

Mali's Land Tenure Systems: An Assessment of Small-scale Female Farmers' Plot Proprietorship and Legal Rights

Asmao Diallo

Doshisha University, Graduate School of Global Studies

Abstract

Women in rural Mali contribute much to agricultural production in addition to their ordinary work and reproductive work at the household level. They perform many farming activities, including producing, processing, and marketing. Even though women play a central role in agricultural activities, they remain the most affected by land tenure insecurity. Women represent 51.6% of the rural population, make up 60% of the farm labor force, and account for approximately 80% of food production, yet only 16% are landowners (EAC 2012; INSAT 2018). Challenges to women's land ownership are rooted in the pre-colonial societies, reinforced by the colonial administration, and sustained by the post-independent governments. With the advent of democracy in 1992, the government has taken some initiatives to reform the agricultural sector and promote women's tenure rights by enacting statutory laws and policies. One of the most important of these laws is the Agricultural Orientation Law (AOL) of 2006, aiming to modernize Mali's agriculture while promoting gender equity on family farms in rural areas. This article assesses how land tenure systems changed in Mali from pre-colonial, colonial, to post-colonial times and how small-scale female farmers' tenure rights have also evolved within these systems after the enactment of AOL. To achieve this objective, interviews, questionnaires, and focus group discussions were conducted in the Baguineda and Kati areas of Mali with agricultural cooperative members, government officials, traditional leaders, researchers, and NGOs between January 20 and February 28, 2020. The results reveal that efforts to revive the agricultural sector through the enactment of the AOL, which primarily aims to modernize agriculture, have been insufficient, partly because of the complexity and incoherence between the statutory and customary tenure systems. Little land has been allocated to women farmers due to biased beliefs on their ability to produce efficiently. As a result, small-scale female farmers are still employed as laborers on larger farms managed by national and international investors. Women's unawareness of their legal tenure rights and barriers to accessing essential services have further made them vulnerable. This study suggests harmonizing statutory laws with conventional practices to avoid land conflict and discrimination. It also recommends enforcing law implementation in state-managed areas while strengthening women farmers' capabilities, which remain necessary for their socio-economic empowerment in the agricultural sector.

Keywords: Agriculture, land tenure systems, statutory law, customary law, Mali, women

I. Introduction

A wide range of studies by development experts has explored the challenges women and farmers face in agriculture (Agarwal 1997; Kevane 2004; Lastarria-Cornhiel 1997). They have argued that women are often underprivileged by legal and customary land tenure arrangements, resulting in them having fewer rights to property, water, and other natural resources. Similarly, Jaquette et al. (2006) asserted that customary practices entrenched in outdated cultural land-use norms continue in parallel with state conceptions of land tenure and management. Tinker (1990) also contended that women regularly miss out on the allocation of property entitlements crucial for food security and growth. Likewise, Boserup (1970) stated that unequal gender interactions and females' unprotected rights to property inhibit them from partaking in decision-making around land and natural resource utilization in several countries throughout the world. Besides, women's inadequate education impedes their knowledge in ways that conventional rights restrict their prerogatives to utilize land, subjecting them inadvertently to involuntary expulsions (Nuwagaba et al. 2003).

In sub-Saharan African countries, most female farmers are often dispossessed of their plots, or, in cases where they can access land, they hold fewer rights and less decision-making power over those lands. Generally, women gain access to the plot via a male family member (father, husband, or brother), who determines how the property must be precisely utilized (Djiré 2005). In some cases, women might have joint entitlement to the household plots with their spouse; when their male co-owner dies, this right may be constrained (Djiré 2005). As a result, fewer than 20% of sub-Saharan African landowners are women (Caracalla 2011). Although prevalent law defends females' land rights, the absence of legal information and a fragile application process hamper women in working out these prerogatives. Women have legal land rights; in theory, the outcomes are hardly fair in practice (Tinker 1990).

Females' and males' relationships to land generally alter based on structure and social arrangements, predominantly kinship systems and gender structure (Djiré 2004). Women farmers in Mali share the above-highlighted characteristics. As stakeholders in agricultural activities, women are the most affected by land tenure insecurity. For instance, 95% of women are engaged in farming activities in rural areas, yet only 16% are landowners (EAC 2012; INSAT 2018). Women are mostly de facto occupants and embody most agricultural activities, including producing, processing, and marketing agricultural products throughout Mali. Women and men live in cultures that depend on survival economics that are quickly shifting, as are the rules and traditions that regulate these economic collaborations (Diarra 2006). In the southern parts of Mali, where farming is intensively practiced, women cannot traditionally own land in these regions. They can cultivate or use land temporarily. Still, land can be taken back from them at any time, preventing many women in rural areas from participating in land improvements such as developing irrigation infrastructure, fencing, or tree planting (USAID 2012). Purchasing a plot remains restricted by females' domestic chores, which neither offers secure revenue nor a means of saving appropriately. Women are expected to carry out household nutrition provision activities and care work strengthened by patricentric regulations within the household structure, disqualifying them from acquiring land ownership (Gladwin 2002). The persistence of gender inequalities in acquiring land and other farming assets influence women smallholders' and entrepreneurs'

capability to contribute cost-effectively, administer, and benefit from new economic gains (Nuwagaba et al. 2003).

Women regularly create associations that appeal for land to be allocated for their collective use to improve their land tenure protection, often for communal gardens or fields (Diallo 2021). Understanding women's lack of land ownership in contemporary Mali requires examining the evolution of land tenure administration by analyzing how the land has been managed over time, i.e., land institutions and management. The structures in charge of their implementation, their established function, how they addressed contemporary issues, and whether women's rights are respected within the existing systems are all matters to be investigated.

