

# LEGAL ESTABLISHMENTS AND GENDERED ACCESS TO LAND IN PATRIARCHAL SOCIETIES OF NORTH-WESTERN GHANA

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## ABSTRACT

Denial of women in land entitlements especially in patriarchal societies has been a major development concern in Ghana, resulting in promulgation of legal establishments that seek to enhance equality in access. The paper examines the underlying factors for the persistent gender disparity in land access and usage despite the existence of laws to bridge the gap. Interviews with land custodians and households revealed the desire to preserve tradition and cultural heritage as the main driver for non-inclusion of women in land access rights. The interpretations of these laws also tend to exclude women access to land. Besides, limited knowledge about the existence of legal establishments that seek to promote and/or ensure gender equality accounts for the persisting exclusion of women in land entitlements. Consequently, legal establishments need not only strict enforcement but also with effective sensitization programs if the persisting inequality gap in patriarchal societies is to be bridged.

**Keywords:** Land, Gender, Ownership and Access, Patriarchal Societies, Rights and Interest, Legal Establishments, Nandom District, North-Western Ghana.

## 1. INTRODUCTION

Land remains a critical asset for both urban and rural dwellers due to its socio-economic benefits (World Bank, 2005). Within rural settings, land serves as the major resource from which livelihood activities are carved (FAO, 2013; ECA, 2009). The central importance of land and its persistently increasing value has resulted in various rights and interests being designed to grant ownership and access rights (Platteau, 1996). According to Thu et al. (2007), there are two forms of rights attached to land, namely: primary and secondary rights. Primary rights grant access to land through ancestral inheritance (patrilineal or matrilineal), purchase or sharecropping. Secondary rights on the other hand are gained through particular relationships such as marriage and kinship. The regulation of access and ownership rights usually depends on the social

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relations that exist among people. Rights to land are either carved from formal legislations and laws or through informal systems based on societal constructs (Kasanga & Kotey, 2001).

It has been argued that, in most parts of Africa, the current system of land tenure has a largely individualistic nature of ownership (Asabere, 1994; Woodman, 1966). The individualization of primary and secondary land rights has resulted in ownership and access inequalities between men and women (Quisumbing et al., 2001). It is estimated that about 200 million of the world's population (20 percent of the world's poor) are denied access to land (UN HABITAT, 2008). Within the category of people who are usually denied access to land, women form the majority (ECA, 2009). Odeny (2013) and Thu et al. (2007) assert that, traditionally women are not allowed to own and/or access land within the patrilineal system of primary rights.

Ghana practice both customary and statutory systems of land tenure (Kasanga, 1995). Within these co-existing modes of land acquisition, customary land tenure system which is largely operationalized based on the defined social structures controls about 80 percent of all lands in the country. This implies that, customary structures greatly influence the ownership rights and interests that accrue to land. The various structures that define rights and interests accruing to land in Ghana- be it customary or statutory- have changed over the years (Kuusaana & Eledi, 2015; Kasanga & Kotey, 2001) due to the influence of colonialism and globalization (Cotula, 2007).

Customary system of tenure as a major means by which both men and women gain ownership or right to access land for use is not universally defined (Kasanga, 1995; Kuusaana & Eledi, 2015). Even though there is no uniformity of customary land tenure practice among regions, different ethnic groups or communities (Higgins & Fendrich, 2011), there is a general framework that characterizes the various rights associated with the customary land tenure system of Ghana (see Figure 1). Within the southern sector of Ghana, all customary lands are held in trust of the people by the stool. Women as well as men have legal rights as defined by custom to own lands via inheritance. It has been argued that even though women's land rights in such societies are permissible by customary definition, they still encounter various degrees of discrimination in terms of inheritance and access to use. However, within the Northern sector of the country, women do not have land ownership rights. While the situation limits ownership or access rights, women are still regarded as contributing about 70% of household food production through land use in that part (Higgins & Fendrich, 2011; Kuusaana & Eledi, 2015).

In efforts to combat the relegation of women in access to land, various conventions and legal reforms have been promulgated (see Ghana Statistical Service, 2014 and Duncan, 2004) as

