

Indigenous women's land rights: case studies from Africa

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Indigenous communities' rights to land and natural resources are vulnerable, and seeking formal recognition of customary law and collective ownership to land is crucial to protect these rights. However, greater autonomy or recognition for indigenous laws and culture does not necessarily result in enhanced rights for women within the group.

Indigenous women are often doubly vulnerable, as their access to land and resources is frequently mediated through customary law, which depends on their communities retaining control over traditional territories. Often no one, male or female, has formal legal title to land or communal claim to land, and whole communities are forcibly displaced to make way for conservation or development projects. Certain communities, such as Batwa and Basongora in Uganda, and Samburu in Kenya have been rendered virtually landless.

When communities are dispossessed of their land, women are often disproportionately affected because of their traditional role in procuring water, fuel or trading goods for their families. For example, Batwa communities displaced from their traditional forests in Uganda to make way for a national park came into conflict over access to water holes with the Bakiga community, whose territory they were forced onto. Consequently, Batwa women had to travel more than half a day to reach an alternative water source. Iteso displaced by ongoing raids from Karamojong in Uganda were forced to move into internally displaced people's (IDP) camps for their own protection. Women and girls from their community have suffered sexual assaults by security forces, and traditional structures to protect women have been eroded. Endorois women report being assaulted and beaten by Kenyan government agents during their eviction to make way for a game reserve.

When indigenous communities do have traditional or customary land tenure, indigenous women's rights are often more insecure than those of men. Customary land tenure practices are complex and hugely varied; land governance is tethered to social relationships and reflects power structures, social norms, symbolic or cultural meaning, and sometimes systemic inequities. This means that, within the same

society, the factors making land tenure insecure for some groups may not be the same for others: indigenous women may be more vulnerable to threats to land tenure security than men. Customs may reinforce social justifications for inequitable land rights for men and women. For example, among Acholi in Uganda, husbands pay a bride price to their wives' fathers, and this payment supports the traditional belief that women are the 'property' of the husband, since a payment was made for her. This belief underlies the customary land tenure rule that prohibits women from having rights to land independent of their relationship with their father or husband. Acholi men say, 'Property can't own property', and the notion of women having independent land rights is an anomaly to them.

Women may be excluded from decision-making both within their community and the wider political systems of the state. Within pastoralist communities in East Africa, men dominate politics and decision-making and are the heads of households and clans. Women are left to play secondary supportive roles in livestock production and are generally excluded from public life. In the past, women held a more equitable role in their communities, but with the recent commercialization of pastoralism and government interventions, women have become increasingly marginalized from decision-making.

Formal laws can also discriminate against indigenous women. For example, Rwanda's land law gives equal rights to land for 'husbands and wives', but only civilly married monogamous couples are recognized as married under law and many indigenous women, such as those belonging to the Twa community, are married by customary or religious rites, effectively excluding them from the provision of equal property rights. Women may also lack the education or information necessary to allow them to exercise formal legal rights. Overall, unequal access to land can limit the economic independence of indigenous women, making them more vulnerable to economic or social upheavals.

More secure land tenure for indigenous peoples could help protect their communities against external threats to their lands and natural resources by providing a formal basis for these groups to assert their ownership rights.

However, greater autonomy or recognition for indigenous cultural rights does not necessarily result in enhanced rights for women within the group. Efforts to strengthen the property rights of indigenous groups could increase women's vulnerability to being disenfranchised unless differing needs, rights, norms and expectations of women and men with respect to land are considered.

Indigenous women with strong property rights in land are less likely to become economically vulnerable, and more likely to be protected from extreme poverty. When faced with household shocks, such as abandonment, sickness, divorce or widowhood, and depending on the land use culture of the community, indigenous women can turn to land for self-employment and food production. Property rights can increase an indigenous woman's bargaining power within the household, and land rights can empower women to participate more effectively in their immediate communities and in the larger civil and political aspects of society.

