



USAID ISSUE BRIEF

LAND TENURE, PROPERTY RIGHTS, AND GENDER

CHALLENGES AND APPROACHES FOR STRENGTHENING WOMEN'S LAND TENURE AND PROPERTY RIGHTS PROPERTY RIGHTS AND RESOURCE GOVERNANCE BRIEFING PAPER #7

BACKGROUND

While many people in the developing world lack secure property rights and access to adequate resources, women's access to and rights over resources are further disproportionately limited by socio-cultural factors. In patriarchal cultures—predominant in much of the world—men as *de facto* heads of households have the largest role in decision-making about resources at both the household and community level, meaning women have disproportionately fewer rights to land and property (Flintan 2003).

Improvements in women's access to and control over economic resources have a positive effect on a range of development goals, including poverty reduction and economic growth (UN 2009). Rural women in particular are at the strategic center of reducing hunger, malnutrition, and poverty because they produce 60%–80% of food in the developing world.¹ The FAO estimates that, globally, almost one billion people are undernourished and more than three million children die each year from under-nutrition before their fifth birthdays. Women play a central role in household food security, dietary diversity, and children's health.

When considering household well-being, it is important to consider who within the household manages the family's resources, including land, as women are much more likely than men to spend income from these resources on their children's nutritional and educational needs (Quisumbing 1996). Data from Central America indicate that an increase in female landholdings is associated with increases in household food expenditure and levels of child educational attainment (Katz and Chamorro 2002). Similarly, a study in Nepal suggests that children of mothers who own land are significantly less likely to be severely underweight because those women are more likely to have control over household decisions (Allendorf 2006). Another study indicates a positive relationship between the amount of assets, including land, that a woman possesses at the time of marriage and the share of household expenditures devoted to food, education, health care, and children's clothing (Quisumbing and Maluccio 2002).

Secure rights to land—including the right to manage it and control the income from it—go beyond mere access. For a majority of women, access to land and property essential for food production and sustainable livelihoods is dependent on natal and marital affiliations. Thus, women can lose rights to land when there is a change in marital status due to marriage, divorce, or death of a spouse. Interventions must focus not only on women's rights to access land but on the cultural and social factors that prevent women from obtaining secure rights to land, which are not dependent on their marital status (FAO 2007). This issue paper presents challenges and approaches for



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The FAO estimates that women produce over 50% of all food grown worldwide and 60%–80% of the food grown in most developing countries, yet women own less than 2% of the land.¹

¹ FAO, <http://www.fao.org/sd/fsdirect/fbdirect/fsp001.htm>.

strengthening women's land tenure and property rights and provides recommendations for policy formulation and implementation.

CONCEPTUAL FRAMEWORK AND CRITICAL AREAS

Secure rights to land and property for women generate economic and social benefits.

There are both economic and social benefits when women have secure land rights. Property rights in land—whether customary, formal, or religious—provide economic access to key markets and social access to non-market institutions such as household- and community-level governance structures (COHRE 2004).

Secure land rights confer direct economic benefits because land: is a key input into agricultural production and enterprise development; can be used as a source of income from rental or sale; and can provide collateral for credit where strong, well-regulated land markets exist. Women may not fully reap these benefits if they do not have legal and socially-recognized rights to individually- or jointly-held land.

World Bank research shows that by 2009, worldwide investors had expressed interest in 45 million hectares of farmland in the developing world (WB 2010). The significant increase in land values and global investments in farmland by investors, financial institutions, and governments sparked by the 2008 food price shocks will increase women's vulnerability if their participation in decision-making and their consent is not considered. For example, a study of Maragra sugar plantations in Mozambique's Manhica district found that while women enjoy equal rights to access land under Mozambique's 1997 formalized customary land law, they lack decision-making power over customary land. Thus, most women do not have long-term commercial leases with investors (Forum Mulher 2010).