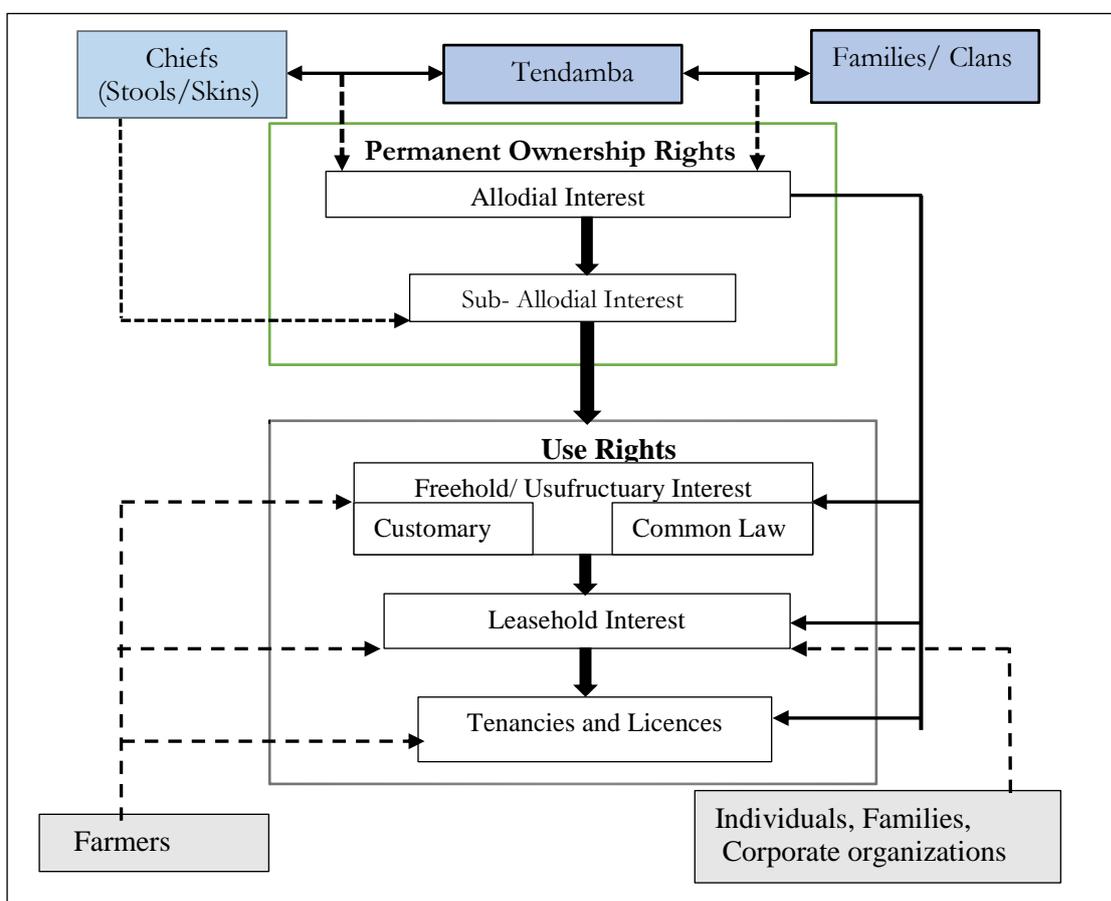
approaches to addressing the inherent gender inequality within the customary tenure system (Whitehead & Tsikata, 2003). Several decades after the adoption of both national and international legal enactments by Ghana as a way of ensuring equality in ownership or access to use of land and other inheritable properties, customary practices still relegate women land rights in patrilineal societies (Higgins & Fendrich, 2011). A study by Duncan (2004) in the Northern region shows that, women only rely on the decision of male relatives as husbands, brothers or fathers to gain access to land for use. This implies a limited functionality of the legal provisions that allow for both males and females to own productive lands.

In order to provide a basis for up-scaling the execution of legal provisions that guarantee equal rights of ownership or devise other approaches to addressing customary land inequalities in Africa, this paper examined the feasibility of gender equity enhancing establishments within patrilineal communities of North-Western Ghana, using the Nandom District as a case study. Specific issues the paper sought to examine include: the recognition of gender equity concerns in customary land relations; the level of awareness on legal provisions that guarantee equality and protect vulnerable (women) rights to land as a property; and the applicability of legislations in achieving equality within the customary land tenure system of patriarchal societies.

## **2. CUSTOMARY LAND TENURE SYSTEM OF GHANA**

Customary land tenure comprises all the aspects of rights and interests that are held within traditional structures which include: Skin/Stool and family structures (Larbi, 2008; Awuah et al., 2013). It is viewed as set of principles and interactional rules that defines how societies regulate ownership and transfer rights as well as other operational rights such as access to use, and control of land (Kasanga, 1995; Unruh & Turray, 2006). Thus, it simply specifies who can own or use what land and how (Lastarria-Cornhiel, 1997). In most parts of Africa including Ghana, customary land tenure system is the dominant mode used in granting right of access to land by groups or individuals (Kasanga, 1995; Larbi, 2008; Kasanga & Kotey, 2001). As illustrated in the customary land tenure framework (Figure 1), lands governed by customary law in Ghana are either stool/skin lands or family lands. Stool or skin lands are owned and managed by chiefs (usually referred to as stool in southern Ghana or skin in Northern Ghana) in trust of the community (Kuusaana & Eledi, 2015; Awuah et al., 2013; Kasanga & Kotey, 2001) while the family lands are those that have their ownership or interest vested in a family with Tendambas as custodians in some parts of the North (Kuusaana & Eledi, 2015). Interests or rights on land can be grouped into two: permanent ownership rights and use rights (Kuusaana & Eledi, 2015). Permanent rights are usually held by fiduciaries in trust of a whole group of people (society, family or clan). The trustees of these lands have rights to exercise control over the use and

transfer of these lands in consultation with other members of the allodial group. The use right on the other hand -depending on its nature- can be operationalized to grant various exclusive interests to individuals within a group to allow them exercise control over the use and appropriation of lands (Kasanga & Kotey, 2001). The allodial title is the highest right that can be held on land (Awuah et al., 2013, Kasanga & Kotey, 2001; Woodman, 1966). This interest confers permanent ownership right on a group or society and is inalienable and unrequited. It is usually owned by first settlers of the society and the basis for all other customary interests on land. It is argued that the allodial title is acquired either through discovery, gift or conquests (Migot-Adholla et al., 1991; Brobby, 1991).



**Figure 1: Customary Land Tenure Framework of Ghana** (Source: Adapted from Kuusaana & Eledi, 2015)

As a derivative of the supreme interest on customary land, two main interests arise: freehold and leasehold. Individuals within the allodial group gain ownership of land based on freehold or usufructuary interest (Woodman, 1966; Larbi, 2008). The freehold interest grants indefinite use rights of allodial lands to families/individuals through common law or customary freehold (Larbi, 2008, Kasanga & Kotey, 2001; Brobby, 1991). Common law freehold is distinguished from customary freehold on the basis of who reserves the right to practice what within freehold.

