THEMATIC RESEARCH

CONFLICT

Understanding Institutional Access, Strengthening, and Coordination for Land Dispute Resolution

Experiences from LAND-at-scale Interventions

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TABLE OF CONTENTS

ABSTRACT

Considering the challenges of conflict management, mediation, and dispute resolution in numerous countries, several LAND-at-scale (LAS) interventions aim to strengthen and improve access to institutions of dispute resolution. Recent LAS interventions build on previous efforts since 2002 by the Netherlands Ministry of Foreign Affairs to strengthen land tenure security, increasingly recognising durable and equitable solutions, especially for marginalised people. Further, LAS acknowledges the need for flexible interventions to fit differing local contexts, the importance of institutions beyond the statutory judicial system, and necessary support from numerous stakeholders. Drawing on feminist and institutional perspectives, this paper conducts a literature review on dispute resolution and access to justice in settings of legal pluralism and uses desk-based research of LAS project documents from seven selected countries and interviews with key stakeholders to distil emerging insights on conflict resolution mechanisms and access to justice, identifying ways forward for land governance interventions. Considering the challenges faced by past development programming to operate within pluralistic land tenure regimes, the review considers how LAS policies have uniquely navigated these environments or fallen into similar patterns. Building on feminist institutional understandings of power dynamics, this paper shifts actors and power to the forefront of analysis. I argue the capacity of an institution to resolve a land dispute is primarily dependent on the power relations between actors involved as disputing parties and mediators. This argument considers the rate of dispute resolution with the actors who can(not) access these institutions and coordination of institutions at different administrative levels. Far from ignoring the type of land, competing interests, or uses of a parcel, this argument relies on perspectives from legal pluralism to better understand the specific factors which influence the number, geography, and resolution rate of disputes. The findings allow for further tailored policy approaches and potential changes to support these groups and highlight challenges.

1 INTRODUCTION

Despite a growing number of development programmes centred on institutions involved in land dispute resolution, challenges persist in providing equitable and inclusive mediation and conduct sustainable operations at various administrative levels. This review examines the LAND-at-scale (LAS) programming focused on strengthening, coordinating, and improving access to institutions in conflict-affected areas, with specific considerations for durable and equitable solutions among marginalised groups. Recent LAS interventions build on previous efforts since 2002 by the Netherlands Ministry of Foreign Affairs to strengthen land tenure security, recognising the need for flexible interventions to fit differing local contexts, the importance of institutions beyond the statutory judicial system, and necessary support from numerous stakeholders. To resolve the difficulties of pluralistic land dispute management, mediation, and resolution, development programs increasingly aim to develop institutional capacity, focusing on incremental and flexible land administration with a desired outcome of land tenure security for everyone (Enemark *et al.*, 2016; Hall and Scoones, 2016; Betge, 2019). Institutional capacity building tends to focus on increasing the rate of land dispute resolution, sometimes ignoring who benefits from settling these dispute cases. In line with broader trends in development policy, LAS points to the need for strengthening institutions to improve the efficiency of resolving backlogs of disputes, access to dispute resolution for vulnerable parts of the population, and institutional coordination for disparate stakeholders.

Given the LAS focus on institutions of dispute resolution and considerations for equity, this research draws on feminist institutionalism (Mackay, Kenny and Chappell, 2010; Kenny, 2014; Kabeer, 2016) to better understand the gendered norms, rules, practices, and power within and between institutions (Mackay, Kenny and Chappell, 2010), which can undermine equity in land disputes. Feminist institutionalism not only permits a focus on gender but moves toward a more comprehensive understanding of marginalisation and highlights areas of discrimination, access, resistance, and opportunity within institutions involved in land dispute resolution. This paper challenges the clear distinctions between formal and informal institutions drawn by feminist institutional authors by incorporating perspectives from legal pluralism (Moore, 1973; Lund, 2016). As discussed in depth below, land governance in Africa often includes institutions such as elders and state courts with overlapping and conflicting authority (Sikor and Lund, 2009; Khan, 2010, pp. 126–127). Dividing institutions between customary and statutory or formal and informal fails to recognise their interrelationships.

While much of the above literature helpfully identifies the forms of institutional marginalisation and the pluralistic nature of dispute resolution, there remains a gap in understanding the intersectional and compounding forms of marginalisation in the process of strengthening, coordinating, and improving access to land dispute institutions. Feminist institutionalism helpfully forefronts actors and power relations in the study of institutions, aiding understandings in which groups can access institutions as recipients of mediation and mediators themselves, along with the vulnerabilities created by changes in the coordination of institutions at different administrative scales. Further, this research highlights those privileged by stronger institutional arrangements.

To understand the rates of land dispute resolution, the LAS baseline and midterm reports use a range of typologies to organise land disputes, including categories around competing interests or uses, land types, and actors involved. Building on feminist institutional understandings of power dynamics (Mackay, Kenny and Chappell, 2010; Kenny, 2014; Kabeer, 2016), this paper shifts actors and power to the forefront of analysis. Drawing on Kabeer's (1999, p.436) definition of power as the agency capacity of actors to make choices, define their own priorities, and act on these choices, the paper also recognises the intersecting and mutually constructing social identities (Crenshaw, 1989; Collins, 2000). In doing so, I argue the capacity of an institution to resolve a land dispute is primarily dependent on the power relations between actors involved as disputing parties and mediators. This argument considers the rate of dispute resolution with the actors who can(not) access these institutions and the coordination of institutions at different administrative levels. Resolving numerous cases or a high rate of resolution does not guarantee equitable results but may be the result of highly unequal power dynamics between disputing parties or the inability of vulnerable groups to voice differing perspectives as mediators themselves. Far from ignoring the type of land, competing interests, or uses of a parcel, this argument relies on perspectives from legal pluralism to better understand the specific factors which influence the number, geography, and resolution rate of disputes. Institutions of dispute resolution were made up of a variety of elders, chiefs, government administrators, and civil society, further reaching mediative decisions through a combination of statutory laws, customs, local norms, and practices.

