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Lesson 3:

Women's Evolving Land Rights in the Face of Economic Change in Ghana

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INTRODUCTION

In rural Ghana, women are the primary providers of food for their families and cultivate over 40% of agricultural land. Yet women's rights to land – the basis for the food they produce – are limited by patriarchal practices. While statutory law largely grants women land rights on par with those of men, in much of Ghana these rights are governed by customary institutions that assign greater control over land to men. In some areas, increased population pressure and competition for land are shifting customary rules in ways that further undermine women's access and rights to land. However, the impacts of evolving custom differ somewhat among the Akan of Western Ghana. Here, customary rules are enabling women to accumulate stronger rights to land by contributing to the production of cocoa.

GHANAIAN WOMEN'S LAND RIGHTS UNDER STATUTORY LAW

Statutory law has evolved to support women's rights to land by promoting equality and making it easier for women to inherit land. Under the Constitution of 1992, all persons "are equal under the law" regardless of gender. Additionally, spouses are guaranteed a reasonable portion of each other's estate, even if the spouse dies intestate (Scholz and Gomez 2004; Duncan and Brants 2004).

The Intestate Succession Law (1985) provides equal inheritance rights for spouses and increased inheritance rights for children. According to the law, spouses are entitled to 3/16 of the estate of the deceased if they die without a will. Prior to enactment of the law, a widow was not legally considered to be part of her husband's family and was denied inheritance of his property if he died intestate (Scholz and Gomez 2004).

By recognizing customary marriages, the amended Customary Marriage and Divorce Registration Law (1985, as amended 1991) is key to making the Intestate Succession Law applicable to the majority of women in Ghana. Eighty percent of marriages in Ghana are considered customary (Scholz and Gomez 2004). However, because the Intestate Succession Law recognizes only one wife, women in polygamous unions are not protected from disinheritance when their husbands die. Additionally, many rural communities have high rates of illiteracy and are isolated from urban centers. As a result, widespread knowledge of statutory law is limited, even among the authorities charged with implementing the law (Scholz and Gomez 2004).

Despite the integration of women's inheritance rights into the legal system, women face great difficulties in realizing these rights. Customary law continues to dictate how land is passed to family members in the event of death. Women are regularly excluded from inheriting land from their fathers under patrilineal practices and from their uncles under matrilineal practices, in favor of sons and nephews, respectively. Under most customary law in Ghana, women have been entitled to lifetime use rights to her deceased husband's land. More recently though, widows are being subjected to "property grabbing," whereby her in-laws seek to oust her from the land she

occupied and farmed with her husband using threats, intimidation or physical violence (Scholz and Gomez 2004; Duncan and Brants 2004).

GHANAIAN WOMEN'S LAND RIGHTS UNDER CUSTOMARY LAW

Eighty percent of Ghana's land is governed by customary law, rules and norms adhered to by communities that typically share a common lineage. When it comes to land access and inheritance rules, Ghana has both patrilineal and matrilineal systems. In patrilineal systems, males typically inherit land from their fathers, while in matrilineal systems males inherit from their maternal uncles. In both systems, land is considered to belong to the lineage, though male household heads typically hold permanent use rights to land for the benefit of their families. Women access land through their male relatives – through their father or husband in patrilineal communities and through their father, uncle or sometimes their husband in matrilineal communities (Duncan and Brants 2004; Quisumbing and Otsuka 2000). However, these rights are considered "secondary" and are subject to the primary rights of the male relative. Women are less likely than men to exercise independent control over the land that they farm, and often do not control the proceeds of their labors (Duncan 2010; Scholz and Gomez 2004; COHRE 2008). Women are also virtually excluded from governance bodies that exercise authority over land (Duncan and Brants 2004; COHRE, 2010).

When women are given parcels of land by their husbands or other male relatives, the parcels tend to be smaller and less fertile than men's, thereby constraining women's productivity. In areas where women traditionally held use rights to the commons, such as in shea nut forests, this land has frequently been converted to farmland and is no longer accessible to them (Duncan and Brants 2004). Gendered divisions of labor also affect women's land rights. Claiming new land is typically done by clearing virgin land of trees, a task that is restricted to men under most customary systems (Ibid.).

Women-headed households comprise 30% of rural households (Scholz and Gomez 2004). At one time, customary norms recognized a woman's right to acquire property independent of a male relative (Duncan 2010).



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However, population growth and the commercialization of agriculture have eroded traditional systems of land tenure. Primary forests have largely been replaced by crops or cocoa fields; limiting the availability of virgin land that can be cleared by young men for their own plots of land (Otsuka 2001). In addition, increasing demand for biofuels and volatile food prices have prompted foreign governments and commercial investors to acquire large tracts of arable land in Ghana. In conjunction with population growth, these pressures have decreased the availability of land and increased land prices (Cotula 2009).