Thus, common law freehold interest is granted to strangers who are not part of the allodial title group (Woodman, 1966) while customary freehold is preserve only for members within the allodial interest group and is acquired by first clearance and continuous use of undeveloped communal lands as well as inheritance (Brobbly, 1991). The inheritance or succession of freehold interest on land by allodial members is generally according to the lineage of a society (Kasanga & Kotey, 2001) with a patrilineal system of inheritance in the Northern, Volta and some Ga communities, and matrilineal in Akan speaking communities of Ghana.

Leasehold interest in land is granted to non-members of the allodial group under the guidance of common law freehold. It allows individuals to acquire land for particular purposes over specific period of time (Kuusaana & Eledi, 2015). A valid lease must therefore have a day of commencement and expiry, have contractual agreement between the leaser and the leasee, and must have legal documentation by the Ghana Lands Commission. Tenancies and licences are also interests held on land based on contractual agreement between landowners and mostly migrant (farmers) and can be granted on seasonal basis. This practice is common in Southern-Ghana as they grant migrants and people access to land for production through short term leasehold, shared and cash tenancy (Kuusaana & Eledi, 2015).

Although various interests on customary land exist in Ghana, it is the practice of the southern sector that has been regarded as considerably flexible to meet gender and migrants (farmers) need (Kasanga & Kotey, 2001). Despite this, it is beset with some challenges such as unfair contractual agreements between landlords and farmers in share tenancy, non-standardized amounts paid for lease or cash tenancy, and insecurity due to the absence of registered titles in terms of allodial or usufruct rights. The system in Northern Ghana is however of major development concern as it is shrouded with gender biasness and inequality. Women who are reported to be contributing about 70% of household food production through land use are excluded by the patrilineal system and hence, do not grant them access to and/or ownership of land which are mostly acquired through inheritance (Kuusaana & Eledi, 2015; Higgins & Fendrich, 2011).

### **3. LEGAL FRAMEWORK FOR GENDER EQUALITY IN GHANA**

At the national level, the 1992 Constitution of the Republic of Ghana has spelled out fundamental human rights in Chapter Five. Article 17(2) in particular indicates that “a person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed, social or economic status.” Again, Article 17(4) mandates the government to set up special policies or legislation that will address any discriminatory socio-cultural practice that undermine

the freedom and rights of any group of people in the country. Article 18 of the constitution further guarantees every citizen right to property including land which is regarded as a key asset/resource among rural folks

As part of legal efforts in Ghana to protect the vulnerable, including women access to productive resources and assets, the Intestate Succession Law, 1985 (PNDCL 111), amended in 1991, has been established to help secure two-thirds of a deceased's property for the living spouse and the children while the remaining is passed onto the rest of the family members (see World Bank, 2005; Duncan, 2004). Despite these legislations, it has been evidenced that women especially in most rural settings are deprived of basic livelihood supporting assets like land that belonged to their deceased husbands (FAO, 2013). Such assets are normally considered as lineage properties and hence, distributed in line with customary inheritance practices in which women in patrilineal societies have no right (Kasanga & Kotey, 2001).

**Table 1: International Legal Framework**

<b>International Establishment</b>	<b>Focus of Establishment</b>
The Universal Declaration of Human Rights (1948)	Ensure that every human being and family have equal rights and freedoms which are inalienably entitled
The International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966)	Create necessary conditions for all human beings to freely enjoy their economic, social and cultural rights as well as their civil and political rights.
International Covenant on Civil and Political Rights (ICCPR) (1966)	Strive for promotion and observance of all Civil and Political Rights including right to life, freedom of religion, freedom of speech, electoral rights and rights to fair trial.
The Declaration on Social Progress and Development (1969)	Promote social development through peaceful co-existence, friendly relations and cooperation among states and individuals.
The Universal Declaration on the Eradication of Hunger and Malnutrition (1974)	Eliminating hunger and malnutrition by ensuring that all nations work towards various economic, social and political issues that affect food production and distributions.
The Convention on Elimination of all forms of Discrimination Against Women (CEDAW, 1979)	Emphasises the need for women's human rights to equality and non-discrimination among all member nations
African Charter on Human and Peoples' Rights (ACHPR) (1989)	Promote and protect rights and freedoms of all irrespective of gender status within the African continent.
Beijing Platform for Action (1994)	Promote global commitment to achieving equality, development and peace for women through empowerment
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) (1999)	Make provisions for the abolishment of gender discriminatory practices against women in all member states.

Source: Authors' Construct (2018).

According to FAO (2009) and Duncan (2004), Ghana has made legal commitments at the international and national level to address gender inequality in various societal relations over the years. For instance, Ghana joined global efforts that are focused at ensuring that, women rights in general property access/ownership including land are secured and promoted (FAO, 2009). Besides, Ghana is a signatory to most of the international gender equity declarations, covenants

and conventions (see Table 1), (GSS, 2014b; Duncan, 2004). Most of these signed agreements have been ratified in the local context and are aimed at bridging the gender inequality gap regarding women access to productive resources and assets such as land.

#### 4. STUDY SETTING AND METHOD

##### 4.1 Study Setting

The study was carried out in North-western Ghana, specifically the Nandom district. It is bounded to North-West by the Republic of Burkina Faso, and to the South and East by the Lawra and Lambussie Districts respectively (see Figure 1). The District has an estimated total land size of 404.6 square kilometres, with about 84 settler communities, out of which 86 percent of its inhabitants living in rural settlements (GSS, 2014a).



