



DIIS REPORT

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Land administration, gender equality and
development cooperation
Lessons learned and challenges ahead

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Abstract

Most land reforms seek to enhance tenure security, encourage investments and thus promote economic growth. In addition, recent land reforms increasingly also attempt to secure women's and other vulnerable groups' access to land. This DIIS Report examines the role of development cooperation in land reforms and the extent to which donor organisations have addressed concerns related to gender equality.

The report reviews the reforms in fifteen countries in sub-Saharan Africa, Latin America and Asia, with a focus on Ghana, Tanzania, Uganda, Zambia and Nicaragua. Donor organisations have played an important role in land law reforms but also in related legal reforms such as succession law or marriage law, which have an important impact on women's access to and ownership of land. Legislation upholding gender equality is now present, albeit in different degrees, in most of the countries examined. However, the implementation of these legislative frameworks often does not follow suit, and women still face discrimination, in part due to social and cultural barriers and the inaccessibility of institutions able to support them. Moreover, gender concerns are also increasingly 'evaporating' in development cooperation policies. This is illustrated by the limited funding allocated to gender issues outside the 'soft' sectors of health and education and the weak implementation of gender mainstreaming in policies. The current inadequacy of gender-disaggregated data both in development cooperation and in national statistics e.g. on issues related to land tenure hampers efforts to effectively address issues related to gender equality and should therefore be corrected.

Abbreviations

AfDB	African Development Bank
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIDA	Canadian International Development Agency
DAC	Development Assistance Committee
DRN	Development Researchers' Network
EU	European Union
FAO	UN Food and Agriculture Organisation
GAD	Gender and Development
GII	Gender Inequality Index (UNDP)
ICARRD	International Conference on Agrarian Reform and Rural Development
IFAD	International Fund for Agricultural Development
ILO	International Labour Organisation
JICA	Japan International Cooperation Agency
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
SAP	Structural Adjustment Programme
UN	United Nations
UNCTAD	UN Conference on Trade and Development
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WB	World Bank
WCARRD	World Conference on Agrarian Reform and Rural Development
WID	Women in Development

I. Introduction

Land is again on the development agenda after a short break in the 1980s and early 1990s. A new wave of land administration reforms, often supported by the World Bank and other donors, has been initiated in recent years. Most reforms contain elements of decentralisation and the registration of rights, which are thought to enhance tenure security and economic growth. Apart from the overall intention of many land administration reform processes to enhance tenure security, encourage investments and thus promote economic growth, support for land administration reform is often accompanied by a wish to secure women's and other vulnerable groups' access to land and to support existing customary institutions. In addition to national-scale land administration interventions, a number of NGO-led interventions, supported by donors, are also seeking to improve tenure security through rights-based approaches.

Land in rural areas is the focus of this report. Rural areas are where most, particularly poor people live in developing countries, where land access has a direct importance for household food security, and often where the gap between customary practices and statutory law is the greatest. Moreover, women's activities on land and their ownership of or access to land are central to their livelihoods. Agriculture is still 'the most important source of employment for women by a wide margin in South Asia and in sub-Saharan Africa' (FAO 2011a: 5). In Asia, while there are sub-regional differences, the average female share of the agricultural labour force is about 42%. In Sub-Saharan Africa it is around 45%, and in Latin America it was just over 20% in 2010. Juxtaposing these figures with figures on female land ownership shows that the latter is not something that is settled once and for all, even though it has increased in some countries during the past three decades. According to estimates from FAO, women constitute around 18% of landowners in Latin America and the Caribbean, 15% in sub-Saharan Africa, and 11% in South and South East Asia (FAO 2011b: 9).

This report forms part of a larger research programme financed by the Danish Foreign Ministry examining what works and what can be achieved by development assistance across a number of sectors, including gender and land. Based on a review of recent literature, fieldwork-based scholarly research supplemented with evaluations of NGOs and state-backed land-titling and land administration interventions, the present study on Land Administration, Gender Equality and Development Assistance seeks to:

- i. provide an overview of on-going land administration reform processes – state- as well as non-state driven – taking place in selected developing countries, with a particular emphasis on Danish partner countries;
- ii. provide an overview of types of support through development assistance for such processes;
- iii. examine the extent to which such processes particularly address issues related to women’s access to land;
- iv. take stock of documented results and the social and economic impacts of support for land administration; and
- v. suggest ways in which development cooperation can provide support for on-going land administration reform processes in ways which would contribute to strengthening women’s and other vulnerable groups’ access to land and thus their participation in economic growth.

To reflect the enormous variation which exists within this field, the report draws on experiences from a number of countries in Asia, Sub-Saharan Africa and Latin America, all of which have undergone reform. Fifteen countries were selected for a more detailed analysis of statistics and legal frameworks: Bolivia, Burkina Faso, Cambodia, Côte d’Ivoire, Ethiopia, Ghana, Mali, Mozambique, Nicaragua, Niger, Tanzania, Uganda, Vietnam, Zambia and Zimbabwe. These countries have all been partner countries for Danida during the past two decades, although Danish development cooperation has recently ended in some of them. Five countries were chosen for more in-depth case studies, each shedding light on donor-supported interventions aimed to strengthen women’s rights to land: a large, state-led titling project in Tanzania, NGO-driven projects on women’s land rights in Zambia, the Land Administration Project in Ghana, NGO-driven interventions to improve local-level land dispute settlement in the northern and formerly conflict-ridden part of Uganda, and land reform and land-titling efforts in rural Nicaragua.

As this report shows, that the incorporation of women’s and vulnerable groups’ rights to land into legal frameworks affecting land is something of a novelty. Previous reforms had either not taken gender into account at all or declared that women and men had equal access to land without providing any mechanisms to promote such gender equality in practice. Overall, the language in legal texts and donor policy documents from the 1970s focused on land rights, often through agrarian reform, but it did so in a ‘gender-neutral’ way, influenced by patriarchal attitudes to gender roles and implicitly assuming that, if a farming household benefited from land reform, all members of households would benefit. The language and politi-

cal awareness of gender equality has changed radically, as is reflected in the many international agreements on gender equality, against gender-based discrimination etc., that have been ratified since the 1980s.¹ The role and potential reform of marriage law, customary law and customary land administration authorities, much emphasised by some scholars (Yngstrom 2002: 35; Odgaard 2006: 37; Deere and Leon 2001), is central to efforts aimed at improving women's access to land. However, sector-specific legislation has been shown to be necessary to give general gender-progressive statements in constitutions and softer family laws sufficient weight (Wily 2003: 57; Manji 2006: 106). As the review of databases, literature and case studies carried out for this report shows, there have been major improvements in the national legal frameworks recognising women's rights (to property ownership, to education and to decide over their own bodies) and outlawing gender-discrimination in recent decades.

Donors have certainly contributed to these legal and policy processes, and their role is at the centre of our analysis. They have influenced the formulation and implementation of the new wave of land reforms in numerous ways. In the literature, much attention has been paid to the role of the World Bank, which, because of its involvement in structural adjustment programmes, has encouraged more market-oriented land laws and individualised forms of land tenure (Gibbon et al. 1993; Manji 2006; Deere and Leon 2001). Much less attention has been paid to all the other ways in which donors have influenced land sectors in developing countries: the facilitation of policy formulation, implementation programmes and projects, and the NGO activities, often also financed by Western donors. This report aims to provide an overview of these donor practices and of the extent to which they have contributed to strengthening women's access to land on the ground. Although donors seem increasingly to take women's rights into account, the way to address this issue differs among them. Many NGOs and development organisations work with gender issues from a rights-based approach. Yet international donor organisations like the World Bank, working on poverty and issuing loans to developing countries, increasingly use the better efficiency and economic outcomes of projects where women are the beneficiaries as an argument in favour of strengthening women's participation in development interventions.

This report also shows that the *implementation* of progressive, gender-sensitive laws is a totally different matter from promoting policy and legal reform. This may be

¹ As we shall see in Section 4, however, the gender focus seems to have been diluted in recent policies (see Danida 2013, Holvoet and Ingberg 2012).

because of different interrelated factors such as a lack of political will, cultural barriers or contradictory legal frameworks, where, for example, marriage laws and inheritance laws may undermine proposed gender-sensitive land legislation, or due to unsolved contradictions between statutory law and customary law. The fact that it is often difficult to measure the effects of concrete initiatives on women's rights, legal literacy, increased access to resources and support for defending rights may also contribute to the 'gap' between gender-sensitive legal reforms (which, despite, political battles can often be achieved within a couple of years) and the actual implementation of practices and structures to create more equal opportunities for men and women (which requires a much longer time span to materialise).

Working with rights means engaging in a continuous series of contests between men and women, between women and between men of different social-economic, ethnic or religious backgrounds, as well as between different institutions with the authority to enforce such rights. Consequently, what is at the core of women's rights is not only women's ability to keep land and be able to make use of land rights, but also about their opportunities and rights to acquire land and to have their rights and access to land recognised, for example, through titling and access to justice. Although it is outside the scope of this report, one should remember that it is not sufficient to look narrowly at land legislation and the distribution of land ownership: access to credit, markets, education, extension services, technology, personal security organisation and a public voice are essential conditions for women's ability to make use of any land rights they might have obtained.

Almost all of the sources consulted for this report agree that cultural barriers are among the most important barriers to be overcome in order to strengthen women's land rights, and consequently, that it can be expected to take a long time to achieve rights and possibilities for women that are more equal to those that men enjoy. And, just as it has been realised that it is necessary to consider both men and women when addressing gender issues, it is also necessary to realise that women are not just women – they also identify themselves as belonging to a certain class. Thus, class issues also have to be taken into account when addressing gender issues in general and in the context of land tenure specifically.

This study focuses on changes in women's rights and access to land during the past three decades and the attempts to promote gender equality in the context of access to land and land administration through development cooperation. However, large-scale land acquisitions, whether carried out by international actors or the na-

tional elite, will not be discussed here, which nevertheless may amplify and render even more acute the challenges that are outlined in this report.

2. Methodology

This synthesis report is based on two types of inputs:

- An overview of gender and land trends, based on the analysis of three international databases and a review of recent literature, including evaluations of state-backed land-titling projects (for a literature review, see also Pedersen et al. 2012). Most of the information retrieved from the data bases is focused on donor support related to land administration and gender in fifteen selected countries.
- Five country case studies based on a review of recent literature and on fieldwork involving interviews with key actors from Nicaragua (Broegaard, forthcoming), Ghana (Spichiger and Austin, forthcoming), Tanzania (Pedersen and Haule, forthcoming), Uganda (Burke and Pedersen, in preparation) and Zambia (Spichiger and Kabala, forthcoming), and supplemented by evaluations from NGOs and of state-backed land-titling projects. The main findings from these studies are incorporated into Section 5 of this report.

Each of the sources on which the synthesis report is based is briefly introduced in the following, which also discusses strengths, weaknesses and caveats in the data.

2.1 International data bases

The overviews of policies, land administrations and donor engagement in the fifteen selected countries² are largely based on three international databases:

- FAO's Gender and Land Rights Database (<http://www.fao.org/gender/landrights/en/www.fao.org/gender/landrights/en/>)
- USAID's Land Tenure and Property Rights Portal ([usaidlandtenure.net](http://www.usaidlandtenure.net))
- AidData database³ (<http://www.aiddata.org/content/indexwww.aiddata.org>)

Combined, the three international databases serve as indicators of the trends and changes in land policies and donor activities analysed in this report. The advantage of such databases is that they enable the establishment of an overall and multi-country

² The selected countries are Bolivia, Burkina Faso, Cambodia, Cote d'Ivoire, Ethiopia, Ghana, Mali, Mozambique, Nicaragua, Niger, Tanzania, Uganda, Vietnam, Zambia and Zimbabwe.

³ Version 1.9.1, released February 2010. A version 2.1 of AidData database was released in February 2013 after the consultations made for this study were conducted.

overview with respect to land-related legal reforms and development interventions. The downside, however, is that these databases in turn rely on secondary data or incomplete data sets, owing to a combination of factors such as ambiguous terminology and incomplete registration, as well as the fact that overall data quality and comprehensiveness may change over time.

The FAO's Gender and Land Rights Database focuses on women's land rights in 79 countries.⁴ It provides country-level information on different elements related to women's access to land: the national and international legal framework, customary law, land-tenure institutions, civil-society organisations and land-tenure statistics.

USAID's Land Tenure and Property Rights Portal is a database containing country-level information related to property rights and resource governance in 65 countries.⁵ Although the focus is not necessarily on women, the country profiles contain a section on intra-household rights to land and gender differences. This database sets land issues in a larger context than the FAO database, as it also contains sections on water, forest and mineral resources. These two databases have been used together for the overview tables in this report on, for example, land legislation.

AidData 1.9.1,⁶ used in particular for donor activity overviews, is based on the reporting made by donor agencies to the OECD DAC Creditor Reporting System (CRS) according to a set of pre-defined purpose codes⁷ and further improved by the AidData project. Despite the improvements made, the database reflects the uneven quality of the reporting made among donor agencies and over time. Not all donor assistance has been reported, and/or it has not been reported and classified consistently in the same way: some projects have detailed descriptions, while others only have a project title (see below for details).

Selection and classification of projects within AidData

Due to the large number of development projects or programmes in the selected countries, a first selection was made following AidData's classification according to

⁴ Of the 79 countries included in the database, 29 are in Africa, 22 in Latin America and the Caribbean, 20 in Asia, four in Europe and four in the Middle East.

⁵ Of the 65 countries included in the database, 30 are in Africa, 16 in Asia, 13 in Latin America, three in Europe and three in the Middle East.

⁶ The analysis for this report was conducted between October and December 2012. A more recent version of AidData is available at <http://aiddata.org/content/index/Research/research-datasets>.

