

Land Tenure Reform and Gender Equality

UNRISD research finds that the new generation of land tenure reforms introduced in the 1990s is not necessarily more gender equitable than earlier efforts, even though women's ability to gain independent access to land is increasingly on the statutes.

The Issue

It is now widely recognized that the agrarian reforms implemented from the 1950s through the 1970s were gender blind. These reforms were often based on the assumption that assets allocated to the head of household—typically male—would benefit all household members equitably. Not only did these reforms ignore the well-being of women and their dependents in the event of household dissolution (upon separation, divorce or widowhood), they were also blind to the ways in which gender-based inequalities in access to land exacerbated married women's (unpaid) workloads, economic insecurity, and bargaining power within households.

These reforms took place at a time when gender equality was marginal to the policy agenda and when women's organizations lacked their current visibility. In the 1990s the reform of land tenure institutions once again emerged as a prominent issue for international development agencies. But was this new wave of reforms any more gender sensitive than those of the past?

A main focus of the more recent reforms was land titling, designed to promote security of tenure and stimulate land markets. The reforms were often driven by domestic and external neoliberal coalitions, with funding from global and regional organizations subscribing to the position that *private property rights* are essential for a dynamic agricultural sector. Yet it would be too simplistic to view the diverse national experi-

ences of land tenure reform as top-down neoliberal undertakings. Democratic transitions, though often fragile, have opened up new possibilities for agrarian reform, placing inequalities in land distribution back on national agendas. The involvement of social movements, including women's movements, and their domestic and international allies has been the other hallmark of recent policy debates on land. The extent to which women's interests are reflected in the new generation of reforms is the key question examined in this Research and Policy Brief.

Research Findings

The potential and limitations of the law

The studies carried out under the UNRISD project document both considerable progress throughout the 1990s in making formal laws pertaining to land more gender equitable, as well as repeated failures in actually putting the statutes to work. The reasons for failure are legion—from budgetary constraints arising from fiscal discipline, to administrative and institutional weaknesses within government in the management of gender policy, to weak political accountability for gender equality within parliament and society. Women also tend to be unfamiliar with legal processes and encounter difficulties when they try to access courts due to lack of time, resources, constraints on mobility and judicial bias.

The commitment to gender equality in post-apartheid South Africa, enshrined in the constitution, is often held up as exemplary. There, land reform

UNRISD Research on Agrarian Change, Gender and Land Rights, 1999–2002

The project explored the extent to which ongoing land tenure reforms were addressing gender-based inequalities in land tenure institutions. The lack of systematic gender-disaggregated data makes it difficult to determine the precise magnitude of the problem, but the information available from case studies suggests that it is serious in most countries. Three countries, characterized by diverse land tenure institutions and trajectories, were selected for in-depth research: Brazil, South Africa and Uzbekistan. To interrogate the blanket policy prescriptions that are often made with regard to women's land access without any reference to regional specificities, a regional study on sub-Saharan Africa was commissioned, complemented by country studies on Ghana and Tanzania. Three overarching questions guided the research:

- Have high-level policy commitments to gender equality (enshrined in constitutions and civil codes), and bottom-up pressure from women's advocacy groups, been effective in making government practices more gender equitable?
- Do poor women benefit from "market based" approaches to land reform?
- Does the new consensus on the potential of "customary" systems of land tenure to meet the needs of all land users and claimants adequately reflect the constraints that women are likely to face in such systems?

attempted to meld a strong commitment to the goals of social justice (including gender equality) with the principles of market-led land reform. Yet at the level of implementation, the commitment to gender equality is much less evident. The research attributes the neglect of gender concerns at this level to several factors, including institutional and operational weaknesses, absence of political accountability for gender policy at the highest level, and the relative weakness of the women's movement, especially in rural areas, since 1994.

