

The interplay of statutory and customary laws on land rights in Tanzania



Researchers: Garance Genicot and Maria Hernandez de Benito¹

Introduction

Land ownership and inheritance rights play a critical role for gender equity, and the land-poverty nexus has drawn considerable attention both in academia and policy circles.

The legal reforms of the late 1990s in Tanzania aimed to establish strong property rights for occupiers of customary land, and divested more powers to Village Institutions, making them responsible for adjudicating, registering and titling all local holdings. With these reforms, Tanzania has been transitioning to a legal framework that recognizes private property rights and supports equal property rights for women. In contrast, customary laws, which vary from tribe to tribe, differ greatly in terms of access, control and inheritance of land for women.

About the research

Our research is focussed on building an understanding of how institutions can affect female land property rights in rural Tanzania following the legal reforms of the late 1990s. Village Institutions, in particular, have a key role in the interplay between customary and statutory laws. To study them, we conducted a diagnostic survey in 45 randomly selected villages across 3 regions in Tanzania: Katavi, Kigoma and Mwanza. In each village, we interviewed both the household head and a spouse in 10 households² resulting in a sample size of

¹ This EDI Research Insight arises from research undertaken for the EDI Case Study on “Land rights and village councils in Tanzania” (<https://edi.opml.co.uk/research/land-rights-village-councils-tanzania/>)

² Qualifying survey respondents have to be married, the head of the household or the spouse, must have lived in the village for at least 10 years, and must not be a refugee. The household must own and use land.

912 respondents. We also interviewed 10 members of the Village Institutions (“VI” hereafter) per village for a total of 450 interviews. A community survey was also conducted with several members of the VIs to collect data on village socioeconomic and demographic characteristics, VI composition and functioning, village land rules and recent land disputes.

This EDI Research Insight highlights four findings that come out of our survey:

1. Female inheritance land rights have improved over time, but are still limited;
2. Female inheritance rights are often partial;
3. Village Institution members are not gender neutral;
4. Women are underrepresented in village institutions.

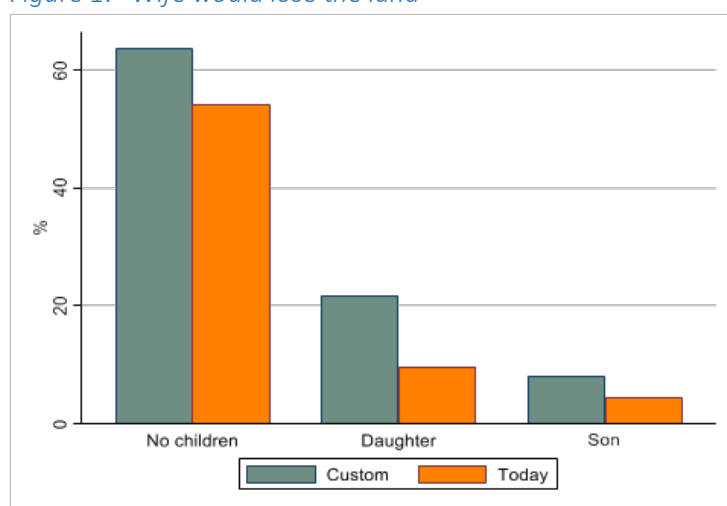
Finding 1: Female inheritance land rights have improved over time, but still limited

Household members were asked, during private interviews, what they think would happen today and what would have happened under their own clan customs in different hypothetical scenarios (so-called *vignettes*). In particular, household members were first asked to imagine a woman who inherited a land plot (shamba) from her husband, which she was cultivating and there was no land title, and a male member of his clan claimed the land. The question was asked under three potential scenarios: the wife had no children, the wife had a daughter from the husband, and the wife had a son from the husband.

In Figure 1, we plot the proportion of respondents that believe the hypothetical woman would lose the land entirely in each of the survey vignettes³. We observe that although the perceived women inheritance rights have improved over time as compared to their clan customary rights, 54% of the respondents still think the wife would lose the shamba if she had no children (down from 67%). Things improve when the woman has children, but 10% and 5% of respondents still think she would lose the shamba if she had a daughter or a son from him, respectively, as compared to 25% and 10% under their clan customary law.

This evidence suggests that, although women land rights have improved, they are still influenced by customary laws that strongly favor men.

Figure 1: “Wife would lose the land”



³ In the custom vignettes, we included an extra answer possibility: “She could keep it only if she marries the brother of the husband”. In Figure 1, this option was added to “Lose the shamba”. The share of respondents that chose this answer in the 3 vignettes were 3.10% (no children), 2.7% (daughter) and 2.32% (son).

Finding 2: Women inheritance rights are often partial

Instead of only giving respondents the two extreme options of losing versus keeping the land, we also presented them with a range of intermediate ownership choices. Specifically, the answer options were: “they would split the land”; “she could keep it but would lose it if she remarries”; and “she could cultivate it all her life (even if she remarries) but she could not sell it”. Table 1 presents the share of answers obtained for each option.

