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Mali



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Lesson 1: Women, Inheritance and Islam

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INTRODUCTION

Forty-eight percent of Malian women are engaged in agriculture, yet the vast majority may only access land to which men hold the primary rights. While the constitution and some aspects of statutory law in Mali support equality between men and women, in practice Malian women do not enjoy equal status with their male counterparts, particularly with respect to property rights and inheritance.

Mali is a secular state and, in recent history, the Government of Mali has shown growing support for policies supporting greater equality between men and women. The Constitution of the Republic Mali (1960) recognizes Malian men and women as equal before the law, regardless of origin, race or religion. The preamble of the Constitution affirms women's rights, proclaiming Mali's "determination to defend the rights of women and children as well as the cultural and linguistic diversity of the nation."

Mali also subscribes to international agreements for the protection of women, including the Convention on the Elimination of All Forms of Discrimination (1991) and the Protocol on Women's Rights (1995). Similarly, domestic legislation passed in Mali seeks to promote gender equity. According to L'ordonnance N°00-027/P-RM du 22 mars 2000 portant Code Domanial et Foncier (Land Tenure Law) (2000), men and women have an equal right to hold title to land.

Loi N° 0640/ANRM Portant Loi D'Orientation Agricole (Agriculture Law) (2006) ensures the promotion of equality of men and women in the agricultural sector. One example of this is Article 24, which states that Mali favors supporting the establishment of vulnerable groups, women and youth as farmers. In practice, however, formal laws such as this one are not strongly enforced. Even if it were, there is great misunderstanding by women of their formal rights, and many barriers to them exercising those rights.

While some Malian laws promote the equal rights of women, others are discriminatory towards women. For example, the Loi 62 An-RM/ Code du Mariage et de la Tutelle (Law on Marriage and Guardianship) (1962) states that a woman is responsible for obeying her husband, while her husband is responsible for protecting her. The head of the household is defined as the husband, who is responsible for household finances. A wife is obliged to live with her husband. There is no inheritance code in Mali, although the Law on Marriage and Guardianship says that inheritance matters can be decided by the husband to be settled by customary or formal local statutes, which are often discriminatory towards women. The Malian Family Law also favors men in areas such as divorce, child custody and inheritance.

The Malian government has recently taken steps to reform family law, but these reform efforts have faced substantial resistance from the public. Approximately, 90% of Mali's population is Muslim, many of whom adhere to Islamic law, which sets forth different rights and responsibilities for women and men regarding family and personal matters. Contradictions between secular state policy and Islamic law and lack of popular support for reforms have impeded changes to laws governing women's property and inheritance rights.

INHERITANCE AND CUSTOMARY TENURE LAW

Despite statutory support for women's equal rights to obtain title to land, women in Mali do not actually enjoy equal land rights. The vast majority of Malians access land either on the basis of customary law, religious law or some combination of the two. Under these systems, primary rights to land are passed from men to their male heirs. Women generally access land through their husbands and their husbands' lineages and have a more limited breadth of land rights compared to men.

Mali's Land Tenure Law officially recognizes customary land tenure and the state regards chiefs as custodians of land held under custom. At the same time, however, the Government of Mali is the legal owner of all untitled land. Due to the fact that the law provides no clear means by which to prove customary tenure over untitled land, the majority of claims to customary landholdings remain insecure. Chiefs can allot perpetual or leasehold rights to land, although only the State can issue titles. Under some customary tenure systems and under Article 46 of the Land Law, land may only be transferred within lineage or ethnic groups. In most cases, transfer rights are restricted to men.

William J. Grigsby's paper Women, Descent, and Tenure Succession among the Bambara of West Africa describes Bambara women's customary land rights. The Bambara are the largest ethnic group in Mali (40% of the population), and the Bambara language is spoken by 80% of Malians. The following discussion of women's customary rights to land and natural resources refers specifically to Bambara women, though many practices are similar for men and women throughout Mali.

While women are generally assured access to land through their husbands or other male relatives, women tend to possess fewer rights over land. Men retain most of the decision-making power over how land is used and managed. In some cases, women's rights to a particular plot of land given to them by their families or husbands are temporary, meaning that women can be moved to new land if so decided by her husband or other male relative. In some communities women have been able to access land as groups for collective cultivation, especially for small-scale subsistence gardens. However,



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this is a recent phenomenon and, as yet, is uncommon. In general, Malian girls will inherit land if they have no brothers, though most often they will return the land to their father's lineage when they leave their village to marry.

Male farmers typically give their wives one of their fields, which they expect will be returned after the woman has harvested her crop in a form of rotation. Because women do not remain on fields for long periods of time, they typically plant annual crops and are dissuaded from making more permanent improvements to the land, such as installing irrigation and planting trees. Moreover, custom in West Africa often prohibits women from planting trees because this is interpreted as staking a claim to land. Planting a tree canopy on a field is also perceived to interfere with the planting of annual crops.