This paper uses desk-based research of LAS project documents and interviews with key stakeholders to distil emerging insights on conflict resolution mechanisms and access to justice, identifying ways forward for land governance interventions. The research reviews LAS project documentation on interventions across Burundi, Chad, Mali, Mozambique, Rwanda, Somalia, and Uganda, analysing the approach, progress, and challenges experienced in these projects. Project documentation included the overarching LAS programme document and indicators, baseline studies, and midterm reports when available. Considering the challenges faced by past development programming to navigate pluralistic land tenure regimes, the review considers how LAS approaches have uniquely traversed these environments or fallen into similar patterns.

2 Land Dispute Resolution and Feminist Institutionalism: Toward a Pluralistic Perspective

Within the LAS programme, support for dispute resolution refers broadly to improving access to institutions, coordination between institutions, and strengthening institutions. Considering the challenges of conflict management, mediation, and dispute resolution, LAS policy recognises the need for flexible and adaptable programming and intends to contribute to structural, just, sustainable, and inclusive change. In light of the LAS focus on institutions involved in dispute resolution and specific policy considerations for marginalised groups, the analytical approach of this research brings feminist institutional authors (Mackay, Kenny and Chappell, 2010; Krook and Mackay, 2011) into conversation with more pluralistic perspectives

on land tenure regimes (Moore, 1973; Lund, 2016). The joining of feminist institutionalism with legal pluralism allows for understanding forms of institutional and institutionalised marginalisation during land dispute resolution and how this takes place within the complex and conflict-affected land tenure regimes. Further, it aids in developing a clear understanding of the type and scale of land disputes (Grimble and Wellard, 1997; Warner, 1999; Wehrmann, 2008; Boone, 2014).

Feminist institutionalism highlights the gendered, structural challenges of norms, rules, resources, and identities within institutions (Folbre, 1994; Mackay, Kenny and Chappell, 2010; Krook and Mackay, 2011; Kabeer, 2016). While feminist institutionalism draws from earlier new institutional theorists in defining institutions as “the humanly devised constraints that shape human interaction” (North, 1991, p. 477), this paper also recognises the gendered and enduring rules, norms, and procedures that "structure behaviour and cannot be changed easily or instantaneously" (Mahoney and Thelen, 2010, p. 4). Likewise, this research pays attention to the rules, norms, and practices of institutions and their differential effects (Kenny, 2014, p. 679). For institutions of dispute resolution, this perspective aids in understanding the differential processes in dispute resolution for disputing parties, mediators, and those left out of the process.

In many of the LAS countries, land reform since the turn of the millennium has focused on decentralisation, leading to adjustments to or new institutions involved in local-level dispute resolution. The complete replacement of institutions with new ones occurs very rarely, and change is constrained by lock-in effects (Waylen, 2017). Mackay (2014) develops the concept of “nested newness” to describe the way new institutions are embedded, or nested, within a broader social, historical, and institutional environment, which constrains possibilities for future alterations. The experience of wholesale regime change in places such as Rwanda shows ways regimes refer back to particular notions of “traditions” and “customs” while establishing new institutional arrangements (Waylen, 2017). In Rwanda, regime change and reinterpretation of the “customary” led to more gender-inclusive policies, while in places like Afghanistan it led to further marginalisation of women (Waylen, 2017).

Feminist institutionalism considers institutions as constitutive through interactions between individual actors' actions and rules, norms, and practices (Mackay, Kenny and Chappell, 2010). The feminist institutional perspective permits an analysis of the underlying processes that shape institutional outcomes. Further, this research foregrounds the power relations of actors as decision-makers within institutions of land dispute resolution, as well as those recipients of mediation. While a focus on power tends to be less considered by many of the new institutionalist authors (Kenny, 2007, p. 96), feminist institutionalism moves power to the forefront of understanding institutions (Miller, 2021). While property types, competing use or interests, and scale ought to be considered (Grimble and Wellard, 1997; Warner, 1999; Wehrmann, 2008; Boone, 2014), this paper draws on feminist institutionalism to shift actors and power to the centre of analysis on land disputes. As discussed further below, different types of property, uses, rights, and interests may inform where disputes take place or their frequency, but actors and their power relations primarily determine if and how a dispute is resolved.

Kabeer offers a helpful definition of power as "the ability to make choices" (1999, p. 436). The pre-condition of economic, social and human resources provides actors with agency, the "ability to define one's goals and act upon them," and influences one's achievements (Kabeer, 1999, p. 438). The ways power relations are gendered shape the construction of statutory and customary laws, norms, and practices within institutions at multiple levels. Varying power relations permit some land users the power and agency to access, own, and control of land, while others are denied these rights (Doss *et al.*, 2015). Complex land interests must also be considered within a hierarchy of power relations between competing and overlapping interests among those making claims to parcels of land (Benjaminsen and Lund, 2003; Olsen, 2009).

The variety of primary, secondary, and overlapping claims to parcels and subsequent disputes require more nuanced views beyond binary understandings of ownership or individualised rights (Doss *et al.*, 2015; Doss and Meinzen-Dick, 2020; De la O Campos, Edouard and Salvago, 2023). Binary understandings of ownership often ignore important secondary rights, such as refusal rights, embedded within customary laws and practices (Doss and Meinzen-Dick, 2020). Land rights include a bundle of interests including; “usus,” the rights of use, access and withdrawal; “abusus,” the rights to change, manage and transform land; “fructus” includes the rights to make a profit and loss, or be the economic owner; “transfer,” the rights to transfer the land temporarily or permanently; and “future interests” which consider rights of inheritance or future rights not yet realised (Doss and Meinzen-Dick, 2020).

Limitations of these land interests for less powerful groups can be embedded within institutional rules, norms, and laws (Kenney, 1996; Mackay, Kenny and Chappell, 2010). Institutions involved in land dispute resolution may generally discriminate against women, but gender relations exhibit a great deal of variation across societies and throughout time and are shaped by intersectional differences (Crenshaw, 1989; Agarwal, 1997; McNay, 2000). Intersectionality "aims to capture the reality of the intersecting and interactive axes of the construction of gender relations" (Pearson, 2013, p. 23). These intersecting and mutually constructing social identities include factors such as gender, sex, race, class, religion, ethnicity, and clan (Crenshaw, 1989; Collins, 2000).