To achieve this objective, it is important to clarify the concept of land tenure. The word "tenure" is derived from the French word *tenir* (to hold), so, in the African setting, the vocabulary of land tenure implies the actual relations of people to the land and the methods of conflict resolution deriving from it. Accordingly, land tenure refers to "the institutional structure which governs the provision of access to land and other natural resources and how this entry is guaranteed beyond communities. It further identifies the development of the institutions organizing land tenure and property rights agreements" (USAID 2011). In line with the major stages of the country's socio-historical and political evolution, the study schematically identifies three main phases in land governance in Mali: the pre-colonial, colonial, and post-colonial tenure systems. In the following lines, this article will briefly explain the research methodology and overview the major phases in Mali's land governance. This will be ensued by assessing contemporary statutory law, mainly the Agricultural Orientational Law, which grants attention to women's land ownership. How women understand this law and its impact on their land tenure systems in current society will be examined. The outcomes reveal that women's land ownership is still challenging due to the complexity and incoherence between statutory and customary tenure systems.

(a) Study Sites and Research Methods

To assess small-scale female farmers' land rights in Mali, I conducted fieldwork in two agricultural areas in Mali between January 20, 2020 and February 28, 2020. The first area is Baguineda, which is 30 km from Bamako, Mali's capital city. It has a population of 40,095 as of 2019, of which 19,582 are women (OPIB annual report, 2020, p. 35). Baguineda people reside in villages comprising 30 to 300 family units. Each household has on average 2 to 13 workers per agricultural production unit (APU), mainly engaged in agriculture, livestock farming, logging, fishing, handicrafts, and trade activities. Cereal crops (rice in the irrigated fields; sorghum and maize in the non-irrigated areas) dominate agricultural activities. Market gardening husbandry is the dominant activity during the off-season. Rice, maize, millet, and sorghum are the main cash crops. Vegetables such as onion, cabbage, lettuce, tomato, okra, eggplant, groundnut, mango, watermelon, and other fruits are also cultivated. On average, each household grows rice or vegetables on 0.63 ha in the managed area of the OPIB, while 3.5 ha in the rainfed area are used for millet or sorghum cultivation.

The Office du Périmètre Irrigué de Baguineda (OPIB), the irrigated perimeter of Baguineda, is one of the three agro-ecological zones created in 1926 during the French colonization of Mali with a channel

excavation from the Niger River. The OPIB covers 1,347 ha of irrigated land, 1,849 plots of 0.63 to 0.025 ha on average. The Baguineda office increases crop production as supported by the OPIB dam's water resources. The irrigated edge of Baguineda is under government management, making it different from other agricultural lands. For this reason, Baguineda is a good case study with more potential for women to access irrigated land.

The second study site is Kati, an urban commune and the biggest city in the Koulikoro region. Kati covers 9636 km² and is 14 km from Bamako, the capital city of Mali. For operational reasons, Kati's circle has been divided into two zones, each with its plan. The northwest district of the river comprises 24 communes with a population of 610,024 inhabitants, while the southeast district of the river includes four communes and a population of 310,183 inhabitants (Issiaka et al. 2015). The two districts' primary economic activities in rural areas are mainly agriculture (millet, maize, and groundnut cultivation).

Vegetable crops (onion, tomato, eggplant, etc.) are also grown in the region because of their proximity to the capital and trade potential. The rural inhabitants reside in villages that range from 20 to 200 households. The standard family size is ten individuals and varies from 6 to 13 individuals. Smallholder farmers' production is mainly survival-oriented, and, generally, households are engaged in growing on land they traditionally own. The lands ownership systems are based on customary laws and traditions. Each household has, on average, half a hectare of farmland, depending on the village and population size. Small-scale agriculture offers most of the food supplies for families in both Kati and Bamako, with farmers providing for domestic consumption and the remainder being traded in local markets. Kati remains a thriving market town for potatoes and vegetables in Mali. Individual farmers also practice livestock breeding to improve their incomes.

Despite the proximity of the two study areas with the capital city, variation in land ownership systems remains. There are two major explanations for this. Firstly, Malian communities are not homogeneous even though some similarities are found; each society has its own established patterns and norms regarding the family establishment, structures, social interactions, and resource management among community members. Often, disparities in land management and access are found within the same community. For example, land access is primarily based on statutory tenure systems in urban Bamako areas. In contrast, in the peripheries of the capital city, people can access land through customary tenure systems. Secondly, the differences in land tenure systems between the two study areas are also explained by the fact that the Baguineda area benefited from a managed or irrigated site (OPIB) overseen by the government. All the land in the OPIB areas is totally under state control. Most of the households in this area have access to some irrigated land. Besides this, they also maintain access to their traditional plots, which they acquired from inheritance or through customary tenure systems. While in the Kati area where the survey was conducted, there is no irrigated area managed by the government for agricultural activities, farmers in Kati rely on traditional landholding systems through customary leaders or families for their farming activities. They further rely on

rainfall during the rainy season and on wells and streams during the dry season for their market gardening activities.¹

To understand women's land ownership in these two areas, I conducted interviews at the national level with institutional actors (government officials in different ministries and NGOs, agricultural extension agents, and local rural services) and at the community level with traditional and religious leaders, civil society organizations, the rural population, and women's cooperatives involved in the production, processing, and marketing of agricultural products. Interviews, questionnaires, and focus group discussions were formally conducted with each area's local agricultural department, extension agents, and the actors mentioned above. Regarding the data collection techniques, the questionnaires, interviews, and focus group discussions were focused on questions about the cooperative's creations, degree of organization, characteristics of its membership, visions, and ideals. The questionnaires also addressed the cooperative members' land deed apprehensions, their understanding of land tenure laws and policies in Mali, and their knowledge about the Agricultural Orientation Law and its implication in rural areas. Lastly, the questionnaires addressed the cooperatives' responsibilities in empowering their members' land ownership and access to other agricultural resources.

