

# **Overcoming barriers to land access and tenure security in the Customary land sector to increase efficiency, equity, and economic empowerment across Ghana's agricultural value chains**

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**Key words:** customary land rights, documentation, customary land tenure, gender, youth

## **SUMMARY**

In Ghana, as in many countries across Africa, land for agricultural uses is accessed through the customary land tenure system under which customary rules and practices define the institutional arrangements for leadership, decision making, land access, use, occupation and ownership of customary lands and, the mechanisms for securing land tenure. In Ghana, the management of customary lands are organized under ethnic groups who occupy geographical jurisdictions called 'Traditional Areas'. Each traditional area is associated with a particular ethnic group with its customary laws and practices for the management of its customary lands. Thus, as with other segments of the population, young men and women in Ghana generally have access to customary lands for agricultural purposes through their ethnic background and their affiliation to an ethnic group of birth, the system of inheritance and the availability of vacant portions of customary lands belonging to the ethnic group. This access comes with limitations such as the absence of independent decision making and control over the land under occupation and use by the youth, lack of security of tenure due to increased threat of dispossession when there is a competing interest, and limitations and restrictions imposed by societal norms to independently participate in commercial agriculture, especially in high-value tree-crop cultivation. At the customary level, customary norms and practices limit young men's and women's participation in the management of customary land and therefore are far removed from the decision making and application of customary laws in contemporary Ghanaian societies. Traditionally, older male members of the ethnic group are considered mature enough to be custodians of the customary lands, responsible for determining who gets to access to any portion of the customary land, how much can be given and for what purposes. Even though young men and women have the manpower to farm, they are generally considered not capable to manage investments in farming cash crops in a sustainable manner. Older heads of households are considered more responsible to manage perennial crop farming over a long period of time. Therefore, young men and women in the ethnic group are only able to participate in cash crops cultivation as part of a household activity, contributing their labour to cultivate farmlands acquired by the head of the household who gains access by virtue of being considered old enough to hold the land and engage in productive farming activities over a long

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period of time. The lack of independent access to agricultural land for cash crop production, threats to tenure security, and limited recognition of the rights of young men and women undermines their ability to efficiently use the land or their willingness to make investments in it. These factors prevent young men and women from effectively participating in agricultural value chains and propelling the country's sustainable economic development.

Unlike acquisition of customary land rights under the customary land tenure system, which is guided by customary laws, leasehold interest can also be obtained under the customary land tenure system. Acquisition for leasehold interest is not regulated by customary laws and practices and therefore can be accessed by all, including young men and women. However, an important requirement for obtaining a leasehold interest in land is the payment of a lump sum upfront payment as consideration for the grant of the leasehold interest. With the increasing population and competing land uses, the requirements for upfront payments have become extremely high, making it difficult for young men and women to meet the capital requirement for obtaining leasehold interests for their farming activities.

Government, private sector, development partners and all other stakeholders engaged in agricultural value chains in Ghana cite insecure tenure as a known impediment to sustainable and equitable growth in the sector. Recognizing and respecting all types of customary land rights, including those held by members of the household who work together on a household farm, and documentation of all of such customary land rights, when done correctly, can support increased tenure security and facilitate equitable and sustainable development. Yet efforts to address tenure issues through documentation often fail to adequately record the complexity of the customary land tenure systems in Ghana, resulting in incomplete and inaccurate records of customary land rights and risking further entrenching discriminatory norms and disenfranchising young men and women.

This paper draws on findings from a nationwide diagnostic assessment of opportunities and barriers for young men and women's dignified employment in Ghana's agricultural sector to highlight challenges and opportunities for accessing and documenting land rights as a way to support stronger tenure security of rural Ghanaians. The paper goes on to share a promising approach for addressing these barriers through support for inclusive customary land governance, participatory land use planning and capacity strengthening of land administration institutions and professionals. It also highlights some best practices of conducting land use planning with climate change and gender lens (integrating gender equality and social inclusion) from Tanzania through Landesa in collaboration with the Government.

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## **1. Introduction**

Secure access to land and strong tenure rights are necessary for Africa's sustainable and equitable economic growth. Customary land rights documentation holds the potential to strengthen customary land tenure security and thereby to support equitable and sustainable development and increased agricultural productivity. In Ghana, the legal framework provides a clear vehicle for accessing and documenting customary land rights, but implementation remains a challenge. In many communities, prevailing norms and understanding of the value of documentation challenge efforts to document customary land rights. Limited institutional capacity and support for participatory land governance and decision making further hinder access and documentation of customary land rights, especially for women and youth.

Ghana's economy is largely driven by the agriculture and extractive sectors, with over half of the country's labor force engaged in agriculture. In this context, secure access to sufficient productive land for farmers is critical for sustaining livelihoods, household food security, and for national development. Access and secure land tenure is also a necessary foundation for meeting the challenges of a changing global climate. Yet land with productive capacity for sustained agricultural activities is becoming an increasingly scarce resource, with population growth, urbanization, commercial investment, changing climatic conditions, and land speculation driving up pressure and changing how land is valued, managed, and used.

In practice, recognizing, respecting and documenting the array of customary land rights recognized under the state and customary land tenure systems in Ghana to support more streamlined, efficient, and clear customary land administration is challenging. Promising practices drawn from experience supporting community land rights documentation efforts in Tanzania offers a potentially useful example that could help to advance efforts to ensure that land rights documentation supports equitable outcomes for young men and women in rural Ghana.

Specifically, this paper discusses challenges to women and youth access to customary land rights and mechanisms for customary land rights documentation within the plural legal and institutional context of Ghana's land registration system. Drawing on findings from a nationwide study of tenure-related constraints and opportunities for enhancing young men's and women's independent participation in perennial crops cultivation, this paper discusses entry points for supporting existing customary and state institutions during the process of land

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rights registration to enhance documentation efforts. After a brief discussion of the nexus between land tenure security and equitable socioeconomic development in section two, section three provides a brief overview of customary land administration and challenges to tenure security in Ghana. Section four describes the methods of data collection and findings from the nationwide assessment. In section five, we describe a successful approach to supported land rights documentation being piloted in Tanzania that addresses similar challenges. Section six concludes with a reflection on a potential way forward to overcome tenure security challenges in Ghana and similarly challenging contexts around the world.

