

Women's land rights realities in the 'Rubi-Tele' Hunting Domain, in the Democratic Republic of the Congo

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Abstract

Women contribute to reducing hunger and improving household food security and livelihood. However, they do not benefit from secure land rights. This study thus aimed to determine the factors that prevent women from Rubi-Tele from enjoying their rights. A 2-week survey completed by four focus groups in four villages helped us gather information that was later analysed using a socio-legal approach. All women were involved in agriculture, but they were the only workers who could not control or manage the land. They often accessed land through the family channel (96.7%), while other pathways were less used by the origin (3.3%). Although the Democratic Republic of the Congo has made enormous progress, women were unaware of these advances: thus, 70% did not know their rights. This unawareness impeded their ability to initiate strategies to claim their rights. Some women have been able to identify their difficulties. They incriminated the custom standards that favoured their male counterparts (21.7%). Additionally, begging for husband permission (28%) and poverty (20%) were cited as barriers to women's property rights. Moreover, some women conservationists preferred the custom to formal laws, despite their advances (30%). No strategy has been initiated because women fear the society's response.

Keywords: women's rights to land, access to land, customary law, biodiversity conservation, Rubi-Tele Hunting Domain



1. Introduction

The majority of the Congolese of the Democratic Republic of the Congo (the Congo D.R.) lives in the countryside, and about 80% rely only on agricultural activity to ensure food security (FAO *et al.* 2010). This activity, for which land constitutes an important asset, mainly involves women due to traditional and social practices in the villages. Another observation is that women are found in a larger proportion (53% of the population) than men (ILC *et al.* 2004, Ministère du Genre, de la Famille et de l'Enfant 2009); thus, women significantly contribute to their household livelihood, family food security, and children's health (USAID 2016). However, they are still discriminated against in terms of land and property access, control, and ownership (Buuma *et al.* 2013, UN Women 2019), although there are undergoing efforts (legal instruments), at both national and international scales, to reduce the gender gaps and bootstrap rural development (USAID 2016).

In its 16th article, the agriculture law of the Congo D.R., law n°11–022 of 24 December 2011, does not make any requirement regarding sex to acquire a piece of land. In addition, in the 49th article of the land law of the Congo D.R., law n°73–021 of 20 July 1973 as amended by the law n°08–008 of 18 July 1980 the legislator clearly stated that ownership of property can be acquired or transmitted by gifts between Congolese who are still alive; by will, by succession and by agreement. This Congolese legislator had thought about women's rights to land, which rights should enhance their capabilities and abilities to fight against vulnerabilities and expand their power in negotiations (Agarwal 1994).

Moreover, the Constitution of the Congo D.R. (amended in 2006 in 2011), as well as international and regional legal instruments, constraining and non-constraining ratified by the country, such as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW¹) of 1979, the African Union Declaration on Land Issues and Challenges in Africa, and the Framework and Guidelines on Land Policy in Africa in 2009, guarantee access to land and individual property to men and women, and prohibit gender discrimination. Furthermore, there exist various commitments throughout the world for securing women's rights (UN Women 2019), which benefits from the supremacy over national laws (legal monism).

Despite this panoply of legal instruments protecting women's rights to land, there still exists a gender gap in practice in Congolese villages, in general, and Rubi-Tele, in particular. Many reasons can be listed, and amongst them, the no respect to the legal monism by courts (C.CEDEF 2013), the legal pluralism promoted appears unfavourable to women's rights (Cotula 2007, Mitic *et al.* 2012) due to the contraction between different sources of norms, as well as the lack of implementation and vulgarisation of the existing laws, and so forth. Aligning with what precedes, this work pursued the objective of

¹ Gouvernement de la République Démocratique du Congo, 1985. 'Ratification of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)/ convention ou comité sur l'élimination de toutes formes de discriminations à l'égard des femmes (CEDEF)'. <<https://undocs.org/pdf?symbol=fr/CEDAW/C/COD/6-7> / Accessed on 4 January 2021>.

determining the factors that prevent women from Rubi-Tele from enjoying their right to land in terms of *usus* and *fructus* compared to their male counterparts.