**Figure 2: Map of Study Area with Major Communities** (Source: Adapted from GSS, 2014a)

As illustrated in Figure 2, local government administration in the Nandom district is operationalized through four area councils, comprising: Nandom, Puffien, Baselbe and Ko area councils. Also, traditional leadership within the district is under the authority of one paramount chief (Nandom Naa) who also devolves power to various divisional and sub-chiefs.

Predominantly, the inhabitants of Nandom District are Dagaabas who are the custodians of the land with patriarchal lineage (Lentz, 2006a). Anthropological studies (Goody, 2004; Lentz, 1996; 2006b) indicate that, land within the district is own by families/clans and governed by the *Tengandem* who are the land custodians (in charge of all land related issues). The patriarchal lineage among the Dagabas in the district customarily excludes women from land ownership and entitlements, which are mostly acquired through inheritance, thereby offering an interesting case study for ideas on why there is persistent gender disparity in access to lands within the country's legal framework and establishments seeking for equality.

#### **4.2 Study Design and Method**

This study adopted a social constructivist worldview as a guiding philosophical framework for claims to knowledge, construction of reality, axiology, methodology and rhetoric. Within this worldview, an inductive approach was used alongside co-constructed reality, and recognition of values as ways of determining knowledge. Hence, a case study design and methods were adopted to gather data from selected communities and organizations/ institutions. A case study design was necessary to gain breadth and depth information on the customary practices and ownership in terms of land tenure relations (Creswell, 2009) as well as limit the discussion to a cultural group with the same customary practices (Bagson & Beyuo, 2013; Alfred & Bonye, 2012; Lentz, 2006a; 2006b; 2010; 1996). Within the case study design, four different communities were selected from the four administrative area councils in the Nandom district (see Figure 2) to gather and analyse data. Even though all communities within the area councils were qualified for selection, consultative-criteria<sup>4</sup> shown in Table 2 were used to select participating communities.

The adoption of multiple case communities as argued by Woodside (2010) and Cavaye (1996) is to give basis for estimation of the effect rather than for the purpose of generalizing for the entire population. Thus, the multiple case studies allowed for comparative analysis of views from different communities within the various area councils (Yin, 1981). Aside the adoption of different communities for the study, several sources of evidence- male and female discussion groups, gender-based household heads and organizational key informants- were used to obtain and triangulate findings. Within each community, two focus groups were constituted among land custodians and women group engaged in agriculture as a way of understanding their views on the subject matter. Discussions among groups were moderated with interview guides and an audio recording device.

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<sup>4</sup> Consultative-criteria were designed based on research objectives together with views from fieldworkers of agricultural organizations that operate within the district.

**Table 2: Community Selection Criteria**

Area Councils	Criteria	Community selected
Nandom Area Council	<ul style="list-style-type: none"> <li>• Shares boundary with adjoining district (Lambussie District)</li> <li>• Proximity to district capital</li> <li>• Relatively large population to cater for different gender categories of household heads views</li> <li>• Women group engaged in agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Brutu</li> </ul>
Ko Area Council	<ul style="list-style-type: none"> <li>• Shares boundary with adjoining district (Lawra District)</li> <li>• Relatively large population to cater for different gender categories of household heads views</li> <li>• Women group engaged in agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Tuopare</li> </ul>
Puffien Area Council	<ul style="list-style-type: none"> <li>• Shares boundary with adjoining district (Black Volta)</li> <li>• Relatively large population to cater for different gender categories of household heads views</li> <li>• Women group engaged in agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Kokoligu</li> </ul>
Baselbe Area Council	<ul style="list-style-type: none"> <li>• Shares boundary with adjoining district (Black Volta)</li> <li>• Relatively large population to cater for different categories of household heads views</li> <li>• Women group engaged in agriculture</li> </ul>	<ul style="list-style-type: none"> <li>• Tankyara</li> </ul>

Source: Authors' Construct (2018)