Acholi, northern Uganda: potential vulnerability of women within customary systems

The Acholi land tenure system of northern Uganda illustrates the complex dynamics at work within customary land tenure, and demonstrates some of the challenges with regard to protecting women's land rights within these systems. The Acholi are a Luo-speaking people, indigenous to the Acholi sub-region of northern Uganda. In Acholiland, land is held under customary tenure, which is recognized by law, and is technically owned by all Acholi people, though different clans govern different areas of the region. Arable land is apportioned by the clan elders to a household head – always a male – normally at the time of his marriage. The household head is given responsibility for managing and protecting the land, while other members of the family – the wife and children – must obtain the consent of the household head in order to gain the right to use and access the land. When the household head dies, his sons inherit his rights to the household land, and may also request additional land from the clan elders when they marry. Traditionally, transactions in land are not



permitted without sanction of the clan.

A woman's right to property in Acholiland is determined by her relationship to a man (usually husband or father), while a man's right to property is determined by his membership in a clan by birth. When a woman marries, her husband pays a bride price to her family, and she leaves her father's household and moves to her husband's household. Women who live with a man in a consensual union that has not been formalized by following the marriage traditions, including bride price, are not considered married by Acholi. Women's rights are more insecure, limited in length (only lasting as long as her marriage) and limited in scope (she cannot conduct land transactions, but her husband can).

Widows can be particularly vulnerable members of the community. An Acholi widow who completed the customary marriage rites becomes the *de facto* head of the household upon the death of her husband. She then has the responsibility of managing the household land and allocating it to male children when they become adults and get married. But an Acholi widow who never completed the customary marriage rites, as was very common during the long civil war in northern Uganda, is often forced to leave the land she used in her husband's household and take her children with her. Because her marriage was not sanctioned by custom (and bride price was not paid), her children are not considered part of the deceased husband's clan, and so she must return to her birth household. This is an example of how a woman's land tenure security may be more vulnerable than a man's within a customary system. But it is also an example of how, when indigenous institutions are weakened due to

Left: An Acholi cane-cutter in the sugar fields at Kinyara sugar works, Masindi district, Uganda. She moved there from Acholiland due to fighting. *USAID Office of Transition Initiatives/Will Boase.*

conflict or economic and political changes, women's land security is often weakened further.

Customary leadership of the Acholi was severely affected by the long conflict in northern Uganda, when many Acholi people lived in IDP camps for as long as 20 years. During this time, people were separated from their land for long periods, and many people disappeared or were killed. When the camps were disbanded and people began to return to their land, customary rules for land tenure did not necessarily have the answers to some of the problems faced by Acholi people: men had lost their fathers from whom they would be granted land; children did not know where their clan land was; women were 'married' to men without following the customary rules for marriage because of a lack of resources; and women were widowed and left with few options for survival. In such a context, the land rights of those with the least power – widows, the disabled, the elderly – were very insecure.

On the national stage, the Ugandan government has recently drafted a new land policy, one of the objectives of which is to strengthen customary land tenure systems throughout the country. At the same time, the policy seeks to address the problem of traditions, customs and practices which discriminate against women in matters of access to, and use and ownership of land. The example of the Acholi people shows that strengthening the land tenure of the Acholi people as a whole will not necessarily strengthen it for all Acholi people, as illustrated in the situation of Acholi widows who do not choose who will inherit land. It also shows how, within customary tenure systems, there may be a range of protections for women's property rights, but those protections depend on different factors from those that determine men's land rights. It is therefore far too simplistic to suggest that customary tenure does or does not protect women's property rights, or that progressive statutory law protects or does not protect women's property rights. If the Ugandan

government is to succeed in meeting the relevant objectives of the National Land Policy – to protect customary land rights and women's land rights – its interventions must look at where both formal and customary systems intersect.

Improving indigenous women's land tenure security

There is evidence that customary laws can be adapted to changing circumstances, provided that women and men can negotiate within their communities to promote change, and that there is space for that negotiation within both customary and formal legal frameworks. The following examples provide some strategies that indigenous women have used to strengthen their land rights, without undermining the customary systems of the group. These tactics can bring about changes that benefit the indigenous community as a whole.

