



Pursuing Gender Equality in Land Administration

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Ensuring gender equality with respect to land rights is hailed as a key element of the recent land reforms, but actual results in this respect are limited. Achieving gender equality requires a comprehensive focus on land, family and other laws, including customary, pertaining to land and on their implementation on the ground.

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A new wave of land reforms has swept across a large number of developing countries during the past decades. Often supported by the World Bank and other donors, most of the land reforms focus on the registration of existing rights and offer formalisation of these rights through strengthened and decentralised land administration institutions, as well as strengthening mechanisms for land dispute resolution. While the initial focus of these new wave land reforms was primarily on the formalisation of statutory rights through titling etc., recently there has been a noticeable shift towards the recognition of customary tenure and, in a number of countries, towards the registration – and thus formalisation – of customary rights as well.

The land reforms have primarily been promoted on the basis of economic concern with enhancing tenure security, encouraging economic investment and thus promoting economic growth, many of the recent land administration reforms have also been hailed as a key element in efforts to ensure gender equality with respect to land rights. However, a review of the land reform processes that have taken place in a selection of 15 countries suggests that the gender

POLICY RECOMMENDATIONS

- Ensure that provisions ensuring non-discrimination in family law and customary law accompany recent provisions for gender equality in land legislation.
- Strengthen the focus on comprehensive implementation and enforcement of land legislation. In doing so, draw upon the lessons learned by civil society organisations in their efforts to promote gender equality in land administration and dispute resolution.
- Explore and institutionalise ways to enhance the effective accessibility to women of statutory as well as customary land administration and dispute resolution institutions at all levels – irrespective of their social and economic status – e.g. through promoting female representation in customary as well as statutory land administration and dispute resolution institutions.
- Monitor and measure success of land administration institutions at all levels in terms of their contribution to achieving gender equality in land administration, e.g. through ensuring the registration of gender-disaggregated data.
- Document and analyse the social, economic and political impacts of gender (in)equality on land access and land administration on a regular basis.



focus of these reforms has often been introduced as an ‘after-thought’ and that it has only rarely been followed up with efforts to monitor progress in terms of gender equality. Moreover, these efforts are hampered by the generalised dearth of gender-disaggregated data on land-related issues.

Nonetheless, today land legislation in many developing countries contains provision for equal opportunities for men and women in terms of land rights and many countries allow – and in some cases even actively promote – joint land ownership of husband and wife. Moreover, several countries have passed legislation that formally abolishes discriminatory practices, including on the basis of gender, under customary as well as under statutory land tenure. However, these legal provisions do not automatically translate into gender equality in terms of land tenure. While they contribute a significant part of agricultural labour, not only in sub-Saharan Africa but also in Asia and Latin America, and often also enjoy access to land, women constitute only 18 % of landowners in Latin America and the Caribbean, 15% in sub-Saharan Africa and 11% in South and Southeast Asia, and several observers note that women’s access to land is shrinking rather than growing in many places, often in conjunction with increasing pressure on land.

Several factors contribute to explain these apparent discrepancies:

FAMILY LAW IS AS IMPORTANT AS LAND LEGISLATION IN PROVIDING FOR WOMEN’S ACCESS TO LAND

Gender equality with respect to land not only depends upon the legal ability to hold land rights provided for through land legislation, but also upon family law such as laws regulating marriage and inheritance. In many places women obtain access to land upon marriage through their husband’s family or clan and this access may be lost upon divorce or the death of the husband. Often loopholes in laws, ambiguities or a lack of guidelines mean that laws are

not able to redress inequality. In Nicaragua, for instance, the law places children before spouses as heirs. Moreover, common-law relationships, which are commonplace in rural areas, are not recognised by statutory law. In Ghana, a woman’s inheritance rights depend on her ability to prove her contribution to the acquisition of property within the marriage. However, the Matrimonial Causes Act lacks guidelines to help courts determine the extent to which a spouse has contributed to the acquisition of property and it is difficult for rural women to ‘prove’ how much they have contributed when their primary contribution has been in terms of time and labour.

LAWS ARE IMPORTANT – THEIR IMPLEMENTATION AND ENFORCEMENT IS CRUCIAL

While legal frameworks are important as such, their implementation and enforcement is crucial. The fact that many African countries are under dual tenure systems makes legal coherence challenging, as there are often discrepancies between statutory and customary law. This is most visible where statutory law allows for customary law to be applied, even when the latter is entrenching discriminatory practices. In Zambia, for instance, cases relating to customary land are excluded from the laws that govern inheritance. Moreover, Zambia’s Lands Act, although ostensibly gender-neutral, ‘allows’ discrimination because it recognises customary practices.

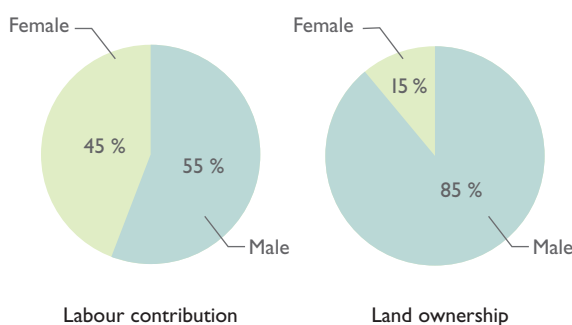
Even where the legal framework is comprehensive, partial or incomplete implementation and enforcement of the laws often means that, in practice, women remain discriminated against. While the presence of land administration and land dispute settlement institutions at the local level is important, they need legitimacy and local support in order to apply anti-discrimination laws. Resources – including in the form of training and capacity building in general and specifically with respect to gender issues – are crucial: the implementation of reforms in Ghana and Tanzania has been hampered by lack of adequate funding as well as by a lack of qualified staff. Moreover, in many countries implementation of the land legislation has often been project-led and thus had a sporadic character both in temporal and geographic terms, depending on the availability of donor funding.