## **2. Unlocking Land's Potential: The Nexus between Land Tenure Security and Equitable Rural Development**

### Secure tenure as a necessary condition of equitable and sustainable economic development

Across the world, land provides a primary source of income, food security, and cultural identity for rural men and women. Secure access to suitable land and financial capital are critical inputs for agricultural productivity and sustainable economic development in rural areas. Secure rights to agricultural land provide the assurance to land users that they will be able to reap the economic and sustainability benefits of their investments in land over time; insecurity of tenure acts as a disincentive to investment in land and renders land users vulnerable. Improving access to land and the security of land rights can therefore serve as an important catalyst in unlocking agricultural and agriculture-adjacent opportunities. Addressing land issues can be particularly important in extending these opportunities to women and youth, who often face disadvantages in land access and security under customary systems.

Yet in many countries, rural men and women lack secure rights to the land they rely on for their lives and livelihoods. Rising pressure on land and competition for land and resources, weak land governance, and incomplete or poorly implemented legal frameworks for securing land rights combine to weaken the land tenure security of many rural people, particularly poor and marginalized groups.

Improving land access and strengthening land rights boosts economic opportunities in a number of ways:

**Providing avenues for employment in agricultural value chains. Having in place a transparent customary land governance system and institutional mechanisms for accessing customary land rights for farming perennial crops is needed to increase participation of women and youth in agriculture.** Identifying vacant land that may be available for allocation, rehabilitation, and documentation in the names of aspiring farmers can provide disadvantaged women and youth with the opportunity to enter into employment in the agricultural sector when accompanied with other supportive services, such as agronomy and business training, financing, access to markets, and technology solutions. Agribusinesses may also offer opportunities for land access for aspiring growers through land leasing arrangements.

**Strengthening incentives for smallholders to invest in their land.** Limited access and insecure land rights can be a significant deterrent to investment for smallholder farmers. For example, investing in higher value tree crops instead of utilizing land for subsistence farming or investing in inputs and infrastructure such as fertilizers, mechanization, and irrigation may not be feasible for smallholders who face high risks of losing their land rights before the return to their investment has been realized. Eliminating these risks can thus enable farmers to be able to take advantage of opportunities to make long-term investments in their land, which can improve their living standards in a meaningful way. In addition, households whose land rights are insecure must often invest resources in protecting those rights, such as building visible structures or devoting labor to guard land. Stronger land rights can free up resources for more productive uses.

**Enabling investment by agribusinesses.** Insecure land rights for smallholders also introduces risks for many types of agribusiness investments. For example, outgrower schemes and similar arrangements rely on participating producers having secure land rights. More broadly, marketers, processors, and other actors in the value chain may be deterred from investing and establishing a presence in areas where land rights for farmers are insecure. Strengthened land rights can allow farmers to meet purchaser compliance standards and participate in commodity certification schemes, and can thus expand economic opportunities by changing the incentives for other actors in the value chain as well.

**Increasing bargaining and decision-making power for women.** Strengthening women's rights to collective ethnic lands and marital property can also be a source of economic opportunity. Often, legal protections for the land rights of indigenous women of ethnic groups in Ghana and married women fail to translate into equity in practice. Empowering women to be able to make their own choices about land use can thus enable them to be entrepreneurial and to take advantage of market opportunities. In addition, stronger rights give women more bargaining power in terms of household spending decisions, which often translates into increased investment in health and education of household members.

**Improving the functioning of land markets.** By enabling buyers, sellers, and renters to engage in more secure land transactions, stronger land rights can facilitate land sales and rentals or sharecropping arrangements. Land transactions can boost output and productivity in the agricultural sector by enabling producers to adjust their land holdings to more efficient scales. Markets can also provide an important alternative means of accessing land for those who are disadvantaged under the customary land allocation system, as women and youth often are. Finally, land markets contribute to productive employment in other sectors by enabling land holders to sell or rent their land to migrate or invest in other opportunities.

**Increasing access to credit, crop insurance, and other farmer support services.** In some cases, formal land documents can boost credit access by enabling landholders to use their land as collateral to obtain loans. Alternatively, formal recognition of land rights may provide lenders with information or additional security that increases their willingness to extend credit.

## **Documentation of customary land rights – if done correctly – can strengthen tenure security and unlock land’s potential to drive sustainable economic growth**

Land rights formalization processes seek to make land rights more secure by providing formal (legally legitimate, usually but not always, government supplied) documentation of the rights to own, access, use, control, and/or transfer land and other real property. Limited documentation of rights contributes to tenure insecurity across the world. Globally, an estimated 70 percent of the population lacks a legally registered title to their land (World Bank, 2017). In Africa, where the majoring of rural land is held under customary tenure, rates of formal documentation are lower still: by one estimate, only 10 percent of rural lands are registered (Byamugisha, 2013). Communities with undocumented rights may face insecurity when faced with the pressures of population growth, land commodification, agricultural commercialization, natural resources exploration and exploitation, and climate change (World Resources Institute, 2017). Undocumented land rights can also present risks for companies, making it difficult to identify and respect land rights, and thereby avoid and mitigate adverse human rights impacts, conflict, and other challenges that can affect companies’ operations, finances, and reputations.

Across the world, efforts by governments and development partners to streamline policies and processes for increasing the proportion of land that is registered face challenges such as outdated and complicated methods for recording land data, under-resourced land administration institutions, complexities arising out of customary tenure systems, and limited demand for formalization on the part of rural landholders.

Because land formalization processes often involve the imposition of new tenure rules and institutions onto a pre-existing system, such processes can have the result of simplifying tenure arrangements and – in the worst cases – can result in the loss of tenure rights. This risk is especially pronounced for women and youth, who often have secondary rights, or rights that are dependent on relationship status or other temporal factors. While land formalization efforts have come a long way towards embracing the complexity of customary tenure, many contemporary, technology-driven approaches still result in incomplete documentation of rights, reinforcing the inequities of customary tenure systems that limit the security and quality of young men’s and women’s access to agricultural land.