Table 1: Partial Inheritance Rights

	No children		Daughter		Son	
	Today	Custom	Today	Custom	Today	Custom
Lose	54.05	66.63	9.71	24.56	4.53	10.48
Split (0-100%)	12.31	7.75	6.18	4.09	3.86	3.53
Keep until remarry	12.32	9.09	27.26	22.68	24.06	23.15
Cultivate, not sell	4.44	3.88	19.98	19.36	21.08	20.18
Own	16.87	12.64	36.87	29.31	46.47	42.67

First, it is noticeable that even under their customary clan practices, a large proportion of respondents believe the woman would obtain partial rights to the land. These range from 20% to 46% in the vignettes both without and with children.

Second and most importantly, a large part of the progress made from the strict customary law application to today’s household expectations are in the form of partial rights, rather than expecting the hypothetical widow to get full ownership over the land. Approximately a quarter of the respondents believe the woman could keep the land as long as she does not remarry if she has children, irrespective of the offspring gender. Another 20% expect that she could continue cultivating the plot all her life even if she marries again. Another 4 to 6% believe that she could own a portion of the land. Hence, 50% believe a widow would obtain partial rights if she has children. The number is smaller in the childless case, but it still represents almost a third of the sample.

It is an open question whether land titling would strengthen or weaken the rights of women who would have otherwise benefitted from partial rights.

Finding 3: Village Institution members are not gender neutral

Local institutions in Tanzanian villages have an important role in mediating and assisting villagers to help them resolve land related disputes. Although statutory law supports gender neutral rights, our data suggests that members of the VIs are not gender neutral when it comes to their judgment as elected members. Each of the 10 individuals interviewed per village were asked to respond to two inheritance vignettes where the gender of the deceased husband's heir was randomized.

The first vignette asked: “Imagine that a father dies without a will. The mother died a few years ago. The father intended to leave a shamba in the village to his only daughter/son. The daughter/son, an adult, lives in Dar Es Salam. The brother of the father who lives in the village is claiming the land. Who would you recommend to be the owner?” The possible answers were: i) The daughter/son; ii) The brother of the husband; iii) Refuse to answer.

The second vignette asked: “Imagine that a wife has cultivated for 15 years a shamba that her husband had inherited from his dead father prior to marriage. She has one daughter/son from him. Her husband dies. The

brother of the husband is claiming the land. Would you recommend that she keeps the shamba?" The possible answers were: i) Yes; ii) No; iii) Refuse to answer.

If respondents randomly got the "daughter" version for the first vignette, then they were asked the "son" version for the second one (45.11% of the respondents), and vice versa.

Table 2: Gender bias at Village Institutions

Vignette	Mean		Diff	p-value	N
	Son	Daughter			
Vignette 1: the daughter/son	0.91	0.81	0.10***	0	450
Vignette 2: the wife	0.88	0.87	0.01	0.72	450

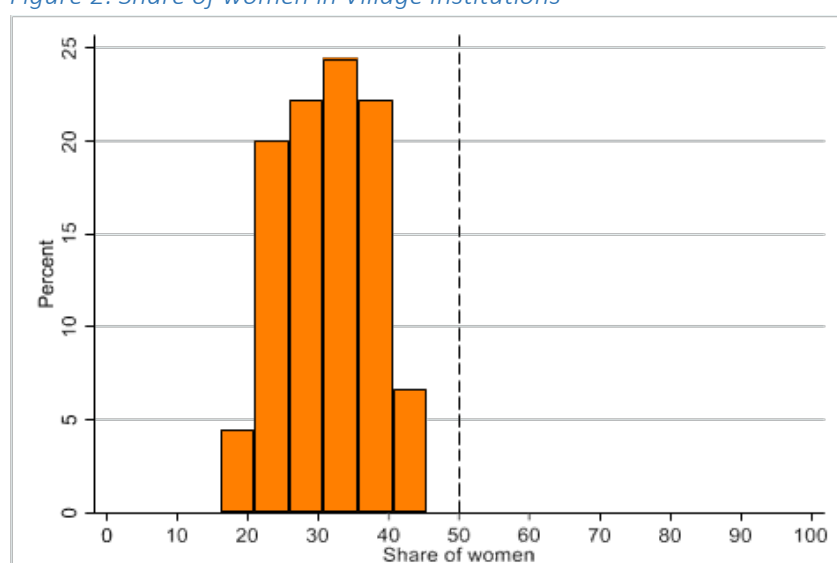
Table 2 presents the mean and mean difference of the two vignette versions. According to Tanzanian statutory law, there should not be any statistical difference between the two versions of the vignettes. This is indeed what we find for the second vignette as the gender of the child does not affect the widow inheritance right that they would recommend. Approximately 88% answer they would recommend the wife to keep the land. In the first vignette, however, VI members are 10% more likely to recommend the child to own the land when it is a son instead of a daughter.

Note that a caveat of the questions' framework is that the own/lose the land options were completely focal, since we did not allow for partial rights. Given our Finding 2, this might undermine our capacity to capture nuances in the difference in answers by gender of the child in the vignette.

