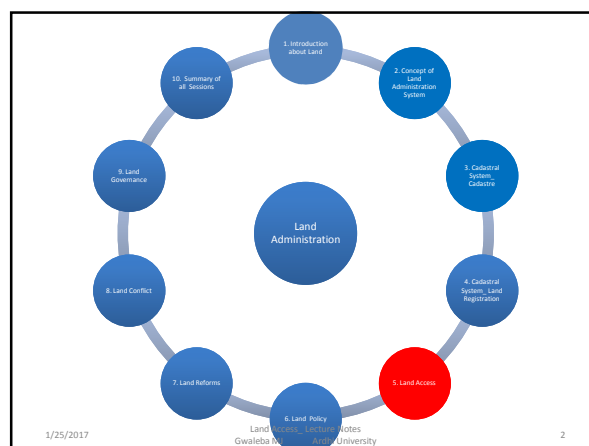


## Land Administration GT 221 Lecture\_5\_Land Access

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### Introduction

- Access to land is a central issue because land is a crucial asset for food production and a key factor for shelter and community development.
- Land is an economic resource and an important factor in the formation of individual and collective identity, and in the day-to-day organization of social, cultural and religious life.
- Land has been recognized as a primary source of wealth, social status, and power. It is the basis for shelter, food, and economic activities; it is the most significant provider of employment opportunities in rural areas and is an increasingly scarce resource in urban areas.

FAO (2002): Gender and access to land

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- Access to water and other resources, as well as to basic services such as sanitation and electricity, is often conditioned by access to rights in land.
- The willingness and ability to make long term investments in arable land and in housing is directly dependent on the protection that society affords the holders of rights.

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4

- Land also has great cultural, religious, and legal significance. There is a strong correlation in many societies between the decision-making powers that a person enjoys and the quantity and quality of land rights held by that person.
- In rural areas social inclusion or exclusion often depends solely on a person's land holding status. In urban areas, the right to participate in land use planning, in community decisions, and sometimes elections, can depend on the status of an individual as a "resident" or "land owner".

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5

### Land Access Defined

- Land access is broadly defined as the process by which people individually or collectively gain rights and opportunities to occupy and utilize land (primarily for productive purposes but also other economic and social purposes) on a temporary or permanent basis (Quan, 2006).
- These processes may include participation in both formal and informal land markets, land access through kinship and social networks, transmission of land rights through inheritance and within families, land allocation by the government and other authorities with control over land and landowners.

Quan (2006): Land access in the 21 century: Issues, trends, linkages and policy options

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6

- **Access to land** is also to be understood as having security of land tenure, which may be defined as having the certainty that those who possess rights to land can be certain that their rights will be valid as long as they are not revoked in a legal and comprehensive way (Lemmen & Oosterom, 2001).
- Land access is governed through land tenure systems (See the definition of land tenure on lecture\_2).
- The rules of tenure define how property rights in land are to be distributed within societies, along with associated responsibilities and restraints.
- In simple terms, Land tenure systems determine who can use what resources, for how long, and under what conditions.

Lemmen & Oosterom (2001): Cadastral Systems

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- Tenure systems in many developing countries have been influenced by former colonial land policies that overlaid established patterns of land distribution.
- Thus, many national and local systems are made up of a multiplicity of overlapping (and, at times, contradictory) rules, laws, customs, traditions, perceptions and regulations that govern how people's **rights to use, control and transfer land** are exercised.

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8

- **use rights:** *the right to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.*
- **control rights:** *the right to make decisions on how the land should be used and to benefit financially from the sale of crops, etc.*
- **transfer rights:** *the right to sell or mortgage the land, to convey the land to others through intra-community reallocations or to heirs, and to reallocate use and control rights (FAO, 2002).*

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9

- Normally, the poor communities have only use rights.
- A woman, for example, may have the right to use land to grow crops to feed the family, while her husband may collect the profits from selling any crops at the market. While such simplifications can be useful, it should be noted that the exact manner in which rights to land are actually distributed and enjoyed can be very complex.

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10

## Ways to Land Access

- People use a wide range of strategies to gain access to land. These include:
- **Purchase**, often using capital accumulated while working as migrants in urban areas.
- **Adverse possession or prescription** (the acquisition of rights through possession for a prescribed period of time). In some countries, this may be the only method for small farmers to gain formal access to vacant or abandoned land and to bring it into productive use.

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11

- **Leasing**, or gaining access to land by paying rent to the owner.
- **Inheritance**, or gaining access to land as an heir.
- **Squatting illegally on land.**
- In most developing countries especially in Africa, women's rights are often secondary, derivative and temporary, obtained through marriage, children, or other relationships with men and thus insecure when the male link is detached.
- Often women only gain access to land through their social relationships with their husbands.

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12

### Women's Land Access in Tanzania

- Women's social economic and political rights are provided for and secured within the constitution of URT which is the basis of all the citizens rights.
- The URT constitution of 1977, thus clearly spells out women rights by first prohibiting discrimination on whatsoever ground and emphasizes equality of all persons.