Rubi-Tele is a public property of the Congolese State, thus any of its portion of land cannot be sold or no one can enjoy the land right in terms of '*abusus*'. Furthermore, the Congo D.R. is reputed to be rich in terms of cultural diversity and hosts many ethnic groups with different practices. On this basis, we postulated that divers of discrimination against women differ from culture to culture in spite of the existence of general reasons.

2. Method

The study site was the hunting domain of Rubi-Tele (62,300 ha), which is located in the northern part of the Congo D.R. at the border of the provinces of Bas-Uéle and Tshopo. This hunting domain is scattered with several small villages (of less than 100 inhabitants), but only some of those (Sukisa, Ngbete, Mabanga, and Ngomba) alongside national road 4 were surveyed as they were accessible to our team.

The information was collected during the first 2 weeks of April 2018, and observations were made on a 60 sized-sample selected based on a probabilistic-based method. Although women were the target population (58 to 2), the focus groups included both women and men. All the surveys were conducted in Lingala, as it is widely spoken in the study region compared to dialects, and thus, precautions were taken to ask questions in Lingala, and during the post-survey, answers were translated into English.

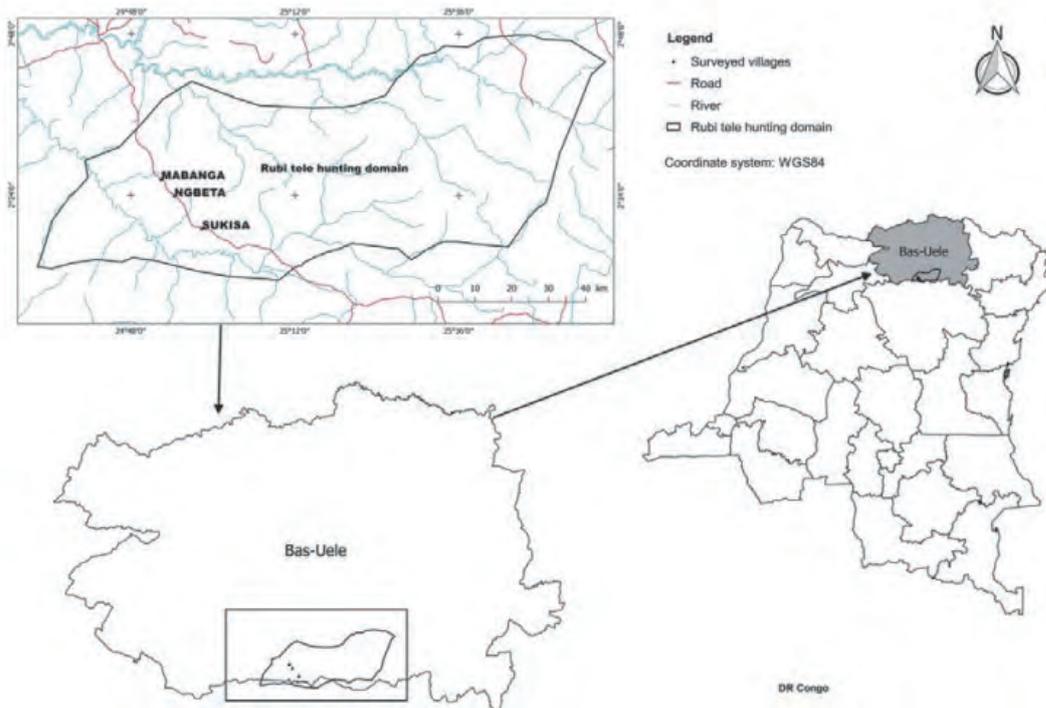


Figure 1. Rubi-Tele Hunting Domain map (Majambu *et al.* 2019)

To better capture women's rights to land in the region of Rubi-Tele, we opted for the legal method, but in its socio-legal approach. Formal laws should be derived from social practices (Villegas and Lejeune 2011). However, for a diverse country in terms of ethnic groups, the Congolese D.R. formal laws did not embrace all realities from all ethnic groups, which is why the gender issue will need to keep an eye on the social practices in force (Robert 1982), making every region specific.

This approach provides an advantage in analysing collective consciousness (Villegas and Lejeune 2011), as well as the links between this consciousness and the laws. To achieve this, the approach combines the lecture of legal texts with field observations. In addition, to take into account the importance of customary rules in defining women's rights in most developing countries, this approach is particularly mindful of how the interactions between written and customary laws affect the situation of women (Cotula 2007).