### **3. Land Administration and Customary Land Tenure Security in Ghana**

#### **Land Administration in Ghana**

Land tenure in Ghana is shaped by a mix of customary and statutory norms and processes, with an estimated 80 percent of land held and managed under customary tenure (Abubakari, et al 2016). The role of customary institutions in land administration is established under the Constitution of Ghana (1992),<sup>1</sup> which also establishes the Lands Commission as a statutory

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<sup>1</sup> Article 267(1) of the 1992 Constitution of the Republic of Ghana

body with a mandate to manage state and vested lands.<sup>2</sup> The role of customary institutions in land administration has subsequently been defined through institutional reforms under the Ghana Land Administration Project (LAP), which established Customary Land Secretariats (CLS) as an institutional linkage between customary institutions and the Lands Commission. These reforms and related donor support emphasize improved record keeping, professional services delivery, land rights documentation, cadastral mapping, and land titling.

### **Challenges to Customary Land Tenure security in Ghana**

In Ghana, secure long-term access to land for most smallholder farmers, and especially youth, women, and migrants, remain a challenge across the country. An estimated 80 percent of land in Ghana is held under customary tenure, and most farmers access land via customary land tenure systems which operate by norms and practices that vary by region (Abubakari, et al 2016). In many traditional areas across Ghana, these customary norms are not favorable to women and youth, or are not clearly defined, making them a challenge to enforce.

Across Ghana, young men and women generally have access to land, but that access is not secure, and the land that they are able to access is often small in area and of low quality. In general, traditional views of young men and women as being unable or less able to manage a farm renders them ineligible for land allocation for commercial agriculture in many customary communities. Female youth tend to be most disadvantaged in access to land and production opportunities: young women encounter additional limitations because they are seen as ‘transitory’ members of the family—their natal communities expect them to leave when they marry, while their husbands’ communities do not see them as deserving of long-term rights to land in their marital community.

Rights to land are often unclear and are generally not documented. There is limited institutional set up for documenting customary land rights. In the few areas where the concept of Customary Land Secretariats (CLSs) has been piloted, communities’ limited understanding of the importance and use of land documents discourages them from engaging in the costly and difficult process of obtaining those documents. This limited documentation of land rights further limits security of access, clarity in land use agreements, and enforcement of land rights.

These barriers make it particularly challenging for young men and women to grow crops that require a long-term time horizon, like cashews, and limit their incentives to invest in the land that they are able to access. These challenges for secure access and rights to land under customary systems limit the sustainable development potential of land-based livelihoods. For many farmers, having weaker land rights leads to uncertain tenure durations and smaller farm sizes, negatively impacting farm output, food availability, productivity, and participation in value chains. Land rights are also least secure for women who are not heads of households (Nara, et al 2020).

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<sup>2</sup> Article 258

In many parts of Ghana, smallholder farmers who are considered migrants or strangers (non-indigenes) have weaker security of land rights than indigenes and face additional barriers to accessing land. Insecure land rights among migrants is a source of food insecurity among migrant smallholder farmers, who have fewer and weaker land rights as compared to indigenes. Land rights are also least secure for women who are not heads of households.<sup>3</sup>

When non-indigenes lease land as tenants, they are only granted short term rights allowing them to cultivate annual food crops like cassava and maize, but not perennial cash crops like cocoa, cashew, and coffee. This practice has limited the participation of non-indigenes, youth, and women in many of Ghana's economically important agricultural value chains hence reducing their access to decent jobs in the agriculture sector.

These barriers to entry for young men and women in Ghana render the country's agricultural sector less able to overcome some its most pressing challenges. Ghana's farming population is aging, and while young people comprise a significant portion of the rural population, land is mostly controlled by the older generation. Accessing land is a challenge for young women and men, who tend to lack the capital needed to acquire land for independent farming, and whose access through customary tenure is limited (Nara et al, 2020).

Where youth are able to access land, limited documentation of their land rights presents an additional barrier to securing these rights, and to accessing extension services. Individuals wanting to access, acquire, document, and register interest in agricultural land must understand and navigate complex processes that differ from one traditional area to another. Because of the complexity and limited understanding of these processes, the rights of most agricultural landholders in Ghana are not documented, or in some cases only partially documented, such as a receipt for payments made or a site plan, which do not provide the clarity or protection needed.

Land tenure insecurity is greater for peri-urban smallholders where there is increased demand for land due to rapid urbanization. Land rights documentation could strengthen land rights for peri-urban youth and women smallholder farmers if steps are taken to facilitate land access and ensure inclusive land rights documentation and registration. While Customary Land Secretariats (CLSs) were initiated and piloted under the Government's Land Administration Project (LAP) and have since expanded to about 100 Secretariats across the country, they have yet to prioritize the documentation of land transactions and land rights of customary land holders. Instead, they have thus far prioritized the documentation of residential rights with limited attention to farmland registration (Landesa, 2015).

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<sup>3</sup> Implications of Customary Land Rights Inequalities for Food Security: A Study of Smallholder Farmers in Northwest Ghana, <https://www.mdpi.com/2073-445X/9/6/178>.



## 4. Methods and Findings

### Methods

#### Description of the Study

Following a desk review and analysis of related perennial crop farming and government activities in each region, the study undertook field engagements in 85 traditional areas and 328 communities within 15 regions across Ghana. Table 1 shows the focus regions and value chains studied. Specific traditional areas were selected based upon the presence of targeted job creation value chains as determined through previous research and value chain analysis.