⁷ <http://www.oecd.org/dac/aidstatistics/aidstatisticsanddatabasesallaboutnumbers-whospendswhatwhere.htm>.

purpose codes.⁸ Even if the database contains some more precise and narrower codes, these were not in use at the time when earlier projects were reported, and therefore only general codes deemed to cover issues related to land administration have been used in selecting projects in order to cover a wider time span.⁹ Due to the lack of data for the years preceding 1990, a twenty-year span was selected (1990-2009), which also largely corresponds to the introduction of the new wave of land reforms.

Because of the focus on land administration and gender, codes related to environment and environmental protection, forestry, fisheries and water, which may also have a bearing on women's access to land, were not included in the selection of aid activities.¹⁰

Ten issues or elements/components related to land administration and to land and gender were identified in these projects and were used to classify them accordingly: (1) land policy and legal framework, (2) capacity-building in land administration, (3) land administration systems, (4) titling/registration/formalisation, (5) land allocation or resettlement or access, (6) dispute resolution and access to justice, (7) land rights of indigenous peoples, (8) gender, (9) awareness raising (on land issues) and (10) land general.¹¹

When counting the number of aid activities (overall or per country), activities that lasted over several years were only counted once when they had the same

⁸ Purpose codes from AidData datasets related to land and/or gender: 15110, 15130, 15140 and 15150 for government and civil society; 16030 for housing policy; 31110, 31120 and 31130 for agricultural policy, development and agricultural land resources; 42010 for women in development; 43040 for rural development; and 92000, 92005, 92010, 92020 and 92030 for support to non-governmental and governmental organisations.

⁹ 'Empty' purpose codes were also included in the search, as some projects have not been reported under any purpose code.

¹⁰ Text-searches were made using the following search terms: land, property, gender, woman, women, fonci* (for the French terms foncier(s) or foncière(s)), terri*, mulher, mujer, femme. All project titles or project descriptions containing these words were highlighted and then examined in more detail, and only relevant projects with a clear association with land were subsequently selected.

¹¹ 'Land general' was also used as a classification; projects filed under this category may deal with more general issues of land management, but this category was also used when the description of a project was too vague to pinpoint a specific component. This category therefore contains all projects/programmes/components that have to do with land, land tenure or land management when nothing else is specified (these terms can cover a vast array of different kinds of support: support to land tenure could be support to pastoralists' groups, capacity-building for local authorities dealing with land, the drafting of policies on the role of village land committees, legal awareness workshops or alternative land dispute resolution mechanisms). Projects with 'land', 'land tenure' or 'land management' in the title or brief description were characterised as dealing with 'land general'. The category 'Land administration systems' include any projects having to do with cadastre, registry, surveying, mapping, recording of boundaries, land information systems or land monitoring systems. 'Titling/registration' also includes projects aimed or in part aimed at 'formalisation of rights' (when clearly stated).

project title. Counting was done by looking at every line of the projects, not just the land-related issues. However, if a project was dealing with more issues, for example, women's rights, titling or indigenous people's delimitation of territories, it was classified in all the relevant categories (i.e. as having the components of gender, titling, land administration systems and land rights of indigenous people). This means that, when we write that in a particular country titling is part of, for example, four projects and surveying part of two projects, titling and surveying could be part of the same projects, as what is of interest here are the *issues* which these projects are covering rather than the number of projects. Of course, as many projects actually cover several issues, the total number of projects does not necessarily correspond to the total number of projects covering such and such issue. Therefore, while some data will also be given about the number of projects, what was of major interest for this study were the kinds of projects, that is, what these projects were about.

Cross-checking data in the AidData database with our existing knowledge of some of the countries selected suggests that some land-related projects are missing from the database.¹² It is difficult to assess whether they were reported at all or have been classified under other purpose codes. Furthermore, the way in which projects are reported is not consistent. Many projects lack titles and/or precise descriptions, and the duration and outcomes of projects are also unclear. Such inconsistencies are especially visible over time: recent projects seem to be more often and more completely reported than earlier ones, making a diachronic analysis difficult or at any rate very patchy. As a case in point, in 2005 only nine out of 24 DAC countries used the so-called 'gender marker' in their reporting on donor activities to the OECD DAC database, whereas in 2012 all of them did so (O'Neill 2012).

Where feasible, data on, for instance, World Bank projects have been cross-checked and completed with information from the Projects database of the World Bank website and with information from the USAID land tenure portal. In any case, a further in-depth study of five countries should provide a better analysis and will illuminate some of the broad sketches drawn here.

¹² In Tanzania, for instance, a 'high-level policy workshop' was held in August 1991, sponsored by the Ministry of Lands, Housing and Urban Development, but with support from the World Bank 'as part of the preparation for the Forest Resources Management Project' – that is, it was probably registered under a non-land sector (Proceedings of the Arusha Workshop on Land Policy 1991). Similarly in Zambia, an important study of land tenure, funded by USAID and undertaken in 1993-1994, contributed to the development of an action plan for land tenure and administrative reforms in collaboration with the Ministry of Lands (see Roth et al. 1995), but seems not to have been reported in the data.

Taking into consideration the different sources of imprecision, including changing reporting methodologies, the observable increase in the prevalence and proportion of the gender component in land-related projects depicts a clear trend that we assess to be indicative of overall changes.

2.2 Fieldwork and literature review

Five countries (Ghana, Nicaragua, Tanzania, Uganda and Zambia) were selected as case-study countries. The reason for their selection was that, each in their own way, they illustrate how reforms have gradually included (or have tried gradually to include) a gender component in their land administration reform and how this has played out. Furthermore, all five countries have been major recipients of Danish development assistance during (most of) the period in review, and within the research team there is in-depth knowledge about land issues in each of these five countries. In the cases of Nicaragua, Tanzania, Uganda and Zambia, in-country interviews have been conducted as part of this study with donor representatives, government officials and NGO staff. In the case of Ghana no interviews have been undertaken, but an expert on land issues in Ghana has co-authored the study. For each of the case-study countries a report has been prepared which analyses the changes in women's land rights in recent decades, with special emphasis on the influence of donor initiatives (Broegaard, forthcoming; Burke and Pedersen, in preparation; Pedersen and Haule, forthcoming; Spichiger and Austin, forthcoming; Spichiger and Kabala, forthcoming).

Finally, a literature review has been undertaken, partly based on searches on Google Scholar and the Scopus database using the keywords 'land' and 'land reform' on their own or combined with area-specific terms, as well as 'gender', 'women' and 'women's land rights', and based on another literature review undertaken under the ReCom framework (see Pedersen et al. 2012). Literature and reports from agencies and institutions are included, and evaluations have been searched on the DAC Evaluation Resource Centre database (www.oecd.org/derec/). The literature review has partly been used to supplement the fieldwork in the case-study countries and partly been used to supplement the analysis of the three international databases. All literature, interviews and web pages visited are listed in the individual working papers for each of the respective case-study countries. Literature in the present synthesis report only includes those references specifically cited in the report.

3. Genealogy and main elements in land reforms

3.1 Genealogy of the reforms

The literature on land reforms offers different typologies of land reforms, as well as different explanations of their differences and similarities. This section provides an overall picture of the types of land reforms that have taken place since 1990, while Section 4 focuses on the way in which development assistance has contributed to these reform processes.

Waves of land reforms have been passed in the different regions at different times. The first reforms to take place during the twentieth century were often undertaken in newly independent and/or socialist countries and before the end of the Cold War. They focused on *redistributing* land from large landowners to smallholders (Sikor and Müller 2009) and also on the restitution of rights by opening up new areas for agriculture (see Dorner 1971, World Bank 1975). In all of these reforms the state played a prominent role (see also Berry 2009). The role of donors, although important in some respects, was also limited, most likely due to the political aspect of land reforms (Zoomers 2010).

Two more recent strands of reforms followed. These reforms were introduced after the end of the Cold War and the fall of the Berlin Wall in the late 1980s. Whereas the reforms of the past were often termed ‘redistributive’ land reforms, ‘tenure’ reform and so forth to emphasise a predominant element, the more recent reforms were often of a more administrative character, though they too had distributive consequences. The first strand focused on the individualisation and the marketisation of land, often through titling or other registration processes. Underpinning these policies was the assumption that individual ownership, the stepping back of the state and a free market would open up investment and economic growth (Sikor and Müller 2009; Lipton 2009). The failure of this approach gave rise to a second strand, often incorporated in a reform process that had been introduced earlier. Characteristic of this second strand is the increased recognition given to local forms of tenure, as well as to local and customary authorities. In parallel or together with the increasing attention given to customary or indigenous systems of tenure, attention has also been drawn to women’s rights to land, as we shall see below. At the same time, most of the current reforms still assume that land markets are important and will eventually lead to what from an economic point of view can be seen as well-distributed land ownership

among the most efficient users of land, an idea that regained much popularity in the 2000s after the publication of *The Mystery of Capital* by de Soto (de Soto 2001). Indeed, the International Fund for Agricultural Development (IFAD) characterises this second strand as ‘new-wave land reforms’, which it defines as ‘decentralised, market-friendly, with support from and involvement of civil-society action and with consensus’ (IFAD 2001: 5). Furthermore, in the African context, many of the current and on-going land reforms aim to simplify very complex mixes of tenure regimes. These reforms provide the point of departure of this study.

Although these recent reforms do not consistently present the same pattern, and some vary significantly in both design and implementation, some general features can be observed.¹³ The occurrence of reform components fluctuates with the overall trends and fashions in the development business.

3.2 Main elements of the land reforms

Most reforms share a set of features described below. Several factors seem to have been decisive for the reform design: the country’s historical trajectory and colonial legacy, the geopolitical and social context, international relations, and the influence of other countries or donor countries and organisations.

Focus on the market and individualisation

Most reforms in the 1980s and early 1990s emphasised individualisation and private ownership or the recognition of individual use rights. Often, these reforms were followed by efforts to register rights and introduce titles. This was especially the case for countries which followed a market-led approach, for instance Ghana, which passed its Land Title Registration Act in 1986. However, it is interesting to see that Cambodia and Vietnam, both communist or post-communist countries, started reforming their land administration systems in the late 1980s and early 1990s, also with a focus on individualisation of rights. In 1988, Vietnam granted households individual long-term use rights, and a 1993 law expanded these rights to, among other things, the right to use land rights as bank collateral and to transfer them to heirs or alienate them to third parties (Sikor 2006: 621). These developments came after decades of state-led reforms where a number of countries had put

¹³ The outliers, included in the report, typically started the reform process earlier or omitted some of the new wave of reform elements outlined below.

an end to private ownership and, for development purposes, had emphasised state-led planning and vested land in the state.

In the 1980s a number of Latin American countries appear to have been at the forefront of state intervention being replaced by the market, accompanied by titling programmes (Deere and León 2001). The two Latin American countries included in this report, Bolivia and Nicaragua, are late comers in this regard, Nicaragua because it had been absorbed by civil war, and Bolivia because it was locked in a struggle between large-scale landowners, the *latifundia*, and the indigenous populations (Deere and León 2001: 160, 174).

The Asian countries oriented towards the West, such as Japan, South Korea and Taiwan, had reformed their land-tenure systems, redistributed and individualised land, and strengthened land administration decades before (Prosterman and Brown 2009, 60ff).

Zimbabwe is often mentioned as a special case, but still it reflects some more general trends. Thus, having achieved black-majority rule quite late, in 1980, it embarked on a land redistribution reform, an approach that by then was being abandoned by most other countries. However, in line with other countries carrying out reforms at the time, the reform adopted a 'market-friendly willing seller/buyer' approach (Goebel 2005: 15).

Notwithstanding the fact that some, particularly African countries have or are in the process of passing legislation that recognises customary systems, most of these countries, if to different degrees, are introducing or aiming to introduce forms of certification or registration of land even in customary areas to ensure the tenure security of landholders.

Role of the state and decentralisation

While existing – customary – rights and 'the local level' have perhaps been increasingly given recognition, the way land is administered at the different levels varies in the different countries, with some countries choosing different forms of decentralisation, with different degrees of devolution or deconcentration of power.

While the trend to decentralisation in some cases reflects a growing disappointment with state-led reform implementation which had proved ineffective in reaching the

poor in rural areas (Wily 2003), in other cases the establishment or strengthening of local-level authorities actually extends the state's regulatory power, as in Ethiopia, where the government has become increasingly present at the regional level through the granting of regional authorities to make their own land policy. Still other examples exist where there have been strong decentralisation efforts, but without decentralising authority regarding land administration (e.g. Nicaragua).

In fact, the role of the state in the recent land reforms has fluctuated. Although at first not given an important role due to the focus on a market-led approach, of late there seems to have been resurgence in the influence of the state, though not unilaterally. Thus, there are different degrees and forms of decentralisation of land administration, with, for instance, differences between countries in the degree to which local land administration has been devolved to non-state authorities. Devolution of responsibility to non-state authorities tends to take place particularly in countries where most of the land is held under customary tenure.

Ghana, for instance, chose to vest power in customary authorities, whereas Tanzania and Zimbabwe vested power in existing elected local authorities or appointed land boards (Toulmin 2000: 229). Often, mixtures incorporating elements of the different models were the end result. In Mali, the Pastoral Charter of 2001 prescribed that the local councils, which had been given the responsibility for land administration in the 1990s, should manage natural resources with the participation of pastoralists (USAID database, accessed in March 2012). In Mozambique, land may be under the authority of customary as well as statutory institutions, sometimes even overlapping (Wily 2003: 12).