In Brazil, the 1988 constitutional guarantees of women's land rights were combined with pressure from women in dynamic rural unions and in the nascent landless movement to create what would appear to be highly propitious circumstances for gender-equitable land reform. Yet outcomes have been far from impressive. By the mid-1990s, rural Brazilian women constituted what was, by regional standards, a modest proportion (12.6 per cent) of reform beneficiaries. This was largely because securing women's land rights was not the priority of any of the social movements, and the main social movement determining the pace of agrarian reform, the landless movement, considered class and gender to be incompatible. Land titling efforts in seven other Latin American countries in the 1990s produced mixed results. Front-runners like Colombia made joint titling mandatory, while the large-scale privatization of the *ejido* sector in Mexico (where lands had previously been held collectively, although generally worked on a household basis) trampled upon women's rights enshrined in the civil code by ceding only one title per household and issuing it in the name of the (usually male) household head.

The fundamental question, however, is whether such difficulties have rendered statutory law, whatever its purpose and character, totally pointless. In other words, is there any purpose to be served by legislation? The answer emerging from the UNRISD project is a qualified yes. Yes, because it sets a benchmark against which progress can be measured; and because it is a discursive resource that rural women and their advocates can use to establish their right to access material resources, be it through courts or through informal processes of dispute settlement. But this must be qualified, because the legislative framework is one among many tools that women will use in their daily struggles to access resources.

Whether states actively promote gender equality principles, and whether political parties and social movements endorse gender equality and enjoy a significant presence, are important for the representation of rural women's interests. In Uzbekistan, one outcome of the "transition" has been the shift in the government's position and ideology, with a new emphasis on "traditional" Uzbek values that stress women's roles as mothers and carers. Because these changes have taken place in the absence of women's movements or civic platforms where women's interests may be expressed, government directives to enterprise managers who are responsible for land allocation provide no incentives for including women as beneficiaries.

The limits of "market-friendly" land reform

In South Africa, the market-friendly land reform programme has been criticized for being "demand-driven". The main concern has been the state's inability, within the market-friendly straitjacket, to acquire and redistribute productive land proactively and on a sufficiently large scale. By March 2005, less than 3.5 per cent of the area designated as commercial farmland had been redistributed.

A strictly demand-driven programme also conflicts with the policy aim of reaching women, because it overlooks the ways that power relations and divisions within communities structure how "demand" is expressed, and by whom. It commits the state to responding to applications from already constituted groups, in which it is likely that women's role will be a dependent one. The pressure on government to exit as soon as land has been transferred further limits its effectiveness as a development agent. The major achievement to date has been to ensure that women are chosen to serve with men on land reform committees; however, this has not guaranteed representation for women's interests, nor is women's future representation assured.

Form of Acquisition of Land Ownership in Six Latin American Countries (per cent, by sex^a)

	Inheritance	Community ^b	State	Market	Other	Total	Sample size
Brazil^c							
Women	54.2	—	0.6	37.4	7.8	100	4,345
Men	22.0	—	1.0	73.1	3.9	100	34,593
Chile^d							
Women	84.1	—	1.9	8.1	5.9	100	271
Men	65.4	—	2.7	25.1	6.8	100	411
Ecuador^e							
Women	42.5	—	5.0	44.9	7.6	100	497
Men	34.5	—	6.5	43.3	15.6	100	1,593
Mexico^f							
Women	81.1	1.8	5.3	8.1	3.7	100	512
Men	44.7	14.8	19.6	12.0	8.9	100	2,547
Nicaragua^g							
Women	57.0	—	10.0	33.0	—	100	125
Men	32.0	—	16.0	52.0	—	100	656
Peru^h							
Women	75.2	1.9	5.2	16.4	1.3	100	310
Men	48.7	6.3	12.4	26.6	6.0	100	1,512
Couples	37.3	1.6	7.7	52.6	0.8	100	247

Notes: ^a Distribution by sex is statistically significant at 99 per cent level of confidence. ^b In areas of community ownership, distribution by the communal authority is one channel through which women access or acquire land. ^c "Other" includes donations by private parties. ^d For farms larger than 5,000 square meters only. ^e "Other" includes imperfect donations by private parties and other responses. ^f Based on the total parcels acquired by 1,586 individuals assuming principal agriculturalist is the owner. ^g "Other" includes land held in usufruct, which is treated as private property. ^h From a nationally representative sample of *ejidatarios* and *poseionarios*; based on total parcels titled to 1,576 individuals. "Other" includes adjudications based on judicial actions. ⁱ For individual land owners only. ^j "Other" includes parcels held in co-ownership with family and nonfamily members of unspecified sex.