The economic benefits of land apply to both rural and urban land. When title to informal urban settlements is secured, families are able to make structural improvements and lobby the government for better services, resulting in better sanitation and living conditions. Studies have found that women who have secure urban tenure in India have higher self-esteem, are better able to participate in local committees and governance structures, and are able to invest in their homes (Baruah 2010).

Furthermore, providing rental housing is a major livelihood for women in slums (Gilbert 1999). Other studies have found that secure land and property rights can enhance women's abilities to participate in informal trading and negotiate access to higher income emerging markets in the formal sector (Charmes 2000).

In addition to the short- and medium-term economic gains, women with stronger property rights in land are less likely to become economically vulnerable in their old age, in the event of the death of their spouse or divorce, or if land is sold without their consent. In Ethiopia, it was found that women's land rights within marriage may give them greater claims to assets upon divorce or the death of their husbands (Fafchamps 2002).

Aside from economic gains, land and property rights can empower individuals to participate more effectively in their immediate communities and in the larger civil and political aspects of society. Women with property rights are more likely to be active members of their communities, and community institutions themselves are more likely to be responsive to the needs of women as a result (FAO 2002).

Gender-equitable resource rights are essential for food security.

Rural women in sub-Saharan Africa are 68% more likely to be malnourished than urban women, and "malnourished mothers are more likely to die in childbirth and to give birth to low birth-weight babies who are more likely to have stunted growth" (Uthman 2008). Securing and recognizing women's land rights can increase agricultural productivity and shared-household decision-making and thereby increase the total amount of resources available to the family for nutrition and food security (Allendorf 2006).

A country-wide study in Uganda shows how land tenure insecurity can impact agricultural productivity and food security. When women farmers did not have independent and secure rights to the land that they were farming, many chose not to let it lie fallow during the optimal periods. Since their rights to use the land were insecure and dependent on a relationship with a male, the women feared that not using the land for one season would impact their longer-term access. The land was therefore overworked. The study concluded that when women are forced to struggle to maintain control of their land, productivity and income fall (Mason and Carlsson 2005). Similarly, a study in Kericho, Kenya, shows that women neglect tending tea plantations because

"Women farmers hold the key to sharply reducing world hunger. First and foremost, particularly in places like Africa where the hunger problem is most severe, women produce most of the food. In some countries, 70%, 80%, even 90% of the food people consume is produced by women small farmers."

-ActionAid Executive Director Peter O'Driscoll

they have limited control over proceeds from the tea, resulting in increased household tensions and lower productivity (ROAPE 1993).

When women farm, they prioritize growing food for the family, but they are commonly overlooked in agricultural policy. Until recently, investment in smallholder agriculture had been decreasing, and aid to rural development has decreased by 50% over the past 20 years (ActionAid 2008). Studies have found that “female farmers are equally efficient as male farmers, once individual characteristics and input levels are controlled for” (Quisumbing 1996). Studies conducted in sub-Saharan Africa conclude that total efficiency in agricultural production would be improved if resources were allocated more equitably across men’s and women’s land plots (Allendorf 2006). In Peru, a study found that 71.4% of Peruvian women with land rights live in male- or dual-headed households. The same study found that peasant farmers in Peru felt that “female land rights are strongly associated with better outcomes for owner-operated farming households” (Deere et al. 2004).

Despite the positive relationship between secure land rights and an increase in agricultural productivity, and the fact that women play a significant role in agricultural productivity, food security programs designed to formalize land rights may weaken—rather than strengthen—the land rights of women. If women are not taken into consideration, formal rights to land may be documented in the name of the head of the household only, and the head of household is usually a male, as evidenced by Kenya, Uganda, and Zimbabwe’s post-independence land registration and formalization experiences (Sunungurai 2010, Khadiagala 2002, Syagga 2006).

Food security affects HIV/AIDS prevalence.

The status of women’s rights to land and housing is linked to the transmission, prevention, and mitigation of the effects of HIV/AIDS. A study in a peri-urban area of South Africa found that women who are able to acquire their own property are significantly more capable of escaping abusive relationships and leaving sexual partners who refuse to use condoms, thereby lowering their risk of HIV/AIDS infection. Examining one area of rural Uganda, the same study found that having the right to rent out household land enabled women to better cope with the impacts of losing a partner to HIV/AIDS (USAID 2008).