Uganda: a vision for more secure land rights for women in Kibaale

Kibaale district in western Uganda is a region facing huge challenges in relation to land. During the colonial era, large tracts of land and freehold titles were formally given to Baganda people from Central Uganda, who were favoured by the colonists at the expense of the indigenous population of the Bunyoro kingdom. Indigenous Bunyoro continue to occupy their ancestral land but, by law, are regarded as tenants. The government made provision in the 1998 Land Act to purchase this land from the absentee landlords and then presumably re-distribute it back to the Bunyoro, but so far this has not happened.

In recent years, due to advocacy efforts of the Bunyoro, much has been done to address these historical wrongs. These include the passage of a law which prohibited evictions of 'tenants' (an increasingly frequent occurrence in the Bunyoro kingdom as certain land became more valuable), and the renewed support of the buy-back policy, this time with budget support through a land fund, included in the draft National Land Policy of Uganda presented to the cabinet in 2011. However, in the context of what appear to be positive steps forward for the indigenous Bunyoro people, Bunyoro women continued to suffer from very insecure land tenure.



Left: Maasai women in the Crater Highlands region, along the East African rift in Tanzania. *Dieter Telemans/Panos.*

Despite formal laws which provide for the contrary, customary land tenure for Banyoro women is more insecure for the following reasons: (a) customs only grant women land rights through marriage; (b) the common practice of polygamy complicates land holdings and the division of rights upon the death of a man who had multiple wives; (c) patrilineal inheritance rules which prohibit daughters from inheriting land from their fathers; and (d) widows being 'chased away' by their in-laws from land they had used while their husband was alive. In addition, women and men in the area have low levels of literacy and lack information on the legal and institutional framework for land rights. Even when individuals have that information, land agencies and others who might assist them in making their land rights more secure are located at great distances from many of the remote villages.

A local community-based organization, Ugandan Rural Development and Training, worked with the community to help improve the land tenure security of women while respecting the indigenous culture of the Banyoro. It did this by encouraging Banyoro women to focus on aspirations rather than the problem. Using this approach, the women articulated their vision for their lives with regard to land, assessed their current situation and identified a gap between the two. This allowed women to consider broader ways to address land-related challenges. By focusing on identifying the problem – barrier to land access (I cannot inherit land because I am a woman, and under custom women cannot inherit) – and then seeking to solve it (change cultural practices so that women inherit land) the situation can seem overwhelming: how can one woman change centuries of cultural practice? On the other hand, focusing on a vision for a desired outcome (I envision myself owning and cultivating 5 acres of land), leaves more room to find a creative solution, which may incorporate purchasing land, taking advantage of government support schemes, or negotiating with local leaders.

In the end, this method helped women to change their circumstances. Some Banyoro women identified land that was available for sale, found ways to raise money to make the purchase, and even ensured formal backing of their rights to the acquired land by learning how to work with the land office, which could issue titles. Other women went with their husbands to the land office, identified the absentee landlord, negotiated with the landlord for change, and then had the change recorded at the land office. Women and men in the village not only improved women's tenure security, they also developed recommendations for the government to consider to help improve equitable land tenure security for women and men around the country.

Tanzania: Maasai women taking advantage of favourable laws

In Tanzania, Maasai women face discrimination both from the majority society and through cultural practices within their community. The latter include social traditions that restrict their rights to access or own land. Through organization and negotiation, one group of Maasai women were able to gain secure rights to village land held under customary tenure. The women recognized that by acting as a group they were more likely to gain support than by acting alone, taking advantage of positive provisions in the Village Land Act 1999, which grants women and men equal rights to village land.

The Tanzanian Village Land Act recognizes equal rights for men and women to access, own, control and dispose of land under the same terms and conditions. The law protects women from discriminatory customs and traditions that restrict women's access to ownership, occupation and use of land, and specifically requires equal treatment of women and men when they apply for recognition of customary right of occupancy of village land. The process for being granted a customary right of occupancy is largely administrative, and must be granted by the village council and approved by the village assembly who issues a certification.

Maasai are semi-nomadic people in northern Tanzania. Maasai cultural practices tend to marginalize women in terms of decision-making, and in terms of rights to access and control

Below: A Dagomba woman who returned to her village to marry after working as a Kayayo, or market porter, in the city of Accra, lifts firewood onto her head outside Tampion, Northern Region, Ghana.