In Mali, land is often characterized by multiple, overlapping rights. Land that is cultivated by a family during the growing season is sometimes made available to women in the broader community for gathering firewood or collecting shea nuts. The type of field determines who is allowed to gather these secondary resources. Fields left fallow for a long time can be considered less desirable because the overgrowth attracts snakes and other

pests. Therefore there are fewer restrictions on who can gather in such fields. Other fields that are better kept are given to women of the same lineage for gathering.

Trends in agriculture, however, have restricted women's traditional use rights, making them more vulnerable to poverty. Permanent cropping, plow farming, and cash cropping have resulted in land being cultivated for longer periods of time. Shorter fallow periods mean women have less opportunity to gather on those properties. This prevents women from supporting themselves through alternative incomes (collecting, processing, and selling shea tree products, for example), as they spend more time gathering firewood from further away. In the interest of securing their futures, many Malian women who have individual land rights pass these on to their sons or other male relatives in exchange for assurances of future support. Thus, women's already limited land tenure has become even further restricted.

Fertile land is becoming increasingly scarce in West Africa due to recurring droughts and land degradation from misuse or overuse. More farmers are emigrating out of their communities in search of land. Immigrant women's land rights are especially tenuous. Because women access land from their husbands who in turn access land through native

community members or elders, these women essentially possess tertiary rights to land. Hence, their control rights over land are more diminished than those of women married to native community members.

Nevertheless, women are finding ways to assert rights through non-traditional channels. In one example, a rural landowner died without male heirs. When his brother attempted to sell his land, the landowner's daughters claimed the land so that they could care for their mother. When the matter could not be resolved at the village level, the landowner's daughters took the case to court. The judge ruled that the landowner's brother had to give eight cultivable hectares to the daughters. This was because "he [the brother] had removed the customary nature of the land by seeking to make money out of it." Similar cases have been documented.

In another case, a woman from a village in Mali married a man who had emigrated from Guinea. The lineage group gave the Guinean immigrant fertile land to use. However, when he tried to sell the land because of financial challenges, the elders told him that the land had been a gift. They advised him to consult his wife (their sister) before selling the land as they did not later want to be accused of disinheriting their nephews.

ISLAM AND INHERITANCE

Islamic Law provides another layer of rules governing land access and tenure in Mali. Muslims regard land as a sacred trust, with ultimate ownership resting with Allah. Under Sunni practice, daughters may inherit land and real estate. However, in other Islamic sects, only men may inherit land, though women may be granted use rights.

Islamic law is established by Shari'a (the word of Allah, as revealed by the Prophet Muhammad and recorded in the Koran) and by the Sunnah (the life practices of Muhammad, as recorded after his death in the Haddith). Muslims regard the Koran as the direct word of Allah and, for this reason, hold its meaning to be perfect and immutable. However, for those issues to which the Koran does not speak directly, Islam encourages Muslims to engage in *ijtihad*, or independent reasoning.

The Koran, in sura 4, discusses inheritance. The most commonly quoted Islamic laws regarding inheritance are:

1. In the case of a father who dies, he is directed to give his son "a portion equal to that of two daughters." If he has only two or more daughters they receive two thirds of the inheritance. If he only has one daughter, she receives half.
2. If a man dies without children, his sister is entitled to half of his inheritance. If it is a woman who dies under the same circumstance her brother inherits the entire estate.
3. A woman is directed to leave her husband half her estate if she has no children. If she has children the husband is entitled to one fourth of the inheritance (after paying debts). In contrast, a man is directed to leave one eighth of his estate to his widow if he has any surviving children or agnatic grandchildren. If he has no such descendants, his widow is entitled to one quarter of the estate. In the case of polygamous marriage, the inheritance share of the wife is split equally among each of the wives.

The Koran recognizes fifteen male heirs and ten female heirs. While Sunni Muslims allow for up to one-third of the estate to be bequeathed to non-heirs through a will, Shiite Muslims reject inheritance rights for parties unnamed in the Koran. Nearly all Muslims in Mali are Sunni.

Islam recognizes that women have independent legal, economic and spiritual identities from men. While women are clearly entitled to inherit under Islamic law, their inheritance portions are less than those of men, allegedly based on the reasoning that men have a greater obligation to provide economic support for the family. Some commentators have suggested that women should, for this reason, be compensated for their reduced inheritance rights by alternative means of economic support or through alternative avenues of receiving and holding property, such as lifetime gifts, trusts, dower, and maintenance support.