Focus Region	Priority Value Chain
1. Upper West	Shea, Cotton, Cashew
2. Upper East	Shea
3. North East	Shea, Cashew, Mango, Cotton
4. Savannah	Shea, Cashew, Mango
5. Northern	Shea, Cashew
6. Bono East	Cashew, Shea
7. Bono	Cashew, Cocoa, Mango
8. Ahafo	Cocoa
9. Ashanti	Cocoa
10. Eastern	Cocoa, Cashew
11. Western	Cocoa
12. Western North	Cocoa, Cashew
13. Central	Cocoa
14. Volta	Cocoa
15. Oti	Cocoa, Coffee

#### Study objectives and approach

The diagnostic study focused on two interrelated activities with the following objectives:

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1. Assess the land access and tenure security challenges and opportunities that impact young men's and women's participation in agriculture, specifically in the cocoa, cashew, shea, mango, coffee, and cotton value chains in Ghana, and determine ways to address the challenges.
2. Assess relevant activities and operations of value chain actors in the traditional areas, districts, and regions, and their interventions.

Data collection under the study was preceded by a community entry exercises which took the team to each of the selected region, traditional areas and communities. In each community, farmers engaged in the selected values chains were identified and mobilized into focus groups for the interviews. Focus groups comprised adult male and adult female farmers, young men and young women, organized in separate groups. Traditional Leaders at different levels in the hierarchy of traditional leadership were also engaged. In each traditional area, Queen mothers were engaged separately from male chiefs, even though in a few of the traditional areas, the male chiefs allowed the Queen mothers to be part of the engagements with traditional leaders. Finally, private sector actors operating at different points in the value chain were identified and engaged. The stakeholders identified during the community entry and mobilization phase in each traditional area were engaged through semi-structured interviews and focus group discussions to understand the land tenure dynamics of the selected areas, existing or previous interventions by state and/or private actors with regard to activities pertaining to the selected value chains, involvement of women and youth (male and female) in the value chain, and to collate insights relevant to the implementation of the project.

**Analysis of Findings: Challenges and Opportunities to Address customary norms and practices and strengthen institutions to improve land access and customary land rights documentation outcomes in Ghana**

**Barriers imposed by Traditional Norms and Customary Practices in Household Farming**

There is the general norm in Ghana that cash crop farming is done by older men who are allowed to access land for farming and all members of his household are expected to join him in working on the farm. Ownership however, remains with the head of the household who makes decisions on the farm.

Almost all the women and youth engaged during the assessment are members of households and therefore have some form of participation in all the selected value chains but in a limited way. The limited participation is in the form of their involvement as members of their households, working with the male head of their household with limited control and decision-making power. Household participation in value chain activities is a traditional norm and considered as part of way the local communities are organized. Youth and women end up in the household operation by default as wives and children. This traditional norm and the expectation that come with it, limits women and youth from engaging in the value chains as

primary participants and therefore also have limited opportunities and benefits that the 11 value chain presents.

### **Barriers to Accessing customary land rights by Women and Youth**

Access to customary land rights by women and youth is usually through the lineage and inheritance. The status of a women as married, single, widowed or aged, influences her ability to access lineage land. In a patrilineal system, women's membership status in their families is generally considered non-permanent, and they are often only granted temporary use rights, which are too insecure for tree-cropping. For this reason, young women, unlike their male counterparts, are not eligible to own or hold part of any land held under the Usufruct of their father/family. This restricts women's ability and limits their incentive to devote land to long-term investments in cash crop production. Unmarried young women may access such lands temporarily for farming purposes through their biological male relatives such as their fathers or brothers. The rights granted under such conditions are mostly secondary use rights, which are largely undefined, and do not guarantee a strong level of tenure security because access is lost to their birth-families once women marry. The assessment also revealed a perception that young women who are financially independent will delay marriage or leave marriages when there are any challenges. Parents who subscribe to this perception are less inclined to allow their adult daughters access to family land to establish their own farms. In their marital homes, wives are considered ineligible to own or hold land. Under the Usufruct of their husband's family, wives are not biological members and are perceived as likely to re-marry into another family in the event of their husband's death or divorce. As wives risk losing access to land upon their husband's death (or separation), they have less incentive to invest in planting and cultivating tree crops. Childbearing is the main determinant of married women's inclusion in inheritance sharing in their marital homes. Women's continuous access to land in a marital relationship is strengthened when she bears male children in the marriage. Otherwise, a wife loses access and any investments in the form of tree crops on the land, upon the death of her husband. In polygynous marriages, the amount of land and property each wife inherits depends on the number of surviving male children. While wives are eligible to access land for farming purposes through their husbands, the challenge with such an arrangement is that their occupation and use of land may not be continuous. There is no guarantee that their husbands will make land available to them each year. As a result, among married women, the risk of losing access to land discourages women from producing cashew, according to women who participated in the assessment in cashew growing areas.

### **Limited Awareness of, and Capacity to access opportunities in Leasehold Interest**

The Land Act, 2020 is a national legislation that seeks to revise, harmonize, and consolidate the laws on land to ensure sustainable land administration and management, effective and efficient land tenure and to provide for related matters.

The Act recognizes six (6) different types of interests in land – allodial title, common law freehold, customary law freehold, usufructuary interest, leasehold interest, and customary tenancy. Customary tenancies constitute the most prevalent contractual arrangement through

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which farmers access land for the cultivation of cocoa and other tree crops, mainly in central and southern zones of Ghana. The Act also makes the following related provisions:

- i. that, all six (6) interests should be documented, and can be registered.
- ii. the usufructuary interest is acquired in the exercise of an inherent right by a subject or a member of a stool or skin, or family or clan which holds the allodial title. Therefore, the usufructuary interest can be acquired by both males and female members of the landowning group.
- iii. Both males and females who have the capacity may acquire a leasehold interest, provided they do so within the confines of the Act.
- iv. A decision or practice in respect of land under customary tenure, whether the land is individually or communally held shall be in accordance with the customs, traditions and practices of the community concerned. But a decision or practice which discriminates on grounds of one's gender, place of origin, ethnic origin, political opinions, color, occupation, religion or creed, disability, or social or economic status is void.

In spite of the clear provisions in the Land Act, there is limited awareness of types of land that Can be Accessed: Local farmers access land for VC activities from the customary land tenure systems. Even though the land act mentions 6 types of interest in land, five of which can be acquired for VC activities, all farmers interviewed consider access through two main types of interest, which are the usufructuary interest and the customary tenancy. Access to these two types of interests in land are defined by customary rules which disadvantage women and youth but is the most attractive and most known because it requires less capital expenditure to obtain. Accessing land through leasehold interest comes with no defining customary rules. One only needs to have the financial capacity for the upfront payment. Women and youth can access land through the leasehold arrangement. However, the requirement for an upfront payment of a lump sum limits the capabilities of women and youth to access land through this avenue.