Under the growing marketised tenure regimes in Africa, power inequalities in effective claim-making have generated increasing tensions between categories of social difference (Platteau, 2002; Peters, 2004, 2013; Lund and Boone, 2013). Policy literature often ignores the politics of land tenure regimes, yet struggles over tenure relations are both rooted in struggles for power between political elites (Boone, 2014) and amongst rural populations (Boone *et al.*, 2021). Bhattacharya, Mitra and Ulubaşoğlu (2019) and Albertus (2015) bring politics to the forefront, looking at the politicisation of “pro-poor” land reform. As development policies aim to improve access to institutions involved in mediation, social differences and political decisions may generate unequal opportunities for certain parts of the population or shift the power relations between groups (Ngin and Neef, 2021). In some cases, institutional coordination may be limited by political friction between institutions involved in land dispute resolution (Tchatchoua-Djomo and van Dijk, 2022).

Power relations between actors and institutions influence the interpretation and use of laws and practices, or the balance between these, to bolster or deny land rights among specific groups (Chanock, 1985; Whitehead and Tsikata, 2003; Nyamu-Musembi, 2007). Elite actors can often manipulate laws by recognising, defining, or denying rights and making decisions through preferential combinations of pluralistic laws, norms, and practices (Whitehead and Tsikata, 2003). Statutory legislation may be written in a way that espouses equality and justice but can also offer limited safeguards against dispossession or values of community harmony offered by certain customary laws (Manji, 1999; Dancer, 2017; Serwat, 2019).

While offering helpful understandings of institutional marginalisation and power relations, feminist institutional authors (Mackay, Kenny and Chappell, 2010; Kenny, 2011; Krook and Mackay, 2011; Thomson, 2019) frequently constructed clear distinctions between formal and informal, or customary and statutory, institutions. Even for those analysing contexts in Africa (Madsen, 2020; Gouws, 2022) and LAS broader documentation (see LAS indicator 2A), clear boundaries are established between formal and informal institutions. I depart from this dichotomous view by arguing for a pluralistic view of institutions (Benjaminsen and Lund, 2003; Lund, 2016). The terms "customary" and "statutory" may provide a general description, but any clear distinction fails to capture the interrelation between the two. Local elders and village leaders mediating a land dispute may rely upon customary norms with varying levels of influence from statutory legislation, while state courts may reference customary law or practices to offer a decision (Dancer, 2015). The state can also institutionalise customary authority over land by recognising certain roles in governance (Boone, 2014).

In the LAS countries researched, land dispute resolution tends to involve a patchwork of institutions with overlapping authority, yet institutions can sometimes cease operations or fail to operate at certain administrative levels (see for example Kaguenang, 2022, pp. 25, 29). The absence of one institution at a particular administrative level or geographic area rarely represents an absence of authority but competition between multiple authorities (Lund, 2018). The presence of multiple institutions to resolve a dispute provides opportunities for "forum shopping" with competing political power to recognise and address disputes (Lund and Eilenberg, 2017). Forum shopping describes both the bottom-up processes of selection among multiple institutions based on preferential legal precedent, cost, partiality, and cultural norms (Whytock, 2010) and the competition among elites to define, enforce, and recognise claims to property as rights (von Benda-Beckmann, 1981; Lund and Eilenberg, 2017; Tchatchoua-Djomo, van Leeuwen and van der Haar, 2020).

Development policies have long framed the need for improved efficiency in dispute resolution as a crisis, ignoring the continuity of land disputes and linking a proliferation of land disputes to insecure tenure (van Leeuwen, 2010). Much of the development literature and supporting research point to negative implications of ongoing land disputes and links to perceived or de facto tenure security, such as reduced incentives to make long-term investments, increasing costs associated with dispute resolution or subsequent protection, diminished economic efficiency of disputed parcels, and limited capacity to leverage property as an economic asset (de Soto, 2000; Deininger and Castagnini, 2006). Introducing new institutions involved in dispute

resolution can also introduce new forms of power contests and rounds of claim-making (van Leeuwen, 2015; Tchatchoua-Djomo, van Leeuwen and van der Haar, 2020).

Policies supporting land dispute resolution tend to focus on localised interventions, often failing to account for connections at regional and national levels (van Leeuwen, 2010; van Leeuwen *et al.*, 2022). While often giving reference to institutional coordination, LAS policies for land dispute resolution focused on localised interventions (Interview 1; 7). International donors and non-government organisations tend to work within political constraints and look for enabling environments – often found at the local level (Betge, 2019; Nibitanga and Binoba, 2020). Development programmes also tend to ignore the politics of localised land dispute resolution and ways that interventions can bolster the claims or authority of local elite (Betge, 2019; Tchatchoua-Djomo, van Leeuwen and van der Haar, 2020). This narrower focus on the local level limits the required institutional coordination in dispute resolution between disparate actors or broader groups.

With the evolving development policies to support land dispute mediation and resolution in mind, this section brought together feminist, institutional, and land policy perspectives (Daley, 2007; Joireman, 2008; Mackay, Kenny and Chappell, 2010; Krook and Mackay, 2011; Doss *et al.*, 2015) to provide a state of the art in understanding the processes of strengthening, coordination, and improving access to these institutions. The framework in this section draws attention to institutions while recognising the power dynamics between actors involved in land dispute resolution. Departing from dichotomous views of feminist institutional authors, this framework further considers the pluralistic nature of land tenure regimes.

3 Institutional Strengthening, Access, and Coordination

This review specifically focuses on the institutional coordination, access, and strengthening of dispute resolution in conflict-affected countries covered by LAS. Across the context of the LAS programme, development programming on good governance and decentralisation in the 2000s and 2010s supported governments in updating or forming new institutions of dispute resolution. The land dispute institutions involved in the LAS programming varied, but the LAS selection criteria considered the relationship and strategic aims of the relevant Dutch embassy, the relevance to the LAS strategic plan and aims, support of the primary local stakeholders, and capacity to add market value (Interview 1; Interview 5). LAS programming focused on supporting localised institutions involved in land dispute resolution but also included broader support for civil society organisations or supporting actors such as paralegals in Mozambique.