RECENT FAMILY CODE REFORM

In 1996, the United Nations Human Rights Commission began reviewing and assisting in redrafting Mali's Family Code. The process was protracted until 2007 when women parliamentarians joined with human rights activists and attorneys to advocate for changes to the code meant to improve women's rights and to encourage equality between the sexes. The proposed reforms sought to grant women equal inheritance rights to those held by men. They also included elimination of the legal requirement that women be obedient to their husbands and recognition of the rights of non-marital children on par with those of marital children.

Working together with international donors and various NGOs, the Malian government conducted a public education campaign about women's rights. The government also held public meetings throughout the country, seeking feedback about the proposed reforms.

Objecting to several provisions of the proposed reform, the Islamic Salvation Association called for the Family Code bill to be withdrawn from parliament. When the new code was passed by the National Assembly in 2009, there were huge demonstrations of Muslim activists who judged the code to be contradictory to the laws of Islam, bent toward Western influence, and a threat to social morality. The demonstrations included more than 50,000 street protestors in Bamako in August of 2009, led by The High Islamic Council. Many protestors were Muslim women.

The reforms proposed several controversial changes. First, couples were given joint rights to land and property. Previously, those rights had been given separately to men and women. Second, the reform of the inheritance code gave children born outside of marriage equal recognition in succession and gave girls the right to receive inheritances equal to that of boys, a provision which is directly contradictory to Shari'a law. Finally, a clause stating that women would no longer be required to obey their husbands resulted in additionally controversy.



Clearly Mali's official stance on women's rights – as demonstrated by the proposed reforms of the Family Code – has not always been congruent with Islamic law and Islamic practices. While Mali is a secular state, 90% of the population adheres to Islam, and the religion strongly influences social life and culture. Indeed, in response to street protests and pressure by religious leaders, the President of Mali refused to sign into law the new Family Code which had been passed earlier by parliament. Amadou Toumani Touré, the President, is quoted as saying, "Having widely consulted state institutions, civil society, and legal bodies, and seen the need for peace, I have taken the decision to send [back the code]. I have taken this decision to ensure [a] calm and peaceful society."

The Malian government's secular policies have often stood in tension with the customary practices of many Malian citizens, and in particular the religious tenets of many Muslims. For example, Malian law only recognizes civil marriages, not customary or religious marriages. Efforts by the secular government to distance itself from Islamic law and practices have led many within Mali's predominately Muslim population to fear cultural marginalization. Many Malian Muslims have expressed reservations concerning social reforms which they believe arise from Western influences and which will threaten the moral fabric of their communities.

LESSONS LEARNED

Although statutory law in Mali has begun to support the equal rights of women, women's rights to land continue to be unequal. The general public has expressed that they are not prepared to accept reforms to the Family Code, especially reforms related to inheritance practices. Mali's experience in seeking to institute change through a primarily legislative approach yields important lessons.

The first is that reforms which are in direct contradiction to Islamic law face enormous challenges. For millennia, Islam has succeeded in uniting millions of people around a common set of spiritual and life values. The identities of Muslim women and men are deeply rooted in these values and sense of community. Those seeking to promote greater equality among women in Muslim societies must respect these values and start from an appreciation that women indeed are afforded some, albeit unequal, inheritance rights and social protection under Shari'a.

Whereas outsiders may be instrumental in facilitating processes of reflection and change, genuine changes in beliefs and behaviors are likely to be most accepted and enduring when they are manifested by those within the same community. More effective than seeking to rapidly change normative inequalities may be working with Malian women and men to identify vulnerabilities that women face, especially in the face of social

and economic changes, and the array of measures that can be pursued to safeguard their interests. Assignments of land and property to wives and daughters during a man's lifetime (i.e. inter-vivos gifts) may emerge as an alternative to equal inheritance rights for males and females. Other alternatives may also help to move societies closer to the objective of gender equality, even when strictly equal rights remain infeasible. The fact that Islam encourages independent thinking on issues not explicitly dictated by the Koran paves the way for discussing gender rights and advancing the position of women within Islamic societies. Practitioners should bear in mind and highlight those portions of Shari'a law which evidence respect for women and which aim to protect their interests.

Finally, social change is gradual and the path is rarely well illuminated or smooth. Legal changes need to work hand-in-hand with shifts in attitudes and behavior, without the former too quickly outpacing the latter. Advocates for women's rights must be willing to invest time in understanding local norms and their rationales, working with women and their communities to envision the changes that are important to them, and devising workable solutions to achieve those ends. While such an approach may be iterative, slow and fraught with set-backs, it is also less prone to fierce resistance or conflict and is more likely to appropriately serve women's interests.