Finding 4: Women are underrepresented, participate less than men and their opinions are less valued

Both at the national and local level, the electoral law of Tanzania requires women to hold not less than 30% the elected positions. At the village level, the quota and level of enforcement vary across the different institutions surveyed. In our sample, both the mean and the median of the share of women across councils is 31%. Although there is heterogeneity across villages, none of them have achieved equal representation yet, as illustrated in Figure 2 below.

Figure 2: Share of women in Village Institutions



In addition to the VIs, all adult household members also have some say over village decisions via the “Village Assembly” (VA hereafter). The VA is composed of all villagers (both men and women) above 18 years of age. The VA elects the members of the Village Council and VCs are not allowed to allocate land or grant a customary right of occupancy without prior approval of the VAs. Given this function, an important question is whether men and women participate to the same extent in the VA meetings.

Male and female household members are strongly statistically different in terms of attendance, participation and believing their opinion matters. The share of household males who attended the last meeting was 53% compared to 26% of females. A third of the female respondents have never attended a VA meeting while this number is only 11% for men. Among those who have ever been to a meeting, we also measured their own assessment of their participation and self-valuation of their opinions being heard. We asked them “Do you actively participate in the VA?” and “Do you believe your opinion is heard in the VA?” We provided 3 possible answers ranging from low to high participation/opinion. The participation options were:

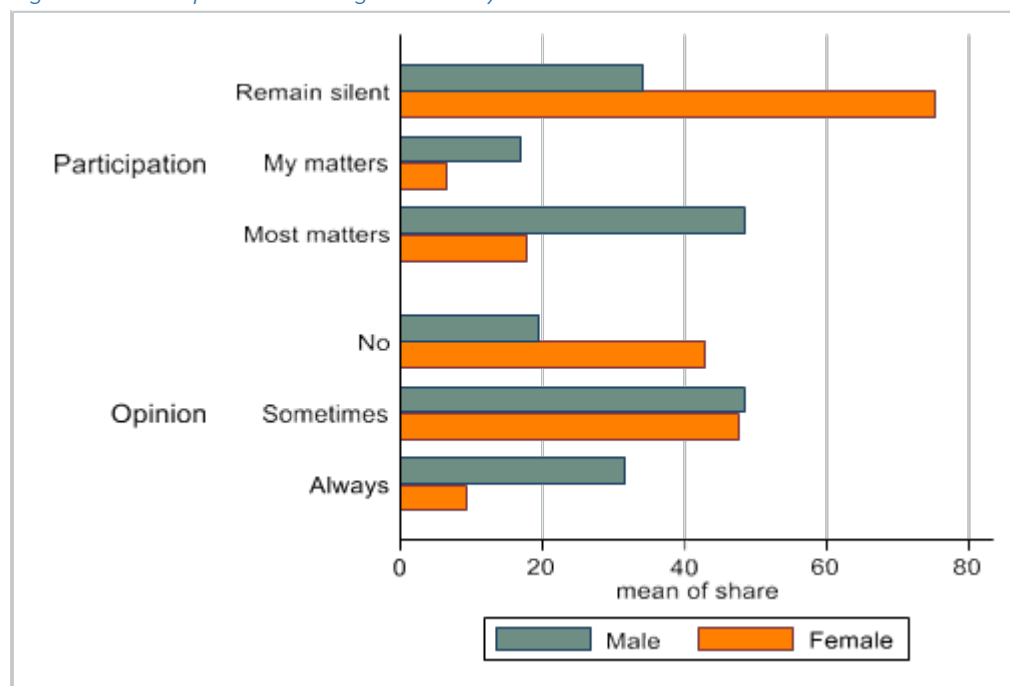
1. No, I attend but usually remain silent;
2. Yes, I attend and raise my opinion in the matters that affect me directly;
3. Yes, I attend and I raise my opinion with respect to most issues that affect my village.

The opinion options were:

1. No, I don't think it is heard;
2. Sometimes;
3. Always.

We can see in Figure 3 that men participate a lot in the meetings and 80% of them think their opinion is heard sometimes or always. On the contrary, 75% of women mostly remain silent and 43% do not believe their opinion is ever heard. This suggests men still dominate the issues discussed in the meetings and the resolutions ruled by the VA.

Figure 3: Participation in Village Assembly



About EDI

Institutions matter for growth and inclusive development, but there is little evidence on how positive institutional change can be achieved. The Economic Development and Institutions (EDI) research programme addresses this knowledge gap by working with some of the finest economic thinkers and social scientists across the globe to inform new pathways to inclusive, sustainable economic growth.

Policy engagement is a critical focus for EDI research. We engage with policymakers and influencers throughout the design and development of our research programmes. EDI Research Insights and Policy Briefs are published at various stages of research to distil evidence and synthesise key findings for general and policy-focused audiences.

For more information, please visit: www.edi.opml.co.uk

EDI Policy Briefs represent the views of the authors, and are not necessarily held or endorsed by the programme or its partner organizations.