### **State Interventions**

Ghana's policy environment and state interventions could be leveraged to support young men's and women's access to land and security of tenure for meaningful employment in agriculture, however, there is a need to for such state interventions to make a special case for land access cash crop value chain development, connecting young men and women to needed support. Unfortunately, Government interventions in value chains target production, processing and marketing, not land access and tenure security. Institutions, policies, and strategies exist to support cash crop value chain development, but they are not successfully reaching young men and women. That programming and policy tend to take as given the existing household production system and customary land arrangements, deepens existing biases against young men and women in land tenure and access to agricultural resources and opportunities. While land-focused institutions and policy frameworks could support stronger rights for young men and women, state land sector agencies have limited oversight over customary land administration and require training and capacity building support to help them to fulfill their potential role.

Private sector initiatives typically neither support more equitable and efficient land use in their value chains nor ensure young men's and women's access to markets, inputs, training, and infrastructure. Private sector actors are generally aware of the negative impacts of land tenure issues on agricultural value chains but often express uncertainty about what role they can or should play to address these issues. Where private sector initiatives are working to address land tenure insecurity – such as through technology-driven solutions to document tree and parcel rights – their approaches result in incomplete documentation of rights, reinforcing the inequities of customary tenure systems that limit the security and quality of young men's and women's access to agricultural land. Yet companies do seem to see the value and importance of addressing land tenure issues and express an interest in supporting efforts to advance young people's participation in agriculture.

### **Barriers to customary land rights documentation**

The Land Act provides for the establishment of functional Customary Land Secretariats (CLSs) in every traditional area to support institutionalization and centralization of land rights documentation efforts in the respective traditional areas. The CLSs are expected to establish a functioning mechanism for documenting customary land rights for all landusers in each customary land jurisdiction, under the oversight of their traditional authorities. They are responsible for the following, among other functions:

1. documenting all transactions in land in their areas of operation
2. facilitating the settlement of land disputes through alternative dispute resolution

The legal recognition for the Customary Land Secretariats under the Land Act holds promise for enhanced access to land rights documentation services. However, most Customary Land Secretariats have limited their documentation services to land users in peri-urban communities and commercial and housing land uses. This situation poses a risk that even at the CLS level, young men and women could be excluded, resulting in a loss of rights and a missed opportunity for increasing young men's and women's employment in agriculture.

There is also the general lack of understanding among agricultural land users and some traditional leaders on the import of documentation of land rights. While some traditional leaders consider documentation of land rights for land users as a way of handing over their absolute rights to the land to the local farmers and therefore hesitate to support documentation, local farmers on the other hand, consider land rights documentation as an avenue for traditional leaders to make high demands of them. Thus, even when Customary Land Secretariats are established for documenting customary land rights, services are limited and patronage is low. These misconceptions and misgivings about documentation are compounded by low literacy rates in many communities.

Customary land authorities do not have sufficient technical capacity to document the different types of interest in land. At the customary level, the Land Act mandates CLSs to document and maintain records of all land transactions, including leaseholds, Usufructs, customary tenancies, etc. However, only a few traditional areas have CLSs, and less than half of these CLSs are functional. Among those, the majority do not have the technical capacity to issue valid documents. Here too, the OASL and Lands Commission have not provided the requisite

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support to help CLSs navigate these challenges. In the Northern Zone, there are no templates or guidance documents<sup>4</sup> to which they can refer.

### **Structural difficulties in accessing local dispute resolution mechanisms**

In Ghana, Customary Land Authorities have the mandate to set the rules for customary land administration, oversee the implementation of the rules they set, and are also in charge of adjudication of disputes that arise in customary land administration through the local dispute resolution mechanisms. Therefore, even though local dispute resolution mechanisms consist of other traditional leaders apart from Paramount Chiefs and Heads of landowning Families/Clans respectively, they still hold considerable influence in the dispute resolution processes. This poses a challenge for smallholder farmers, including women and youth, who have land disputes that involve the Traditional leaders who superintend over the local dispute resolution systems. Risk of biases, intimidation, unfair trial, refusal to hear the case, arbitrary judgements, or lack of enforcement of judgements are some of the factors that affect access to local dispute resolution mechanisms. Due to these structural difficulties, some farmers hesitate to patronize the services of the local dispute resolution mechanisms for redress to land tenure challenges they face, except when they are summoned. The formal courts are also financially and geographically inaccessible to those outside of the district capitals. Therefore, while there appear to be mechanisms in place to handle land tenure challenges that smallholder farmers face, there are structural difficulties that make these mechanisms inaccessible. Meanwhile, the new Land Act strongly advocates for the use of Alternative Dispute Resolution (ADR) mechanisms, instead of the courts of law, as the first option in the resolution of land disputes. However, for this to work effectively and make the local dispute resolution mechanisms attractive, the right standards and principles must be applied in the handling of cases and enforcement of judgements. This will require the strengthening of the local dispute resolution systems.

### **Opportunities to support customary land rights documentation**

Documentation of land rights and interests could strengthen tenure security and potentially increase the availability of lands for women and youth. Piloting or demonstrating a model that involves and strengthens customary leaders', local officials', and community members' understanding of what rights documents do and do not confer and create templates and processes that are easily understandable and affordable has the potential to bring about improvements at scale.

Effectively addressing barriers to women's and youths' land tenure security and access will require raising knowledge and understanding of land rights under Ghana's legal and policy

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<sup>4</sup> However, under the Customary Land Rights Documentation Project, COLANDEF developed a handbook which provides a complete guide, with templates, for the documentation of all the different types of interests in land recognized under the Land Act 2020, Act 1036 of Ghana. Dissemination of the Handbook is currently underway in traditional areas in Southern Ghana. Along with the dissemination of the Handbook, COLANDEF also establishes partnerships with Leadership of the recipient-traditional areas, so that the requisite technical support is provided by COLANDEF, to support the Leadership of the traditional area, in implementing the Handbook.

framework. Engagement with women and youth on rights awareness and strengthening their knowledge of the business side of VC participation and building their skills on self-advocacy/public speaking could address these barriers.