As a consequence, the concern of this study case is to confront the facts observed on the ground (investigation) to the legal framework of land law and establish the relationship between customary and formal laws in the field of ownership of property, access, and control over land, as well as their impact on the fate of women.

3. Results and discussions

This survey essentially turned around married individuals (95%) whose ages varied between 17 and 71 years old. None of them went to the university or college; about 58% of respondents stopped their studies to the primary level, only 8% reached high school, and all the rest had never been schooled. It has been noticed that eight different ethnic groups live together at the study site with high representativeness for Baboa (33.3%), Basoko (26.7%), and Bangelema (26.7%) insuring a cultural mixture through exchanges among them leading to many commonalities than differences in their traditions. The main activity for women remains a slash and burn based subsistence agriculture for all. This activity, in conjunction with the growing population, leads to forest landscape fragmentation and forest emissions of CO₂ (through the burning of organic matter). A small proportion of the population diversifies sources of income, and only about 22% of women combine agriculture with goods sales to increase their household livelihood.

3.1. Women access to land and control over a land

All the respondents reported having access to land unfortunately was limited for women. The land ownerships and control are men's responsibility, keeping the reproductive role for the woman. The survey revealed that this family asset mostly belongs to either the respondent husband (73.3%) or father (18.3%); only 1.7% of women declared possessing their own land (Figure 2b). Land acquisition is still governed by customary laws that do not recognise women's right to inherit land, which is important

because in 98.3% of cases, land was acquired through family pathways (Figure 2a). Negotiation (the rental of land) is also used as a means to access land, but infrequently (1.7%) (Figure 2a).

The Arable land is a crucial economic asset for many households in most rural areas (Agarwal 1994, Ki Zerbo *et al.* 2006) and a source of power in general (Buuma *et al.* 2013), and in the Rubi-Tele Hunting Domain, in particular. Agricultural activities conducted on rural lands involve more women than men (USAID 2016) due to their demography compared to their male counterparts; thus, their contribution to food security and rural development increases (Campos *et al.* 2015) as well as their bargaining power within the family (Dhakal *et al.* 2016, USAID 2016). Positive results were found in Tanzania, Nepal, Rwanda, India, Ethiopia, and so forth for women enjoying secure land (USAID 2016).

These lands granted to women are mostly of less quality and/or smaller than those owned by their male counterparts (USAID 2016). Despite the fact that women seldom inherit land in Rubi-Tele, it has been discovered that the acquisition pathway is tightly linked to household dissolution (divorce or husband death) (Dokken 2015). In addition, most sub-Saharan traditions give more privilege to men than to women; women have to use their husbands' lands (Hamahi *et al.* 2009). Despite the existence of legal instruments (Constitution of the Congo D.R. 2011, CEDAW 1979, etc.), many practical efforts are still to be achieved to secure women's land rights (identified as a crucial sustainable development goal), which may lead to expectations such as larger agricultural production and women empowerment.

Women still feel insecure. They can access land as long as they belong to a household. This right depends on the climate of the relationship between women and their male relatives (Cangelosi and Pallas 2014). Although they have gone for the full community resources as a marital regime, wives are not treated as a particular case, and their access to land is still fragile. In South India, in the case of separation (divorce or death of the partner), women automatically lose their right to access their husband's lands (Agarwal 1994) and are forced to return to their parents, unless she was kind to the husband's family. They cannot inherit the transfer of their husband's land (social practices), while the legislator reserved these rights (Family code of the Congo D.R. 2016).