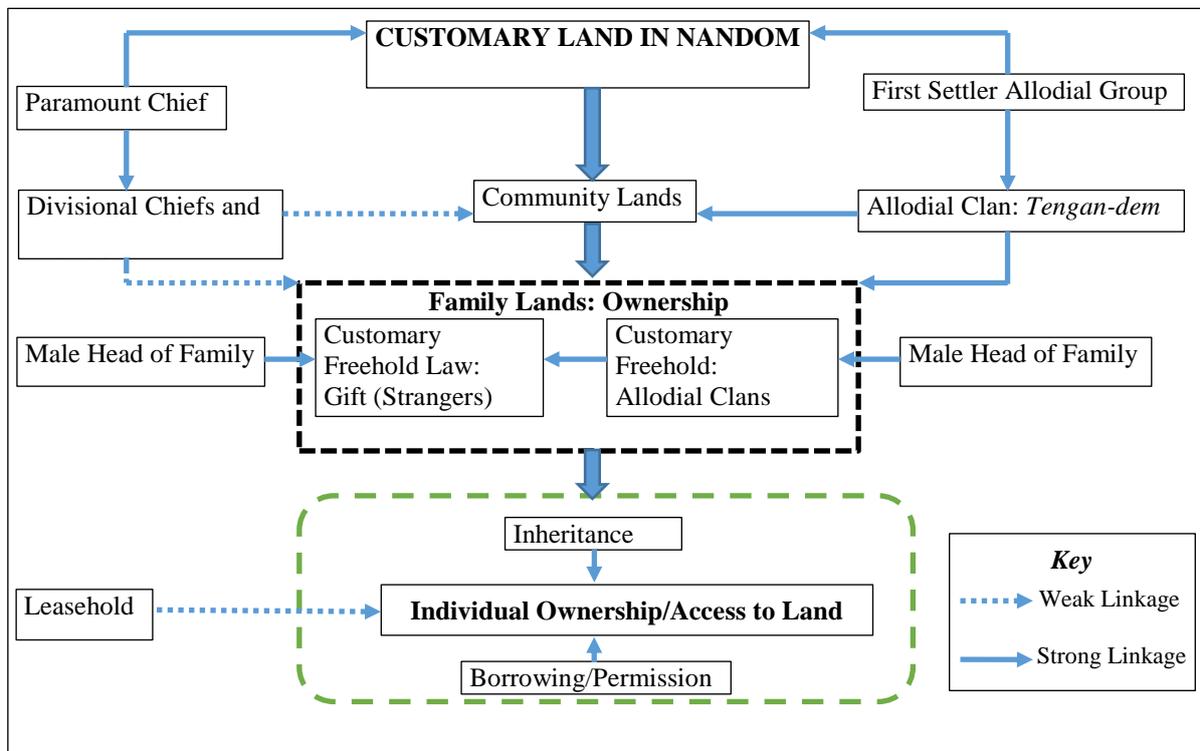
As a way of strengthening reliability of findings, the study surveyed households' heads in the four communities using simple random sampling techniques with statistical information provided by an NGO (Partnership for Rural Development Action (PRUDA)) operating in the district. As noted by Rice (1995), a sample size of at least 30 respondents is enough to produce valid results in a survey if they are properly distributed and selected among the population, hence the study randomly selected 30 households' heads from each of the four communities for interview regarding their knowledge on legal establishments seeking to bridge gender inequality gap with regards to land access and ownership. Also, the study gathered data from some local based organizations/institutions within the district that are engaged in rural agriculture and development activities: i.e., the Nandom Deanery Rural Integrated Development Program (NANDRIDEP) and Partnership for Rural Development Action (PRUDA). Data from participants were transcribed and analysed through text description, pattern matching and supported with figures, direct quotations and tables, while discussion was done in relation to relevant literature.

## 5. RESULTS AND DISCUSSION

### 5.1 Recognition of Gender Equity Concerns in Patriarchal Land Tenure System

The customary land tenure system of North-Western Ghana, specifically the Nandom District fits into the general framework of the Ghanaian customary land tenure system (see Kuusaana & Eledi, 2015). However, owing to evidence that no two communities tenure system is exactly uniform (see Higgins & Fendrich, 2011), the study found that, the district has its own set of

institutions, rules and values that define ownership, access and control over land as depicted in Figure 3.



**Figure 3. Customary Land Tenure System of Nandom District** (Source: Authors' Construct, 2018)

As illustrated in Figure 3, customary land was first acquired by the allodial group (see Lentz, 2006a). However, due to resettlement of various individuals that belonged to the first settler group, the issues of ownership and control of land has been decentralised to community allodial clans<sup>5</sup> (*Tengan-dem*<sup>6</sup>). The *Tengan-dem/ Tindana* therefore become the basic institution in charge of all land related issues at the community level, and is headed by a selected male head (*Tengan-sob*). At the district level, the paramount chief though not a member of the allodial clan, has a strong linkage with land related issues. This is attributed to historical trends that point out that, the clan of the paramount chief played a key role in the acquisition of the earth shrine (symbol of allodial title) by the first settler of Nandom from the Sissalas in Lambussie (see Lentz, 1993; 2006a). The strong influence of the paramount chief on land issues is also alludes to the low recognition that has been associated with *Tengan-dem/ Tindana* since colonial era and in recent land reforms where chiefs are generally recognized in land acquisitions (see Abdulai & Ndekugri, 2007; Kunbuor, 2002).

<sup>5</sup> A clan refers to a group of families who are believed to have originated from the same ancestor.

<sup>6</sup> *Tengan-dem*: Local term for land custodians or allodial clan.

Contrary to the strong linkage between the paramount chief and district level land issues, divisional and sub-chiefs have a weak influence on customary land concerns. This was explained by the fact that, chieftaincy positions in the various communities of the district were usually reserved for ‘strangers’- that are settler clans which were not part of the allodial group but part of the early settlers. There is separation of functions between divisional or sub-chiefs, and *Tengan-dem* (land custodians). Community chiefs were enskinned to take charge of administrative activities while *Tengan-dem* exercised control over the earth shrine and land. Even though the role of community chiefs in contemporary times was explained not to have changed widely, they are consulted in instances of major land issues for onward reporting to the paramount chief. The preference of land custodianship to chieftaincy by first settlers among rural communities indicates the importance attached to customary land tenure system.

The next level of customary land operationalization is at the extended family level. Discussions with *Tengan-dem* indicated that, from the community level, lands were acquired by allodial families through first cultivation and continuous use (customary freehold). Aside the customary freehold interest by various families, lands were also owned through customary law freehold. Thus, earlier settlers were given land as gift by families and *Tengan-dem*. At the family land level (acquired either through customary freehold or gift), inputs of *Tengan-sob* were explained to be limited. *Tengan-sob* becomes relevant in family land only in instances of conflicts among families (leasehold or division of land among children) or at inter-community level. Family lands are therefore held by the head of the family in trust of all other family members.