II. Overview of Land Tenure Systems in Mali and the AOL

A. Land Tenure Systems in Mali

Pre-colonial African societies, such as the Malian ones, were based on rules reflecting the country's socio-economic, political, and cultural realities. These rules were a mixture of precepts originating from religious beliefs and conventions between communities established by the ruling organizations (Djiré 2010). In Bambara, the most widespread language of Mali, they bear the name "Ben-kan," literally translated as "conventional wisdom" (Cissé 1997). In this vein, Malian societies were inseparably linked to the notion of convention. These conventions recognize and legitimize the domination of a lineage, a community, or a group of communities over specific resources, including land. During pre-colonial times, access to land and resources was based on the principle that they belonged to the first occupants. When newcomers do not impose themselves through battles, they must conclude effective agreements with the early settlers (Hilhorst et al. 1998). Under these conventions, indigenous organizations were often assigned authority to ascertain procedures regulating land management, usage, allocation, and other natural assets (Fernandes et al. 1998).

These conventions—often conflictual—have established various mechanisms of social regulation that have contributed to establishing a negotiated order (Coulibaly and Diakite 2004). But this negotiated order, like any legal order, always reflects a steady power balance between the social classes and strategic groups involved. The agreements focused on challenges and value systems well internalized and understood by all social actors (Djiré 2005). Although mostly unwritten, they are still relevant to collective knowledge and social practices. Such conventions exist almost everywhere throughout Mali and determine contemporary communities' social patterns and local rules. In pre-colonial times, married women had no rights to land for

¹ Source: My fieldwork results.

fear of destructing the conventional household land systems attained via inheritance. While safeguarding family interest remains the rationale behind various traditional land tenure practices in farming societies, tribes and extensive family alliances retain essential attributes to maintain command over land and resources inside the extended family unit (IDRC et al. 2002).

French colonial times in Mali introduced drastic adjustments to pre-colonial land tenure structures. The French colonial governments destabilized the established superpower of local groups, in which indigenous farmers and pastoralist communities were accountable for distributing and implementing land and natural resources. Colonial land legislation was based on two essential principles: strengthening the land ownership of the colonial power and expanding the model of dominant Western private property under state self-supervision. In this regard, the French system was based on the eminent domain theory, which originated from the feudal system that makes the state the sole owner of the land (Djiré 2010). This theory would be reinforced by the concept of “vacant land or land without an owner,” which already existed in the French civil code and was introduced into the colonial legislation to take over indigenous lands (Kanté et al. 1994). The early years of colonization were thus characterized by the adoption of several texts enabling colonial land ownership systems while renewing the previous precolonial systems. The colonial tenure systems further set restrictions on land owned collectively or land distributed by community leaders. During colonization, such land could only be leased or sold with the governor’s approval (Chauveau 2003).

This approach initially led to the transformation of individual land into the private domain of the state. Vacant land or land without an owner was allocated to meet the colony’s needs and assigned to the colony for an individual’s benefit (Chauveau 2003). Secondly, the land ownership system would convert customary rights into land titles through a registration procedure. In addition to these two approaches, a third system, which failed to recognize traditional land rights, was implemented (Guillen et al. 1990). As of July 1906, legal tenure registration was a prerequisite for using or leasing public land (Kornio et al. 2004). The procedures for obtaining property rights based on French law were complicated, making indigenous people reluctant or unable to request it. During colonial times, indigenous people, mainly women, were excluded from accessing land. Women were encouraged to stay at home and pursue productive and reproductive roles. These roles assigned to women were necessary for the continuity and sustainability of the imperial economy as they needed labor (young people) on the farm to sustain their industries.

Following independence, the Mali newly independent government assumed that a sovereign state must control its economic growth; it then kept all the colonial texts (Le Bris et al. 1982). The new government gradually disposed of customary rights, especially in practice and often through inconsistent regulatory measures. The evolution of regulation related to agricultural land in the post-colonial period is divided into three main stages. The first stage was characterized by the state’s absolute monopoly on land management. The second stage maintained the state monopoly and allowed local stakeholders to manage natural resources and customary rights recognition. The continuity of previous guidelines from the colonial tenure systems predominantly characterized the third stage. It incorporated colonial texts largely, and, on the other hand, it maintained some essential elements from conventional systems (Guengant et al. 2003). Accordingly, after

independence in 1960, the newly independent Malian State concluded that all types of land utilization remained provisional and revokable by the government anytime.

Moreover, the advent of democracy in 1992 instituted new approaches to the government's attempt to reform land ownership. Another law, the Code Domaniale et Foncier (CDF), or Land Law, was passed in 2000. Innovative components of this law echoed devolution and decentralization approaches by confining rights to centralized local government bodies to handle their properties. Even so, the state reiterated its power to control land or all public realms, including airspace, property, and sub-soil reserves (Lorenzo et al. 2004). Regarding women's tenure rights, independent Mali's secular state has demonstrated increasing help by enacting laws and strategies advocating for gender equality. This is evident in the nation's constitution, which grants equal rights and opportunities to all its citizens. In addition, the CDF grants males and females equal entitlement in possessing title deeds. More importantly, the Loi d'Orientation Agricole (Agricultural Orientation Law) was enacted in 2006. It guarantees the advancement of equal rights and opportunities between men and women in the agricultural realm through assisting and supporting the innovation and institutionalization of modernized farming practices for vulnerable groups, mainly women and youths, in farmed exploitation in rural areas.