The review begins by examining the process of institutional strengthening, drawing on feminist institutionalism to bring the actors and power dynamics between parties involved in a dispute to the forefront. In each LAS country documents, the rate of land dispute resolution was emphasised as a factor in understanding the strengthening of institutions. Land disputes were considered according to a range of typologies but proved too ambiguous to draw clear conclusions across the countries studied. In this section, I draw on Wehrmann (2008) to argue for a clearer distinction between the property type, actors involved, and competing interests or

use of a parcel. As discussed below, the institutional capacity to resolve a dispute varies based on the competing power dynamics between the actors involved.

The review then considers institutional access as both the landholder's ability to receive mediation and to operate as a mediator, showing intersectional forms of marginalisation and limits to institutional change. LAS recognised the differing power relations between women, youth, and men, but this section questions which groups benefit from LAS programming due to the varying and not always consistent approaches toward vulnerable groups. Further, the pluralistic approach to institutions permitted careful investigation into the specific opportunities and persistent challenges for vulnerable groups to access institutions to receive mediation or act as mediators.

In the last section below, findings from across the country reporting show the multiplicity of institutions involved in dispute resolution, highlighting the interrelationships between elders, lawyers, clan leaders, government administrators, and other actors. These interrelationships challenged the binary categories of (non)state and (in)formal used by feminist institutionalism, along with the LAS project documentation and country-level reports. While LAS moved away from the former focus on statutory institutions and recognised the multiplicity of institutions involved in land dispute resolution, the coordination at broader scales was sometimes limited by their inexistent or inconsistent operations and political contestation, subsequently limiting the capacity to resolve disputes spanning administrative districts or arising between larger ethnic or communal groups. Collectively, these findings support the main argument of the paper that the capacity of an institution to resolve a land dispute is primarily dependent on the actors involved, with considerations explored further below on understanding the types of disputes, access to institutions, and coordination across pluralistic tenure regimes.

3.1 Clearer dispute typologies to better understand institutional strengthening

The LAS project documents outlined a wide range of factors in relation to strengthening institutions, including increasing human resources, administrative and managerial capacity, accountability and independence by a lack of human rights violations or abuses of power, and limited political and private interests. LAS country reports and programme documents often refer to building increased capacity to resolve the high numbers of land dispute cases (LAS Standard Indicators, p. 9; for example, Masengo, 2022, p. 38). The LAS measurement of institutional strengthening also considers effectiveness, which is defined in the programme documentation as efficiency and timeliness. The emphasis on the backlogs of court cases and the need to reduce the burden on statutory courts was clear in the country reports, consistent with broader development policies to improve efficiency in dispute resolution (van Leeuwen, 2010). To better understand the differences and varied efficiency of dispute resolution, LAS reports often measured the rate of land dispute resolution according to the institution and land dispute "type".

This section draws on Wehrmann (2008) to argue for clearer typologies of land disputes, considering the characteristics of the land itself, actors involved, and competing interests or use of a parcel. Drawing from feminist institutionalism and supported by evidence from the LAS

country studies, I argue that the actors involved in a land dispute primarily altered the rate of resolution. For future programming to understand whether institutions were strengthened, a clearer, actor-centred typology must be applied across the various contexts. A consistent typology of disputes across LAS programming would shed light on when and where programming is mitigating or deepening the marginalisation of vulnerable groups. Resolving numerous land disputes may benefit more powerful actors without careful attention to these programme outcomes.

The dispute categories employed across the LAS studies often blurred the actor and other factors to understand the dispute types, weakening the ability to understand broader connections between the factors involved in a dispute, the rate of resolution, and the institution involved. The more ambiguous land dispute categories described a wide range of factors but failed to consistently report on the actors, land interests or uses, and characteristics of the land itself. For example, land dispute types in Chad included the diverse categories of "water access, land access, farmer pastoralist disputes, caste, administrative districts, jealousy and rivalry, and vengeance" (Kaguenang, 2022, pp. 46–48). The various studies then used these dispute types to show varying rates of resolution. Yet, the ambiguity of each category limited the capacity to determine the salience of a particular factor.

Several studies examined the types of disputes involving the interest or use of a parcel. In the Burundi and Rwanda studies, numerous cases were noted around boundaries, inheritance, or land sales (van Leeuwen *et al.*, 2022). In these cases, the studies note the strong rate of resolution at the local level with these types of disputes despite the high number of cases (Masengo, 2022, pp. 43–45; van Leeuwen, Munezero and Niyonkuru, 2022; LADEC, 2024). Balemesa notes competing interests over animals grazing on farmlands in Uganda, along with repeated land sales and rental agreements (Balemesa, 2023, pp. 32–33). In the Mali paper, interest and use were specifically used to divide dispute types while also recognising the type of land (SNV, Université des Sciences Juridiques et Politique de Bamako and Royal Tropical Institute, 2022). Some studies blended an actor-focused category with competing land use or interests (SNV, Université des Sciences Juridiques et Politique de Bamako and Royal Tropical Institute, 2022; LADEC, 2024). Across the Sahel, disputes often arose between sedentary farmers and nomadic pastoralists, with unclear reporting distinctions between the actors involved in a dispute and the competing uses of the parcel.

In addition to the interest or use of a parcel, some studies framed disputes according to the type of land. Indeed, the socially constructed meanings associated with land (Berry, 2018) can influence the specific rights and ways certain actors expect to use a parcel (Doss and Meinzen-Dick, 2020; De la O Campos, Edouard and Salvago, 2023). Different land types can impact the ways land users make claims to a parcel or authorities apply rules to governing a parcel. Disputes over family or clan land may arise, frequently noted in the Burundi and Rwanda contexts (Masengo, 2022; van Leeuwen, Munezero and Niyonkuru, 2022), while the Mali report uses this framework to analyse the different types of disputes, dividing analysis between forests, communal, rural, and public-private (SNV, Université des Sciences Juridiques et Politique de Bamako and Royal Tropical Institute, 2022). As noted in the Uganda and Burundi reports, the marshlands, fertile lowlands, and floodplains can be strategic farming areas which permit

additional crop rotations and easier irrigation (van Leeuwen, Munezero and Niyonkuru, 2022). Due to the geography of these locations, governance often varies compared to other areas, such as limitations to certification or titling of these parcels. Reports also note urban and rural variation, with areas researched in Somalia noting fewer disputes on peri-urban parcels. Lastly, several noted differences between customary and statutory land (Kaguenang, 2022; Malloum and Soumaïne, 2023).