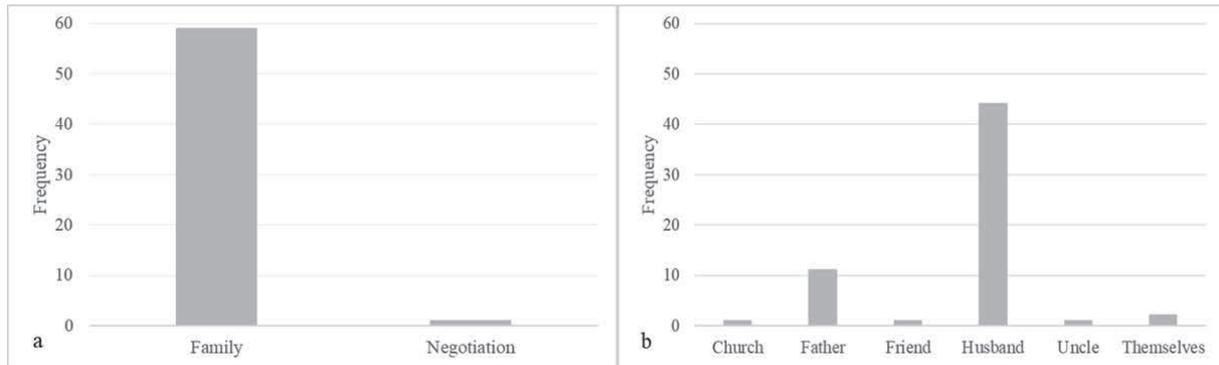


Figure 2a (left). Land acquisition pathways.²

Figure 2b (right). Owners of lands that women access in Rubi-Tele.

In the Rubi-Tele Hunting Domain, land is mainly acquired through two different pathways: inheritance (96.7%) and negotiation (3.3%) (Figure 2a); no title can be issued to a private property because this has already been classified as a public property for the state (Land Law of the Congo D.R. 1980). As such, belonging to a given ethnic group will play a key role in land acquisition ($X^2 = 1.4224$; $df = 8$; $p\text{-value} = 0.9939$; $\alpha = 5\%$) compared to the education level reached by these women ($X^2 = 2.697$; $df = 2$; $p\text{-value} = 0.2596$; $\alpha = 5\%$). Educating women means empowering them (USAID 2016), but in the context of Rubi-Tele where customs are dominant, other factors should enter the game.

Negotiations for land renting are mostly used by women married to men who do not originate from the Rubi-Tele domain; however, curiously, their husbands take over land management and control as soon as they obtain a piece of land. This reality is common to many rural areas throughout the world (USAID 2016). Furthermore, there were noticed the existence of some community lands (for churches and other associations), but women have not undertaken such initiatives yet.

Traditions in force in the Rubi-Tele Hunting Domain do not grant women the right to inherit land which is the opposite of what the Constitution states in its article 34. In the case of the parents or husband's death, land management and control become exclusively the responsibility of men in more than two-thirds of cases (Figure 3) discriminating against women (CEDAW 1979). In Figure 3, we can see that the more lucky to inherit family land are sons (53%) and the more marginalised are their mothers (17%). In some cases (5%), if the household did not account for any infant boy (sons), the management came to the defunct brothers (Figure 3). The widow and her daughters are not, in many cases, land management decision-makers. The family code of the Congo D.R. (2016), in its articles 512, 530, 758, etc., widows and her daughters have the right to inherit. What people are doing in practice is the torsion of state laws.

² The family pathway includes both inheritance and granting land to someone, the negotiation option encompasses rent and access to some else land without minding something in return.

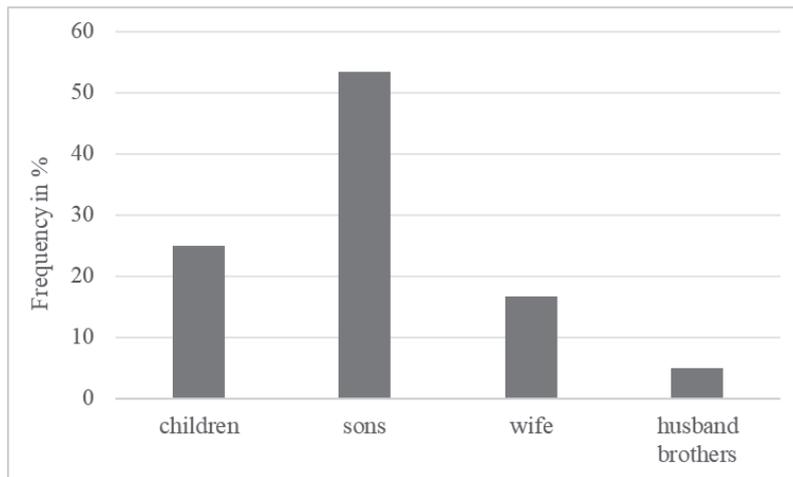


Figure 3. Potential groups³ of heirs of land after a household dissolution.