In the 2000s there seems to have been a renewed focus on the responsibility of the state. Tellingly, a book from the period, *Bringing the Law Back In* by Patrick McAuslan, advocates the 'important role for law in development generally and in land reform in particular' (McAuslan 2003: vii). The extreme case in this regard is Zimbabwe, which started land-redistribution programmes on a large scale in 2000, but milder versions of the trend can be found in a number of countries. Tanzania, for instance, passed laws that strengthened the coordinating role of the state and meso-level local authorities in 2007 (Pedersen 2010). In 2005 Ethiopia, having decentralised power over land administration to the regional states in the 1990s, passed a law that regional state laws could not circumvent the federal state's constitution and land laws and thus undermine tenure security (FAO database, accessed in March 2012). The latter points to the

continued responsibility of the state to ensure tenure security despite decentralisation policies.

Role of the state and dispute settlement

Though crucial to people's ability to defend their rights to land, the dispute settlement aspect of the new wave of land reforms is only sparsely dealt with in the academic literature. Not much systematic research exists into the design and effect of the more decentralised land dispute settlement system, which is, indeed, a key aspect of the new wave of land reforms. In Tanzania, for instance, the rise in the number of land conflicts in the 1980s and the existing court system's inability to handle them was a main impetus for initiating a land-reform process (Pedersen 2012). In Ghana, tackling the increasing number of land disputes 'clogging' the court system was one of the central aims of the land reform ushered in in 1999 (GoG 1999). Based largely on reform experiences of the past, existing academic research tends to focus more on the causes of land disputes than on the design of land dispute settlement and its consequences for women's rights to land. One strong strand of the literature focuses on the causes of the increasing number of land conflicts and points to either resource scarcity or environmental stress (Derman et al. 2007: 2; Huggins and Clover (eds.) 2005). Another stresses the impact of the 'deepening social differentiation and class formation' on access to dispute settlement (Peters 2004: 283). A third tradition, focusing on formalisation and land titling, largely takes dispute settlement for granted (see, for instance, de Soto 2000), while a fourth criticises the agenda for state-led reform and identifies the formal system's inability to deliver decisive decisions and the subsequent persistence of informal and customary institutions (see, for instance, Berry 1993; Lund 2008). However, even scholars from the latter tradition increasingly recognise the crucial role of the state.

Sandra Joireman, in her book, makes it clear that property rights are not isolated from wider patterns of authority, especially in contexts in which the state is weak (Joireman 2011: 162). She identifies a number of other actors, beside state institutions and customary authorities, who may enforce rights at the local level, such as bureaucratic entrepreneurs, NGOs and 'specialists in violence' (for instance, gangs in slum areas of Nairobi).

However, Joireman also acknowledges the importance of the state and concludes that state law and property rights enforcement ought to 'rectify historic injustices, prevent violence, protect contracts, and provide a social environment conducive to

economic growth' (2011: 163). Lund, based on research in Laos, goes a step further and suggests that the state is already crucial: 'Through alignment with donors, government institutions have become able to acquire institutional control over land. Land right had hitherto been a relationship between the right holder and a variety of local institutions, and institutional control over land had been fragmented among them' (Lund 2011: 900).

Despite variations, the state *is* an important actor, and the design and implementation of its policies are also significant for the settlement of disputes. Again, the power vested in customary authorities, who are often recognised and incorporated into land dispute settlement systems, seems to be important for women, as pointed out by both Pauline Peters and Claassens and Ngubane (Peters 2009, 2004; Claassens and Ngubane 2008). However, whereas these scholars are sceptical of the role of customary authorities, Odgaard recommends that they should be strengthened because of their accessibility, which is important for women's access to justice (Odgaard 2006). The actual role of customary authorities varies widely in the different countries.

Recognition of existing rights

The recent reforms have increasingly recognised existing rights. Indeed, it soon became clear to policy-makers that local or customary tenure systems and pre-existing relations among all land-users were complex and could not be set aside. The social context therefore plays a very important role in the design and implementation of land reforms. An illustration of this is the presence and influence of large populations of indigenous people, or pastoralists, as in Bolivia or Mali, whose land rights have increasingly been recognised.

It seems the models differ, both regionally and nationally within each country. In Latin America, for instance, the 'indigenous question' surged strongly at the beginning of the 1990s (and coincided with the 500th 'anniversary' of indigenous resistance to colonialism in Latin America). This was influential in achieving increased respect for local and existing land rights (at least in theory and policy). An influential factor at the international level was the International Labour Organisation (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries 169, which was reviewed to strengthen its focus on the protection of indigenous peoples from the actions of the state. Although not ratified by Southeast Asian countries, ILO Convention 169 has been used as a model in the drafting of legislation in Asia, for instance in Cambodia, where the Land Law of 2001 grants collective land-own-

Box 1. Customary tenure

Customary tenure is defined as ‘a set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources’ (USAID 2013). Despite its connotations of ‘tradition’ and ‘the past’, customary law is in fact dynamic and not ‘set in stone’. Worldwide, as many as two billion people are currently estimated to live under customary tenure regimes (USAID 2013). In Africa, for instance, private land ownership is not common in rural areas, and the World Bank estimates that only 2-10% of the land is held under statutory land tenure (Vermeulen and Cotula 2010, Deininger 2003). While customary systems may or may not be recognised by the state, usually their legitimacy in the community is independent of such recognition.

ership rights to indigenous communities, even though these rights can be restricted depending on, for instance, national interests (Xanthaki 2003: no page). Nicaragua’s Communal Land Law of 2003 lays the legal foundation on which indigenous communities can claim recognition of their communal land rights, as well as the titling thereof by the state. Although the legal framework is in place, however, implementation is another matter (Larson 2010; Mairena et al. 2012).

In Africa few countries recognise the rights of indigenous people, but Mali recognises pastoralists’ rights. Moreover, in many African countries there is an increasing recognition of existing customary rights by states themselves as well as by donors, as we shall see in the later sections of this report.

3.3 Land reforms and women’s right

It is only recently that women’s and vulnerable groups’ rights to land have explicitly been incorporated into the legal framework. Previous reforms had either not taken gender into account at all or made declarations that women and men had equal access to land, but without providing any mechanisms to make sure that such rights were implemented in practice. Generally, sector-specific legislation is required to give general gender-progressive statements in constitutions and softer family laws any weight (Wily 2003: 57; Manji 2006: 106). This is despite the important role played by reforms of marriage law, customary law and customary land administration authorities, as is shown in the five case studies.

While previous land policies and legislation were characterised by gender-blind language and analysis, assuming that the entire household would benefit equally

Table I. Land Reforms in Selected Countries¹⁴

	Important Land Laws	Main aim(s)
Bolivia	<ul style="list-style-type: none"> • The Constitution of 2009 • The Law of Agrarian Reform (el Acto Nacional para la Reforma Agraria - INRA Act) from 1996 • The Law of Community-Based Re-direction of Agrarian Reform (la Ley de Reconducción Comunitaria de la Reforma Agraria) from 2006 	<ul style="list-style-type: none"> • Land and natural resource policy exclusively under the control of the central government but decentralised • Customary rights of the country's indigenous communities. Regularisation of land rights, issuance of titles, resolution of land disputes, and distribution of land introduced in 1996, but streamlined in 2006 (USAID)
Burkina Faso	<ul style="list-style-type: none"> • Loi de 1984: Réorganisation Agraire et Foncière • Loi du 23 mai 1996 : Réorganisation Agraire et Foncière • 'Politique Nationale de Sécurisation Foncière en Milieu Rural' from 2007 • Rural Land Tenure Law (Act. No.034 on the Rural Land Tenure System) of 2009 	<ul style="list-style-type: none"> • State is owner of the land, but individualised private property provided for (FAO). • National policy (2007) aims at formalising access rights pastoralism governed by the 2002 Pastoral Policy Act (USAID)
Cambodia	<ul style="list-style-type: none"> • The Land Law, 1992 • The New Land Law, 2001 • Land Policy Framework, 2002 • The 2008 Land Policy Declaration 	<ul style="list-style-type: none"> • Private property rights reintroduced in 1989 and 1992 • New land law and policies aiming at better protection of property rights (FAO) • Issuance of titles • Policy declaration aimed at developing administrative system
Côte d'Ivoire	<ul style="list-style-type: none"> • Loi relative au domaine foncier rural 1998, revised by law in 2004 (FAO; Crook 2008) 	<ul style="list-style-type: none"> • Certification and titling of customary rights to land • Customary procedures through a formal, decentralised land administration (FAO, Crook 2009: 9)
Ethiopia	<ul style="list-style-type: none"> • The Federal Rural Land Administration Proclamation No 89/1997 • The Land Administration and Land Use Proclamation No. 456/2005 	<ul style="list-style-type: none"> • Land state property and citizens have user rights • Regions responsible for implementation (in 1997) • Autonomy of regional states in matters of land in 2005, but regional land acts cannot contradict the constitutions and national land proclamations. (FAO, USAID)
Ghana	<ul style="list-style-type: none"> • Land Title Registration Act, 1986, amended in 2007 • The 1992 Constitution, the Administration of Stool Lands Act of 1994 • The National Land Policy, 1999, amended in 2002 • The Land Administration Act of 2008 	<ul style="list-style-type: none"> • People required to register land in local registry to give certainty to ownership and reduce conflicts (USAID) • All public land vested in the President, and all customary land vested in traditional authorities • National Land Policy aims at decentralising and streamlining the land administration (FAO) • Several institutions merged into the Lands Commission

¹⁴ Sources for this table are the FAO gender and land database (<http://www.fao.org/gender/landrights/en/>) and USAID's Land Tenure and Property Rights Portal (usaiddlandtenure.net), consulted between March and April 2012.

(Table 1)

	Important Land Laws	Main aim(s)
Mali	<ul style="list-style-type: none"> • The 2000 Land Code, as amended (Ordinance No 00-27/P-RM of March 2000 Pertaining to the State Property and Land Code) • The Agricultural Orientation Law, 2006 • The Pastoral Charter (Law No. 01-004) of 2001 and its implementing decree of 2006 	<ul style="list-style-type: none"> • Citizens have the right to own property • Recognition of state land, land owned by individuals and entities, and use-rights to customary land held by groups and individual group members (USAID) • Recognition of pastoralism and rights to move livestock and have access to natural resources
Mozambique	<ul style="list-style-type: none"> • The National Land Policy from 1995 • The 1997 Land Law • The 1998 Rural Land Law Regulations; Decree No. 1/2003 (for the National Land Registry and Real Estate Cadaster) • The 2006 Urban Land Regulations 	<ul style="list-style-type: none"> • Aims: to increase tenure security for individuals and rural communities and to encourage private investment. • Rules for the acquisition and transfer of use-rights • Registration of rights
Nicaragua	<ul style="list-style-type: none"> • Nicaragua's 1904 Civil Code, as amended. Agrarian Reform Act (Decree 782/1981) • The Cooperatives Act (Decree 826/1981) • Confiscation Decrees (3/1979; 38/1979; 329/1980) • Expropriation (Decree 769/1981); Acts 85, 86 and 88/1990 • Ownership Stability Act (1993) • Joint Titling Act (209/1995) • Property Act 278/1997 • The 1999 Law on the Regularisation/Organisation/Titling of Spontaneous Human Settlements • The General Policy for Territorial Ordering • The Communal Land Law (2003) • The 2002 Demarcation Law Regarding the Properties of the Indigenous Peoples 	<ul style="list-style-type: none"> • Various land reforms have been passed and repealed in the period from 1979–2002, first with the aim of redistributing land more evenly; later with the aim of reversing previous expropriations and confiscations, as well as strengthening land titling, and land administration, including registries and cadastral systems • 1995 joint titling act promoting titling for couples, when state allocates land or titling land to land reform beneficiaries • Rights of indigenous people to own and use communal lands based on their traditional and customary patterns of land and resource use and occupancy
Niger	<ul style="list-style-type: none"> • The 1993 Rural Code • Various decentralisation policies 	<ul style="list-style-type: none"> • Decentralisation of land administration • Registration of customary land rights (USAID) (Diarra and Monimart 2006)
Tanzania	<ul style="list-style-type: none"> • The 1995 National Land Policy • The Land Act No. 4 • The Village Land Act No. 5 of 1999 	<ul style="list-style-type: none"> • Aims: improving tenure security in rural areas, streamlining land administration and facilitating a market in land (FAO) • Decentralisation at village level of land administration and dispute settlement

(Table 1)

	Important Land Laws	Main aim(s)
Uganda	<ul style="list-style-type: none"> • The Land Act of 1998, amended in 2004 and 2010 	<ul style="list-style-type: none"> • recognition of customary and tenancy rights to land • Promotion of freehold tenure • Streamlining and decentralising land administration (FAO)
Vietnam	<ul style="list-style-type: none"> • The 1988 Land Law • The Land Law, 1993 (amended in 1998 and 2001) • The Land Law, enacted in 2003 	<ul style="list-style-type: none"> • 1988: households that had previously farmed land as members of cooperatives obtain individual long-term use rights • 1993: official land titles and transactions introduced • 2003: comprehensive legal framework established for a functioning land market; role of the state as owner and administrator of the land clarified
Zambia	<ul style="list-style-type: none"> • The Land [Conversion of Titles] Act of 1975 • The 1995 Lands Act • The Draft National Land Policy of 2002 (revised in 2007, but not yet turned into law) 	<ul style="list-style-type: none"> • All land vested in the President • No freehold, but 99- or 14-year leases • Customary tenure recognised • Promotion of conversion of land into leases or other types of title (granted by the President) (FAO)
Zimbabwe	<ul style="list-style-type: none"> • The Communal Land Act of 1983 (amended in 2002) • The Rural Land Act of 1963 (amended in 2002) • The Land Acquisition Act of 1992 • The Administrative Court [Land Acquisition] Rules of 1998 (amended in 2005) • The Deeds Registries Act of 1959 (amended in 1996) • The Fast Track Land Reform Programme of 2000 • The proposed National Land Policy of 2003 	<ul style="list-style-type: none"> • All communal land is vested in the President, but rights to land acquired before 1 February 1983 are recognised • Traditional authorities lose the power to administer land • The Fast Track Land Reform Programme and the proposed National Land Policy of 2003 both sought to address unequal land distribution and tenure insecurity (FAO)

when the household head was given land,¹⁵ recent policies have started looking at the protection of women's rights to land specifically, which, as we shall see below, has formed part of the recent reform processes (Wily 2003).¹⁶ Yet, as the present analysis shows, a wide gap between principle and practice remains in many countries, with the lack of or only partial implementation undermining gender-sensitive legal provisions.