Beyond land type and interests, several reports focused on the actors involved in land disputes. The actors mentioned in a dispute varied depending on each context but often included ethnic-communal groups, refugees, internally displaced people, class, or women. In several cases, the classification of a dispute included a particular actor alongside other dispute types regarding use or interest and land type. Country studies noted the involvement of certain actor identities in a dispute and mediative institution as creating varying rates of resolution. Several studies noted the challenges and lower rate of resolution when disputes involved broader ethnic-communal identities or along clan lines (SNV, Université des Sciences Juridiques et Politique de Bamako and Royal Tropical Institute, 2022; Cavallaro, 2024; SNV *et al.*, 2024). The Mozambique documentation (Terra Firma and Centro Terra Viva, 2021) illustrated the challenges in dispute resolution between large-scale investors and government entities against local actors. The findings from Mozambique noted that 72% of the cases involved local communities against larger-scale private investors, yet only 34% were resolved in favour of the local communities (Terra Firma and Centro Terra Viva, 2021, pp. 13–14). In Rwanda, the country study noted the limited capacity of the local mediators to resolve disputes involving women's land disputes on parcels in different territorial jurisdictions (Masengo, 2022, p. 55). Finally, local mediation resolved over 90% of the disputes heard in Burundi, but 39.5% of these unresolved cases involved women and refugees (author's calculation from LADEC data). In these examples, the property type or specific interests of the parcel were not as salient of a factor for dispute resolution compared to the power dynamic between the actors involved.

Further examples from the LAS projects also stressed the importance of the power relations between actors and how these differed in each context. In Burundi, studies noted lower rates of resolution and outcomes when disputes involved refugees or women (van Leeuwen, Munezero and Niyonkuru, 2022; LADEC, 2024). In the Adjumani district of Uganda, the study noted that women's claims during disputes varied depending on their capacity to cultivate the land. In contrast, men's claims did not depend on their use of a parcel (Balemesa, 2023, p. 22). Several studies showed high rates of resolution in favour of powerful landholders, such as the state against an individual landholder, police or military forces and civilians, or wealthy investors against smallholders (Terra Firma and Centro Terra Viva, 2021, pp. 13–14; SNV, Université des Sciences Juridiques et Politique de Bamako and Royal Tropical Institute, 2022). These studies offered details on the variety of competing interests or uses and land types but limited capacity to resolve a dispute due to the actors involved (van Leeuwen, Munezero and Niyonkuru, 2022; Balemesa, 2023).

While the interests and use of a parcel or property type cannot be ignored, evidence from the baseline and midterm reports provide support for power dynamics between actors to primarily influence the institutional capacity to resolve a dispute. A focus on the power dynamics between

actors allows a clearer understanding of the rate of resolution, but the type of land or use may still provide an indicator of the number of disputes or areas of increased contestation. Non-agricultural, peri-urban land in Somalia showed low levels of land disputes, given the lack of interest in the parcels away from urban and agricultural opportunities. However, marshlands or inheritance issues generated a high number of cases. Thus, findings from this synthesis encourage a more systematic approach to classifying dispute types to better understand the factors influencing the number of cases, the capacity for resolution, and the equity in decision-making. A clearer typology of disputes supports the overall argument for this paper in understanding the connections between the rate of resolution and the actors involved in a dispute. As discussed further in the following sections, moving the power relations between actors to the forefront of land disputes more clearly identifies which factors may limit access of certain groups or require further institutional coordination.

3.2 Improving access for who?

Expanding on the importance of actor power relations and clearly defining the types of land disputes, this section considers the LAS emphasis on access to dispute resolution institutions (Netherlands Enterprise Agency, 2019, 2022). LAS (indicator 2A.1, p. 9) defined access as the "use by people of formal or informal institutions of justice to resolve disputes" and considers standards of fairness, independence, accountability, and effectiveness. In addition to the capacity for certain groups to use institutions conducting dispute resolution, access also considers the capacity to function within institutions themselves as decision-makers. To better understand institutional access, this section draws on insights from Staab and Waylen (2020) on the analysis of gender policies, especially considering more "hidden" forms of change, resistance, and opportunities involved in policy implementation. Varying forms of marginalisation in each context highlight how intersecting and mutually constructing social identities differ geographically and over time but include factors such as gender, sex, race, class, religion, ethnicity, and clan (Crenshaw, 1989; Collins, 2000). Further, Mackay's (2014) concept of 'nested newness' offers insights into the limitations of institutions in departing from former arrangements. Nested newness investigates institutional (re)formation, considering the specific alterations to actors, values, and rules of institutions. This section illustrates certain ambiguities in LAS approaches toward marginalisation and vulnerable groups, resulting in various LAS country-level programming and research approaches. This section also considers the breakthroughs and barriers toward institutional access, highlighting forms of persistent discrimination and approaches to incorporating marginalised groups.

Feminist institutionalism emphasises the need for careful consideration of institutional opportunities and vulnerabilities, providing a helpful framework to critique the more ambiguous approach taken by LAS programming toward vulnerable groups (Interview 1). LAS documentation often moved between a focus on women, gender, youth, and other groups (for example, LAS, 2.3) but rarely considers ways that these identities can overlap to form compounding marginalisation. When describing vulnerable groups in Mozambique, reporting identified the disparities between local communities in relation to more powerful outside investors, in addition to other categories of women, youth, or legal literacy, but failed to explore

the power dynamics within these groups (Terra Firma and Centro Terra Viva, 2021, p. 16). Illustratively, younger women from rural areas may be especially lacking legal literacy, but this would not be possible to identify through current reporting. Inclusivity and access are mentioned several times in the LAS programme document (Section 2.3) in relation to strengthening land governance and dispute resolution. However, the approach lacks a clear articulation if access involves the use of institutions as beneficiaries or operating as mediators themselves. The LAS programme also articulated goals for awareness raising, advocacy, policy dialogue, and specific research, noting that these actions will strengthen land rights for "vulnerable groups, women, squatters, etc." (LAS, 2.3).