Source: Carmen Diana Deere and Magdalena Leon. 2003. "The gender asset gap: Land in Latin America." *World Development*, Vol. 31, No. 6, pp. 925–947.

In Uzbekistan, international agencies have been heavily involved in setting the land reform agenda, insisting on privatization of collective farms. The establishment of secure and tradable property rights and the elimination of price distortions and production quotas have been central objectives. Despite the gradual nature of these reforms, the share of the private sector in agricultural production has increased substantially. This has led to the emergence of different categories of private holdings. Yet the management is almost exclusively in male hands, while the unpaid family labour that keeps the private holdings viable is predominantly female.

Although the empirical base is far from comprehensive, a judicious reading of the existing evidence, much of it case study material, points to severe limitations of land markets as a channel for women's inclusion (see table). Clearly, women are not a homogeneous social group; there are always groups of women, for example urban women in formal employment, or

women in peri-urban areas growing food for urban markets, who may have accumulated enough resources to purchase land in their own name with full property rights. But for the vast majority of women smallholders, market mechanisms are not likely to provide access to land.

Decentralization and devolution: Finding justice “closer to home”?

In sub-Saharan Africa, much land distribution and land access is governed by locally managed systems of “customary” rights. In the 1980s, the international financial institutions identified the absence of private property rights in land as a barrier to agricultural growth. Yet research carried out by the World Bank and the University of Wisconsin Land Tenure Centre in the early 1990s largely undermined such policy assumptions. Received wisdom within the World Bank’s Land Policy Division now seems to be swinging in favour of building on customary systems, even though individual land titling still routinely appears in policy documents advising borrowing governments on the need for further liberalization.

The positions adopted by some research and advocacy organizations active on land and sustainability issues (Oxfam and the International Institute for Environment and Development/IIED, for example) are initially very different from that of the World Bank, especially in their criticisms of liberalization. But they too prioritize local-level systems of customary rights (as a force against “land grabbing” by national elites and foreign corporate interests).

There is scant discussion, however, of how these local-level systems of customary rights might work in practice, including their capacity to deliver land to women. From a gender perspective, the main problem is that women have little power at *all* the decision-making levels implied by the land question: not only within formal law and government, but *also* within local-level decision-making processes. In some countries there are concerns about the role of “traditional” authorities and chiefs in rural local government, where the traditionalism espoused is hostile to women’s interests.

Where decision-making regarding land has devolved to informal community-based institutions, as in Uganda, women are finding “justice” by local courts discriminatory. Similar concerns have been raised about the decentralization of land administration in China, where the shift of power to local authorities, in the absence of clear instructions from central government, has led to the development of local practices and customs that violate national legal requirements to safeguard women’s land access.

Divisions within civil society and the difficulties of building alliances

At the national level, the liberalization agenda raises major concerns about land deprivation and heightened inequalities in land distribution. It has also been politically divisive, pitting civil society organizations against the state and causing rifts within civil society ranks.

Land tenure reform processes in Tanzania (1991–1999) coincided with the ongoing liberalization agenda and widespread concerns about its adverse social implications. In 1998, gender advocates allied with the National Land Forum to establish a stronger coalition. But this alliance soon confronted divisions within its ranks over how to reform discriminatory customary law, and the respective powers of state- and village-

level institutions. Gender advocates were far more critical of customary laws than the National Land Forum, and less convinced of the value of vesting land in village assemblies.