In many African countries a certain pattern is observable, as most land is held under customary tenure. Most women, especially in rural areas, still access land in customary ways, that is, through their male relatives (husbands and fathers) (Whitehead and Tsikata 2003). However, the extent to which they are discriminated against under customary law varies greatly depending on the country, region and ethnic group (see Box 2).¹⁷ Moreover, inefficiencies and overlapping or inconsistent rules in statutory land administration may also hamper women's access to land. Local-level land-administration authorities may ignore or refrain from enforcing gender-progressive legislation. Thus, while discrimination against women is most often prohibited by law, in practice it is still common.

The situation in Latin America differs from that in Africa. Independence from the colonial powers was gained around the mid-nineteenth century. In Nicaragua, as well as in some other Latin American countries, legal provisions in the constitution were inherited from the colonial period that had guaranteed women an equal proportion of inherited wealth and property, both parental and marital (Dore 2006:55). However, liberal reforms in the late nineteenth century had regressive effects on Nicaraguan women in that they undermined these legal provisions in order to diminish the fragmentation of land and wealth implied by the colonial inheritance system. Furthermore, a characteristic of the land reforms in Latin America is that they have responded to strong social pressures as a result of the hacienda-type property structure, with a strong concentration of land ownership among just a few landowners. Furthermore, one characteristic of the Latin American land reforms is that they have generally been

¹⁵ For example, the World Bank sector policy on land reform from 1975 does not mention 'women', 'female' or 'gender' at all, but does go into detailed discussions regarding the provision of land to 'family' or 'household', including 'household heads and other members of the family' (World Bank 1975).

¹⁶ Ghana, for instance, started already in the mid-1980s with the Land Registration Act of 1986, which required people to register their property, but did not address the other reform issues. Still, it is included because the country continued its land reform process in the 1990s and the 2000s with a new constitution in 1992, a reform of the role of the customary authorities in land administration in 1994, the introduction of a land policy in 1999, and a large, on-going implementation project in the 2000s.

¹⁷ In eastern Uganda, for instance, it was found that there were many more important gender differences with regard to land access than in central or northern Uganda (see Ravnborg et al. 2013).

Box 2. Women and land under customary law

Although customary practices are often seen as discriminatory to women, this should be slightly nuanced. Women's statuses vary in the different ethnic groups within and between the different countries, with marriage and inheritance practices affecting them differently. Indeed, customary land tenure is intricately linked to customary law and practices regarding marriage and inheritance, especially in areas where people depend on land for their livelihoods.

It has been argued that women's rights were better protected under customary tenure in the past. In several countries, for instance, the colonial tenure system and legal system worsened women's situations because colonial land administration contributed to the subordination of women's rights by designating them as 'secondary' (Knight 2010: 22). Post-colonial land policies also played a role. Even where individualised land ownership was introduced, as in Kenya, it also often disadvantaged women because rights were registered in the name of the household head, who was often the man (Nyamu-Musembi 2008). Furthermore, what remained of practices that protected women's access to land have declined further by increasing land scarcity and pressure on the land, or conflict. It is indeed highlighted in most regions of Africa that nowadays, with some exceptions, customary systems do not treat women and men equally as far as access to land or land ownership is concerned. This affects women in particular upon any change in their marital status, such as widowhood or divorce. There is therefore some ambivalence towards customary tenure, which is seen as 'closer to the people', but also as a source of exclusion or discrimination. In Tanzania women's groups wanted to do away with the customary system altogether, as it was seen to be at the root of discrimination against women, while in Zambia women's organisations consider it possible and even preferable to work with the customary tenure system. Also in northern Uganda, some organisations are attempting to work together with customary authorities to redefine women's rights.

'incomplete' in that they have not provided beneficiaries with the prerequisites for competitiveness (Caldecott et al. 2012) (see also AECI 2005).

Historical trajectories and patterns leading to reforms vary widely across Asia. However, it has been argued that in the case of Vietnam, as also of China, the abolition of private property by the communist regime has had the effect of improving women's status (Rao 2011: 3), which was always subordinate to men in pre-revolutionary Vietnam (Tetreault 1991: 3). Nevertheless, despite gender equality being introduced early on, in practice it is still only a few women who own land. Here again, social and cultural practices may persist which favour men (Rao 2011: 4; Thiel 2010: 5). For instance, men are allocated bigger plots (USAID portal, accessed in February 2013). In Cambodia, the high number of female-headed households due to the Khmer Rouge regime's executions meant that women were allocated land. Howev-

er, this changed with the liberalisation of land in 1989, with women receiving less land than men (USAID portal, accessed in February 2013).

Around the start of the 1980s, the rhetoric regarding women and their importance in agriculture changed radically, as signalled by international conferences and conventions (see section on donor and gender). This coincides with widespread *de jure* recognition of women's rights through, for instance, the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 (CEDAW). However, these changes failed to be accompanied by changes in the design of legislation and policies. The reforms of the 1980s may have encompassed overall statements that women and men have equal access to land, but rarely did they have more precise measures in the land laws to make sure that these ideas were implemented. Several countries illustrate the discrepancy between gender equality in law and practice. In Vietnam, for instance, gender equality regarding access to property and land rights is represented in the law, but not found in practice (USAID portal, accessed February 2013). Likewise, laws on joint titling or gender equality in succession rights in several countries fail to be implemented or enforced. In Zimbabwe, the focus in the 1980s was on the redistribution of land. A more general law on women's rights, the Legal Age of Majority Act, was passed in 1982, but customary law prevailed in the land administration of communal areas, which still made up the greater part of land in the country. In the redistribution programmes of this period, women's rights only enjoyed a 'limited response' (Goebel 2005: 37).

While laws related to marriage and inheritance are crucial, in particular for women, it has been argued that sector-specific legislation is required to give general statements in constitutions and softer family laws any weight (Wily 2003: 57; Manji 2006: 106). Women's groups in many countries fought fiercely to obtain protection for women's rights to land inscribed in the land laws because such provisions could be vehicles for future efforts to strengthen women's ability to fight for their rights (Goetz and Hasim 2003: 20; Tsikata 2003). As is clear from Table 2 below, they were often successful. The subsequent reform periods thus saw more efforts being made to secure women's rights to land in most countries. In the 1990s, many Latin American countries made plans to improve equality of opportunities for women, including affirmative action (Deere and León 2001: 22). This included, for example, the introduction of quotas regarding female representation in national government, as well as giving a priority to or reducing fees for land-titling for female-headed households in some countries. Similarly, the new wave of land reforms in sub-Saharan Africa expanded the provisions for women's rights (Wily 2003: 57). Again, as mentioned earlier, there may be a considerable gap between the letter of the law and implementation on the ground.

Table 2. Legal framework and gender equality

Bolivia	The 1996 land-law reform explicitly recognises women's and men's equal rights to land and states that non-discriminatory criteria should be applied in the distribution and administration of land (USAID).
Burkina Faso	Loi 1984 declares that men and women have the same rights to land ownership. Furthermore, a national policy, 'Politique nationale de sécurisation foncière en milieu rural', enacted in 2007, prescribes equitable access to land and mentions women's access to land and resources in particular (FAO). The new land law of 2009 demands that women should be among the stakeholders in drawing up local-level land charters (USAID).
Cambodia	The 2001 law includes a measure to ensure that both women and men are identified as owners of the land (FAO). Government interventions to ensure gender equality in land matters are articulated in the Gender Mainstreaming Action Plan (GMAP) and provide for procedures for individual (systematic) registration for women and increased collaboration between the Ministry of Women's Affairs (MoWA) and the Ministry of Land Management, Urban Planning and Construction (MLMUPC) (Thiel 2010) (USAID).
Côte d'Ivoire	The law does not discriminate between men and women – only nationality matters (FAO). However, seemingly, there are also no particular measures to protect women's rights to land.
Ethiopia	The Constitution and the 2005 Land Proclamation is 'progressive in terms of women's rights'. It codifies use rights for women and men in terms of titles (FAO).
Ghana	The Constitution prohibits discrimination based on gender and guarantees women's right to own and inherit property (USAID). The National Land Policy identified women's lack of security of tenure, and the Land Administration Project, launched in 1999 to implement the Land Policy, aims to improve women's tenure security through the training of land administration staff and the traditional authorities (FAO). However, there seem to be no specific measures in the land laws to protect women's rights.
Mali	The Constitution prohibits discrimination against women and provides that all citizens have the right to own land (USAID). The Agricultural Orientation Law also aims at promoting equality and women's interests. However, no particular measures in the land laws seem to be in place.
Mozambique	The 1997 Land Law gives women the right to participate in all land-related decisions and to register use rights individually (FAO).

Nicaragua	The Constitution prohibits gender-based discrimination and prescribes the same rights to inherit family-owned properties for men and women (USAID). The land reform period in the 1980s also included gender-progressive legislation. Finally, Law No. 209 of 1995 established a legal presumption whereby titles held in the name of the head of the household would be extended to the name of the spouse or stable partner for land allocated through land reform (USAID).
Niger	The Rural Code provides women with equal rights to land (USAID). Furthermore, women are represented in the land administration at all levels (Diarra and Monimart October 2006: 9-10).
Tanzania	Women's rights to hold land are underlined in the land acts. The Village Land Act, which regulates village land in rural areas, has no less than fourteen provisions protecting women and declares null and void all practices and customary laws that discriminate against women (Knight 2010: 180).
Uganda	The Constitution of 1995 confirms the fundamental right of every person to own property. It also prohibits laws or customs that may discriminate against women. Finally, the Constitution and Land Act both take affirmative action when it comes to women's representation in political and administrative bodies (FAO); (Rugadya, Obaikol, and Kamusiime 2004: 6).
Vietnam	The constitution prohibits discrimination against women, and the 1993 Land Law provides for equal land-use rights between women and men (FAO).
Zambia	The 1995 Lands Act is gender-neutral, but it makes no reference to women's land rights (FAO). The Constitution prohibits discrimination but excludes the application of the clause with respect to marriage, divorce, etc. The 2000 Gender Policy and the Draft Land Policy (2002 and 2006) propose that 30% of land be allocated to women.
Zimbabwe	The Constitution prohibits discrimination against women, but gives precedence to customary law in the fields of marriage and inheritance. The Fast Track Land Reform Programme provides for a 20% quota of women beneficiaries, while the proposed National Land Policy recognises women's weak position regarding land rights on customary land and calls for a modernisation of customary law to provide for equality between men and women (FAO).

Sources: FAO and USAID databases

4. Donor support to gender and land

4.1 Donors and land: brief historical overview

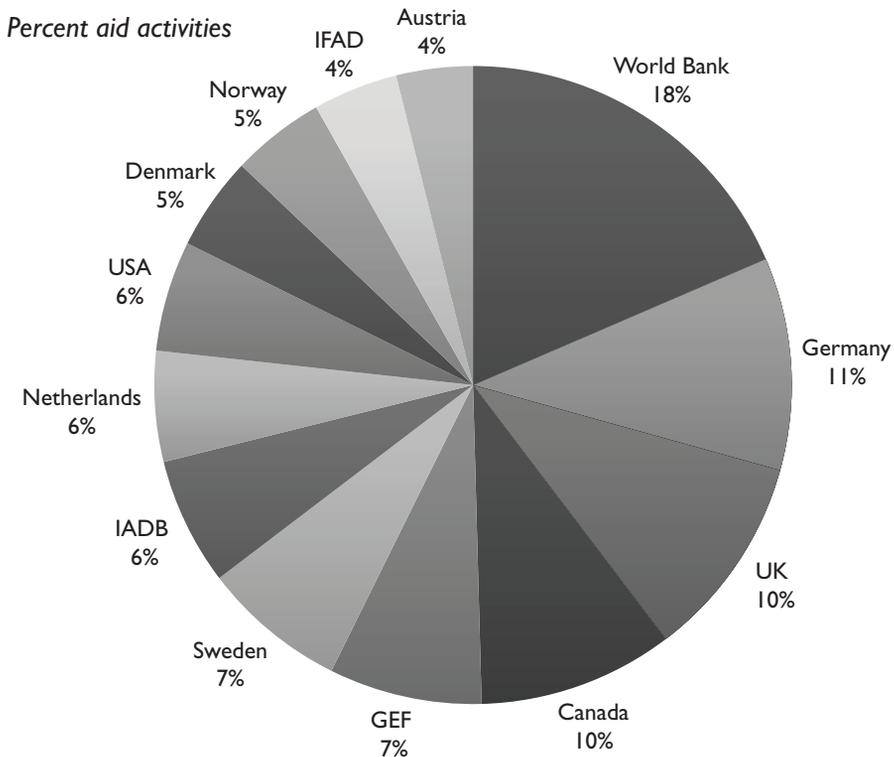
Donors were instrumental in promoting the first waves of land reforms, which were often ‘part of the policy package’ of newly independent nations (Sikor and Müller 2009: 1308) (see, for instance, UN reports on ‘progress in Land Reform’ in 1963 and 1966 and the 1966 World Conference on Land Reform). Donors, multilateral as well as bilateral, have continued to influence the reform processes in different places and at different stages. The World Bank has been an important player, as have several bilateral donors, such as the US government, some of the Nordic agencies, GTZ and DFID.