The last level of the customary land tenure system in the district within which households and individuals operate is acquired through borrowing or inheritance. Inheritance confers ownership on male children while borrowing is open to both males and females for a period of time. It was also realised from focus group discussions with *Tengan-dem* that, among satellite communities, leasehold interest has emerged as a mode of acquiring and owning land among satellite communities. At a discussion, a *Tengan-sob* or *Tindana* summarised the operation and major use of customary land among rural communities as follows:

“[...] Our grandfathers’ land is the only thing that has existed and passed down since they first settled here. It’s one of the things which they gave us to be doing small-small to feed our families and when your time is up, you also share it among your children- those who are males and go. You cannot carry it and you cannot increase it. We don’t sell it... when another family is in need, you just cut a portion for them to use and take it back whenever you need it...”  
(*Tindana* at Tuopare: December, 2017).

Taking inferences from the above quote, the entire framework of accessing and owning land within the district has more preference for males while giving females a limited opportunity in

land borrowing for use. Even female access to borrowed land is based on the relationship with and discretion of male owners (see Duncan, 2004).

In a further discussion with land custodians, the recognition of gap in the permanent use of productive lands by women was contextualized to understand what households could be gaining or losing with the current system of tenure. While many land custodians expressed fear of negative implication for peaceful co-existence of societies and families in an event of possible change in the system of customary land ownership to include women, others argued differently. In their opinion, women are often capable of managing household farms and individual farms and thus, their possession of land will mean more food for the household. As remarked by a participant in a discussion;

“Right now as we sit, I can say that women have the ideas for better farming just that they don’t have the energy to farm larger portions of land. It’s a fact that even though they don’t have farms, their group level farming gives them so much money. Our land system was given to us by our forefathers when a woman at that time didn’t know how to hold a hoe. I think our various households will see better improvement if our wives have their own farms. But it must be clear that those farms can be worked on after assisting us in our farms. If not, why will I marry only to continue working alone and my wife too will be working alone? That’s the thing we’re not sure of” (A Land Custodian at Tuopare; December, 2017).

This implies that there is a conscious realization of the potentials of secured land access by some members of the local institution that manages land. Hence, with a demonstration that the fear expressed to be associated with women land use will not be experienced, there is a possibility of securing household lands for women to use.

To further expand the awareness of women role and potentials in land use at the focus group level, a sequential farming activity as outlined by land custodians in Figure 4 was used to determine the level of involvement of males and females with regards to household cultivation in Table 3. Basically, the farming activities of a typical farming season were examined based on the roles that were described as solely male, female or jointly performed before the year 2000 and afterwards when the concerns of equality were captured as part of the Millennium and Sustainable Development Goals. The outcome of a consensus reached by each of the four focus groups (land custodians) on gender roles as illustrate in Table 3 indicates that, males had more roles to play in a typical farming season before the 2000’s. However, current trends of participation in farm work indicates that, both males and females complementarily play roles within a farming season. This accounts for the assertion by majority of the discussants that, women are now partners and thus contribute significantly to the work of the household.

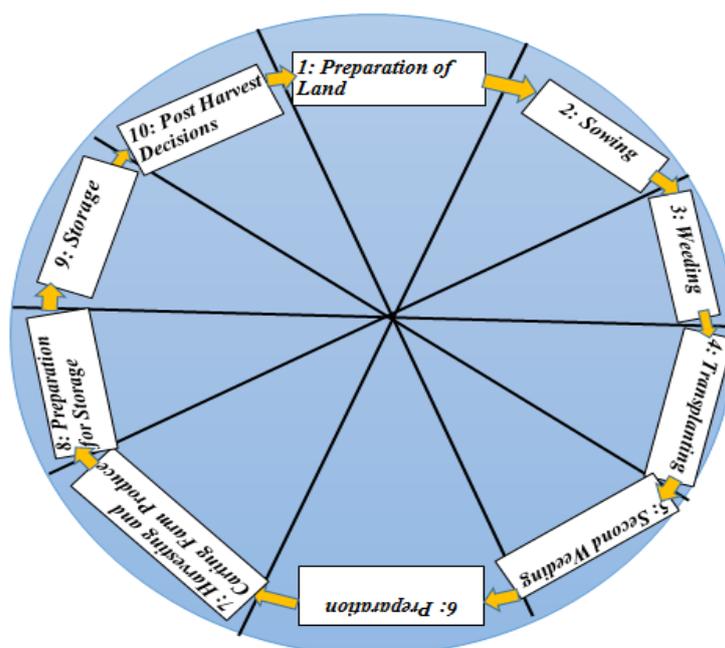


Figure 4: Graphical Cycle of Activities in a Typical Farming Season

Table 3: Gender Roles in Farming Season

Sequential Activities within a Typical Farming Season	Gender Role Player Before the year 2000			Current Gender Role Player (2017)		
	Male	Female	Both Male & Female	Male	Female	Both Male & Female
1. Preparation of Land	√√√√			√		√√√
2. Sowing		√√√√			√	√√√
3. Weeding	√√√		√	√		√√√
4. Transplanting		√√√√			√	√√√
5. Second weeding	√√√√			√√√		√
6. Preparation for harvest	√	√	√√			√√√√
7. Harvesting and carting farm produce	√	√√√				√√√√
8. Preparation for storage			√√√√			√√√√
9. Storage			√√√√			√√√√
10. Post-Harvest decisions	√√√√			√√√√		
<b>Total</b>	<b>17</b>	<b>12</b>	<b>11</b>	<b>9</b>	<b>2</b>	<b>29</b>

Source: Field Data (December, 2017).