I argue that the unclear approach toward marginalisation created variation in the subsequent baseline or midterm reports between brief references to vulnerable groups, cross-cutting approaches, or forefronting certain actors. Most of the reports created a specific section to discuss vulnerable groups (SNV, Université des Sciences Juridiques et Politique de Bamako and Royal Tropical Institute, 2022, p. 17; van Leeuwen, Munezero and Niyonkuru, 2022, pp. 19–21; Cavallaro, 2024, p. 30) with limited application throughout different sections, especially when considering intersectionality and the ability for actors to participate within institutions of dispute resolution. Programme designers recognised these challenges after the mid-term reports and began shifting toward more specific approaches to marginalisation (Interview 1).

Although the approach was sometimes unclear, the LAS programming consistently supported different policies to improve marginalised groups' ability to use dispute resolution institutions. LAS partners conducted awareness campaigns, sensitisation, and supported programmes to increase the accessibility for vulnerable groups, often youth, women, and refugees. A common theme for improving access included emphasising proximity and affordability, considering the financial obstacles of poorer groups. In Mozambique, programming aimed to support local mediation with better access to paralegals. Country-level reports frequently considered ways vulnerable groups also operated as mediators themselves. Support for local institutions often reduced barriers for marginalised people to operate as mediators.

While LAS programming supports further equity for vulnerable groups to access institutions, several factors limited institutional change (Mackay, 2014). In Burundi, newly formed statutory institutions for mediation continued to rely on customary norms of unequal inheritance between women and men, illustrating disparities between statutory law and practice(LADEC, 2024, pp. 38–41). The Burundi case further noted forms of intersectional marginalisation among Batwa women, who faced additional barriers to accessing land due to historical expropriation and limited rights on small, state-issued parcels (LADEC, 2024, pp. 47–48). In Somalia, authorities offered differing opinions on the rights provided by land registration and certification, with women still requiring a male representative during dispute resolution (Cavallaro, 2024, pp. 13–14, 30–31). The Terra Firma and Centro Terra Viva (2021) document also noted the institutional bias against poorer local landholders during disputes with wealthy private investors. In each case, more proximate dispute resolution and considerations for vulnerable groups improved access, but numerous constraints limited equity during dispute resolution.

In several areas, more hidden forms of marginalisation limited the participation or representation of some actors (Staab and Waylen, 2020). In Mozambique, women were generally allowed to attend and raise concerns during dispute resolution meetings, but less than half felt the mediators considered their opinions (Terra Firma and Centro Terra Viva, 2021, pp. 14–15). Dispute resolution, which draws on mediators from a specific local area, can also create insider versus outsider dynamics, challenging resolution for perceived outsiders, such as refugees, internally displaced people, or perceived newcomers (van Leeuwen, Munezero and Niyonkuru, 2022, p. 27). Nearly all of the LAS country documentation also noted the lack of remuneration for mediators, limiting the ability of poorer groups to operate as mediators who do not have sufficient means to take time away from other labour. A lack of financial support places further pressure on mediators, especially those with less financial means, to accept bribes or incentives to offer biased decisions. Reports in Burundi mention the power to corrupt and the challenges faced by mediators with no financial support (LADEC, 2024). Even in the case of wholesale regime change in Rwanda with new institutional arrangements and more gender equality in legislation, institutional legacies of marginalisation against women continued. Masengo (2022) showed that despite efforts to make dispute resolution more proximate, challenges for women in Rwanda persisted due to their limited access to finance for travel or cover the costs of resolving a dispute.

Beyond improving access for vulnerable groups to use the services of mediative institutions, institutions adopted different approaches for vulnerable groups to access institutions as mediators themselves. These approaches varied from the use of representatives, quotas, or the removal of barriers to entry. In areas such as Mali, the LAS programme encouraged mediative groups to include women and youth, using representative actors from women's and youth groups to increase the participation of vulnerable groups (SNV *et al.*, 2024, p. 3). In Rwanda, women gained stronger representation as mediators through statutory laws for gender quotas, requiring at least 30% female participation (Masengo, 2022). Other countries, such as Burundi and Uganda, permitted more widespread participation and removed historical barriers to entry by statutory law but did not rely upon or enforce quotas or representative groups for mediators (Masengo, 2022; LADEC, 2024).

Using quotas ensured that people from marginalised groups could gain access to a local institution as decision-makers, but quotas require an accurate definition of marginalised groups. Some forms of marginalisation can be highly politicised, as Purdeková (2015) highlights in Rwanda when considering ethnic identity, permitting only the elite from within a group to act as a representative. While women or youth may be included in quotas, political friction may limit the compounding vulnerabilities of certain identities, as discussed regarding ethnic and gender identity in Burundi (LADEC, 2024). The representative approach relies upon a single person to act on behalf of a broader societal group, ensuring representation but offering a narrower perspective than a specific quota. Without quotas or representatives, solely removing barriers allowed for increased access but did not always ensure participation, as was the case for women in numerous areas of Mozambique (Terra Firma and Centro Terra Viva, 2021, pp. 14–15).

Across different contexts, LAS programming often increased institutional access for vulnerable groups but at varying rates. The lack of a clear definition of marginalisation led to a wide range of beneficiaries and approaches to increasing access, which was identified as a clear challenge following mid-term reporting. Many LAS programme documents created separate sections for "women" and "youth" but struggled to consider the overlapping social relations and subsequent power dynamics between disputing parties and mediators. Evidence from the LAS countries spoke to the challenges of institutional change through overt and more hidden forms of resistance. These challenges ranged from working to overcome politicised gender discrimination in Burundi against women's equal access to family land, the difficulty of identifying ethnic vulnerabilities in Rwanda, to the class dynamics in Chad. A pluralistic approach to institutions further showed how institutional and institutionalised discrimination can arise through a myriad of laws, norms, and practices, explored further in the next section on institutional coordination.