However, Islamic culture also weighs against women's tenure rights as around 90% of Mali's population is Muslim. In regions where Islam is highly practiced, such as in the northern part of Gao, Mopti, and Timbuktu, access to land is governed by Shariah's prescriptions or according to local customs and traditions. In Islam, the land is considered a sacred trust whose supreme ownership belongs to Allah. Subsequently, land and natural resources are governed by two interdependent principles. Firstly, the unrestricted use of natural resources, which is not the object of any human being's effort, is free and cannot be traded. The second principle is sustainability, under which land belongs to the individual who sustains it (by cultivating it) (Diakite et al. 2004).

Regarding women's access to land in Islamic regulations, they have no restrictions in owning, inheriting, using, or purchasing land. In this vein, women can receive land or property as a dowry or acquire it through inheritance, even though their shares are smaller, generally half that of their male counterparts (Chaudhry 1997). They can also manage and maintain control over their marital household and financial assets through marriage and may continue to do so after divorce or widowhood. More importantly, women can have individual land title deeds or communal lands. These rights are evident in Islamic law, which endorses women's rights to land and property (Haddad et al. 1997). Yet, in Mali, Islamic rights are neither equally incorporated into the state legislation nor applied correctly among people. Sharia laws are commonly misinterpreted by religious leaders who are generally male.

Land insecurity in contemporary Mali mainly originated from the confusion of these three systems, which continually contradicts statutory practices (Djiré et al. 2010). To some degree, the statutory legal guidelines have undertaken traditional and religious systems and patterns that persist in ruling land relations primarily in urban areas (Diallo 1993). In current Mali, traditional, religious, and statutory structures continue to cooperate, establishing legal pluralism. Yet, the boundary between customary and legal systems is often understood with profound ambiguities, conflicts, and complexities.

Subsequently, women's land tenure remains challenging throughout the country. As an illustration, in a survey conducted by the Enquête Agricole de Conjecture (agricultural survey data) in 2012 on the state of agriculture and farmers in Mali, researchers found that men own 84% of farm plots. Of the 16% of women landowners, 40% were in Kayes region, 21% in Koulikoro, 20% in Sikasso, 11% in Mopti, and 8% in Ségou (EAC 2012). The survey further stated that men have five times as many plots at the national level than women. In Kayes, men have twice as many plots as women. This proportion is 5 in the Koulikoro region, 6 in Sikasso, 16 in Ségou, and 10 in Mopti. Although female plot owners hold 16%, it should be noted that women's plots are very small. Male plot owners have an average of more than 2 ha, compared to 0.22 ha for women (EAC 2012).

The EAC data indicates that Malian women make an invaluable contribution to the socio-economic realm of food production. Yet, despite the adoption of countless international conventions and protocols that reaffirm gender equality, discrimination and prejudice impede their empowerment. In almost all farming regions, women still struggle to own agricultural plots as men do. These inequalities can be further understood and addressed by collecting, processing, and analyzing data on gender disparity in the agricultural sector.

B. The Agricultural Orientation Law (AOL) and Its Claim for Women

On August 16, 2006, the Loi d'Orientation Agricole or Agricultural Orientation Law (AOL) was adopted by the National Assembly of Mali to determine and conduct a long-term policy for agricultural development in Mali. The AOL mandates the state to develop and implement agricultural policy in cooperation with local authorities and farmers. As such, it defines and implements a policy to promote development initiatives at the local, regional, and national levels and provides support for the creation of family farming and agro-industrial enterprises. The AOL further aims to promote a sustainable, diverse, modern, and competitive agriculture, placing farmers at the center of the rural development process (Ministère de l'Agriculture 2009). In this approach, the AOL advocates restructuring and modernizing agriculture for medium- and large-scale family farms by increasing their competitiveness and encouraging their integration into the regional economy to boost employment in rural areas. It also intends "to guarantee food sovereignty and drive the national economy to ensure people's well-being" (Article 1).

The Agricultural Orientation Law further aims to empower women in agriculture by paying specific attention to their land ownership needs. Its emphasis on gender represents an opportunity for rural women farmers, as one of its objectives is to promote the economic and social empowerment of women, youths, and men in rural and peri-urban areas. Many of its articles give special attention to women and focus on solidarity, equity, and partnership, which are instrumental in establishing equality in the agricultural sector. The AOL comprises seven sections with 33 chapters and 200 articles. The following are some of the pillars among the 200 articles that directly address women's land ownership and empowerment in the agricultural sector:

Pillar one: Article 8 promotes equity between women and men in the agricultural sector, particularly on family farms in rural areas.

Pillar two: Article 24 favors the settlement of young people, women, and vulnerable groups as farmers by promoting their access to factors of production and by developing special financial mechanisms to support their agricultural activities.

Pillar three: Article 83 ensures equitable access to agricultural land resources for different farmers and promoters of agricultural holdings. To this end, the state facilitates the admission of the greatest number of farmers, particularly women, young people, and vulnerable groups in the state-managed areas.