Women’s food security (defined as having sufficient quantity and quality of food to eat on a continual basis) is also an important determinant of their ability to protect themselves and their children from HIV infection. HIV prevalence is highest in the most food-insecure countries; hunger is both a result and an exacerbating cause of HIV/AIDS. In South Africa and East Africa—the sub-regions with the highest HIV prevalence—40% of the population is undernourished (ActionAid 2008).

Worldwide, women make up 60% of the chronically hungry (ActionAid 2008). When women are food insecure, they are more likely to engage in unsafe sex. A study in Botswana and Swaziland found that women with insufficient food were 70% more likely to lack control in sexual relationships, 80% more likely to sell sex for money, and 70% more likely to engage in unprotected sex (Weiser et al. 2007).

INSECURE LAND AND PROPERTY RIGHTS FOR WOMEN IN AFRICA

Women’s insecure land tenure and property rights in Africa can be linked to a mix of economic and social pressures that have profoundly transformed social structures and land tenure systems. These factors include colonial and post-colonial private property legislation, an influx of investment options, an increase in the resource value of land, the liberalization of markets through structural adjustment programs in the 1980s and 1990s, commodification of land, the growth of land markets, population increase, large-scale resettlement of people, rise in competition over land, “land scarcity,” and recent large-scale land acquisitions (Cousins 2009, FAO 2007).

The introduction of private property tenure systems and the growth in land markets sustained by post-independence governments has triggered changes in customary tenure regimes (FAO 2007). The largest impact has been on the social networks that existed in earlier customary systems. Where women’s access to land (whether in natal or marital homes) was once protected by the clan and patrilineage, social safety nets are now highly individualized and less certain. The following are implications of these changes.

“The rules, norms, and customs which determine the distribution of land and resources are embedded in various institutions in society—family, kinship, community, markets, and states. The distinctions between ownership, access, and control, and between statutory and customary laws, have resulted in varying degrees of complexity in the distribution of land and property” (World Development Report 2009).

Inequities arise from transforming customary laws and practices.

Post-colonial land distributions—and formalization of individual land rights—and subsequent land transactions frequently vested titles to land in the head of the household only. These were most often men, according to patrilineal custom, and this vesting shifted the traditional concept of what it means to have rights to land. One study in Uganda observes that now “[t]he man as an individual, rather than as the responsible representative of his family, has become the person with all the authority to use, sell, and control land” (Adoko and Levine 2005).

While clan elders continue to facilitate allocation of land and patrilineal inheritance procedures, their authority to regulate and protect women and children from land grabbing, distress land sales, and forced eviction upon spousal death or divorce has been weakened; this has led to increased female poverty and household food insecurity. Resulting rising levels of female landlessness and loss of assets have also exacerbated women’s vulnerability to HIV infections and accelerated the spread of HIV (Kimani 2008).

Moreover, a rise in forced sales of customary land without regard to women’s and children’s rights has resulted in the loss of livelihoods, as documented by studies in Uganda (Adoko and Levine 2005). In Kenya, where women head 70% of all squatter households, more than 25% of female slum-dwellers report having been displaced from their rural homes as a result of land dispossession (Benschop 2004). The current quest for farmland in Africa by large-scale investors is likely to cause greater vulnerabilities among women because their claims to land rights are generally weak. As a study by the World Bank indicates, “countries with poorer records of formally recognized rural land tenure...attracted greater interest” from investors (WB 2010).

Statutory law impacts women’s land rights.

Traditional land tenure systems have often been transformed in ways not beneficial to women, while positive changes in statutory law to protect women’s rights may have a limited effect due to lack of enforcement.