SOURCES

- Abubakri, Yekini Olakulehin. 2008. Women and Intestate Succession in Islamic Law. No. 08-49 in Islamic Law and Law of the Muslim World Research Paper Series at New York Law School. URL: <http://ssrn.com/abstract=1278077> (accessed 16 January 2011).
- Chaudhry, Zainab. 1998. Myth of Misogyny: A Reanalysis of Women's Inheritance in Islamic Law. *Islamic Law*. (3) 41.
- Chauveau, Jean-Pierre et al. 2006. Changes in Land Access and Governance in West Africa: Markets, Social Mediations and Public Policies. IIED.
- Cissé, Salmana (1985). "Land tenure and development problems in Mali: The case of the Niger Delta." In A. Hill (ed). *Population, health, and nutrition in the Sahel: Issues in the welfare of selected West African communities*. London: KPI.
- Creevey, Lucy E. 1986. *Women Farmers in Africa: Rural Development in Mali and the Sahel*. Syracuse University Press.
- Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ). 2009. "Foreign Direct Investment (FDI) in Land in Mali." Division 45 - Agriculture, Fisheries and Food. Available online. URL: <http://www2.gtz.de/wbf/4fDx9kw63gma/gtz2010-0064en-foreign-direct-investment-mali.pdf>, accessed October 19, 2010.
- Djiré, Moussa. *Reformes Foncières et Accès des Femmes la Terre au Sahel: Quelles Stratégies Pour les Réseaux ?* Prepared for a conferenced organized by teh International Land Coalition and IFAD, Rome 2007.
- Esposito, John L. and Natana J. DeLong-Bas. 2001. *Women in Muslim Family Law*. Syracuse University Press. Pp 39-40.
- FAO. Gender and Land Rights Database – Mali. Available online. URL: <http://www.fao.org/gender/landrights/report/>, accessed 12 September 2010.
- Gribsby, William J. 1996. Women, Descent, and Tenure Succession among the Bambara of West Africa: A Changing Landscape. *Human Organization*, Volume 55, No 1. On file at the Rural Development Institute.
- Grigsby, W.J., and J.E. Force. 1993. Where credit is due: Forests, women and rural development. *Journal of Forestry* 91 (6):29-34.
- Howden, Daniel. 28 August 2009. Mali President Forced to Retreat on Women's Rights Law. *The Independent*. Available online. URL: <http://www.independent.co.uk/news/world/africa/mali-president-forced-to-retreat-on-womens-rights-law-1778402.html>, accessed 14 September 2010. (Howden 2009)
- Integrated Regional Information Networks (IRIN). 2 May 2008. Mali: New Family Law Faces Opposition from Muslim Organizations. Available online. URL: <http://www.unhcr.org/refworld/docid/4820057d1f.html>, accessed 5 August 2010. (IRIN 2008)
- IslamOnline. 27 August 2009. Muslim Protests Block Mali Family Code. Available online. URL: http://www.islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-News/NWELayout&cid=1251021233325, accessed 14 September 2010. (IslamOnline 2009)
- Joshua Project. <http://www.joshuaproject.net/people-profile.php?peo3=10617&rog3=ML> (accessed 16 January 2011).
- Mohammedi, Omar T. *Shariah-Compliant Wills: A Primer*. Available online. URL: http://www.tristatemuslims.com/index.php?option=com_content&view=article&id=373:shariah-compliant-wills-a-primer&catid=55:interesting-stuff&Itemid=73, accessed 30 September 2010.
- Nardone, Jessica. 2008. Femmes et Accès à la Terre au Mali. <http://base.d-p-h.info/fr/fiches/dph/fiche-dph-7522.html> (accessed 16 January 2011).
- Radford, Mary F. 1999-2000. The Inheritance Rights of Women Under Jewish and Islamic Law. *B.C. Int'l & Comp. L. Rev.* 23: 135-184.
- Soares, Benjamin F. 2009. The Attempt to Reform Family Law in Mali. *Die Welt de Islams* 49: 398-428.
- Social Institutions and Gender Index. Gender Equality and Social Institutions in Mali. Available online. URL: <http://genderindex.org/country/mali>, accessed 15 November 2010.
- UN-HABITAT. 2005. Paper 5: Muslim Women and Property. *Islam, Land & Property Research Series*. Available online. URL: www.unhabitat.org/downloads/docs/3546_30551_ILP%205.doc, accessed 29 September 2010.
- US Department of State. Mali - International Religious Freedom Report 2005. Bureau of Democracy, Human Rights, and Labor. Available online. URL: <http://www.state.gov/g/drl/rls/irf/2005/51483.htm>, accessed 15 November 2010.
- Wing, Susanna D. January 30, 2009. Exploring Democracy, Women's Rights, and Legal Reform in Francophone Africa. Paper presented at "Rethinking Development: Societal Transformation and the Challenges of Governance in Africa and the Middle East," Yale University.
- World Bank. Development Indicators – Mali. Available online. URL: <http://data.worldbank.org/indicators>, accessed 15 September 2010.