Pillar four: Article 89 endorses equitable access to land and other agricultural resources for different farmers. In this respect, vulnerable groups, such as women, benefit from positive discriminative measures in allocating plots managed by the government and its institutions (Ministère de l'Agriculture 2009).

The enactment of the AOL represents an important initial step, as it must be applied, with all the challenges involved in implementing the principles that will disrupt patriarchal customs and traditions. This is precisely why it has been supplemented on the one hand by the provisions of the Code Domanial et Foncier (CDF) or Land Law of 2000 (amended in 2002), which includes the recognition of family farms and agricultural enterprise. On the other hand, it involves the Politique Foncière Agricole (PFA), Mali's new agricultural land policy, adopted on December 31, 2014. The new policy should give more relevance to customary rights already recognized by CDF and to decentralization (implemented since 1996) in land management.

In addition to the AOL, the Government of Mali has also adopted legislative and institutional measures for women's empowerment. Mali has ratified several international conventions that have a direct or indirect effect on the status of women. For example, it approved the Protocol of the African Charter on Human and Peoples' Rights (ACHPR). It also fully subscribes to the definition of discrimination based on sex. Article 2 of Mali's Constitution states: "All Malians are born and remain free and equal in rights and duty. Discrimination based on social origin, color, language, race, sex, religion, and political opinion is prohibited." Mali also adopts the gender-responsive planning and budgeting, which seeks to integrate gender concerns into the country's budget management to efficiently allocate resources according to defined needs. It also investigates the financial status of women, men, girls, and boys to improve resource-efficient allocation in all sectors of activity. These laws and policies, mainly the Agricultural Orientation Law, represent a major step towards rural development, particularly promoting rural women (Diallo 2019). The AOL and its regulation reveal provisions promoting gender equality in agriculture. The study will demonstrate how women's land tenure evolved from three different systems and what impact this had on the implementation of the AOL in contemporary Mali societies.

III. Analysis and Discussion

In this section, the members' quantifiable features, such as age, household size, job, marital status, sex, and years spent at school, are briefly explained. Demographic attributes are crucial in assessing how women's land ownership evolved from pre-colonial times to contemporary society. These characteristics are essential in understanding the data provided below. The respondents' demographic features are also vital in comprehending socio-economic data about their access to agricultural resources, mainly land. In this regard,

Table 1 briefly describes the characteristics of the surveyed population summarized in Table 1. The majority (70%) of the respondents were female farmers from cooperative organizations. On average, they were 36 years old, married, with primary-level education. The respondents reside in households comprising at least three individuals.

Table 1: Demographic Features of Sampled Respondents

Variables	Cooperative members			
Age	Max	Min	Mean	S. D
	65	19	36	9.97
Sex	Cooperative members (%)			
Male	30.6			
Female	69.4			
Level of Education in years	Max	Min	Mean	S. D
	5	1	3.15	1.81
Profession	Respondents (%)			
Farmer's members of the coop	70			
Office workers (government officials, NGOS and others)	30			
Household size	Max	Min	Mean	S. D
	13	3	6	2.6
Marital status	Respondents (%)			
Married	87.1			
Single	8.8			
Widowed	4.1			

[Source: Diallo, based on field survey.]

When analyzed by site, the results reveal that small-scale female farmers represent 45% of the active population in Baguineda. Besides their domestic chores, these women are responsible for rice farming, sowing, clearing, planting, weeding, harvesting, stacking, and market gardening, representing 60 to 70% of their daily workload. In comparison, men in Baguineda perform plowing and threshing activities. The same holds in Kati, where small-scale female farmers represent 58% of the active population. In addition to their household activities, they help their husbands grow cash crops and perform marketing activities in family farms. How these women access and own land in the two study sites will be examined in what follows.

A. Women's Plot Rights a Reflection of Pre-colonial Tenure Practices

Land tenure practices originating from pre-colonial times are still applied throughout the southern agricultural regions where the survey was conducted. Under these systems, the conventional actors managing land access remain traditional chiefs or customary families, usually acting as landowners. However, it should be noted that, underneath traditional procedures, access to land for personal ends does not equate to ownership rights over this land. Under this system, the household head maintains supreme decision-making

power over land and who can access it. Accordingly, within contemporary tenure practices, several layers of management are recognized as legal in tenure policies that acknowledge multiple intersecting rights over land. One of these rights is classified as a primary right, an individual has supreme decision-making power over land, and a secondary right, which usually grants the right to utilize the land. For example, a woman or young man might have the right to cultivate a plot to meet individual needs. Still, they do not have primary rights over this land as the household head, or traditional commander maintains this privilege. The customary authorities cannot allocate permanent or leasehold licenses to land; only the state holds entitlement to issue title deeds.

Most of the agricultural land in the southern part of Mali is collectively cultivated by family members. The head of the household supervises communal land and manages agricultural work and revenue from the family farm. The farm unit is a family endowment, and it is handled to meet all household members' needs. Private fields are also cultivated according to a schedule that permits individuals to devote two or three days a week to running their plots. In this vein, while individuals (women and men) operate the household plot, they also obtain access to their own personal land, which they can nurture to meet individual needs.

Under this system, women's property rights vary based on numerous features, including their age, marital status, inheritance, and connection with the community. In this regard, women's obligations and rights to land change over their lifetime as defined by their position as married women, singles, grandmothers, and widows. As an illustration, in some rural areas in Mali, mainly in the cotton-producing region, traditionally, females do not have personal access to land. Instead, they operate as workers on their partner's or father's land. When they are about forty years old, following the first grandchild's birth, these women request to be acquitted of their farm duties and take responsibility for looking after their grandchildren. Nevertheless, if a woman becomes a widow, it is accepted that she must take care of her children. In this case, she is granted access to her partner's land till her eldest son can take over.