A gap in understanding of women's and youths' rights under Ghana's formal legal framework for land rights among customary leaders and rural communities is a barrier to realizing those rights. There is a clear opportunity to overcome obstacles to women's and youth land rights by raising awareness and building support among customary leaders for these rights in the context of strong, respected customary systems and economic development will lead to durable, positive change in Ghana's rural communities. Peer learning and exchange within and across countries, alongside technical support in models for documentation and advancing gender and youth empowerment and social inclusion could be explored as well.

## **5. THE LANDESA TANZANIA EXPERIENCE AND LESSONS FOR GHANA**

### **Introduction**

Tanzania as in Ghana, land is a key resource in achieving better lives for every Tanzanian as it affects the lives of most people living in rural areas. If land is planned, surveyed, titled and used sustainably is fundamental for economic development, food security, and poverty reduction in Tanzania. Significantly, preparation and implementation of land use plans will increase productivity of land and other related natural resources.

Currently, the land tenure system in Tanzania is a leasehold system which is referred to as the granted right of occupancy and customary or deemed right of occupancy while the President is vested powers over the land, and s/he is a custodian of the land on behalf of all Tanzanians. The main laws which govern land matters in Tanzania are The Land act, No. 4 1999, and the village Land Act, No. 5 1999. Section 2 of the Land, Act provides that a right of occupancy means a title to the use and occupation of land and includes the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land by customary law; it also defines the deemed right of occupancy as the title of a Tanzanian citizen of African descent or a community of Tanzanian citizens of African descent using or occupying land under and by customary law. To foster co-operation with Central Government, local government authorities, Non Governmental Institutions such as Landesa and other institutions engaged in land use planning, the Land Use Planning Act No. 6 of 2007 recognizes the concept of participatory land use planning and management by establishing Planning Authorities at the National, District and Village levels. Thus, Landesa has been working with the Government and other partners to conduct land use planning which is the focus of this paper. Regardless of some of the challenges, but there are great lessons to be learnt depending on the situation and circumstances of Ghana.

This section is not a comparative analysis of land laws or land use planning in Tanzania versus Ghana. However, it highlights some best practices of conducting land use planning with climate change and gender lens (integrating gender equality and social inclusion) from Tanzania through Landesa Tanzania in collaboration with the Government of Tanzania and

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PELLUM in Mufindi District. Through this collaboration, Landesa Tanzania was able to support disadvantaged groups such as women and youth in four villages. This paper will showcase two villages namely Ihomasa and Nungwe.

Founded in 1981, Landesa is the world's first non-governmental organization designed for collaborating with governments to extend land rights to world's poorest. Landesa has empowered millions of women and men with powerful tools to improve their lives through engaging in activities that advance gender-responsive land-rights. Landesa has worked in 50 countries throughout the world with headquarters in Seattle, Washington, USA and country offices in China, India, Myanmar, Liberia, Rwanda, Kenya and Tanzania.

PELUM Tanzania is a network of Civil Society Organizations (CSOs) working with smallholder farmers and livestock keepers in Tanzania. The network has its headquarters in Morogoro, Tanzania. The current membership of PELUM Tanzania is 39 legally registered CSOs spread all over Tanzania Mainland.

### **Land use plan for village land ( including communal land)**

For the purposes of management only, all land is classified as general land, Village land and reserve land. The President has powers to transfer land from one category to another. Reserve lands are forests, wildlife areas, etc., which constitute about 28 percent of all lands. Village land is all land that falls under the jurisdiction of the existing registered villages in the country which constitutes nearly 70 percent of all land. The rest is mostly urban land and that land already under granted titles. The Commissioner for Lands is the sole authority responsible for overall administration of all lands, but has delegated his powers to authorized land officers at district/municipal level. The Village Councils manage all village land with advice from the Commissioner for Lands.

- i. Village land that includes Communal land as opposed to general land and reserved land is managed by Village Assembly through village council
  - i. Despite ongoing rapid urbanization, approximately 65% of Tanzania's population is still rural
  - ii. Climate change impacts poses significant risks to rural livelihoods and land tenure rights.<sup>5</sup>
  - iii. Out of 12488 villages, less 20% have LUP and thus, significant part of village land is unplanned and insecure

### **Conducting Land Use planning with climate change and gender lens**

Climate change effects are not homogenous for women and men because of their gender roles, challenges, preferences, and rights – the same applies to youth. It also poses a risk of

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<sup>5</sup> Nexus between VLUP and land tenure security

- Proof of ownership in the legal complexity
- Property disposition and requirement of spouse consent
- Community capacity to address climate change risks
- Community capacity to negotiate and defend land tenure rights

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perpetrating inequalities as women and young women are generally stereotypically portrayed vulnerable and marginalized with limited access to productive resources.

Just like other women around the globe, Tanzania women also suffer disproportionate impacts from climate change impacts and biodiversity loss. Because women's livelihoods depend on the management and consumption of diverse natural resources, they often bear a greater brunt of challenges than their male counterparts when these resources are destroyed or depleted

In Tanzania, Women in subsistence farming produce 70%- 80% of their families' food yet, they usually have only access to land while men own, control and inherit land. consequently, husbands make decisions on management of the such land that women cultivate and use of its produce.

Since women lack ownership and control over land, they have limited opportunities to invest in sustainable land use. Limited access to and use of resources have also led to women and young women experiencing more impacts with limited ability to adapt.

### **Landesa Tanzania Land Use Planning (LUP): Mufindi Experience**

The Mufindi District experiences will be graphically narrated through 2 villages of Ihomasa and Nundwe. This case studies involved a population of 3684, where 35% are children under the age of 18 by 2020. Our innovation is through engendering the LUP process and climate change mainstreaming.