Peter DiCampo/VII Mentor Program.

over land. Women are largely unrepresented in land-related decision-making bodies, and those few women who form part of those bodies are ineffective because they may lack the confidence to speak up in front of men, have limited literacy, or have little or no knowledge of land-related laws, policies and processes. As a result, the interests and needs of Maasai women have largely been absent in village, ward and/or district development land planning, and women rarely benefit from land-related programmes in the area.

The Maasai Women's Development Organization (MWEDO) supported women in forming committees. These committees of Maasai women then engaged in dialogue and negotiation with village officials and leaders, eventually gaining certificates for customary rights of

occupancy of village land for women in their communities. MWEDO supported the women by providing training on legal rights, as well as the administrative steps needed to help secure land rights through official land certification. At the beginning, the women's committees faced significant opposition from their communities, but through perseverance, openness and making use of diverse negotiation tactics, over time the women gained community support. Importantly, because the process was defined and led by the Maasai women's committees and was focused on dialogue and negotiation with men as leaders, the whole community supported the results. The process was then documented and shared for use by other Maasai communities seeking to improve the tenure security of women.

Ghana's Grassroots Sisterhood Foundation: negotiating for customary lands

Through sustained and collective negotiation, in which they emphasized the broader community-wide benefits to be gained through secure land rights for women, Dagomba women in the



northern region of Ghana gained secure rights to customary land, from which they were otherwise precluded.

In northern Ghana, women are vulnerable to extreme poverty and food insecurity. The burden of planting, maintaining, harvesting and marketing crops most often rests on women, and yet they are excluded from decision-making on land and natural resources. While under formal law women can own and inherit land, by custom women are not entitled to inherit land from their family or their husbands, and have to rely on relationships with male relatives to gain access to the land that they rely on for their survival.

The Ghanaian Constitution recognizes both formal law and customary law. Recognizing customary law is positive for indigenous land rights in Ghana, where an estimated 80 per cent of land is governed under customary tenure. Yet, under customary law, gender and kinship relations play a central role in determining how land rights are allocated. While both women and men can acquire certain rights through their membership in a lineage, those rights normally have to be exercised through some additional act, such as clearing land or paying a customary tax, burdens which can inadvertently exclude women. In addition, in marriage, a woman is expected to work with her husband on his lineage land to provide for the family, leaving her little time to develop separate land.

The Grassroots Sisterhood Foundation works with groups of women in northern Ghana to strengthen their land tenure security through a variety of means: developing alliances with tribal chiefs, religious leaders, professionals, land agencies and other groups in the community; holding stakeholder forums; training women on their land, property and inheritance rights; and holding community conversations to raise the awareness of land and property issues among traditional and religious leaders.

One group of women who were part of a settler community in the northern region of Ghana was able to negotiate for long-term rights to customary land in their village by collectively approaching the chief. They organized into a group and explained to the chief that they needed land for a market, which would benefit the women individually but also the whole

community. They made multiple visits to the chief in his palace, persuaded his elders and counsellors to support their effort, and invited the chief to visit the land site, convincing him that it would improve his image as leader if he granted them rights to the land. The women worked together to gain funds to provide the necessary 'drinks' which are culturally required during such negotiations. In the end, the women persuaded the chief to give them 5 hectares of customary land for a market. The women have rights to that land for their life-times, and may bequeath it to their male and female children. Even if the chief dies, the women's rights to this land are secured with the next chief because the grant of land was written in an official ledger, demarcated, and all the elders witnessed it.

Conclusion

Secure land tenure is an important goal for indigenous groups, and it is an important goal for indigenous women. However, one does not necessarily beget the other. Recognizing or supporting customary laws alongside formal law is an important starting place for securing indigenous peoples' land rights, but if those customary laws preclude rights for women then the benefits of the formal recognition may not be shared equally by all. Likewise, stronger land rights for women in formal law may do little where dominant customary land tenure systems contradict these formal legal protections, or women find that they are unable to understand or access them. Successful strategies incorporate a dual approach, which both formally recognizes customary land tenure regimes of indigenous peoples and also creates the space for negotiation and adaptation with that customary regime so as to benefit the entire community. ■