Customary practices value and prioritize men's access and control over farming and housing land. It is assumed that a household farm controlled by men meets the entire family's demands, so, in this case, it is contended that women do not need access to individual plots. To meet individual needs, women are granted access to the market garden "Nako" in Bambara or the crops from trees (such as shea nuts), which they assemble and process either for selling or domestic consumption. Market gardens are small vegetable gardens found near the homestead, mainly on roadsides or edges of fields. Almost every household in agricultural societies practices market gardening as a supplement to family farm agriculture. Market gardening also supplements the daily household needs of food. Such gardening requires fewer economic resources, using locally available plants, materials, and indigenous farming methods (Diallo 2021). Women are generally engaged in vegetable gardening, which improves domestic and intra-household food security throughout the year. If surplus vegetables and fruits are left, they can also be an income-generating activity for women as they provide them with extra cash to compensate for their household needs.

Consequently, in farming communities of the south, conventional patterns deem men as heads of households and sole providers for the family sustenance needs, as explained earlier. In this way, women are granted individual market gardens to meet their personal needs. They access these respective lands via their

husbands (household head) or through the village chief over negotiation with their husbands. Accordingly, a respondent said:

Land access, let alone its ownership, remains the major concern among smallholder women in our community. This is because men are mostly in charge of land allocation, distribution, and management in both the state-irrigated areas and in the non-irrigated areas that are under the customary leaders' control.²

Another interviewee added:

With the speedy urbanization of Kati county, land access is getting more complicated for everyone, especially women. Our utilization rights, which males ensured through traditional tenure systems, are lessening with men losing their prerogatives on land. As a result, women are generally the most vulnerable and the first to be excluded from farming activities, particularly women from poor households.³

Many women respondents still acquire land via traditional practices and inheritance or a mixture of these two in the study areas. Beneath these structures, the fundamental rights to the plot are handed from men to their male inheritors, as highlighted by the respondents. Females usually acquire land via their spouse's lineage and hold an inadequate plot privilege compared to males. Mali's tenure law formally acknowledges customary tenure rights since the government considers traditional heads as guardians of land obtained under tradition. Yet, at the same time, the state remains the legitimate owner of all untitled property. Meanwhile, state laws deliver no apparent entails through which they confirm customary tenancy rights over the vacant or untitled property. The bulk of the population seeks traditional landholdings practices, which remain precarious.

Beyond these challenges, the surveyed women farmers noted that men are more engaged in the lawful processes when required to undertake legal procedures for the formal registration of plots. When their spouses must do it on their behalf, they usually use their names to substitute their wives'. If the husband has multiple wives, when the sons running the farm inherit the land, they might expel any remaining wives who are not their mother. The issue can become conflictual, sometimes involving the courts and expensive legal fees. Some male offspring may also sell parts of the extended family land to rich urban office workers on their relatives' backs. This can often result in family dissolution and conflicts between families and within family members.

Women farmers are traditionally excluded from the formalization process of land access due to the weight of their domestic work and their lack of literacy, information, and financial means. In the two study areas, women are responsible for household chores and care for family members, making it challenging to pursue lengthy administrative procedures. During the interviews, women also pointed out that the legal processes are slow and expensive. They further stated that they are also victims of bidding and corruption. As an illustration, interviewees in Baguineda affirmed that:

² Interviews with Baguineda women's cooperative, February 5, 2020.

³ Interview with Kati women's cooperative, February 7, 2020.

Our income from market gardening does not allow us to undertake legal procedures for the formalization of our plot. We daily live from our earnings. For this reason, most of us still rely on customary holding tenure systems although they guarantee lesser rights.⁴

In addition, when women farmers are engaged in legal procedures, they also prefer to indicate their sons' names when their spouses die. As such, one of the interviewees stated that:

Sons are deemed permissible heirs of the family land. This is a common practice; even when women can acquire land on their account, they tend to pass this right on to their sons. Daughters are regarded as temporary family members since they will be married and leave the parental house following their marriage.⁵

The above accounts demonstrate that small-scale female farmers' access to property rights in Mali remains challenging. Due to the incoherence in legal practices, these obstacles influence conventional procedures that deem men the rightful heirs of household property. On the other hand, they are also due to the precariousness of women's conditions, their lack of financial resources, their lower education level, their lack of information on their rights, and their implication in the discriminatory practices against themselves.

B. Women Plot Rights a Reflection of Post-independent Tenure Practices

Post-independent land legislation in Mali is based on the principles of citizens' equality, state ownership, decentralization, access to the property through registration, title deeds to land, and recognition of customary rights (Coulibaly et al. 2004). Land represents a symbolic legacy whose utilization remains a factor of unity and social cohesion in Mali. It is one of the foundations of societies' organization at the village level. The land is also an essential financial and symbolic means of production, sharing, and consumption between households and the community.

Land acquisition is done in two ways in Mali whether you are in a managed area such as the Office du Niger (ON), the Niger office; the Office de Développement Rural de Selingué (ODRS), the rural development office of Selingue; or the Office des Périmètre Irrigué de Baguineda (OPIB), the irrigated perimeter of Baguineda, or in a non-managed area, which is not supervised by any organism. Managed areas are generally areas where intensive farming is practiced, especially rice and extensive market gardening. In contrast, the non-managed areas are lands intended for dry cropping—millet, sorghum, and peanut. The delivery of the land acquisition act is the responsibility of the locality. The managed area is under the state's authority through technical services and managerial organizations (ON, ODRS, and OPIB).