However, in the 1980s there seems to have been a break in donor interest. Some scholars ascribe this to reluctance on the part of international donors to be involved in politically sensitive issues (see Zoomers 2010: 431). McKeon attributes the stagnating land reform agenda of the 1980s to structural adjustment, which brought about a ‘general disenchantment with agriculture as a motor for development’ (McKeon 2013: 106). In fact, it has been argued that it was the failure of structural adjustment programmes (SAP) that spurred the revival of land reforms (Borras and Franco 2009: 14). Other authors see the 1980s’ and 1990s’ development towards more market-friendly and individualised tenure arrangements as caused by the structural adjustment programmes that most countries went through during the same period. At that time, the World Bank, a key player in the formulation of these programmes, had been developing its stance on land. In 1975, the World Bank’s *Land Reform Policy Paper* had emphasised owner-operated family farms, land markets and equitable land distribution (Deininger and Binswanger, 1999). It was not until 1989, however, in the report *Sub-Saharan Africa: From Crisis to Sustainable Growth*, that the Bank recommended changes in land law (Gibbon et al. 1993: 10). By then, some countries, such as Tanzania, had already opened up a space for private ownership in a bid to encourage the private investments that were increasingly seen as drivers of growth (Chachage 1993: 225). Over the years, the World Bank became the most important donor to the land sector.

It is interesting to see that of late there seems to have been a growing will on the part of donors to develop a common framework and draw on one another’s experience to develop common and consistent policies on land issues. Apart from formal adherence to the Paris declaration, this willingness, as well as the willingness to set up guidelines to direct land-related investments, is being spurred by the increasing attention paid to

the phenomenon of land grabbing.¹⁸ Manifestations of this interest include, for instance, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security,¹⁹ and a newly established Global Donor Working Group on Land. The Group was officially launched in July 2013, following the Donor Roundtable Meeting at the World Bank in Wash-

Figure 1. Share of land-related aid activities funded by donor agencies supporting a minimum of eight land-related activities, 1990-2009 (N=232 aid activities)



Source: Own elaboration based on a selection of land-related aid activities from the AidData database.

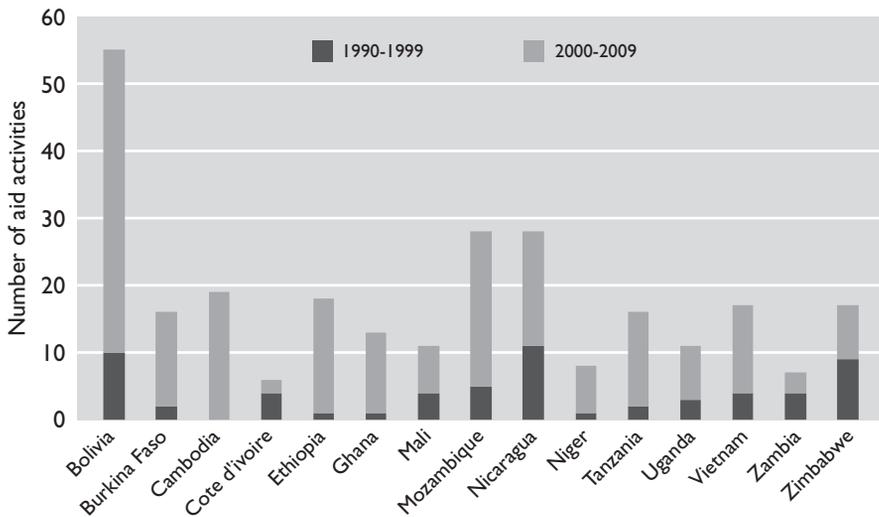
¹⁸ An example of this are the ‘Principles of Responsible Agricultural Investment that Respect Rights, Livelihoods and Resources’ to regulate land-grabbing developed by the World Bank, together with UNCTAD, FAO and IFAD developed in 2011. However, these principles have been criticised for being a way to ‘legitimise land grabbing’ (GRAIN 2011). For a discussion of these issues, see White et al. 2012.

¹⁹ The guidelines build upon previous efforts, such as the Voluntary Guidelines on the Right to Food adopted in 2004 and the 2006 International Conference on Agrarian Reform and Rural Development (ICARRD) (FAO 2012). The guidelines are not aimed at donors, however, but at all who can use them (states, local governments, organisations, civil society etc.).

ington in April 2013. It comprises bilateral and multilateral donors and development agencies ‘committed to improving coordination and information sharing to enhance the effectiveness of development programmes that focus on land governance’.²⁰

Based on a selection of aid activities related to land²¹ registered in the AidData database, Figure 1 shows the thirteen most important donors (bilateral and other) to the land sector in the fifteen selected countries. These are, in order of importance, the World Bank, Germany, the United Kingdom, Canada, the Global Environmental Facility (GEF), Sweden, the Inter-American Development Bank (IADB), the Netherlands, the USA, Norway, Denmark, the International Fund for Agriculture (IFAD) and Austria. Of these, the World Bank seems to be the only donor having

Figure 2. Land-related aid activities provided to fifteen selected recipient countries, 1990-2009 (N=270 aid activities)



Source: Own elaboration based on a selection of land-related aid activities from the AidData database.

²⁰ Members of the group are donor members of the EU Working Group on Land (ADA, AFD, BMELV, BMZ, DFID, EC, GIZ, MoFA-Austria, MoFA-Denmark, MoFA-Finland, MoFA-France, MoFA-Netherlands, SDC, Sida), i.e. several member countries of the EU, together with the FAO, Japan International Cooperation Agency (JICA), IFAD, the Millennium Challenge Corporation, USAID, CIDA, UN-HABITAT and the World Bank.

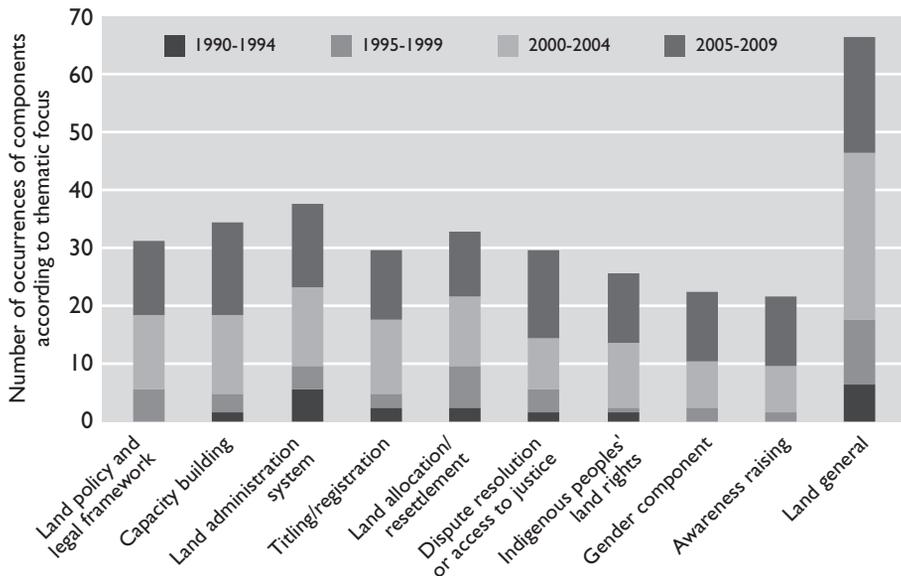
²¹ The projects were identified through the purpose codes 15110, 15130, 15140 and 15150 for government and civil society; 16030 for housing policy; 31110, 31120 and 31130 for agricultural policy, development and agricultural land resources; 42010 for women in development; 43040 for rural development; and 92000, 92005, 92010, 92020 and 92030 for support to non-governmental and governmental organisations. Selection was then made on the basis of the title or project description.

been part of projects or programmes related to land in all the fifteen countries analysed in this report, with some emphasis on Bolivia and Nicaragua. This figure is only indicative of a trend towards donor support over the last two decades, as it does not reflect the importance of the projects in terms of dollars disbursed on them (see also comments on AidData in the methodology section).

4.2 Main elements supported by donors in land reforms

Figure 3 shows a significant increase in the different components of land-related projects, in particular over the last decade. According to AidData, donor influence on land-policy formulation appears to have been more indirect at the beginning of the 1990s, after which it took off.

Figure 3. Thematic focus^a in land-related aid activities, 1990-2009 (N=270 aid activities)



Source: Own elaboration based on a selection of land-related aid activities from the AidData database.
^a Note that each aid activity may have more than one thematic focus. Thus the total number of components/thematic focuses exceeds the total number of aid activities.²² The different components reflect trends and changing priorities in support of the different elements of land reforms.

²² For instance, a project aiming to survey a portion of land and give titles specifically to women will have a 'gender', a 'land administration system' and a 'titling' component.

Support to market-led land reforms

A wide spectrum of scholars have criticised the ‘neo-liberal’ new wave of land reforms and the role of donors (Kay 1999; Platteau 1994a, 1994b; Ribot and Peluso 2003; Sjaastad and Bromley 2000; Bromley 1997; Benda-Beckmann 2003). Borrás and Franco note that the World Bank has been supportive of ideas about individual titling as a way to promote growth and thereby constructed the ‘market-led agrarian reform’ model that emphasises ‘willing seller-willing buyer’ principles. However, as they also point out, by making reform a matter of technique, proponents of reform conceal the fact that the distributional effects of reforms are rarely neutral. Reforms, they say, can and should be categorised as either pro-poor or anti-poor (Borrás Jr. and Franco 2010: 16). Similarly, Stein points out that structural adjustment programmes do not take into consideration African scepticism towards capitalist accumulation and resistance to privatisation that may undermine reforms (Stein 1995: 113). Gibbon et al. refer to Kenyan experiences, where individualisation processes led to greater advantages in terms of land acquisition and credit availability for large landowners than for small-holders (Gibbon et al. 1993: 19).

Deere and León are equally critical of the distributional consequences of ‘neo-liberal reforms’ in Latin America, but they also note that they coincided with the growth of women’s movements and the struggle for democratisation that they see as the main drivers for the more gender-progressive legislation embodied in many of the reforms (Deere and León 2001: 4).

However, even though the focus may have remained on individualisation and registration, local tenure systems are encompassed in the recent reforms rather than put aside, as discussed below.

Support to customary tenure systems

The increasing recognition of the role of customary and informal tenure systems by countries and donors alike is illustrated by, for example, the World Bank’s shift with regard to customary tenure systems, which already in 1994 were being acknowledged as institutions that could be built upon and which did not themselves hamper investment (Bruce and Migot-Adholla 1994). Other donors have followed suit. Not only has it been acknowledged that local tenure systems and authorities should be taken into account – importantly, it has also been recognised that individual or freehold tenure is not the only way to promote tenure security and thus investments and economic growth. Thus, customary and

informal tenure systems 'should not be assumed to be a constraint impeding agricultural intensification' (EU 2004: 13). Rather, donors are increasingly of the opinion that customary law should not be erased: this is 'not realistic and not desirable since customary tenure systems have attributes and strengths that respond to real needs in many countries' (USAID 2013: 1). In fact, some of the arguments in support of titling are now applied to customary tenure, with a trend to develop customary forms of registration in order to improve protection of the security of tenure of landholders, in particular women, as will be discussed in Section 5. For example, HLPE (2011) urges that individual titling efforts must be complemented with new approaches for securing tenure, such as communal titling or rights recognition (WDR 2008, HLPE 2011), as individual titling can weaken or leave out communal, secondary, or women's rights (Spielman and Pandya-Lorch 2009).

Support to policy, research and legislation

As is shown in the country studies, donor support to the policy and legal framework is important, and has been provided particularly during the early stages of land reform policy processes. This is perhaps where the influence of civil-society organisations doing advocacy, supported by donors, is most visible. In several of the countries studied, laws on, for instance, inheritance, or marriage law on joint ownership, have been pushed by women's groups or human rights groups. This work also encompasses popular consultations, the dissemination of information, awareness and sensitisation. Other laws related to gender equality such as laws against domestic violence have also received significant donor support.

Support to Land Dispute Settlement

Whereas it was largely absent in the early 1990s, donor support to land dispute settlement has exploded in the late 2000s. Often such support is given through NGOs. In post-conflict northern Uganda, for instance, a number of projects have been initiated by NGOs to address the problems people often experienced during the civil war and upon returning from the refugee camps after the war. From 2009-2010 the Uganda Land Alliance, with the support of the DANIDA Legal Aid Basket Fund, implemented a project that sought to strengthen the traditional authorities and to incorporate them into the more formal land court system because these authorities often play an important role in land dispute settlement at the local level, but are ignored by land reform efforts. The project carried out sensitisation of communities and training of local leaders (members of the formal area land committees, as well as traditional leaders).

4.3 Donor support to gender equality and land

Projects with a gender component in AidData

According to the AidData database, gender components in land projects started appearing during the second half of the 1990s and showed an increase in the 2000s, as did ‘awareness raising’.²³ According to the search strategy described in Section 2,²⁴ the AidData database includes a total of twenty projects which explicitly address land and women. Three of these projects have women’s land rights as their main focus, namely a study of gender and customary law in Bolivia, a project in Niger ‘against the defeminisation of agriculture’ and a women’s land rights project in Zambia. Projects in Mozambique seem to put quite a lot of emphasis on women. It is likely that other projects of the kind mentioned above for Zambia are being implemented elsewhere, but nonetheless projects with gender/women and land as a *main* focus appear to be few.

Rather than constituting the main focus, the concern with ‘gender equality’ is more commonly one among other concerns addressed in aid activities. In the more recent projects, gender is often associated with projects on *land rights* and *certification*. This is a new development and is found in Ethiopia, Cambodia, Mali, Ghana, Mozambique, Uganda and Zambia (in this last country it is a project on its own).