WOMEN’S ACCESS TO LAND IS INCREASINGLY LIMITED AS PRESSURE ON LAND INCREASES

As land becomes scarcer, conflicts over land increase, and women’s land rights, which are often secondary land rights obtained through male relatives, tend to be weakened further.

In rural areas, women involved in agricultural activities often depend on family and kin for labour. Therefore, they may be

The relation between men’s and women’s agricultural labour contribution and land ownership in sub-Saharan Africa





Village Land Council Secretary, Kiteto District, Tanzania
 © Photo by Rasmus Hundsbæk Pedersen

GHANA'S LEGISLATION AND GENDER EQUALITY

Ghana's legislation on inheritance has been hailed as very progressive. The Intestate Succession Law, for instance, stipulates that in the absence of a will, two-thirds of the estate of the deceased passes to the spouse and children. However, the impact in practice of this law is debated. The persistence of traditional inheritance norms, the lack of knowledge of the law as well as costs related to its enforcement have been constraining women's ability to have these inheritance rights recognised.

reluctant to claim individual rights to land if this engenders a risk of losing this support or upsetting family relations. In some places individual female ownership or even joint ownership is not in line with customary practices. Women are often seen as not supposed to – and do not pretend themselves – to claim land rights, as this would be a sign of disrespect for their husbands, or disrespect for customs or, even, disrespect for God. Often efforts to promote women's land rights are confronted with resistance to the very idea of female ownership of land. As a local participant in an NGO-led project aiming to promote women's land rights in rural Zambia put it, the slow pace at which the programme was implemented was due to the fact that "some community members are deep-rooted in anti-women land

rights belief." Overcoming such cultural barriers may take time and practice, laws and sensitisation workshops alone are not sufficient.

LAND INSTITUTIONS ARE LESS ACCESSIBLE FOR WOMEN

Institutions meant to administer and back land rights, even when they are represented at the local level, tend to be less accessible to women. There are several facets to this lack of access. First, women may not even be aware of land registration possibilities, nor have the legal literacy necessary to be able to claim the enforcement of their rights. Second, the costs related to both registration and dispute resolution processes often means they are out of reach of poor women. Third, women may feel intimidated in official proceedings such as those of legal courts and, as mentioned above, they may feel that they are not even entitled to have their rights enforced.

In Zambia for instance, where land administration is not decentralised below district level, registering land is costly and time-consuming. Likewise, in cases of disputes over land or land inheritance, women may shy away from using state courts for practical, financial and cultural reasons.

In countries where customary law applies, the role and accessibility of customary institutions with regard to women's ability to access land or to have their rights enforced has been debated and the evidence is mixed. Often hailed



as being ‘closer to the people’ and ‘more accessible’, it has also been shown to be discriminatory to women. However, in Zambia and Niger among other places, engaging traditional authorities in working for women’s land rights has yielded positive changes both in women’s land access in practice and in local perceptions of it.

In addition, not only customary but also statutory land institutions tend to be staffed with men and to address men rather than women when performing outreach activities. Efforts to establish sections to specifically attend to women’s concerns or to ensure a more equal representation of women among the staff of such institutions, including cadastral survey units, land registries and land tribunals, may be important, although not in themselves sufficient, steps towards achieving non-discrimination on the basis of gender.

NIGER: WHEN LAND IS IN SHORT SUPPLY

For the past 20 years women in the region have increasingly been denied access to land. Little by little women have lost their traditional rights to own and inherit land. In addition, husbands have ceased giving their wives fields to cultivate and have started to seclude the women inside their homes.

Source: CARE-Denmark (2013). Women’s fight for land. Lessons learned from CARE Denmark’s Women and Land Initiative in Niger.

“The issue of men and women did not happen in Europe as a revolution. It is an evolution. Why do you want it to be a revolution in Africa? Let it evolve and we’ll get there”

– *Official in the Tanzanian Ministry of Lands*

FORMALISATION AND INDIVIDUALISATION OF LAND RIGHTS MAY JEOPARDISE WOMEN’S LAND ACCESS

In many parts of the world women hold access to land primarily through secondary land rights, e.g. through their male relatives. The focus on registration of existing land rights characterising the new wave of land reforms entails the risk of jeopardising women’s access to land. Indeed, while on the one hand it has been argued that the registration of individual rights to land, including to customary land, would enhance the tenure security of landholders, on the other hand these processes may weaken women’s rights. Knowing that secondary land rights may be registered and thus converted into primary land rights and subsequently formalised, some male relatives become hesitant to grant secondary land rights to women in the first place, as it would imply the risk of losing clan or family land to individuals from other clans or families. This reluctance is likely to be even more pronounced in cases where the land reform process fails to recognise the customary land authorities and where emphasis is exclusively on the registration of individual land rights.

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