On the other hand, in a non-organized area, the prefect, the mayor, and the customary chief may issue plots. So, in contemporary Mali, all lands belong to the state. However, in keeping with traditional norms, land use is managed by the village or customary chiefs within their collective territorial boundaries—reflecting a dual land administration system. As highlighted earlier, traditional leaders can enjoy land by

⁴ Focus group discussions with women's cooperatives in Baguineda, February 7, 2020.

⁵ Interview with Kati women's cooperative, February 5, 2020.

cultivating it, using its fruits or trees, or attributing it to newcomers without a definite ownership title. The final allocation of the land belongs to the state.

Regarding women's land ownership in the post-independent era, it is important to highlight that women's property rights and control are not homogenous in Mali. An individual's gender, status, education, financial means, and location impact their property rights. Accordingly, urban areas have no discriminatory gauge for housing plots; the sole challenge remains women's financial ability to buy them, which generally remains lower than men's. In the northern regions of Gao, Timbuktu, and Kidal, where immense land exists, the plot goes to the entity that wishes to farm it. Women farmers in the northern regions meet no challenges in acquiring farming land. Both men and women hold equal access to land since very few individuals practice agriculture. Once an individual obtains land, they can pass it to their offspring. Women usually derive their income from handicraft works and livestock breeding in the north.

Moreover, the surveys found a couple of interesting issues concerning women's land acquisition in managed and non-managed areas. In managed areas, women farmers are excluded or have limited access to plots due to prejudices about their ability to exploit land efficiently and their lack of financial resources. In non-managed areas, female farmers own a few plots of land at the edge of a village or near their husbands' fields. In contrast, men are allotted reasonable-sized plots to produce various crops (rice, millet, sorghum, sugarcane, etc.) while women cultivate small, less lucrative fields for market gardening purposes.

Among the properties designated as managed, the survey found that most property owners are investors not settled in rural areas, implying that state services allocate lands according to its strategy of promoting agribusiness to foreign and non-rural local investors to the disadvantage of the rural population. It is also essential to highlight the existence of women owners that cultivate large parcels of land by hiring rural farmers. These women come from other cities like Bamako. The communities consider them the new investors responsible for their hardships (social inequality, land confiscation, and paid labor).

To further understand women's land tenure rights in current land legislation, the study assesses their land access and ownership in the two study sites. Regarding their access to property rights in the study areas, respondents were asked whether women and men farmers have equal access to agricultural land. The interviewees gave positive and negative answers. Thirty-seven percent of the respondents in Baguineda disagree that women have equal access to land, while 33% of respondents agree that they do. In Kati, 67% of the interviewees were pessimistic about equal land access, against 63% of negative answers in Baguineda. Overall, 65% of the respondents stated that women's access to property remains a challenge. The results thus indicate that even though most of the active rural population in Baguineda and Kati are women, the bulk of them can only access land through a male relative. Usually, men retain fundamental entitlements over land and its resources. Women still enjoy lesser rights, mainly regarding land privileges and inheritance.

These findings contrast with Articles 8, 24, 83, and 89 of the AOL, which guarantee equitable land access between men and women in Mali. These outcomes also reveal that, while men benefit from land ownership, women only have the right to use or exploit infertile land. Accordingly, most respondents indicated that women have temporary access to unproductive land. Since formal registration of claims over land is more complicated, women frequently attain access to land by securing utilization rights through

traditional systems, gifts, or purchases among villagers or their cooperatives. In this vein, a female farmer reported:

We are never denied access to land, but our threat remains access to land with legal documents and the type of plots we are allocated. We constantly change agricultural fields. Our spouses assign us infertile plots of land, which are difficult to exploit, but, once they are productive, they repossess them.⁶

Another interviewee added:

Women farmers still encounter dire challenges in acquiring land titles through formal systems in our communities. Most of us poorly understand legal land tenure acquisition procedures due to our lack of education and information about these systems. Even the well-informed ones are constrained financially in tackling these procedures, which remain complicated, expensive, and heavily bureaucratic.⁷

The respondents were also assessed regarding their general knowledge of the Agricultural Orientation Law (AOL) and its provisions towards women. Regarding their knowledge of the AOL, 63% of the respondents affirmed that they had never heard about it. Specifically, the survey found that 40% of the respondents in Baguineda had heard about the AOL compared to 38% of the respondents in Kati. In contrast, 65% of the respondents in Baguineda were not aware of the advantages of the AOL, compared to 67% in Kati. Accordingly, an interviewee stated:

Before enrolling in the cooperative, I did not know about my rights. Thanks to my involvement in the cooperative, things are positively changing. Now I am knowledgeable about my rights as an individual, and, more importantly, I have gained awareness about the Agricultural Orientation Law that endorses our land tenure rights.⁸

Likewise, another respondent alleged:

Joining cooperatives was like uncloaking and openly gauging opportunities and consolidating ourselves. It allowed our members to strengthen their skills and knowledge about their rights. We benefit from training programs in adult literacy, capacity building, and awareness-raising about our land prerogatives in the AOL. This knowledge is crucial for our personal growth and economic activities.⁹

Though joining cooperatives is providing women with some knowledge about their individual rights and land tenure entitlements within contemporary tenure policies, more than half of the respondents in both areas claim that women still do not enjoy the same land ownership advantages as their male counterparts. In compliance with the pillars of Articles 8, 24, 83, and 89 of the AOL, human rights legislation, and the Mali constitution, men and women remain equal in accessing agricultural resources. Following the exclusion of

⁶ Focus group discussions with Kati cooperative members, February 14, 2020.