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13

- Article 24(1) of the constitution of the URT, 1977, is clear that every person is entitled to own property. The article further states that any deprivation of a person's property is unlawful unless declared by law which makes provision for fair and adequate compensation.
- Land is a **property** that every citizen is entitled and therefore women as citizens are entitled to this right.
- Article 29(3) ensures that no citizen shall have a right, status or special position on basis of lineage, tradition or descent.

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14

- The Land Act (LA) No. 4 of 1999 adequately provides for a bunch of rights for women to *access, own, and control land as equal as men.*
- It also provides for the right to *participate* in decision making organs regarding land matters.
- It provides for women right to *dispose land and properties therein.*

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15

- The Village Land Act (VLA) No. 5 of 1999, clearly states and recognizes equal rights for men and women to access, own, control and disposition of land under the same terms and conditions (see section 3(1&2))
- Section 20(2) protects women against discriminatory customs and traditions which restrict their lawful access to ownership, occupation and use of land.
- Section 3(2) of both LA and VLA states that *'The right of every woman to acquire, hold, use and deal with land shall, to the same extent and subject to the same restrictions be treated as a right of any man'.*

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16

### Women's Land Access Situation in Tanzania

- Despite the 1999 Land Act [no 4 and 5], reviewed in 2002 by the government of Tanzania, most women still have poor access to land.
- Most women have access to land through their spouses or male relatives but do not own on their own, unmarried daughters, widows and divorced women have been a subject of stigmatization, discrimination and harassment by their male relatives in different ways.
- As customary marriages are not a subject of registration, women are disadvantaged in that upon divorce or death of their husband they find themselves losing almost everything, key among them being land.

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17

- In some cases, husbands have been using title deeds to secure loans without first consulting their wives causing evictions and or loss of their land and properties.
- In matters of inheritance there have been unequal distribution of wealth as between men and women where women are always considered second.

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18

### Challenges to Women's Land rights and Access in Tanzania

- **Dualism in land tenure system.** Tanzania has a dual system where customary tenure operate along with statutory tenure. statutory tenure is regarded as more superior to customary tenure.
- Most Customary tenures are still **discriminatory** to women
- **Legal technical gaps; the policy allows for** women inheritance of clan or family land to be governed by customs and traditions provided they are not contrary to the constitution and principles of natural justice. Such loop holes are sometimes used against women rights as those who apply also define the provisions discretionally.

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19

### Challenges to Women's Land rights and Access in

- Lack of **knowledge on women rights** for women and the public at large (legal knowledge, civic awareness etc)
- Male **dominance in society (patriarchy system)**
- **Stereo-types and negative attitude** against women's power, competence, potential, status etc
- Archaic **traditions, customs and religious beliefs**

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20

### Why is Gender an Issue to Land Access

*Secure land and property rights for all are essential to reducing poverty, because they underpin economic development and social inclusion" (UN Habitat, 2011, p.4).*

- Gender differences in land tenure should be recognized if land objectives, such as increasing land productivity, providing affordable housing, or promoting sustainable resource management, are to be met.
- Improving gender access to land, and the benefits from land, may be one way to overcome economic and social disadvantages

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21

- Without specific attention to gender inclusiveness, important segments of society may be excluded from the benefits of land administration, management, and development schemes.
- Equitable access to land is a human rights issue as it provides a means to food production which makes contribution to food security.
- Secure land and property rights promote investments for both large and small land users, and hence increases farm productivity.

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- In many countries, there is still a lack of adequate provisions for women to hold land rights independently of their husbands or male relatives.
- Statutory law often does not provide for women's independent rights and when such legislation does exist, mechanisms to enforce it are often absent.

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- In customary societies, women's direct access to land through purchase or inheritance is often limited, yet they may have greater management and use rights than men.
- Since women are frequently the major household food producers, there are usually customary provisions for indirect access to land in terms of use rights acquired through kinship relationships and their status as wives, mothers, sisters, or daughters.

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24

- The **use rights**, however, may not grant enough security for women and other dependants when traditional family structures dissolve. Through labour mobility, divorce, separation, or death, an increasing number of women are becoming the heads of households.

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25

- They are thus making many of the day-to-day decisions affecting shelter, food production, and household economics. Yet only a small proportion of these women hold secure land rights. Similarly, there are societies where access to land stems from the female line, and in this case male partners and children may be disadvantaged as societies change.

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### Ways to Improve Women Access to Land

- Awareness raising and training should be carried out at all levels on women's land rights, specifically, but not exclusively to land officers, community development officers, land officers and legal officers.
- Awareness raising and sensitization activities on women's land rights.
- Both men and women should participate in the sensitization and awareness raising activities.

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- Broad based public awareness to women to enhance their **knowledge and understanding** of their rights to land and other resources
- **Advocacy for policy, practice and attitude change**
- Decentralizing land administration to allow grassroots communities where most women are based to **participate in decision making**

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- Economic **empowerment for women to enable** them compete in land dealings
- Steer up formation of women social movements to campaign and fight against discriminatory customs, beliefs and attitudes

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End of Presentation

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30