During the focus group time, there were several reasons raised to support social practices. '*Mwasi aza mopaya*' means that women are stateless. This was reported in a survey in a Burkina Faso village; women are considered foreign in their own families to the point that they do not wish to hold any property right over land (Ki Zerbo *et al.* 2006). Similarly, mentality is found in the South Kivu province, Kalehe, and Walikale clusters; however, women occupy certain positions (princess, business women, etc.) impose their domination to acquire land (Buuma *et al.* 2013).

Treating women as foreign or guests implies that they will have to leave their respective parents' homes and/or the village to start their new lives as wives. However, at their husbands' death, they will have to return to their relatives or seek another family to start. This instability does not allow them to take the lead of land management. Some expressions like '*Mwasi atongaka mboka té*' (women do not build cities) emphasise the preceding idea. Women have to follow their men, wherever they decide to install the shelter. Another expression commonly used in the focus groups is that '*mwasi azalaka nasé ya mibeko ya mobali*' to say that women should always obey and execute their husbands' orders.

Although all these multiple reasons have been raised, women can inherit land in some specific cases, if men show the incapacity to manage this family legacy or after household dissolution (divorce or death) (Dokken 2015). However, it is still seen as a taboo. For many, women who own their own land are immediately identified to prostitutes and insubordinates or 'difficult women', 'delinquent', 'rebellious', and 'complicated' as it is the case in the Walikale and Kalehe clusters (Buuma *et al.* 2013). Women are less likely to own land and their rights are still in a pronounced precarity (USAID 2016) because of all these reasons that put them in an inferior position in society. Furthermore, all of the aforementioned

³ In the group 'children', we can find daughters and sons considered without any discrimination. When sons were cited as unique heirs, we used the exclusive group 'sons'.

reasons, from both men and women, push women not to mind about their situation. Men then take advantage of this situation and impose their domination on women.

3.2. Difficulties encountered by women with regard to land ownership

The woman in the Rubi-Tele Hunting Domain is conscious of the situation she is living in, but she does not express the desire to fight for her rights to land because she fears her husband and/or the society response, although there still exist unexploited lands for agriculture in the hunting domain.

The survey results showed that about one-third of the interviewees reported that this situation was uncomfortable and that there must be a change. They cannot raise their voice but keep waiting for external help. A small portion of the interviewees (3%) did not have any idea of what their empowerment means. On the other hand, women reported that obtaining authorisation from their respective husbands (28%) constitutes a huge barrier to enjoying their land rights; 21% of them reported they think that customary practices play a crucial role in maintaining the situation unchanged. A significant proportion (20%) think that being financially poor is the main reason they do not own land (Figure 4). Above all, women are not united. In the focus groups, we reported that women do not gather in association to face their problems, which is why men's domination is still strong.

Women are free to undertake actions that contribute to their household well-being without husband permission (2016). The advances made by the Congolese legislator are not aware of the customary standards (32% of the interviewees raised it), which denied inheritance to women (12%). These findings are in line with those of Cotula (2007), Buuma *et al.* (2013), Banque Mondiale (2015) and Soc Etude Recherche Developp (2016) study office, which exposes the woman to the impossibility of accessing land on her own. Furthermore, poverty is a barrier to obtaining land (Hamahi *et al.* 2009), but remember that once obtained, men take over their control. This poverty-related reason seems not real for women to enjoy their land rights. Also, traditions holders are still conservationists and are the one to say the last word, while those who are for the women empowerment shyly express themselves in groups (Ki Zerbo *et al.* 2006). In the Ivory Coast rural areas, women add that their physical weakness to land labour and huge homework prevent them from gaining control over land (Koné and Ibo 2009).

A correspondence analysis (alpha, 0.05) shows a correlation between difficulties such as bad customary practices and the fact that men do not allow their wives to fully enjoy their right to land (Figure 5). At Ngete, it seems that difficulties are less felt than at Ngomba, where women report that men do not permit their wives to enjoy with their right to land. On the other hand, at Mabanga, the ignorance of the difficulties highly characterises women.