Donors and gender equality: history and linkages to land

The trend illustrated by the projects recorded in AidData is definitely in line with the latest developments in land policies and the focus of international organisations, which during the last decade have strongly emphasised the role of women in agriculture and issues related to women’s insecurity of tenure.

Indeed, despite early attempts at tackling women’s land rights, donor support to gender-related land issues has only really increased over the last ten years. For instance, the 1979 FAO report of the World Conference on Agrarian Reform and Rural Development (WCAARD) held in Rome was a turning point, recommending that ‘gender discriminatory laws in respect to “rights in inheritance, ownership and control of property” be repealed and measures adopted to ensure women’s equitable access to

²³ However, it is fair to assume that the otherwise large number of projects in the AidData data set that include support to legal advice geared towards women and vulnerable groups, training in human rights and women’s rights and other rights-based approaches might take into account women and their rights to land, even if not directly specified. A deeper look at gender-based projects would be necessary to clarify this, but the case studies will enable a better view on these issues.

²⁴ Searches were based on purpose code followed by text in the project titles and descriptions based on words such as ‘gender’, ‘women’, ‘femmes’, ‘mulher’, and ‘mujer’.

land and other productive resources (FAO 1979)' (Agarwal 2003: 185). However, it took a while for this to be systematically translated into legislation and policies.

In parallel with these developments, the discussions of the United Nations Decade for Women (1975–1985) and the Third World Conference on Women in Nairobi in 1985 (Debusscher 2011: 40) led to the emergence of the 'Women in Development' (WID) paradigm, which guided donor policies and translated into projects focused on women.

However, the WID approach was criticised for focusing on women in isolation while ignoring the unequal gender relations underlying society, as well as for looking at the role of women in production in terms of efficiency rather than gender inequality in the distribution of assets. The Fourth World Conference on Women, organised by the UN in Beijing in 1995, was agenda-setting in that much more detailed goals were defined and ratified by a large majority of countries. The international community set aside the WID model and replaced it with the GAD paradigm (Debusscher 2011: 40), drawing attention to gender issues within households, as well as to relations between men and women.

One of the contributions of the GAD approach was to introduce gender mainstreaming as a way to incorporate a gender equality perspective into policies. Since then, there have been reviews and appraisals of the promises and progress made regarding the implementation of the Beijing Declaration and Platform for Action every five years (<http://www.un.org/womenwatch/daw/beijing15/index.html>). A rights-based approach followed which has grown for more than a decade, gaining increasing weight in development interventions regarding aspects as diverse as access to and control over natural resources such as land and water, indigenous people's rights, institutional development, democracy and human rights.

Donors have been important in harnessing these discourses and approaches, sometimes initiating, sometimes pushing for change, but they in their turn have also been influenced by these international fora and treaties.

Donors and gender equality since 2005 and challenges ahead

Over the last decade, things have changed at a faster pace. Recent publications by multilateral donors reflect the growing concern related to women's access to assets, land in particular (see, for instance, the *Gender in Agriculture Sourcebook* published jointly by the World Bank, the Food and Agriculture Organisation (FAO) and

the International Fund for Agricultural Development (IFAD) (World Bank et al. 2009), as well as the *Toolkit for Integrating Gender-Related Issues in Land Policy and Administration Projects* (World Bank 2013).

However, putting gender equality at the heart of the development agenda may not really have happened yet, even if there are some positive signs. For instance, the 2005 Paris Declaration²⁵ only contained one reference to gender equality, whereas the 2008 Accra Agenda for Action contains strong references to it (O'Neill 2012). A study of the 24 DAC countries and their focus on gender equality shows that all of them are now using the gender marker (identifying projects with a gender component), as opposed to nine countries in 2005. Likewise, between 2005 and 2012, aid in support of promoting gender equality increased from USD 3.1 billion per year to USD 24.9 billion a year (O'Neill 2012: 5).

Yet, although gender equality considerations have now made their way into political texts and development goals, they are less prominently reflected in real politics or outcomes – that is, in practical achievements – to nearly the same extent. Implementation of the now existing progressive or gender-equal legislation is a totally different story. While legal reforms can often be achieved relatively quickly (although some governments drag their feet for years regarding legal reforms that will give women more rights, as some of the case studies show), implementation of policies, and especially the achievement of practical changes on the ground in rural areas generally take a long time. Effects are slow and difficult to measure, and it seems that donors therefore have a preference for supporting policy reforms vis-à-vis the much longer and harder process of gaining and maintaining rights and resources for female farmers, for example.

Moreover, evaluations have shown that donors' work could be improved. In practice, limited staff are devoted to gender issues, and when it comes to the monitoring and evaluation of impacts, results and outcomes regarding gender issues are rarely specifically targeted in evaluations (Freeman et al. 2002; Gosparini et al. 2006; Byron and Örnemark 2010; Woodford-Berger 2000; Freeman and Mikkelsen 2003). For instance, a study of gender mainstreaming in EU development policies shows that this has mainly been introduced in soft sectors such as maternal health and primary education, and that unequal gender relations are not really addressed by these policies, which continue to focus on women only, as in the old WID paradigm (Debuscher

²⁵ The Paris Declaration aims to reform the ways in which aid is managed and delivered. The five main principles of the Declaration are ownership, harmonisation, alignment, results and mutual accountability.

2011). Similar conclusions are reached in a recent AfDB study based on 34 bilateral and multilateral donors' evaluations of gender, gender mainstreaming or gender equality. The study also argues that the leadership of donor organisations themselves lacks the commitment to 'move beyond policy rhetoric' (AfDB 2012: 9). Another important issue is that the commitments on gender equality priorities may not be implemented because donors do not allocate sufficient resources to them. Quantifications of development interventions devoted to gender issues or aid money destined to gender issues also show that implementation is still lagging far behind policy – also by donors. For example, a recent evaluation of the development interventions by the European Community in Nicaragua found that only 13 of 178 interventions supported in the country were gender-specific (9%) and that they only accounted for two per cent of commitments (DRN 2009: 203). An OECD background paper looking at bilateral donor assistance focused on achieving gender equality and women's empowerment found that half of the 24 DAC countries surveyed had identified gender equality objectives, but 'few had allocated a budget for achieving these' (O'Neill 2012: 14). This, in turn, is linked to a lack of data (on the part of both the donors and the partner countries), as will be further explained below.

At a more theoretical level, there is also a debate concerning the reasons underpinning the willingness to change, which has implications for the way the question of 'women and land' is addressed. While several donors work with gender issues based on about the principles of the equality and empowerment of women (as well as men) – and here, the Nordic countries are highlighted – utilitarian arguments in favour of more equal positions of women and men are very often met (e.g. GII; Freeman et al. 2002). This is, for example, the case when donors and governments refer to better efficiency and better economic outcomes of projects with female beneficiaries as an argument in favour of strengthening women's participation in development interventions. Yet, while some – especially feminists – criticise the utilitarian approach for not wanting to work with those issues of inequality and discrimination that cannot produce efficiency gains, others argue that the utilitarian approach and the development potential arguments are important and relevant issues to use in favour of a stronger integration of women and greater attention to their rights, without being culturally normative.

Importantly, donors must be aware that there is currently a risk of the evaporation of gender concerns, as these are sometimes sidelined (Holvoet and Ingberg 2012). A counter trend to the positive signs listed above has been noted in that gender concerns have also come under pressure from religious and cultural groups in internation-

al forums (Danida 2013). This is something to bear in mind, as this report has shown how cultural practices are at the heart of the implementation of gender-progressive laws and can challenge gender equality in practice at both the local and national levels.

4.4 Gender inequality indexes

The issue of holding rights and being able to make use of them – to land, but also to decision-making, financial capital, voice and vote – links the issue of women’s land rights closely to other issues of the distribution of rights and resources in society, as well as the distribution of opportunities between men and women. Many texts on women’s land rights and on gender equality and rural development highlight the fact that it is insufficient to focus on land legislation and land administration. In order to obtain changes regarding women’s access to and control over productive resources and their own lives and bodies, other practices and institutional arrangements, including civil law, marriage law, inheritance, access to credit and society’s view of women as individuals and citizens with rights also need to be addressed.²⁶ Sex-disaggregated data are crucial in effecting change. ‘When sex disaggregated data are used as a basis for decision making, this leads to an increased focus on – and budget allocations for – gender equality and women’s empowerment’ (O’Neill 2012). However, it has been noted that donors’ support for collecting sex-disaggregated data is limited.

As part of the effort to measure and visualize the still existing gap between the rights, resources and therefore opportunities that men have vis-à-vis women, the UNDP has (recently) developed a ‘Gender Inequality Index’ (GII) that reflects gender-based disadvantage in three dimensions – reproductive health, empowerment and the labour market²⁷ – for as many countries as data of reasonable quality allow.²⁸ The index shows the loss in potential human development due to inequality between female and male achievements in these dimensions. It varies between 0

²⁶ See, for example, the ‘Women and Law in Africa’ initiative, which looked at all kinds of discriminatory practices.

²⁷ The three dimensions of the GII are built on five indicators: indicators of reproduction: maternal mortality; adolescent fertility; indicators of empowerment: parliamentary representation and educational attainment (secondary level and above); and indicators of labour market participation. The Index does not allow high achievement in one dimension to compensate for low achievement in another.

²⁸ The GII faces major data limitations, which constrains the choice of indicators. For example, the data on national parliamentary representation does not reflect participation at the local government level and elsewhere in community and public life. The labour market dimension lacks information on incomes, employment and unpaid work that is mostly done by women. The Index misses other important dimensions, such as time use – the fact that many women have the additional burden of caring and housekeeping, which cuts into leisure time and increases stress and physical exhaustion. Asset ownership, gender-based violence and participation in community decision-making are also not captured in the Index, mainly due to limited data availability.

Table 3. Gender Inequality Index, selected countries

Country	GII		Reproduction		Empowerment			Labour force participation rate %	
	Rank	Value	Maternal mortality ratio	Adolescent fertility rate	Seats in national parliament (% female)	Population with secondary education or more		Female	Male
						Female	Male		
	2011	2011	2008	2011	2011	2010	2010	2009	2009
Bolivia	88	0.476	180	78.2	30.1	55.1	67.9	62.1	82.0
Burkina Faso	121	0.596	560	124.8	15.3	34.7	35.1	78.2	90.8
Cambodia	99	0.500	290	41.8	19.0	11.6	20.6	73.6	85.6
Côte d'Ivoire	136	0.655	470	129.4	8.9	13.6	25.2	50.8	82.1
Ethiopia	-	-	470	72.4	25.5	-	-	80.7	90.3
Ghana	122	0.598	350	71.1	8.3	33.9	83.1	73.8	75.2
Mali	143	0.712	830	186.3	10.2	3.2	8.4	37.6	67.0
Mozambique	125	0.602	550	149.2	39.2	1.5	6.0	84.8	86.9
Nicaragua	101	0.506	100	112.7	20.7	30.8	44.7	47.1	78.4
Niger	144	0.724	820	207.1	13.1	2.5	7.6	38.9	87.5
Tanzania	119	0.590	790	130.4	36.0	5.6	9.2	86.3	90.6
Uganda	116	0.577	430	149.9	37.2	9.1	20.8	78.3	90.6
Vietnam	48	0.305	56	26.8	25.8	24.7	28.0	68.0	76.0
Zambia	131	0.627	470	146.8	14.0	25.7	44.3	59.5	79.2
Zimbabwe	118	0.583	790	64.6	17.9	48.8	62.0	60.0	74.3
Denmark	3	0.060	6.0	38.0	59.0	65.6	60.3	70.6	

Source: <http://hdr.undp.org/en/statistics/gii/>, consulted in March 2013

– when women and men fare equally – and 1, where one gender fares as poorly as possible in all measured dimensions.

The table above shows that, for the fifteen selected countries, only Vietnam and Bolivia lose less than half of their potential human development due to gender inequalities (and thus below the world's average), while Niger and Mali lose close to three quarters of their potential human development due to gender inequality.²⁹ The UNDP finds that generally countries with high levels of gender inequality also experience unequal distributions of human development and that countries with an unequal distribution of human development also experience high levels of inequality between women and men.

The table above shows the GII rank and value, and the individual indicators, for the fifteen selected countries, as well as the prevalence rate of (any kind of) contraceptives and total fertility rates. The figures for Denmark have been included for reference.

Looking at the large-scale picture that the GII paints, all countries in the world suffer a loss in their potential achievement in human development due to gender inequality. Sub-Saharan Africa, South Asia and the Arab states suffer the greatest losses due to gender inequality (58%, 57% and 56% respectively), while South America and Central America present averages of 43% and 45% respectively, and Europe and Central Asia have averages of 28%.³⁰

The GII confirms the continued existence of a gap between the (generally) gender-sensitive policies that deal with gender equality, rights to education and health, and women's access to productive resources, and their actual implementation.

²⁹ It should be noted that the losses in achievement due to gender inequality are not directly comparable to total inequality losses because different variables are used.

³⁰ Own calculation based on the 2012 GII data.

5. Lessons learned from country studies

The five country studies point to the following elements that play a key role in the integration of gender equality, to different degrees, into land reforms or attempts at land reforms and the role of development cooperation.

5.1 Legal framework and policies

Legislation has been shown to be crucial for the promotion of gender equality in land tenure. It matters whether gender equality and the ability of women to own land is stated in different pieces of legislation, including the constitution. While important, this is not a sufficient condition to achieve gender equality in land tenure, as the implementation of the legislation often lags behind. This is even more challenging in contexts of dual tenure.

