Ghana	Kenya	Madagascar	Mali	Morocco	Rwanda	Sierra Leone	South Africa	Tunisia
29. The law sets quotas for the appointment of women in land management and administration committees	0	0	2	0	1.5	1.5	3	2	3	0
30. The law sets quotas for the appointment of women in land dispute resolution committees	0	0	0	0	1.5	0	3	0	0	0

Source: Author – compiled from FAO (2014)

Based on the information populated above, the following observations are made.

1. The ratification of human rights instruments is achieved well in the 10 countries selected.
2. More effort is required in the elimination of gender based discrimination from the constitution. Ghana, Mali and Sierra Leone show absence of indicators in most of the frameworks.
3. The recognition of women's legal capacity is well developed in nine countries, except Ghana.
4. More attention should be given to promoting gender equality of rights with respect to nationality.
5. Gender equality in property rights is well covered in so far as the recognition of the right to control ownership of property is concerned regardless of the marriage type.
6. Inheritance remains a sticking point across the African countries. The only commonly developed indicator across the 10 countries is that of ensuring that brothers and sisters have an equal right to inheritance and not necessarily equal shares.
7. Finally, the participation of women in institutions enforcing land legislation requires strengthening. Rwanda performs well in both indicators (29) and (30).

Tables 2.1 to 2.8 resonate well with the observations from Doss et al., (2013) who in reviewing 16 studies from 8 African countries (Ethiopia, Ghana, Malawi, Mozambique, Niger, Rwanda, South Africa and Uganda), observed the following:

- i) With respect to both reported and documented ownership, women are more disadvantaged than men.
- ii) The gender gap varies according to region, land type, definition of land holding and the consideration of joint ownership in the study
- iii) Joint ownership is a common occurrence across Africa and does not necessarily imply equal ownership
- iv) Focusing on the value of landholdings, the review showed that in general, women have less land of lower value compared to men

3. A review of Perception Studies

The paper consolidates the extant literature on perceptions of land rights and tenure. There are numerous studies that have been undertaken to measure community perceptions in both rural and urban settings in Africa. These studies in general recommend the extension of data collection efforts that seek to establish perceptions of tenure security. It is clear that tenure security varies from country to country and efforts to deal with drivers of insecurity would change the landholder's perceptions. The main contribution of this section will be building on the understanding of the perception of tenure security and showcasing best practice cases on the collection of and dissemination of perception data.

Several studies have investigated factors that affect tenure security. The various factors are listed in the Table 3.1

Table 3.1: Determinants of Tenure Security

Authors	Factors identified
Besley (1995)	Formalisation of land rights (well documented) increases perceived security of tenure
Arnot et al., 2011; Atwood, 1990, Bromley, 2008, Jacoby and Minten, 2007, Place et al., 1998	Land titling and registration are not necessarily conducive for tenure security. Neither are they linked to increase in perceived tenure security.
Bromley, 2008; Deininger and Feder, 2009	Need for effective institutions to enforce tenure security.
Gignoux et al., 2013	Conflicts may arise in an attempt to clarify ownership of land parcels boundaries.
Besley 1995; Deininger et al., 2014	In support of commodification of land, maintaining that it might lead to efficiency.
Chimhowu and Woodhouse; 2006	Commodification of land leads to a reduction in tenure security.
Deininger and Feder; 2009, Chimhowu and Woodhouse; 2006	Migration, population increase and urbanisation have both direct and indirect effects on tenure security.
Colin and Ayouz 2006; Goldstein and Udry 2008; Gray and Kevane 2001	Status affects tenure security – limited tenure security on migrants, female farmers and non-indigenes.
Goldstein and Udry 2008; Gray and Kevane 2001	Political connections increase tenure security
(Besley 1995; Brasselle, Gaspart, and Platteau 2002; Sjaastad and Bromley 1997	Long term land investments increase tenure security.