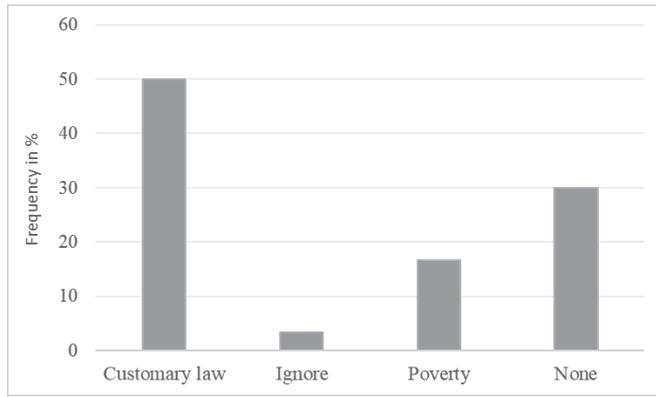


Figure 4. Women opinions about drivers that create a gender gap in the Rubi-Tele Hunting Domain.

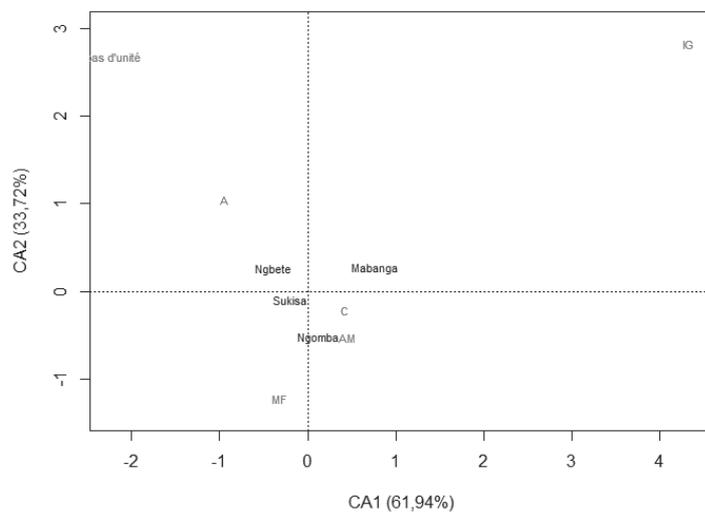


Figure 5. Analysis of the correspondence between the reasons given by women and their villages.

3.3. Impact of formal laws and strategies implemented by women

The context in the study sites is such that 70% of women do not know their real rights (Figure 6a), and 42% prefer their customs to formal law (Figure 6b). No strategy has yet been implemented by women with a view to claiming their right to inherit or possess their own land. A chi-square analysis (chi-squared = 18.889; df = 1; p-value = 1.386e-05; alpha = 5%) revealed a link between the facts of not knowing the formal laws and not undertaking any strategies in place to claim their rights. In addition, the vulgarisation of the state laws seems poorly done to the point that almost none of the women were aware of the advances made by the Congo D.R. legislator in the abolition of marital authorisation of the Family Code on 15 July 2016. Despite the advantages offered by the state law, only 57% of the interviewees think that formal laws should take precedence over customary laws.

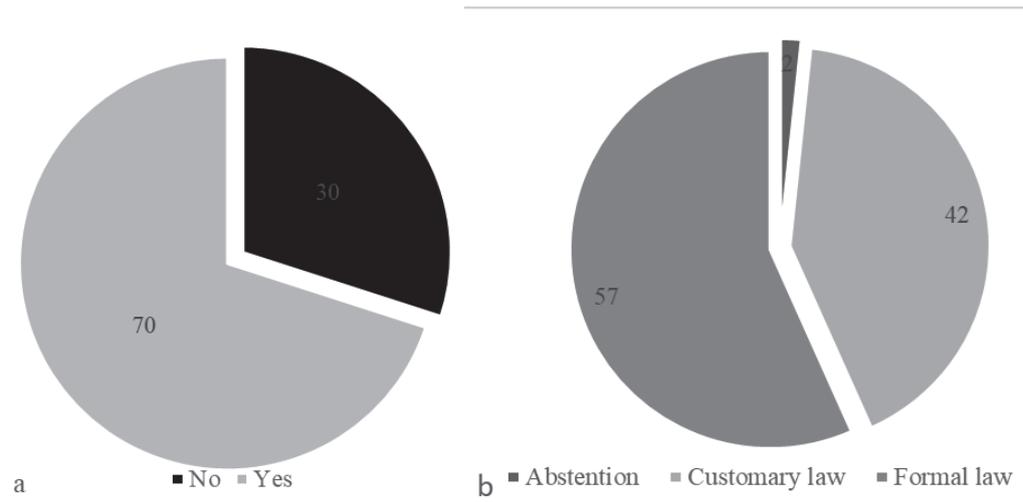


Figure 6a (left). The level of popularization of formal laws that promote women rights.