#### **Mufindi Experience Method**

##### **Preliminary activities:**

Before the actual land use planning – an intensive training on land rights to community is conducted. Our partner PELUM Tanzania conducted various awareness programs in Ihomasa village prior to our support.

Land parcel survey is a process preceded by intensive training on land rights, undertaking participatory Rural Appraisal, identification of different village land uses and by-law making of which after their approval then follows parcel survey which gives room to issuance of customary certificates. It is from the background of training and, Participatory Rural Appraisal and bylaw making contribute to mind shift/change and bring in gender issues consideration.

During implementation of this activity which mainly involved field working whereby, 17 para-surveyors were involved in mapping/surveying of the land parcels in both Nundwe and Ihomasa villages. This activity also involved village chairperson, village executive officer, hamlet chairpersons, and Village Adjudication Committee (VAC) members as well as district officials who supervised the team. It was expected that 1,000 land parcels from each village would be surveyed to make total of 2,000 parcels.

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Para-surveyors are not professional surveyors but active (with at least secondary education) community members who have been identified and trained on basic knowledge and skills to carry out surveying exercise under the supervision of the professional surveyor. In this activity, the para-surveyors had been trained and used in the previous PELUM Tanzania project in Mufindi DC that ended in February 2021. All para-surveyors were from Mufindi DC.

The VAC members are selected by Village Council and approved by Village Assembly as per Village Land Act No. 5, 1999. Normally the number of VAC members is 9 out of which at least four (4) should be women. The main role of VAC is to boundary verification during mapping land parcels as well as resolve minor land conflicts. On the other hand, VAC has the role to protect the land rights of women and people living with disabilities.

The priority was given to disadvantaged groups that include people with disability, women and youth who have land parcel in the village. In order to enhance security to land tenure and reduce land conflicts; the names of the people whose land was surveyed will be approved by the Village Assembly immediately after public display and verification that will take place 14 days prior to end of survey land parcels survey.

In ensuring that disadvantaged groups are given priority, vehicles and motorcycles were used to move them from one point to their land parcels to facilitate the adjudication process. There were cases where people with disabilities could not move to their lands due to physical disabilities and thus use of vehicle and motorcycles was important to enable them parcel their plots.

### **Implementation Process**

The implementation process follows governing laws and guidelines which directs for the effective village meetings and the District council participation. Survey village land parcels in Nundwe and Ihomasa villages involved consultative meetings at village and district levels. At village level two meetings were convened; Village Council and Village Assembly:

**Village Council Meetings:** In both villages Nundwe and Ihomasa the internal meetings that involved members of the village council/government were held on 23<sup>rd</sup> May, 2021; the aim of the meeting was to endorse the activity of land parcel surveying in the respective villages. PELUM Tanzania, Landesa and Mufindi DC Team were invited in the meeting to provide clarifications of the activity. The issues discussed and insisted by the facilitation teams; appealing to full and active participation of the villagers in the activity, the land rights and nutshell on the procedures in land acquisitions awareness delivered. The team informed both

governments about the priority and targeted groups (women, Youth and people with disabilities) for CCRO.<sup>6</sup>

**Village Assembly Meetings:** this is the highest body in decision making at the village level which involve all resident villagers, with age of majority which in this case are those above 18 with sound mind. The meetings were convened on 23<sup>rd</sup> May, 2021.<sup>7</sup>

## Results and Findings in Surveying Land Parcels

### Actual land parcel survey

Landesa and partners managed to map total of 2,213 land parcels of the individuals in both villages. While the team from Ihomasa village adjudicated 1,142 land parcels, 1,071 land parcels were adjudicated in Nundwe village.

**Table 1 Raw Surveyed Land Parcels**

Date	Nundwe	Ihomasa	Both Villages
	Adjudicated Parcels	Adjudicated Parcels	Total Parcels
24/05/2021	210	224	434
25/05/2021	239	199	438
26/05/2021	239	214	453
27/05/2021	128	214	342
28/05/2021	121	207	328
29/05/2021	134	84	218
<b>Total Parcels</b>	<b>1,071</b>	<b>1,142</b>	<b>2,213</b>

**Source:** Land parcel in Ihomasa and Nundwe villages, May, 2021

### Land tenure rights for women and youth

The term land tenure rights are described as relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. In the context of the two villages Ihomasa and Nundwe; the land ownership mainly goes with patriarchal system.

<sup>6</sup> Moreover, the team also appealed to the village councils to ensure information about the activity is well disseminated to all villagers and convened the village assemblies. In Ihomasa, 19 (8F; M11) members of village council attended the meeting while 19 (8F;11M) attended the meeting in Nundwe village.

<sup>7</sup> The Government land officers, PELLUM and Landesa presented on procedures of acquiring village land (CCRO), land rights, gender issues and climate change and the importance of participation of all villagers, and the roles of Village Assemblies, Village councils and Village Land Adjudication members. About 103 participated village assembly meetings in Ihomasa village while about 90 villagers participated in Nundwe village meetings.

The total parcels surveyed in both villages are 2, 213, out of which, 51% male managed while 49% female managed land parcels. Age wise, mapped land parcels for the youth (below age of 35) was 22% while for those above 35 years, was 78% of the total mapped land parcels.

The number of women with mapped land parcels was almost equivalent to that of men mainly due to the fact that, the priority of this activity was given to women, youths, and people with disabilities. Thus, the awareness raising meetings with Village Council and the Village Assembly, focused more on the importance of mapping land for vulnerable groups.<sup>8</sup>

### **Climate change issues in relation to land tenure rights**

It was observed that development of VLUP contributed to the reduced effects of climate change especially those related to agricultural and natural resources management. VLUPs identify and allocate village land for different purposes such as use, conservation, and protection of village land. For instance, land is allocated for agriculture, livestock, settlements/residential, forest, water catchments, wet lands to list a few. In this case, VLUPs enables protection of natural resources which ensures decreased effects of climate change. In relation to mapping of land parcels in the two villages, land was mapped according to the respective VLUPs. That is, mapping was carried out on the land allocated for agriculture and livestock keeping as well as settlement/residential.