Gender equality in the Constitution

The country studies show that an important step towards promoting gender equality in land administration is that it should be clearly spelt out in the constitution. Uganda's constitution has been hailed as particularly gender-sensitive and progressive. Likewise, Ghana's constitution ensures equality between men and women. However, in both Zambia and Ghana, exceptions are made for customary law or personal law (which includes divorce, marriage and devolution of property). These are important caveats which prevent the gender equality principle prevailing in land-related matters: women living under customary law, for instance, often do not have the same rights as men and often depend upon a male relative to access land. The current drafting process of a new constitution in Zambia aims to redress the situation by spelling out clearly that any customary law or practice contrary to principles of gender equality will be void.

Gender equality in the land legislation

It has been argued that the protection of women's rights needs to be spelt out in land legislation as well to be effective. Tanzania's land law goes the furthest in protecting women's rights to land: the Tanzania 1999 Land Act abolishes customary discriminatory practices, aims to include women in administrative arrangements and vests the local land authorities with the responsibility for protecting women.

The Uganda 1998 Land Act also prohibits decisions pertaining to customary land that deny women access to or ownership of land, as well as outlawing transactions

Box 3. Land administration, gender equality and development assistance in Ghana

Ghana has been implementing a land administration reform since 1999. The Land Administration Project (LAP), an ambitious programme supported by donors now in its second phase, aims to strengthen land administration institutions and increase land-holders' security of tenure on both state and customary land. Land in Ghana remains a primary means of production, and agriculture is the main contributor to the Gross Domestic Product (GDP). Land is governed by a plural legal system of customary, statutory and religious law. However, most of the land is held under customary tenure, with chiefs, heads of families or other traditional authorities being the custodians of the rights held by individuals. Through the registration of rights, the reform aims to mitigate the rampant insecurity of tenure due to multiple land sales, lack of or unclear boundaries and issues related to chieftaincy disputes. Although at first absent from the 1999 Land Policy, gender was later incorporated into the project and a gender strategy developed in 2009, with the goal of mainstreaming gender in land-related agencies and activities. The strategy aims to redress the gender imbalance with regard to land ownership. Indeed, women's access to assets, including land, is weak. Legislation aiming to protect and promote women's rights exists and is viewed as progressive, but it has been weakly implemented, also due to cultural practices. Some state laws on inheritance, for instance, aim to regulate succession for spouses under customary marriages, but do not seem to have had much influence in the rural areas.

At this stage, no conclusive evidence has come to light with regard to the impact of the gender mainstreaming of the LAP on women's access to land and land ownership, although an increase in female ownership and titling has been reported in some pilot areas.

The role of development assistance in the reform process is clearly visible through its support to the LAP. The project is also illustrative of how donor policies advocate the recognition and involvement of traditional authorities as main actors in the reform's implementation. At the same time, the call for greater attention to be paid to women's access to land shows that, despite a progressive legal framework, gender equality is facing challenges in a context of cultural and social practices that can prove discriminatory against women. For the time being, however, gender equality in the land administration does not seem to be at the core of donors' preoccupations. Support to gender in general also seems weak. Over 2009 and 2010, Ghana was one of the five largest recipients of aid through budget support from DAC donors; however, only half of these donors reported that their contributions targeted gender equality. More attention is therefore needed to examine how the gender mainstreaming of LAP activities will tackle these issues, and to what extent donors will support and push for these changes.

Based on Spichiger and Austin (forthcoming)

without spousal consent. Moreover, it contains provisions to reinforce the rights of women, children and orphans. In that respect Zambia lags behind, as its 1995 Lands Act does not mention gender (its draft land policy, on hold at the time of writing, proposes to allocate 30% of land to women). Nicaragua has gone further, as since 1995 already, legislation has provided for titles to be issued in the names of both spouses for all plots allocated by the state. However, joint titling may not always be

Box 4. Land administration, gender equality and development assistance in Zambia

Land, in particular agricultural land, is central to livelihoods in rural Zambia. Zambia is characterised by a dual legal system of customary and statutory law and dual land tenure, with state land and customary land. A market-driven land reform, providing for the conversion of customary into state land, was introduced by the 1995 Lands Act in order also to attract investors. The Lands Act was criticised for being gender-neutral and for not tackling women's precarious access to and ownership of land under customary tenure. Indeed, in order to access customary land, which constitutes the largest proportion of land in Zambia, women mostly depend upon a male relative in many regions.

Low access to land and to property other than land is one of the elements that makes gender inequality in Zambia visible, along with women's lack of representation in decision-making institutions, low levels of secondary education and high maternal mortality levels. While some legislation on inheritance could to some extent play a positive role, this is not implemented on customary land.

Both on the government's side and within civil society, as well as within NGOs and donor agencies, gender equality concerns have increasingly come the fore over the last decade. A gender policy passed in 2000, as well as draft land policies, have tried to redress women's lack of access to land by proposing that 30% of the land should be allocated to women. Donors have certainly pushed for policies and changes in legislation with regard to gender equality. In particular, the recent Anti Gender-Based Violence Act has been hailed as representing huge progress towards gender equality and was strongly supported by donors.

The land sector, however, does not receive much donor support. While it is notable that a few donors supported the process leading to the 1995 Lands Act, no donor organisation supported gender issues within that sector in that period. However, donors have addressed issues related to women's access to land through their work related to agriculture or through work on women's rights or support to the judicial sector. A contribution worth noting is support to organisations advocating gender equality in past and on-going policy and legal processes. Donor support directed entirely at women's land rights is mostly felt through programmes implemented by NGOs (national and international) and civil-society organisations. These programmes have had promising results, in particular with regard to knowledge acquisition and capacity-building. However, it was observed that changes with regard to land tenure are slow in being institutionalised, if they are at all, and that positive outcomes are often isolated and dependent upon individuals. In several ethnic groups, women are culturally not entitled to own land, and this is difficult to change, in particular where institutions to enforce the law are lacking. This is linked to the fact that there are no mechanisms to enhance the accountability of land administrators on either customary or state land, nor any ways to ensure that women, once knowledgeable of their rights, actually can (and feel they can) seek redress.

Zambia is now at an important juncture, with the government aiming to codify customary law and to strengthen landholders' security of tenure on customary land. How and when this will be done, and how this codified customary law will be enforced, as well as what impact it will have on women, remains to be seen. Judging from the tenure reform experiences in Zambia of recent decades, donor involvement and support to gender in the land and judicial sectors will be important in order to ensure a positive outcome to these changes for women.

Based on Spichiger and Kabala (forthcoming)

the preferred option: it has been resisted in Uganda, and a study conducted in Nicaragua found that women tend to prefer to have land registered in their own names (Aguido, personal communication).

Gender equality in marriage and succession legislation

Laws regulating marriage and inheritance of course play a crucial role, as do court rulings in systems using common law, as in Ghana, Tanzania, Uganda and Zambia. In several countries, however, laws are not comprehensive. Nicaragua's separation of marital property regime not only provides for a large degree of testamentary freedom, but places children before spouses as heirs. While there is a provision protecting spouses, in that one quarter of the estate is to be reserved for the spouse as 'subsistence proportions', it is stipulated that the need for this subsistence has to be proved legally. The Marriage Act in Tanzania is unclear on ways to divide the parties' contribution. In Ghana, no guidelines have been provided to the courts to help them determine the interest a spouse has in the property.

Some laws contain loopholes, but some are also simply missing. In Nicaragua, for instance, there is so far no law recognising common-law relationships, which are common in rural areas.

One of the main problems that have been mentioned in previous sections relates to the existence of dual tenure systems in many African countries. Exceptions for the application of customary law or non-applicability of statutory law to certain areas (e.g. personal law) can mean that the protection of rights is inadequate. Even in cases where customary law is subsumed by statutory law, enforcement remains a challenge. In Tanzania, for instance, even though customary law and customary authorities are recognised and customary practices must be repealed when they discriminate against women, the statutory law is often not applied or enforced.

Indeed, it is not only the legal loopholes or the existence of two legal systems that are at stake, but the important discrepancies between the legal framework, however adequate or exhaustive, and realities on the ground. All the country studies tell us that the laws are not being implemented, as will be shown below.

Role of donors and civil society

Donors have been involved in research, policy-making and legal processes. They have been key in supporting both the land reforms and gender equality in the five countries. A striking illustration of this is the role of the World Bank and FAO in

Box 5. Land administration, gender equality and development assistance in Nicaragua

Nicaragua in Central America is characterised by both high levels of poverty (especially in rural areas) and considerable inequality. Land ownership is still highly concentrated, despite attempts to redistribute land during past agrarian reforms. Legally, according to the Constitution, women can own property on equal terms with men, although marriage and inheritance laws and practices affect women's property rights negatively. In practice, there is a markedly skewed distribution between men and women regarding productive resources such as land and animals. It is remarkable that, despite the supposed gender mainstreaming in agricultural policy and the progressive legal framework of the 1980s and 1990s, the state as source of land ownership is much less important for women than for men. There is also a considerable gender difference regarding both access to agricultural extension services and access to credit, as well as education and the labour market. According to the recent OECD Social Institutions and Gender Index (SIGI), Nicaragua has the highest level of gender discrimination in Latin America and the Caribbean.

The civil war and the influx of international development organisations from the 1980s influenced subsequent Nicaraguan women's movements and the gender balance. International donors have given support to making women's contributions to society and to the economy more visible and have also supported sensitisation to gender issues among civil servants and others. It is only through the work of the women's movement in Nicaragua that the attitude that violence against women is something natural is gradually being challenged. Donors have both inspired and pushed. With the onset of the structural adjustment programmes during the 1990s, gender-related aspects became a requirement for access to international development aid programmes. Several international cooperation agencies played a key role in the programmes of the individual adjudication of former state land and the promotion of joint titling in the 1990s. Recently donors have supported a large-scale land administration programme, including land-titling. Regional organisations have also received donor support to strengthen women's land rights and their access to justice in general. Furthermore, there have been considerable efforts by donors to coordinate their policies and efforts with respect to gender issues vis-à-vis the Nicaraguan government.

Since the electoral victory of the Sandinista party in 2006, the Nicaraguan authorities have objected to donor support in the area of democratic governance, viewing it as political interference. The withdrawal of funding by six major Western European cooperation agencies has seriously weakened prominent non-Sandinista CSOs. Remaining donors find themselves working in an adverse political environment with regard to gender issues. The current government has a 'familist' approach, as opposed to a 'feminist' one, and gender-based violence appears to be on the rise again. Despite important advances for women's access to education, land ownership, voice and awareness about rights during the past three decades, where Nicaragua has at times been referred to as a positive example regarding equal rights and women's liberation, there seems to have been a reversal in this positive development since the mid-2000s.

Based on Broegaard (forthcoming)

Nicaragua, where these organisations been pushing for legal changes to strengthen women's land rights by making joint titling compulsory for the state's land allocations to couples. Women's groups supported by donors were instrumental in pushing for the spousal consent clause in the Uganda Land Act (Joireman 2011).

Box 6. Land administration, gender equality and development assistance in Uganda

The social status of women has a significant bearing on Ugandan women's rights to access, utilise and/or own land. Marital status is an important factor that contributes to defining a woman's ability to protect her rights. The Government of Uganda has passed a series of reforms to improve land governance, and also to provide better protection of women's rights to land. Implementation has, however, been slow, and coordination with other laws affecting women such as the Succession Act has been poor. These problems are compounded by a shortage of skilled people in the land administration in general and a rapidly changing legal framework that has created confusion over the authority to administer land and settle land conflicts at the local level. The Uganda case study highlights some of these inconsistencies relating to women's rights to land, in particular the situation in post-conflict northern Uganda, where customary law is very strong and often interpreted in ways that discriminate against women.

The study examines the main land-related donor interventions carried out at different levels, from the local to the national. Supported by donors, various civil-society institutions have worked to influence both policy and its implementation. In particular in the north, NGOs have carried out training sessions on land rights to fill out the institutional vacuum left by the civil war. The Ministry of Lands, Housing and Urban Development, supported by the World Bank, on the other hand, has been engaged in various projects to improve the statutory land administration with an emphasis on modernising and expanding the land-title deed system. Sometimes these projects have been contested at the local level. Based on these experiences and the contradictions in the existing legal framework, a new National Land Policy has been formulated that aims to clarify the role of the different institutions and enhance the effective use of land.

Based on Burke and Pedersen (in preparation)

Related laws and policies that impinge upon land are important as well. In Zambia, civil society was crucial in advocating the inclusion of a clause on land in the 2000 Gender Policy. The 2011 Anti-Gender-Based Violence Act in Zambia and the more recent constitutional process also illustrate the important role donors play, both by supporting the process in practice (financial support to meetings, consultative meetings with citizens etc.), but also by supporting civil-society organisations advocating gender equality. Moreover, Nicaragua is also illustrative of the more indirect ways in which donors have pushed for gender equality, including theoretically, by ensuring that views are shared in forums and discussions. This influence is not to be underestimated. In Tanzania, there are signs that women's rights to land are achieving greater recognition from women themselves through the indirect influence of legislation (even if not always applied in practice). Likewise, the discourse in Zambia shows signs of women's rights

to land being more accepted than in the past. While donor efforts have been fruitful and advocacy for gender equality should continue, more of the attention of donors should be drawn to problems related to implementation, as will be discussed below.

5.2 Implementation of legislation

The lack of implementation and enforcement of the legislation means that gender equality with regard to land access or ownership is far from being realised. It is therefore important to keep this in mind with regard to countries which already have developed or are in the process of developing gender-balanced legislation, as this is only the very first step. As will be shown below, problems with implementation are due to several, often interrelated factors, which affect both institutions and people applying to or calling upon these institutions.

Problems related to institutions

The decentralisation of land administration can play a key role in enabling people to access institutions. However, there are some caveats to this. The fact that there are state-backed institutions at the local level does not necessarily mean that they are more widely accessed, nor even considered legitimate in the community. On the contrary, these authorities may lack legitimacy, and customary institutions and practices may still have an important role to play, not always to the benefit of women, as has been shown in some parts of Uganda and Tanzania, where elders involved in allocating land or settling disputes sometimes make decisions that are detrimental to women.