Statutory law—if enforced—can support women’s secure rights to land, but enforcing the law can be difficult because the justice system is often inaccessible and costly, and high land values provide an incentive for illegal land grabbing. In Rwanda, where 50% of women are widows, 34% head households as a result of the 1994 genocide. While the formal legal system and Land Law provide equal rights to land for women, including equal rights to inherit land, a study in Bugesera district, an area with the highest number of cases of women involved in land disputes, found that the most common cause of disputes was women trying to enforce their right to inherit land. The study shows that the majority of defendants in the disputes were male relatives and spouses of the women (RWN 2010).

A study on the impact of statutory land policies and land reform in Uganda’s Kapchorwa and Luwero districts found that a majority of women did not have land registered in their names. In most cases, the few women who purchased land registered the land in their husband’s names, according to custom. The same study showed that women have limited knowledge of their property rights under the legal system and that gaps in the legal system prevent inheritance and co-ownership of property acquired in marriage (WLLA 2010).

Statutory law can also weaken customs that favor women. The Malawi National Land Policy—which has been passed but is being implemented very slowly—provides for all children to inherit land equally from their parents. However, some ethnic groups in Malawi are matrilineal and matrilocal, and their current customary system is more protective of women’s land rights than the new law (ECA 2003, Land Policy 2002).

INSECURE LAND AND PROPERTY RIGHTS FOR WOMEN IN ASIA AND LATIN AMERICA

Women in Asia and Latin America face similar challenges in securing and enforcing rights to land. As in Africa, rights to land have to be both legally and socially recognized to be enforceable. In many cases, such as those listed below, social recognition is more difficult to achieve.

Customs influence implementation of formal law.

In many Asian and Latin American countries, the formal law strengthens women’s property rights, but social norms limit their willingness to enforce the law. In India, although women have the same legal rights to own land as men, less than 10% of privately-held land is in the name of a woman. One reason for this is dowry, which is prohibited by formal law but is nonetheless widely practiced. The daughter’s dowry is viewed by her family as her portion of the inheritance, even though it is typically given to her new husband and his family. Therefore, although women have formal rights to inherit land, these rights are trumped by the social understanding that women’s dowries represent their inheritance (Scalise 2009).

In Pakistan, dowry is similarly recognized—under customary law—as compensation for inheritance; women’s property rights are based on both Muslim personal law and tribal custom. Although, under Sharia’a law, women

have the right to inherit half as much as men; in practice, the dowry custom is followed and women rarely inherit (Scalise 2009).

Similarly, in Tajikistan, women seldom hold title to land, despite the fact that formal law provides for wives to exercise property rights and makes joint ownership of land by husbands and wives the default property regime. This is primarily because many rural marriages are not documented and these provisions do not apply to marriages that are not registered. Moreover, customarily wives only have rights to their dowry of moveable property, have no rights to household property, and can only own land if they have been divorced, widowed, or abandoned. A study conducted in 2007 found that these restrictions on land ownership are widely accepted by women. Because of this, even where formal laws might be beneficial to women, in practice, they are often irrelevant (Giovarelli 2008).

In China, the 2002 Rural Land Contracting Law states that “men and women shall enjoy equal rights with respect to the contracting of rural land. The legal rights of women shall be protected in the contracting process, and women’s rights to contracting land shall not be deprived or illegally restricted by any unit or individual” (Rural Land Contracting Law 2002). However, in practice, because men are generally regarded as the heads of household and land is allocated to households, women frequently lack control over household land.

During the land reform in Chile, land was given to the household head. The only way for women to get title to land, therefore, is through the land market or through inheritance. Although inheritance of land is formally equal for all children, in practice it has been found that “female claimants seem particularly vulnerable to pressure from male siblings to renounce their legitimate rights of ownership,” meaning that to avoid household conflict, daughters rarely exercise their inheritance rights (Deere 1997).