⁷ Interview with Baguineda cooperative members, February 12, 2020.

⁸ Interview with Kati women's cooperative, February 10, 2020.

⁹ Interview with Baguineda women's cooperative, February 12, 2020.

small-scale female farmers in land allocation, the AOL, which was enacted in 2006, stipulates in its Articles 24 and 83 that women, young people, and vulnerable groups must be granted agricultural land. Approximately 15% of the farming land should be allocated to them on any surface managed by the state and its circumscriptions. In addition, Article 8 of the same text promotes gender equity in rural areas, particularly on the family farm. Article 89 also endorses equitable access to land and other agricultural resources to women, who will benefit from positive discriminative measures in allocating plots managed by the government and its institutions. Yet, the respondents contended that neither the constitution nor the AOL fully instigated equal land rights between the sexes. Accordingly, a respondent claimed:

Even though Mali's Agricultural Orientation Law foresees positive discrimination for women, the challenge remains the implementation of this law. None of the articles of the AOL are effectively enforced regarding women's empowerment in owning farming plots in state-managed areas.¹⁰

Another interview added:

One of the purposes of our cooperation is to address the discriminatory challenges regarding our tenure rights. Much of our members' activism has been about strengthening women's land rights and access to finance. Within our cooperative, women have become more vigorous and informed about their rights, steering to empowerment pursuits through joint action.¹¹

Women's lesser access to formal plots through statutory regulations persist not due to the existence of rights protecting them, but they rather continue because of the non-application of these rights by those who are supposed to implement them. There is a lack of political will to fully enforce laws and policies about women's socio-economic empowerment in Mali.¹²

Despite considering the interests of women and young people as farmers, there is a shortcoming in implementing gender equality in the AOL. Articles 8, 24, 83, and 89, which deal with women's land ownership issues and access to other farming outputs, do not include specific provisions or perspectives for women. In addition, the question of fair representation of women in the mechanisms used to update, monitor, and evaluate the law is not fully addressed. Hence, policies promoting gender equality in the AOL are not fully implemented in rural areas, as some interviewees mentioned. Seventy percent of the women stated that they do not know the legal requirements in claiming their land rights. In other words, the legislative and regulatory guidelines, and other texts on land administration in Mali, are unknown to the rural population. This lack of knowledge is explained by their illiteracy, lack of awareness of the texts, lack of representation in land committees, and lack of information and awareness-raising mechanism on adequate procedures for holding land in rural areas. As a result, awareness-raising mechanisms on the laws guaranteeing women's

¹⁰ Interview at the Ministère de l'Agriculture, February 2, 2020.

¹¹ Focus group discussions with Baguineda women's cooperative, February 12, 2020.

¹² Interview at the Ministère de l'Agriculture, February 2, 2020.

entitlement to land remain a challenge for small-scale female farmers and the state. Land legislation proposed by the post-independent state is neither applied fully nor applied in some situations as it remains complicated.

Conclusion

Enormous misunderstanding encompasses land tenure regulation and administration in Mali. Although this might have several causes, one of the main reasons is the disjuncture between the customary tenure practices of pre-colonial times and the various land laws introduced by the colonizers that denied pre-colonial tenure practices. The colonial tenure practices were sustained by post-colonial Malian governments emphasizing decentralization and private property rights following independence. Yet, traditional land tenure systems that date back to pre-colonial times are still utilized. Over time, both structures have changed substantially to the extent that land ownership practices in Mali lack effective incorporation of customary and statutory rules and procedures. Consequently, the public weakly understands land tenure policies and systems. Under both structures, women's land ownership is still challenging.

Given the prominent role of women in agriculture, which is essential for economic growth and poverty reduction in Mali, the paper concludes that previous efforts to revive the agricultural sector through the enactment of the AOL have been insufficient. This insufficiency is partly due to the low percentage of managed agricultural lands allocated to female farmers. Women's lack of land ownership is also explained by the presumption of their inability to produce efficiently and their financial constraints. Lastly, small-scale female farmers' utilization as laborers in the managed areas of national and international investors and the unawareness of women farmers of their land rights as well as their barriers to accessing essential services remain crucial challenges to their land ownership. It is evident from the preceding assessment that the reasons mentioned above maintain women in a vicious cycle of precariousness regarding their land ownership. It thus remains essential to address the inadequate application of the AOL provisions in the managed areas and the allocation of plots to rich investors who threaten the equilibrium and livelihood of rural farmers. Supporters of women's rights should devote enough time identifying community patterns and regulations while collaborating with small-scale female farmers, state, customary and religious leaders to harmonize statutory laws with conventional practices, develop rules for crucial adjustments, and create practical resolutions.

This article suggests enforcing the AOL implementation in state-managed areas while strengthening small-scale women farmers' capabilities, which remain necessary for their socio-economic empowerment in the agricultural sector. Ensuring women farmers' capacity building would enable them to confront inequalities in the distribution of resources, acquire more skills, abilities, and experiences through training, and receive information on their rights as well as new agricultural technologies. This will also allow them to develop leadership skills in attaining decision-making stances where their access to essential agrarian resources is discussed. In contribution to the existing literature on women farmers' access to land in Mali, any policy or development program seeking to improve women farmers' living conditions in the agricultural sector should consider the challenges and recommendations made in this study.

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