3.3 Institutional Coordination

In addition to strengthening and improving access to institutions, LAS programme and country-level documentation mention the need for supporting institutional coordination (LAS, 2.1, for example, (Terra Firma and Centro Terra Viva, 2021, p. 42; SNV, Université des Sciences Juridiques et Politique de Bamako and Royal Tropical Institute, 2022, p. 3; van Leeuwen, Munezero and Niyonkuru, 2022, pp. 35, 40–41; Balemesa, 2023, pp. 51–52)). Although the LAS programme and country reports carefully detail the various institutions involved in dispute resolution and the need to strengthen cohesion, this section critiques the dichotomous categorisation of institutions. Arguing from legal pluralist perspectives, I argue for a more careful framework for identifying institutions, along with the rules and actors which guide their behaviour (Moore, 1973; Dancer, 2015; Lund, 2016). Feminist institutional authors, such as Mackay (2014), call for an interrogation of the actors, values, and rules of institutions but then continue to push institutions into dichotomies of formal and informal. Departing from feminist institutional authors, the contexts of the LAS countries illustrate the incompatibility of clear dichotomies when understanding institutions involved in land dispute resolution. This section highlights the LAS process of institutional coordination, showing ways in which institutions draw on a variety of actors, laws, customs, and norms to mediate disputes.

In line with broader trends amongst development organisations (Berry, 2018), LAS programme and country documents increasingly recognised the myriad of institutions involved in land dispute resolution and coordination challenges between these institutions (Masengo, 2022, p. 28; van Leeuwen, Munezero and Niyonkuru, 2022, p. 25; Balemesa, 2023, pp. 17–18). Amongst the various mediative institutions operating in the LAS countries, many have been formed in recent decades – sometimes replacing but often being added to existing institutional arrangements. The LAS broader papers and country reports tended to apply labels to each institution, such as "formal" or "informal." The dualistic categories recognised that multiple institutions tend to operate in dispute resolution and ensured that implementing partners worked outside of the statutory courts. Some reports also explained the various interrelationships between statutory and customary. In the case of Somalia, Cavallaro, pp.

(2024, pp. 29–30) challenged these clear distinctions and mentioned concepts of hybrid governance but then reverted to more dichotomous classification throughout the analysis.

Yet, in each LAS country example, using a pluralistic approach in understanding institutions permits a better understanding of institutional decision-making and helps to identify ongoing discrimination of vulnerable groups. Mediative institutions created by the state, such as the *abahuza* in Burundi or *abunzi* in Rwanda, hear disputing parties justify their position through claims of various customs. Illustrative of these interrelationships, the local land commission in Mali (SNV et al. 2022, 2024) includes the customary village leader and several community representatives. However, a judge from the statutory court must approve the decisions made by the land commission. A broad trend across the LAS countries is the lack of legal training of mediators, limiting the capacity of these localised institutions to rely upon statutory legislation (See especially the contexts described by Masengo, 2022, p. 26-27, 45; Terra Firma and Centro Terra Viva, 2021: 15 – 16; SNV et al. 2022, 2024). LAS project partners have supported various trainings in statutory law in several contexts, yet the studies indicate further support is required. Even when an institution was created and recognised by the state, a lack of legal training shifts mediation away from concerns for statutory laws and toward the use of customs, norms, and local practices. Instead of labelling institutions as formal (statutory) or informal (customary), further interrogation is required to understand how and in which ways institutions interact with laws, customs, norms, and practices.

Beyond the recognition of numerous institutions, LAS programming fell in line with broader development policy patterns in focusing on institutions at the local level (Interview 1; Interview 7; (van Leeuwen, 2010; van Leeuwen, Munezero and Niyonkuru, 2022)). Reports often noted the strengths of supporting local mediation, especially in resolving the numerous cases backlogging the court system (Terra Firma and Centro Terra Viva, 2021; Masengo, 2022; van Leeuwen, Munezero and Niyonkuru, 2022). However, challenges persisted when local mediative institutions struggled to coordinate across administrative areas (Terra Firma and Centro Terra Viva, 2021, p. 33; Masengo, 2022, p. 58). Coordination challenges disproportionately affected women, who tend to have more disputes concerning geographically disparate parcels with their parents and extended natal family (Masengo, 2022, p. 58). Similar issues arose with refugees, returnees, and displaced persons who had moved from different areas, with lower rates of resolution for these cases.

In efforts to improve coordination and map the institutional landscape, several LAS country reports also noted the absence of institutions mediating land disputes at higher administrative levels (Interview 7; SNV et al. 2024, p. 9-14; Kaguenang, 2022, p. 29; Cavallaro, 2024). The absence or lack of coordination with mediative institutions with broader authority posed risks for land disputes between larger ethnic, communal, and clan groups, which escalated beyond the jurisdiction of local mediative institutions. In Somalia and much of the Sahel, ethnic and clan groups often represented an individual to resolve a dispute (Cavallaro, 2024; SNV *et al.*, 2024). Especially on communally held land, disputes can escalate well beyond the local level when involving two or more broader groups claiming rights to larger parcels (Balemesa, 2023). While coordination across the various local institutions may support dispute resolution between

localised actors, evidence from the LAS reports showed the need for broader coordination outside of local administrative districts.

Increasing institutional coordination also had varying effects, often related to stronger linkages between communal landholdings and the private sector. Some LAS programmes supported coordination by registering and certifying customary norms and practices within government land offices (van Leeuwen, Munezero and Niyonkuru, 2022; Balemesa, 2023; SNV *et al.*, 2024, p. 14). In Chad, increased harmonisation of communal lands with the private sector brought challenges for several women with secondary rights, who stressed the challenges of chiefs selling off customary landholdings (Malloum and Soumaïne, 2023, pp. 5–7). While often not equal, claims to customary laws can sometimes provide certain safeguards, such as protecting future rights for youth through protecting inheritance rights (as illustrated by Balemesa, 2023) or permitting women access to cultivate a familial parcel (van Leeuwen, Munezero and Niyonkuru, 2022). In Chad, project partners supported the provision of land for women, while efforts in Burundi aimed to support women's land rights by recognising and raising awareness for a custom of granting women a parcel on family plots, but initial implementation failed to recognise the variation of these customary practices and limited stronger rights to be registered (Interview 4). While further coordination can facilitate better information sharing and allow representation at higher administrative levels, not all efforts to coordinate institutions in the land sector yielded positive results.