### **Customs and traditions in tenure rights**

It is common in most of Tanzanian communities that, when it comes to land ownership, traditionally, the patriarchal system dominates. That is, practically, in most of the families, land is owned by men. Ihomasa and Nundwe villages fall under the same practice.

As discussed above, strategic awareness creation on women land rights interventions in Ihomasa village contributed to 53% of mapped land parcels be for women as opposed to 45% in Nundwe village. And that in Ihomasa village, most of women mapped land individually while in Nundwe village majority was under joint ownership. In Ihomasa, husbands were confident for their wives to map individually while in Nundwe based on tradition and low awareness, majority of men were not ready to let their wives map individually but jointly. This implies that, discriminatory traditional practices can be changed when the community is well informed of the women land rights.

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<sup>8</sup> Furthermore, specific village raw data of the mapped land parcels show that, 53% and 45% of the mapped land were for women in Ihomasa and Nundwe Village respectively. Moreover, the raw data for mapped women land parcels show that, majority of the mapped land parcels in Ihomasa owned by women individually, while in Nundwe Village are jointly owned (wife and husband). The trend in Ihomasa may be due to the fact that, PELUM Tanzania had land rights project intervention in the village from January 2019 to February 2021 in which community members were trained and awareness raised on women land rights, thus community increased trust on women land ownership.

**Table 1: Gender and Age Categories**

SN	Village	Surveyed Parcels	Approved Parcels	Disputed	Owners	Gender Ownership				Age Ownership			
						M	M%	F	F%	M<35	M>35	F<35	F>35
1	Ihomasa	1142	1118	24	912	430	47	482	53	64	366	64	418
2	Nundwe	1084	1055	29	1148	633	55	515	45	198	435	115	400
	<b>Total</b>	<b>2226</b>	<b>2173</b>	<b>53</b>	<b>2060</b>	<b>1063</b>	<b>52</b>	<b>997</b>	<b>48</b>	<b>262</b>	<b>801</b>	<b>179</b>	<b>818</b>

**Source:** Mufindi District Land Registry; *Generated on: 27/09/2021 11:28*

By comparison, there were more men acquired CCRO in Nundwe village than women as indicated in table 1 above. The reason might be due to the former and present systems of acquiring village land at the village level to mention the few; clearing the bush which existed before enactment and application of land laws whereby masculinity involved in access those lands. Therefore, in both villages individuals and more male persons were the ones who accessed lands. However, in Ihomasa village more women (53%) have acquired CCRO than men (47%) as indicated in figure 1; because of awareness program for more than two years where both women and youth were beneficiaries of those intervention. Thus, the awareness raising meetings, (on women's land rights trainings; and land rights dialogues with Village Council and the Village Assembly, focused more on the importance of CCRO for the vulnerable groups and its consequences to the families and communities) had a great impact.

## Our stories

### Story No. 1

An old women resident of Nundwe village of Mufindi district while showing ran short of words after receiving a paper document providing details of her land ownership said,

*“this paper document is very important to me, my land is secure against any encroachment or eviction, she went far saying, even if I die today, I am confident that, people will respect this paper that prove to be my land”*. This proves that titling increase confidence over land tenure security.



### Story No. 2

*“I don’t understand why women should not own land, land is power and therefore women also need it as men do”*.

A Story of a man from Nundwe village of Mufindi District. It was surprising to hear these words from a man where customs and traditions which do not give room for women to own land. Investment in community sensitization and strengthening of institutions of land governance were documents to change mindset of men towards women land rights.



## Policy and Practical Challenges

**At the community level:** Since this activity involved directly the rural communities in respect of their tenurial land rights, challenges were inevitable as narrated hereunder:

- i. Funeral ceremony in Nundwe village disturbed the mapping schedule as majority of the villagers had to go to the funeral. In addressing this challenge, the facilitation team had to amend the plan from mapping agricultural land to mapping residential areas. This challenge presents a lesson that, in dealing with rural communities, the schedule should be flexible to take into account unplanned social events such as funeral ceremony.
- ii. Capital realization vis a vis land tenure protection ( the mystery of capital by Hernandos de Soto) – the myth discourages community participation

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- iii. Possibilities and land appropriation by elite and well-off class capture –
- iv. State expectations vs community readiness / skepticism
  - v. Institutional weaknesses and fear of community disempowerment of the poor
- vi. Limited funding from local and central government to support the process
- vii. Inadequate of recommended land Survey technology – especially for village land survey

## **6. LESSONS FROM TANZANIA**

### **Recommendations: What works for Community**

- i. Village Land use planning in the context of land tenure security as opposed to capital realization should be central
- ii. Gender and climate change mainstreaming are foundation for an equal
- iii. Land titling should take cognizance of Community land and group natural resource uses (Group CCRO)
- iv. Communities need simple and appropriate regulations which ensure transparency in decision making
- v. Institutional coordination strengthening and Land survey technology recommendation by the responsible authorities

### **Way Forward**

- Village land use planning is critical to empower the rural communities and ensure land tenure security.
- A land secure community is highly likely to be climate change resilient.
- An IPVLUP is foundational for generational equality and therefore government(s) and its partners need to put resource without high expectation of capital realization especially for customary land – land tenure security should be primary community.
- Despite being lengthy and costly, Land use planning process is necessarily for achievement of national , regional and global agendas including agenda 2030 and 2063.

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## 7. OVERALL RECOMMENDATIONS FOR IMPROVING LAND ACCESS AND TENURE SECURITY FOR WOMEN AND YOUTH IN GHANA

- Sustained public education and awareness raising on the available opportunities and options under the law to access and secure land rights.
- Strengthen institutional capacity for customary level land sector institutions to deliver services that secure rights.
- Strengthen institutional coordination between the customary land sector and the state land agencies
- Dialogue and advocate for inclusion of women and youth in local decision making spaces in customary land governance
- Disseminate national land policies at the customary level
- Increase access to public information on land acquisition, documentation and registration processes and associated fees
- Improve coordination between land administration functions and land use planning functions.
- Support customary land authorities with tools and strategies for inclusive customary land administration and decision making.

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