The situation is similar in many other Latin American countries. Despite having highly progressive marital property and inheritance rights for women, entrenched patriarchal values pose obstacles to securing women’s land rights. While a vast majority of these countries provide full or partial ownership of property as the default marital regime, inheritance rights of boys and girls are equal, and countries like Colombia and Bolivia restrict testamentary freedom to ensure widows and children are entitled to a share of inheritance, enforcement is still often dependent on custom. In Nicaragua, for example, some women reported that despite joint titling being mandatory, women failed to exercise control rights over land (Deere 2001).

Customs can supersede more progressive civil and religious law.

There are also some examples of formal law deferring to customary law, thereby formalizing it. For example, in Afghanistan, there is a pluralistic legal regime that recognizes statutory law, then religious law where statutory law is silent, and finally customary law. The Civil Code establishes that religious law governs property rights and inheritance law generally. However, it specifically recognizes customary law in the case of women’s property rights. This means that when women are involved, customary law is applied first. Therefore, even where formal laws grant women rights, they are often not implemented in practice, and this lack of implementation is legal. For instance, although both the Afghan Civil Code and Islamic Law provide that women are entitled to inherit, customarily the husband pays his wife’s family a bride price that then terminates her family’s obligations to her. Further, while statutory law mandates that women receive a dowry on marriage that is exclusively her property, dowry is not customarily given. Since custom is given precedence over formal law, wives are often left without a dowry or the chance to inherit and, therefore, are left without any economic security (Scalise 2009).

PROMISING OPPORTUNITIES FOR STRENGTHENING WOMEN’S LAND TENURE AND PROPERTY RIGHTS

Women’s land rights must be strengthened. USAID can contribute to this goal by working with host governments, the private sector, and civil society to enhance integration of gender-equitable land tenure and property rights considerations in policies and programs

Innovative practices and programming have been developed to facilitate gender-equitable property rights in many parts of the world. These innovations provide valuable examples of how the complex issue of women’s access and rights to land can be addressed in different contexts. In developing strategies to address these issues, USAID might consider the following examples.

Legal and Policy Reform

- **Statutory laws:** In a number of developing countries, laws have been enacted that protect women’s land rights. While formal laws by themselves are not enough, formal law does create the space for change. In Guatemala and India, for instance, state-sponsored land programs require that land documents be in the name of both spouses or in the name of the female only (Deere and Magdalena 2001). In India, ownership rights for women are encouraged by incentives offered at the state and local government levels, including a reduced stamp duty rate for land that is registered jointly or in the name of the woman only (DPGR 2006).

In the Mozambique constitution and land and family laws, women have equal rights to use and benefit from land, and women are joint owners of community title (FAO 2010). Kenya's new constitution and land policy provides for joint ownership of marital property and equal succession rights for men and women. In Ethiopia, photographs of spouses on joint land title deeds have been used to secure women's land rights in marriage (USAID 2008, ARD 2006).

- **Formalized customary laws:** In other countries, governments have recognized and strengthened customary laws in ways that emphasize the rights of women. For instance, Tanzania's Village Land Act of 1999 grants customary rights of occupancy to families and simultaneously protects "the right of every woman to acquire, hold, use, and deal with land, to the same extent and subject to the same restrictions...as the right of any man" (Article 3(2), VLA 1999). Because applications are required to be presented and signed by at least two family members, and Village Adjudication Committees must record when two or more persons or groups of persons are co-occupiers and users of land, spousal and family rights over property are protected. Land rights may not be surrendered or assigned if that would defeat the occupation right of any woman or leave the assignor's dependents destitute. At least three of the seven village council members and at least four of the six to nine adjudication committee members must be women (FAO 2010, VLA 1999). Although this approach is a good example of securing women's tenure rights in customary systems, it is also expensive and involves codifications that may constrain the flexibility inherent in customary tenure systems (FAO 2007, Fitzgerald 2005).
- **Hybrid laws:** In Mozambique, the state owns all the land in the country and grants land use rights to communities that occupy the land according to customary tenure. Its 1997 Land Law allows these communities to abide by their own customary rules and governance structures within their collective holdings and adapt them as needed as long as they do not contravene principles of the constitution, including the principle of gender equality in ownership of land. Ideally, this means that women have full rights to participate in all decisions made about the land (FAO 2010, Land Law 1997).