Bringing together legal pluralism and feminist institutionalism offers a more precise understanding of the coordination of institutions involved in dispute resolution, drawing attention to the specific actors, laws, customs, and norms that have permitted more equitable dispute resolution for less powerful groups and furthered forms of discrimination. As mentioned above, this ranged from referencing customs in Burundi to justify unequal inheritance on family land for women to the challenges in Chad with statutory law and the private sector failing to consider customary safeguards on landholdings for future generations. The emphasis of LAS partners on local-level dispute resolution and coordination enabled numerous disputes to be resolved, but this section highlighted the need for further coordination when disputes involved dynamics spanning administrative boundaries or larger groups, such as ethnic, communal, or clans. The limitations of local institutions with these broader groups also support the central argument of the paper, showing the centrality of power dynamics to dispute resolution.

4 Conclusion

This paper draws from feminist institutionalism to challenge ambiguities in defining marginalisation and emphasising the power relations of actors in the process of strengthening, facilitating access to, and coordinating institutions to resolve land disputes. For policy and programming to adapt to different environments, findings from this paper emphasise the need to develop a consistent framework for categorising land dispute types while developing a clear framework for understanding intersectional forms of marginalisation in the analysis. Building on past interventions, LAS programming expanded the focus of dispute resolution beyond the

statutory judicial system and selection criteria included a process of analysing the numerous stakeholders involved in land dispute resolution. LAS followed similar patterns to other development programming by focusing on local level institutions. While LAS recognised the numerous institutions operating in dispute resolution, common labelling of customary and statutory limited more nuanced investigation.

The challenge for future LAS programming is not to try and list each possible form of vulnerability but to develop a clear framework for partners to understand the intersecting and mutually constructing social identities in each context. Baseline reports showed ways certain identities faced compounding marginalisation, calling for future policies to look beyond simple categories of "women" or "youth." Although some vulnerable identities faced similar challenges across LAS countries, the nature and impact of overlapping and intersecting forms of marginalisation varied significantly depending on the context. The studies showed gender, class, age, ethnicity, politics, and displaced identities as salient forms of social difference. Vulnerable groups sometimes struggled to have their disputes heard or could not act as agents themselves. Despite changes to statutory laws and increased participation, women often continued to face discrimination through overt limitations without male representatives or more hidden limitations, such as restricted access to necessary travel funds. LAS programming tended to highlight women and youth, with dispute resolution institutions employing different models to remove past barriers to entry, such as quotas or representative groups, to incorporate marginalised individuals as mediators.

A key recommendation for future policy and research on LAS programmes is that country-level programming should encourage clear and consistent record-keeping of disputes to distinguish the actors involved, the type of land, and the competing interests or uses of a parcel. The lack of consistency across the LAS reports limited comparability across the different countries, challenging policymakers to identify successful programmes or consistent blind spots. By recording this information uniformly in each context, future research and subsequent policy can more clearly identify certain vulnerabilities during disputes, factors driving the number of disputes, or concentrated areas of contestation that may require more tailored approaches.

Insights from legal pluralism highlighted the complex interactions between various actors, laws, norms, and customs within dispute resolution institutions. These varied institutional arrangements led to variation across the cases in generating stronger access and equity for vulnerable groups or perpetuating inequalities. Policies and future country studies could pay closer attention to the pluralistic institutional dynamics and examine institutions in more detail. As each case study showed, various actors, statutory laws, customary norms, and practices influenced dispute resolution outcomes. While each study referenced these interrelationships, more carefully articulating this across each country may uncover important entry points for policymakers to resolve ongoing forms of marginalisation.

In addition, the LAS theory of change document spoke about how a lack of access to dispute resolution leads to violent conflicts. LAS country studies tended to focus on the wider conflict context in each country as background information or ad-hoc examples of violent land disputes. However, reports failed to address the links between violence and the absence of forums for

dispute resolution or the inability of certain actors to access these institutions. Future research may examine the links between access to dispute resolution and violence arising from impeded access. By deepening our understanding of these dynamics, policymakers can craft more targeted interventions that address the root causes of inequities in land dispute resolution.

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ANNEX A: INTERVIEWS

Interview 1: Land policy expert; remote interview; 17 June 2024

Interview 2: Land policy expert; remote interview; 25 June 2024

Interview 3: Land policy expert; interview; Utrecht, Netherlands; 4 July 2024

Interview 4: LAS country programme manager; conference presentation; Utrecht, Netherlands; 4 July 2024

Interview 5: Land policy expert; conference presentation; Utrecht, Netherlands; 5 July 2024

Interview 6: LAS country programme manager; remote interview; 19 July 2024

Interview 7: LAS country programme manager; remote interview; 1 August 2024

ANNEX B: INTERVIEW QUESTIONS

- Land Policy Experts
  - What was the process of deciding to focus on institutional access, coordination, and strengthening?
    - While the policies are specifically aimed at coordination, most of the baseline studies and project documentation focus further on the local institution more than broader coordination.
  - Which aspects of the policy were specifically designed with marginalised actors in mind?
  - How were certain institutions selected as a project focus?
    - Some institutions focus on mediation, while others, such as those in Mozambique, involve paralegals.
  - Were there any substantial policy changes made following the baseline or mid-term reports?
  - How were location-specific factors considered or policies tailored for each country/sub-national region?
  - Which indicators are most important when considering success for these policies in mid-term or summative reports?

- Country-level Staff
  - Why were the specific institutions selected for this country?
    - Did the programme face any challenges when selecting the institution(s)?
  - Was there any resistance to implementing these policies in general or to specific aspects of the programme?
  - How have the baseline/mid-term studies influenced subsequent programming?
  - How were location-specific factors considered or policies tailored for sub-national differences?
  - Which indicators are most important when considering success for these policies in mid-term or summative reports?