As competition for land increases and land becomes more valuable, male lineage members seek to assert their primary rights to land and women are often the first to lose out. Not only are women increasingly forced off the land of their husband's lineage in the event of widowhood, but they are also denied land in their natal villages for fear that their children could later claim the land, and thus take it outside the lineage (Duncan 2010; Duncan and Brants 2004).

VARIATION IN WOMEN'S RIGHTS ACROSS REGIONS

Although the overall picture in Ghana is one of women's land rights eroding under custom, in at least one region of the country women have benefited from the evolution of customary norms in response to expanding cultivation and commercialization of cocoa.

Among the matrilineal Akan of Western Ghana, women have traditionally had weak land rights. Customary norms prevented women from cultivating cash crops because doing so would strengthen their rights to the land. In strengthening women's rights, the lineage could lose the land to the woman and potentially also her children if she (re)married outside the lineage. Hence, women's participation in the cultivation of cocoa was limited (Duncan and Brants 2004).

Following independence, men became increasingly involved in other income-generating activities, often migrating to urban areas. Cocoa is labor intensive, but due to out-migration, labor in Western Ghana became scarce and expensive. In order to meet labor demands on their farms, women have become more active in tasks that were once reserved for men, such as clearing land and planting and



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cultivating cocoa (Duncan and Brants 2004). Women have also used their labor to secure rights to land. In exchange for planting and managing cocoa trees on their husbands' land, women are often given permanent plots of land by their husbands that they can independently control (Quisumbing and Otsuka 2000).

Land transfers are used as an incentive to encourage women to assist in cocoa cultivation rather than the cultivation of food crops. Under a newly emerging system, men transfer village or family land directly to their wives as a "gift" after it has been partially or completely planted with cocoa trees. Men must receive the direct consent of their family members, but once transferred the woman's rights over the land are very strong (Otsuka 2001; Quisumbing and Otsuka 2000; Duncan 2010). In some cases, she even has the right to sell the land (Duncan 2010).

In contrast, women among the patrilineal Ewe of the Volta Region – where land is scarce – are less likely to be involved in the cultivation of cocoa and are not gifted lineage land due to concerns that the land will be transferred outside the lineage. Rather, cocoa cultivation is the pursuit of men who depend heavily on migrant labor (Duncan 2010; Duncan and Brants 2004). Women in the Volta Region are more likely to receive land from their

fathers rather than from their husbands, though these gifts are not transferrable. Upon her death, the woman's land reverts to her brothers rather than to her children. As land scarcity becomes a critical issue in this region, women are increasingly dislocated from land and deprived of land use rights (Duncan 2010).

Among Dagara migrant communities in the Brong Ahafo region of southern Ghana, men are more dependent on women's contribution to the household livelihood than they were in their home communities in the north of the country. However, unlike Western Ghana where increased reliance on women's labor has enabled women to acquire stronger land rights and economic freedom, Dagara women's independence and rights to land decreased in their new communities. In northwestern Ghana, Dagara women cultivate their own groundnut or vegetable gardens from which they harvest supplementary foods and extra income. But because land prices are prohibitively expensive in the south, Dagara women do not have the right to farm their own parcel of land. Even their food crops primarily belong to their husbands (Lobnibe 2008).

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EVOLUTION OF WOMEN'S LAND RIGHTS AND WAYS FORWARD

Economic and demographic forces have played a significant role in the evolution of women's land rights in Ghana. In most areas, these forces have unleashed increasing competition for land and women have lost out to those with relatively more economic and political power, including their own husbands and male family members. Customary laws that once ensured women's access to land and permitted them a degree of control over their livelihood have been recast to protect the interests of the lineage and especially its male members.

And yet critical exceptions to this trend exist. In Western Ghana, the expansion of cocoa cultivation amid increasing labor shortages induced the emergence of practices that enhanced women's

land rights and reduced their economic dependence on men through the cultivation of cash crops. Why this outcome did not result in other regions in southern Ghana – where labor constraints and the cultivation of cocoa are also characteristic – is not entirely clear. Differences in land scarcity appear to be one factor. The matrilineal inheritance practices of the Akan could perhaps be another. Since the land men farm will pass to his sister's sons, men may feel less concerned about transferring some land to their wives, especially if that land could potentially be passed on to his children instead. Differences may also arise from shifting attitudes and beliefs about women's entitlements in the process of Akan women asserting themselves into new roles in the economy and society. More research is needed if the forces underlying these different trajectories in Ghanaian women's land rights are to be well understood.

Strengthening women's land rights in Ghana would almost certainly yield significant impacts on agricultural productivity and food security. But achieving this will require remedying many of the disadvantages that women face politically and economically, so that women are in a position to shape both statutory and customary law, occupy decision-making roles, and also have the necessary resources to acquire and invest in land. Change will also entail reshaping the attitudes and beliefs of decision-makers in the home, the community and the government, so that equal land rights for women are not only framed in law, but are also part of an internalized credo of society on what constitutes basic justice.

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