A peculiar trend in the roles before the 2000s and current years in Table 3 is the male dominance in all post-harvest decision making among households. The exclusion of females in decision making confirms the passive role of women in participation (see Duncan, 2004; Awumbilla, 2006). Even though there are changes in societal definition of women roles, there has not been a corresponding change in the benefits that are associated with these roles such as participation in

<sup>7</sup> Note: √= A consensus reached by a Focus Group on role player within the two compared periods .

decision making and related outcomes of ownership/control of customary land use. This implies that, women as well as men are equipped with knowledge in the use of the most critical factor of rural livelihood. However, the capabilities of women in the use of land are undermined due to societal definition of rights that limit their freedom, choice and functionalities (see Sen, 2001; 1993).

## **5.2 Awareness on Equity Enhancing Legal Establishments**

Even though gender gaps in roles and ownership of land might be recognised by indigenes of the land tenure system, the functionality or pursuit of enforcement of any legal establishment in every society depends on the level of awareness of the populace. Thus, awareness is a function of knowledge which is gained through education and training, sensitization, and experience (Stromquist, 2006). In order to get an overall perspective on how well informed rural populace within Nandom district are on legal establishments such as Article 17(2) and Article 18 of the 1992 Constitution of the Republic of Ghana, the Intestate Succession Law 1985 (PNDC Law 111), and other gender neutral legal means of owning land (leasehold) (see GSS, 2014b; World Bank, 2005 and Duncan, 2004), the study expanded beyond focus group discussion with land custodians to include discussions with various women groups that engage in farming within the various communities, and gender based household heads survey selected communities. These views were triangulated with two rural agricultural oriented organizations that operate within the district.

At the household level, majority (75.8%) of household heads- male and female- indicated that, they were not aware of any legal establishment that guarantees that women just as men, can also own properties such as land. Some of these respondents however averred that, their travel experience to other parts of the country (Southern Ghana) made them aware that women also inherit or own lands but thought that was customary and not based on constitutional/legal provisions. This finding which was also evident in Duncan's (2004) assessment of knowledge levels of rural people on the Intestate Succession Law 1985 (PNDC Law 111) in some Ghanaian matrilineal societies which implies that, most legal establishments seeking to achieve gender equality in ownership of properties especially in rural settings are alien to the people and as such, cannot be pursued by the vulnerable group. As indicated by a female household head,

“Law in this Ghana saying we [women] too can own land or take over control of your husband's land when he's no more? I have never heard that...if not, this should not have been my state. When my husband died and I started using his farm so that my children and I can feed, his brother later told me last year that, I disrespected him and for that reason, I shouldn't farm on those lands again. So I had to offer myself as a labourer to people in their farms to get something small for my children and I.....

Well, the Chief is there but for the sake of peace in the house, I dare not go and report what I am going through to him. If there are any laws that can help us [widows], they should be made known so that we can come out of our begging position” (A Widow at Tuopare, 2016).

On the other hand, minority (24.2%) of household heads indicated that, they have some knowledge on such legislations with their source of information being advocacy groups and travelling experience. Even with those who had knowledge on the existence of such legal establishments, only 6 household heads (representing 20.7%) expressed confidence that such information was valid and could be practiced only when the right institutions are put in place. Thus, most respondents who are aware of legal establishments within the rural settings have doubts on how feasible and/or practical they are in addressing the gender inequality gaps in customary land ownership.

Among land custodians in all four communities visited, two groups indicated that they somewhat have knowledge on legal establishments while two others had no such knowledge. For a community (Brutu) close to the district capital, land custodians indicated that some organizations have made efforts to discuss sharing land with women based on condition that, women and by extension the household would get agricultural support if they allocated permanent lands to women. They however noted that, due to the emergence of leasehold as a means of owning lands, women who need land and are able to afford could acquire lands. The second group also revealed attempts in the erstwhile (around 1992) to include women in land issues within Nandom district. But since then, land custodians in the community just as the other two have never heard of any legal establishment, and as well never had any conscientization that women deserve to have equal rights in land ownership as men. However, in one of the discussions, a land custodian noted that;

“Some time ago around the early 90s, some people came to Nandom and called all the Chiefs together and told them they wanted us to change our system of land inheritance to include women. They asked the chiefs to discuss with us and bring feedback to them. At that time too we those who were young and had travelled to the South knew that they included women in their land inheritance. We told the chiefs to go back and tell them that, we can’t take what they want. We thought that, it was their way of trying to rule us; so we resisted. Our system of tenure was our own way of showing that we’re different and can rule ourselves. Since that time till now, no one has come to say anything again concerning women land ownership” (A land custodian at Tankyara circa, 80 years, 2017).

Among two women groups, legal establishments were never heard nor did they have any sensitization on indicating their rights to own property. For some members in the group, the right to own or control land for production is only a desired condition which has no grounds in custom or law. However, not all members within the other two groups regarded legal

establishments as entirely unfamiliar. It was observed within such groups that, some participants have for the first time heard from their colleagues who shared their knowledge gained from travelling experience that, some women owned lands in Southern Ghana. Even though women groups are largely engaged in agriculture, their functioning in terms of land use was based on the benevolence of the owners. The practice of excluding women in land inheritance has made some rural people (even those affected) believe that, the phenomenon of male dominance in property ownership is natural and not subject to any legislation.