Source: Author based on Ghebru et al. (2016)

Empirical studies focusing on perceived tenure security in African countries are very few. This is due to the nature of data required for this type of study. In this section, Empirical studies focusing on African countries are reviewed. Stickler and Huntington (2015)

examined the variation in perceptions of tenure security and general satisfaction with customary land governance in the rural economies of Ethiopia, Guinea, Liberia and Zambia. This study confirmed the findings of Lawry et al., (2014) who maintained that in sub-Saharan Africa, the legal recognition of customary land rights was adequate for rural tenure security. The observed perceived limitations pertaining to groups that include the poor, the youth as well as female headed households. A finding which calls for the strengthening of existing customary governance institutions.

Ghebru et al., (2016) identify the main factors linked to farmers perceived tenure security in Ghana. They use household and plot level data to show that there is greater perceived tenure security on inherited land than that allocated by traditional leaders. The perceived tenure security was seen to be on a declining path with increased land market activity as well as increased economic activity. The evidence also points to the insecurity of migrant and polygamous households. The role of political connections in reinforcing perceived security of tenure is underscored. What is interesting in this study is the nature of data used, which is the EGC-ISSER Ghana Socio-economic Panel Survey. This data was collected in 2009 and 2010 as a collaborative effort between Yale University, the Institute of Statistical, Social and Economic Research (ISSER) and the University of Ghana. The fact that this relatively old dataset informs a 2016 study is an indicator of data challenges as such nationally representative surveys usually require huge financing. As such, in the absence of meaningful partnerships on financing, perceived tenure security studies tend to be highly localised.

Recently, Ghebru et al., (2019) considered studies that focused on land access and perceived tenure security in Ethiopia, Malawi, Mozambique and Nigeria. Their observation is that while there has been relatively significant movement in the policy space, implementation is slow and varied across countries. The often minor and undocumented land rights of vulnerable groups, including women, have been eroded due to increasing population pressure, agriculture commercialisation and commodification of land.

In a study informed by the SDG indicators for sustainable development, Prindex (2019) conducted an extensive review of women's perceptions of tenure security in 33 countries. This is a very useful study that complements our focus as indicated in Table 1. The study tests two main hypothesis. The first one purports that women feel more insecure than man and the other argues that increased statutory protection leads to increased tenure security. The conclusions of this study are that in general that women in intact households perceive similar tenure insecurity as men. Those that have experienced death of a spouse or divorce have more perceived tenure insecurity than men. They also conclude that statutory tools are inadequate in influencing tenure insecurity for the latter group. Most importantly, capacity building in terms of educating women about their property rights is a useful factor that assists in building better perceptions about tenure security. The following African countries considered in this study are Benin, Burkina Faso, Cameroon, Cote d'Ivoire, Ghana, Kenya, Liberia, Madagascar, Malawi, Morocco, Mozambique, Namibia, Nigeria, Rwanda, Senegal, Tanzania, Tunisia, Uganda and Zambia.

Conclusion

It is evident from this extensive review of literature that there is greater heterogeneity across African countries in gender provisions for tenure security. Tenure security is

influenced by various underlying factors related to markets, environmental factors, demographics and cultural influences.

Regarding data collection, it is critical that there is harmonisation, even in surveys that are undertaken. Making sure that questions are standardised and the wording, scales and modules are uniform (Stickler and Huntington, 2015). The availability of rich data sets will allow for more detailed technical analyses that are based on statistical models and more rigorous time series techniques.

The success of the SDGs rests on the success in identifying appropriate indicators and understanding baselines for most African countries. Based on the evidence from this extensive literature survey, there are huge data gaps relating to indicators that address the security of tenure. With adequate mobilisation of financial resources, perception studies such as the one done by Prindex (2019) could be replicated to cover a wider set of African countries. Another possible extension of this work would be to explore the availability of data for SDG5 by considering what is available on the Land Data Portal as a starting point.

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