Project Design and Implementation

By taking women's rights into account in both design and implementation, projects can complement and support legal reform. Below are examples of how this can be done.

- In Kenya, the USAID Women's Property Ownership and Inheritance Rights Project advocated for women's property rights through highly respected local tribal elders, helping widows with HIV who had been previously evicted from their homes to regain control over land and family property. In some cases, the program assisted with legal costs for women seeking redress through the courts as a way of creating awareness of the legal system as another alternative for dispute resolution (USAID/Kenya 2009).
- A USAID/Kenya horticulture program helps women to grow cash crops that are not traditionally grown by men, such as high-value indigenous vegetables. Women often have more control over land and income when farming crops that are traditionally farmed by women (Fintrac 2009).
- In The Gambia, with the consent of the community, an agricultural development project allocated land to recently-settled landless women who in return rehabilitated local swamplands for rice cultivation (World Bank/FAO/IFAD 2009).
- With UN-Habitat's assistance, Women Land Access Trusts (WLAT) in Kenya, Tanzania, Uganda, Ghana, and Burundi provide financial intermediation for poor urban women to access land, housing, mortgage finance, and empowerment through training (WLAT, UN-Habitat).

CONCLUSIONS AND RECOMMENDATIONS

The limited research on the benefits of women gaining secure rights to land and property suggest positive results: an increase in women's participation in household decision-making (Field 2003, Datta 2006); an increase in net household income (Deere 2004); a reduction in domestic violence (Panda 2005); an increased ability to prevent being infected by HIV/AIDS (USAID 2008); and increased expenditures on food and education for children (Katz 2003, Doss 2005),

Understanding the complexity surrounding women's land rights is critical to ensuring that those rights are protected and improved. Because laws, customs, and norms can change from country to country, and even vary between regions and ethnic groups within countries, to secure women's land and property rights women must be meaningfully included in the design and implementation of projects and policies. Still a few broad recommendations can be made based on lessons learned:

- Support legislative and institutional reforms that build on local tenure systems and practices that secure women's rights to land and property. Strengthen common property law to enable legal claims. Understand how land laws and family laws have an impact on women's secure rights to land and property.
- Attempt to identify all property rights holders and/or resource users within households and within communities prior to the implementation of land reforms to ensure these rights are respected, secured, and enhanced. Consider registration systems that record multiple use rights as well as ownership. Ensure that both husbands and wives names are listed on land documents and registered. Document and register the rights of those living in consensual union or married under customary or religious law.
- Include women's voices, knowledge, and interests in land programs. Policy formulation should be informed by systematic field-level research to ascertain opportunities for, and barriers to, strengthening women's rights.
- Support rights awareness and positive behavior change among women, local customary institutions, and formal legal systems regarding women's land and property rights. Include men in these programs.
- Support programs that empower women through cooperative action via women's groups or associations. Invest in governance structures, both formal and customary, that promote inclusivity, transparency, and accountability.
- Support alternative dispute resolution, land claims courts, or legal aid to help provide legal recourse when women's land rights are violated.
- Monitor gender impact of land and property reforms and legislation.
- Support legislative changes that improve transferability of land and productive assets via secure and enforceable contracts, specifically rental agreements.
- In urban areas, and where municipal budgets and/or donor funding allow, provide low interest loans for the poor to purchase or rent land, or to acquire or improve housing. Such loans will benefit women if adequate attention is given to strengthening their empowerment, interest, knowledge, and engagement in the services offered.
- In rural areas, strengthen land rental markets and increase access to market opportunities to increase the value of the land and asset holdings. Support value chain projects that deliver inputs when and where women need them. Target extension services to crops that women are involved in producing or to livelihood strategies specific to women.

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***Further Reading on USAID Land Tenure and Property Rights Interventions: See "USAID Property Rights and Resource Governance Information Portal" <http://usaidlandtenure.net/>.*

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