Information from key informants in agricultural organizations did not contradict the fact that, most rural people are not aware of legal establishments that seek to promote equality and safeguard the rights of women in land use and control in the event that their spouse dies (intestate). It was asserted by an informant that, out of every five rural people selected; between one to two people have the probability of expressing awareness on legal establishments that underscore gender non-discrimination in land ownership. The low level of awareness on legal establishments seeking to ensure gender equality among communities implies that, the inherent gender gap in land relations cannot be entirely blamed on the cultural orientation of rural populations. Contributors to the failure of legal establishments in addressing the inherent gender equality gap in land ownership and access could be the low level of conscious sensitization and poor/inappropriate stakeholder consultation. The latter contributor is attributed to the fact that, land relations in Ghana usually recognize chiefs (Antwi-Bediako, 2018; Boamah, 2014) who are often consulted in related issues. However, in some societies such as those within the Nandom area, chiefs have less influence in decisions pertaining to land ownership. It is the Tengan-dem who are the land custodians and thus should be consulted in land related issues and reforms.

### **5.3 Perceptions on the Possibility of Legislation Bridging the Gender Inequality Gap within the Patriarchal Customary Land Tenure System**

Ghana being a signatory to most international conventions, treaties and covenants focused at achieving gender equality (see Table 1) signifies its commitment to ensuring that, operational systems in all sectors comply with such establishments. Evidence indicates that the existence of these legal establishments are foreign to local customary land custodians and majority of rural populations that continuously discriminate against women in land ownership. According to Amanor and Ubink (2016), customary land tenure relations are supposed to be negotiated and redefined by various actors including land custodians, Civil Society Organizations, and others that are focused at enhancing gender equality rights in terms of land access. As noted in this

study, the absence of these negotiations or misplaced engagement of local stakeholders continue to widen the inequality gap with regards to gender (specifically women) access to and ownership of land, even with various legal establishments.

From the household interviews, majority (71.7%) of respondents indicated that, a change in the system of land tenure to include women is not possible. The high level of non-awareness on the existence of gender equality laws on land and property ownership among rural inhabitants creates the impression that there cannot be any redefinition of land relations with legislation. While some respondents attributed their reason of non-adherence to women land ownership rights to increasing population vis-à-vis smaller portions of land, other respondents cited strongly that the preservation of cultural practice on land is sacred and women have no hand in such. Other respondents pointed out that allowing women to own lands will yield in the breakdown of family systems because, women will have the right to act independently without consulting their partners. Moreover, women are regarded as defenceless and cannot stand up to protect family/community lands if they should be allowed to independently own and use land. This revelation was corresponded by a land custodian who remarked that:

“Owning land comes with so many responsibilities. It is not just all about saying this is my land and go to sleep. The land given to you by your grandfathers is not written down and so, at any point in time, someone can contest your right to continuing using that land. Look, some years ago, my people had serious land disputes with the Sissalas and we as men had to stand up. Imagine, if women were part; they would have just left them to take it away and we’ll be forced out. So for women to now be part of land ownership, they can’t defend our rights to land. That’s why we will not agree with government law to add women when we want to share land” (A land custodian at Kokoligu, 2017).

The minority (28.3%) that cited with the possibility of enforcing legal establishments to ensure the consideration of women in land ownership affairs however expressed fears of possible challenges including: the possibility it breeding disagreements and conflicts with land custodians and within families, and difficulty in finding an appropriate destination (paternal homes or marital homes) to situate women’s right to land ownership. Even though, majority of people within the patriarchal societies do not see the possibility of legal establishments overturning the male inclined system of land ownership, their perceptions are driven by limited knowledge and non-enforcement on legislations that ensure that women have access to properties such as land to contribute productively to economic growth and development.

## **1.6 Conclusion**

Although many countries in Africa including Ghana has legislations in place aimed at addressing gender disparity in terms of access to assets and productive resources such as land, it has yielded little effect, particularly in patriarchal societies. This is because the incidence of land access and

ownership inequality in patriarchal societies is largely attributed to cultural orientation and the desire to preserve tradition and culture heritage. Therefore, a gradual and pragmatic approach would be required to enhance female access to land and ownership in patriarchal societies. As noted in the study, limited sensitization and advocacy programmes have been carried out, hence many participants had limited or no knowledge about the existence of gender equality legislations and also doubted its worth within their society. Thus, enforcement of laws to change existing gender discriminations in societies as proposed by the feminist theory (see Yodanis, 2004; Tajfel & Turner, 2004 and Bradly & Khor, 1993) bears a greater risk of not being achieved if imposed on patriarchal communities without effective sensitization programmes to change their perceptions and cultural orientation that women cannot own or have control over properties and productive resources such as land. Households and land custodians (*Tengan-dem*) thus need to be convinced that ownership and/or access to land by women would yield much benefit for the growth of the society than cost (fears of possible conflicts). Hence, legal establishments seeking to bridge gender disparity, particularly on female land ownership and access in patriarchal societies need to be accompanied with intensive sensitizations programmes to have a chance of addressing the persistent challenge.

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## KEY TERMS AND DEFINITIONS

**Land:** that solid surface of the earth used for production and guided by defined societal mechanisms which spell out the various modalities to own or transfer rights to other users.

**Gender:** the socially constructed roles, responsibilities and rights that are associated with being a male or female in society.

**Ownership and Access:** an embodiment of one's rights to use, control and transfer land and other natural resources through customarily or formally defined relationships in society.

**Patriarchal Society:** any human entity with defined social structures that confer dominant rights to own, control or make decisions on males while limiting or undermining female rights.

**Legal Establishments:** all forms of constitutional and conventional laws agreed upon by citizens acting through their leadership in a country.