Figure 6b (right). Women preferences between formal and customary laws.

In Ghana and Cameroon, women gather in groups/associations to claim their rights; however, for the Masai women of Tanzania, they also associate this with the development partners in the negotiations for land acquisition (ACORD *et al.* 2012). Some women tried to take their dossiers to the court when they felt discriminated against, as was the case for Dhungana in Nepal (Cotula 2007) or another woman from the Tillabéri region of Niger (Van Duivenbooden and Kessler 2016). Formal laws agree that women and men are equal in rights and, thus, they are considered as protective for women compared to customary laws that state the opposite (Ki Zerbo *et al.* 2006).

However, the woman from Rubi-Tele is not convinced of the superiority of the formal laws to the customary ones. Although opposites on some aspects, the formal laws give power to the customary laws in rural regions, signs of their cohabitation. However, customary laws keep hidden positive advancements made by formal laws that suffer from less vulgarisation. Ignoring these advancements and being less educated, women from Rubi-Tele have no reference for their empowerment.

3.4. Link between women land right and biodiversity conservation

The role of women in biodiversity conservation has only recently been recognised (Alvarez and Lovera 2016). If women from Rubi-Tele could equally enjoy land rights, biodiversity conservation would be more effective. Conservation of biodiversity is linked to social practices in force (ILC *et al.* 2004), and its loss affects people differently, but the most vulnerable are marginalised people, including women (Bechtel 2010). Women tend to be conservationists and their knowledge uncorrupted by culture mixing, and they have transmitted the knowledge of conservation from generation to generation; therefore, there is no sustainable development without their contribution (Momsen 2007).

Women's knowledge of wild plant species is greater than that of men as they are to collect firewood and harvest non-wood forest products for family subsistence (medicinal and diet plants). In the current context of global changes where pressure on natural resources is ever felt, denying women's rights to land (land control) exposes her to long walks to seek the above resources, raps, diseases, etc., which exacerbate their marginalised status (Alvarez and Lovera 2016). Naturally, women contribute positively to biodiversity conservation *in situ* by cultivating wild plants in their lands, thus ensuring the long availability of resources they use for them and their families.

4. Conclusion

The applicability of women's rights to land issues in the Congo D.R. (case specific of the Rubi-Tele) was assessed in this work and specific focus was given to the profile of women holders of land rights, the obstacles that make Rubi-Tele women do not enjoy their right to land and, finally, strategies undertaken by these women to break barriers that prevent them from making profit. Information was collected through a 2-week survey (from 31 March to 15 April 2018) and our focus group organised at Sukisa, Ngbete, Ngomba, and Mabanga.

Women use household land resources to contribute to family well-being, but do not possess their own land. They still depend upon their husbands or relatives, and only a small portion enjoys the right to possess ownership. The latter are considered to be prostitutes or insubordinates.

The roots of this situation are to search in their customs, not forgetting that the insufficient popularisation of formal laws plays a key role in keeping it without change. Considering men as household heads, women need authorisation to undertake any project, which is not always acquired. The ignorance of the state and other formal laws blinds these women from undertaking any action that goes in the direction of their emancipation.

Acknowledgements

The authors would like to thank the Centre for International Forestry Research (CIFOR) for granting this research through the financial support of the European Union (EU) through the FORETS (FOrmation, Recherche, Environnement dans la TShopo) project. The authors thank the Bringmann Excellence Scholarship for Congolese Universities (BEBUC) for their tutorship. This study is part of the Global Comparative Study on REDD+ (GCS REDD+) supported by the Norwegian Agency for Development Cooperation (NORAD), and the CGIAR Research Program on Forests, Trees and Agroforestry (CRP-FTA). Finally, we would also like to thank the Rubi-Tele manager for accepting our invitation to carry out a survey within the Rubi-Tele Hunting Domain and the anonymous peer reviewers of this work.

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