Another major controversy revolved around liberalization and the risks entailed by land markets. Some women’s rights advocates were critical of the liberalization agenda, given the highly adverse implications of private property regimes for resource-constrained women, who, along with pastoralists and people belonging to minority tribes, had seen their customary rights denied during past registration processes. Other gender advocates, however, did not share this dim view of land markets. In fact, some of the most influential gender advocacy groups supported the liberalization of land markets and land titling as opportunities for (some) women to purchase land on an individual basis.

Land is not a “magic bullet”

The reasons for rural female poverty and subordination are multiple and interconnected, as well as geographically diverse. In some areas of sub-Saharan Africa marked by severe land scarcity, an inability to access land constitutes a constraint on women’s farming; in other areas, women smallholders experience other constraints (inadequate access to labour and other inputs). Although women farm much less land than do men, this is not always because women are prevented from accessing land, but because they lack capital to hire labour, purchase inputs and access marketing channels.

In Uzbekistan, where collective enterprises have not been able to pay their workers’ wages, rural households have fallen back on household and subsidiary plots for self-subsistence, as well as other off-farm activities for survival. In this context, rural women are clamouring for land. But the research strongly underlines that women’s current land hunger must be understood in the context of both a wish to reinstate the terms of their former social contract with collective enterprises (which included a wide range of social benefits) and their despair given the lack of viable employment opportunities.

Rethinking the agrarian household: Shared and separate interests

Why has it been difficult for women to mobilize around individual land rights? On the one hand, in many cultural contexts access to and ownership of land is closely intertwined with male gender identities. In order to claim land, therefore, women require both support and government action that establishes the legitimacy of their claims. On the other hand, women may be reluctant to embark on either collective mobilizations or individual agitation to claim land because membership in a male-headed landed household provides them with a range of material and non-material benefits. While intra-household inequalities in access to resources are well documented, this does not mean that a woman’s level of well-being is unrelated to that of her husband or father. Women’s and men’s interests within marriage are both joint and separate, which is what makes gender struggles so complex. This is one of the reasons why joint titling has been effective in closing the gender asset gap in many Latin American countries.

Research in South Africa supports the view that women have a stronger interest in land reform that benefits their households and communities, than in individual land rights. They regard improvements in the security of household and community tenure positively, and there is support for mechanisms that will clarify and safeguard their own rights and

interests as members of households and communities through joint titles with their husbands, and inheritance rights for their daughters.

Implications for Policy and Research

- In recent years, multilateral agencies have supported gender equality goals. At the same time, they have been influential in advising governments on how to pursue a market-driven land reform programme. The UNRISD research has found that these two goals are in tension, especially in terms of their impacts on low-income women.
- If policy makers in national and international agencies are serious about their commitment to gender equality, then they need to be vigilant about the *kinds* of informal community-based institutions that are being legitimized and strengthened as appropriate decision-making forums for dealing with land. A key area for policy attention is how to strengthen and democratize these institutions to deliver social and gender justice.
- Women's rights advocates have been rightly concerned about the ways in which "traditionalist" discourses and "customary" practices are frequently used to deprive women of equal rights. But criticism of customary tenure should not lead to the oversimplified conclusion that land markets are a gender-neutral terrain. Indeed, in sub-Saharan Africa it can be shown that the introduction of modern forms of property titling has itself undermined women's land claims. Where land reform has been accompanied by individually registered title, women have often lost their customary claims to land while men's claims have been strengthened.
- Some feminist lawyers and legal rights advocates recognize the limitations in law as a vehicle for social change, acknowledging that there may be enormous resistance to equitable practices. While the gap between formal and substantive rights is often admitted, the assumption is that women's ignorance has prevented them from enforcing their rights. This downplays the strength of power inequalities and institutional biases. A broader analytical framework is required if the latter are to be adequately captured.
- Finally, the lack of systematic data on gender differences in ownership of and access to land (including detailed atten-

tion to marital and inheritance regimes that affect the success of policy interventions) is a serious lacuna for both policy and research. It requires urgent attention from national and international statistical organizations.

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