Of the five countries, Tanzania is perhaps the one with the most far-reaching decentralisation of land administration. Land administration and management, as well as dispute settlement, have been decentralised to the village level through state-backed village land councils and village adjudication committees. These institutions may or may not incorporate customary authorities. But even when customary authorities are not involved, customary and discriminatory practices may persist. This is, of course, strongly dependent upon the will of the state. In Zambia, by contrast, statutory land administration has not been decentralised beyond the district level, and even then only up to a point, as districts only act as agents for the state. Furthermore, in countries like Zambia, where there is a clear separation between the customary and statutory systems, the state often does not intervene in customary land administration.

Box 7. Land administration, gender equality and development assistance in Tanzania

Tanzania's 1999 land reform is the key to understanding the current dynamics affecting women's access to land. The reform has been evaluated as among the most gender-sensitive of its kind in Sub-Saharan Africa. It clearly abolishes discriminatory customary practices and prescribes women's representation in the administrative arrangements. Still, women's rights to land are often not respected. There is a gap between the legal framework and what is happening on the ground. The problem is exacerbated by a slow and uneven implementation of the reform in general. This points to the central importance of implementation approaches.

Donors have been involved throughout the Tanzanian land-reform process, from the formulation of policies to their implementation and evaluation. In particular, donors have exercised influence over the content and scope of implementation activities through their financing power, thus helping make things move. However, although donors have often been important allies for women groups, their impact on women's rights is ambiguous. Some donors are important funders of the NGOs who do the slow work of changing people's attitudes towards women holding land. Other donors finance activities aimed at issuing land title deeds, which may undercut women's land ownership if pushed through too hastily. Gender is rarely considered an important part of these titling projects, whose main aim, typically, is to improve the environment for doing business. Thus, donors have contributed to fragmentation. I of the reform in its entirety – its gender-sensitive provisions included – has been neglected.

Based on Pedersen and Haule (forthcoming)

However, for these institutions to function, several interrelated conditions need to be fulfilled. As all five case studies suggest, a lack of resources makes implementation of these reforms difficult. While showing promise, comprehensive land-reform programmes in, for instance, Tanzania and Ghana have been said to be severely under-funded with regard to their implementation (Pedersen 2010; Karikari et al. 2005). Related to the lack of funds, institutions in the areas of land administration and dispute settlement are plagued by issues of inefficiency, a lack of staff and/or of educated and trained staff, and inadequate technical frameworks (e.g. problems with equipment needed for surveying in Ghana).

In some cases, as in Uganda, many of the land administration institutions prescribed by the Land Act do not even exist or do not function at the local level. Village and district authorities in Tanzania lack resources in terms of funding and skills, in part due to delays to plans and regulations, as well as inadequate funding to implement the land laws, which came late after the laws. Whichever registration system has been selected, all the studies report that the countries suffer huge backlogs in treating applications or, further in the process, in delivering certificates. Moreover, cor-

ruption has recurrently been mentioned as a problem in the five countries, though to different degrees. In fact, where procedures and processes take a long time, the practice of bribes might be more prevalent, as people hope that this can make their application progress faster.

Of course, the problems plaguing land administration and dispute settlement institutions affect women as well, perhaps in some cases even more strongly. In fact, an important issue related to the functioning of institutions is whether they are accessible, and to what degree.

Access: geographical, financial, social and cultural

Several factors have been identified in the five countries that make institutions more or less accessible to women. First of all, where land administration has not been decentralised, or not to the lowest level, the physical distance poses a problem for women, who often lack the means and the time to travel long distances to have their land registered at a land agency. Secondly, and related to the first, is the fact that women and vulnerable members of a community may not be able to afford either the costs of transport or the costs of registration itself, which means that titling or registration projects are often placed out of their reach. Even where there are plans to decentralise further, the costs associated with surveying and registering, as in Ghana, Uganda and Zambia, might still mean that the geographical closeness of an institution might be ineffective in enabling women to apply for a title. In Ghana, land title registration in periurban areas is only undertaken by members of the elite. In rural areas, land registration does not benefit smallholders, but mostly companies (Kanji et al. 2005). In Uganda, a recent programme implemented by the Ministry of Lands and financed by the World Bank aims at decentralising land administration at the local level by 2015. However, experts say it will still be difficult to access for women due to the exorbitant costs of registration. In Nicaragua, it is reported that women access land through land reform far less frequently than do men, despite the stated gender focus. According to a national survey in Nicaragua, the share of women landowners only increased from 16% in 1998 to 20% of landowners in 2005. Panel data indicate that roughly 14% of women have title to their land in their own name. Because of their social and cultural statuses, women often find themselves unable to call upon the different institutions responsible for land administration or dispute settlement at the different levels. For instance, cheap land deals were available in Nicaragua with the dissolution of cooperatives, but it was mostly men who benefited from them. This relates to the lack of awareness of laws or of procedures or steps concerning land registration: many smallholders in the five countries are not

even aware of the possibilities of registration. Laws might not be enforced, and enforcement may be made more difficult in contexts with low levels of literacy, which further aggravate the lack of awareness (see Unruh 2008: 701). All the studies reported that the lack of legal literacy and of literacy in general was a serious obstacle to women being able to enjoy their rights.

The case of dispute settlement

All of the above issues apply to dispute settlement institutions as well. These institutions can and do play a crucial role in protecting women's land rights. There is, however, some ambiguity about how far they adequately address issues of gender equality. It was found, for instance, that courts may not always treat women fairly, or not adequately. The costs of judicial procedures might also be too high to bear, or bribes are asked that women cannot pay. In Uganda it has been noted that the courts are often overburdened, and that there are also overlapping responsibilities or tasks between different institutions, as well as between different courts, in Zambia. This is also aggravated by the fact that people may not know where to bring their cases in the first place due to a lack of knowledge about these issues. Women are affected in particular. It has been argued that the local authorities may be turned to in a dispute because women may feel more comfortable and less intimidated by them than in the formal courts. However, it has also been shown that the traditional courts are biased towards men in Zambia (African Human Security Initiative (AHSI) 2009) and that, as in Uganda and Tanzania, women may prefer to turn to the formal legal system, as it may be less gender-biased, although in Tanzania it seems that this is more usually the case for better-off women. In Ghana, however, it has been documented that both formal state courts and traditional courts can intimidate women (Crook, Asante and Brobbey 2011).

In Nicaragua, despite a legal framework outlawing gender-based violence, prosecution for domestic violence (characterised by some as endemic) is rare, and there is *de facto* impunity in cases of violence and other crimes against women (see section below on cultural barriers).

Role of donors and civil society

What can donors do and what have they done to mitigate the problems outlined above? While it has been acknowledged that donors have strongly (even if indirectly) pushed for gender equality in land and other legal reforms, support to the implementation of reforms has followed a different strand. Several donors have supported, whether together or on their own, large land-reform projects,

like Ghana's land administration project (LAP). Often, as part of the reform's implementation, they have supported pilot projects on titling or registration, in a few cases directly aimed at women. Recent land-titling interventions with donor support in Nicaragua, for instance, have a target of issuing 40% of titles to women. However, often the results are quite mixed, and the influence of donors has sometimes been quite ambiguous as far as gender equality is concerned. Despite launching the efforts as gender-balanced, several of the projects supported turned out to be biased in favour of men. This is quite illustrative of the above point that gender mainstreaming is far from being consistently applied. The Uganda study notes that women's rights to land do not receive much attention in the training manuals and guidelines for systematic demarcation in Uganda (Ministry of Water 2003). The Land Administration Project in Ghana also only directed its attention to gender at a later stage. However, gradually more donors commit to taking gender equality into account, as in Ghana, where the gender mainstreaming of the LAP is currently taking place.

An important way in which donors have tackled the issues of access to institutions for women that were outlined above is through support to the justice sector, as in Nicaragua, Zambia, Ghana and Uganda. Positive outcomes of this kind of work include the establishment of women's commissariats in the police in Nicaragua (with the caveat that the police continue to have strong patriarchal values). This is indeed essential to reinforce the justice system at all levels, as well as work on legal and other forms of literacy. Related to this, support to civil-society organisations and NGOs is seen as crucial in all the studies in, for instance, training paralegals and raising legal awareness, which is most often focused on women, as in Zambia, Tanzania and Ghana. However, the impact of this type of project has been questioned. The Tanzania study's comparison of an NGO-led project and a state project to register land, both funded by donors, shows that the former, by being permanently present in the community, had more impact than the latter, introduced by the state and implemented too quickly. However, it has also been pointed out that in Uganda the work of NGOs has failed to have an impact in the longer term as it cannot be as effective as the state in law enforcement (Joireman 2011). Recent evaluations of programmes in Nicaragua have come to the same conclusions: while project support can lead to more concrete results, it does not have the longer-term impact that legislation can have (Aasen 2006). This points to the importance of the complementarities between on the one hand the work on legislation and policy-making and on the other hand law enforcement and policy implementation.

In Zambia, where little donor support is given to the land sector, support to NGOs is of course crucial. Land alliances are examples of NGOs tackling the policy side, as well as having an impact at the community level. In Uganda and Zambia, land alliances and other NGOs are playing a very important role in both bringing gender issues on to the land agenda and their work in the field. International NGOs such as ActionAid have also played an important role in Zambia, Tanzania and elsewhere in Africa.

Also, while the recent trend, in practice as in policy, has been to work within customary systems with customary authorities, what is at the core of the problem is the role of the institutions responsible for implementation. While the return to the customary can be hailed as positive, attention has to be paid to the ways in which customary tenure may be excluding women and other segments of populations, as well as the extent to which projects can have the effect of only benefiting elites. There is an urgent need to find ways to provide checks and balances for customary authorities and customary laws.

5.3 Cultural barriers

Projects and programmes aimed at redressing gender equality and gender experts in the different countries all agree that cultural barriers are the most important problem to be overcome. A clear sign of this is often the inability of projects actually to address fully the question of gender inequality at the local level. A flagrant illustration of this is the continuing resistance to, for instance, joint titling in titling projects that are supposed to include the spouse's name on the title deed, as, for instance, in Uganda, Nicaragua and Tanzania. Men resisted the idea in Uganda. In Tanzania, the project implementers let people decide whether they wanted joint titling or not, whereas it should have been compulsory. Evaluations of programmes' outcomes in terms of women's land rights in Zambia come to the same conclusion: despite having the support of chiefs in rural areas, headmen and husbands may still oppose the idea of women having their own land. Deep-seated views on women and men are also pervasive at government level, and changes in statutory law often take a long time due to entrenched cultural ideas about men and women. While Ghana acknowledged the need for updated property legislation already in 1992, the Inter-state Succession Bill was only passed in 2012, after a three-year process riddled with delays due to the divisive nature of the subject.

In Latin America, in the case of Nicaragua, where the historical and political context is different, the same conclusion can be reached. While gender equality was

part of the overall a policy during the Sandinista regime, the implementation of laws and policies and entrenched cultural values on the role of women did not follow suit. For instance a study showed that land was often titled in the name of two relatives instead of a couple (Agurto and Guido 2003). What was further gained through a female presidency (1991-1996), for instance, by pushing for a gender agenda in agriculture and for collecting systematic data on gender, suffered a setback later on. Experts characterise this as a move from a feminist approach to a 'familist' approach, where traditional values regarding the role of women and men are emphasised. Moreover, this is made worse by a general culture where impunity regarding violence against women implies that gender-based discrimination it is implicitly 'accepted'.

In Africa, important factors playing a role in a woman's ability to make claims and have these claims protected are her social status, but also her marital status. Women's views on the role of women constitute an important cultural constraint. Women may not feel able to go to a statutory court to appeal, for different reasons. While this can be a matter of a lack of the necessary knowledge, as discussed in the section on access, women may also feel that they are simply not supposed to do such a thing (Spichiger 2012).

The huge gap between progressive laws and policies – which themselves are the outcomes of long debates and advocacy by supporters of gender equality – and their implementation clearly shows that a few days in a sensitisation workshop cannot solve the issue of gender inequality, especially at the household level. While sensitisation and awareness-raising are laudable and should be supported, it is the unequal relations between men and women at the local level that have to be tackled.

This all points to the fact that cultural barriers cannot be overcome by law, but only through changes in practice. Positive examples have been recorded, such as the USAID/Millennium Challenge Corporation programme in Nicaragua. The programme uses affirmative action by giving a priority to women owning assets in projects and focusing on women as owners, in this way aiming to change power relations within the family (Millennium Challenge Corporation 2009).

5.4 Representation: gender and class

Class is as important a marker as gender. While all the studies show how discrimination on the basis of gender, whether sanctioned or not by the state or simply ig-

nored, exists in all the countries and prevents women from having equal rights to land or from enjoying these rights, it is also clear that situations differ for women with different social backgrounds. A better-off woman in Zambia or Ghana will be more able to acquire land than a poor woman. While it has been said that stronger women's representation at all levels might help to further women's rights, it is also clear that this is not enough to make sure that women will fare equally. Ethnicity and social status play very important roles: Ghana is a case in point, where some people are more able to have their claims answered than others. This means that focusing on more representation for women in decision-making institutions can have a positive impact, but one needs to keep a check of such issues. The same can be said for projects aimed at titling or certification: the Zambia case shows that women who could not afford to use the land they received (for lack of funds to invest in the land) sold it on. Therefore the question of who will ultimately benefit is crucial to keep in mind.

5.5 Documenting gender inequality

The importance of being able to bring the issue of gender inequality, as in the context of land tenure, into the public domain cannot be underestimated as an important element of attempts to promote gender equality, and the availability of sex-disaggregated data is essential in this regard. Thus, the need for more data in relation to gender is highlighted in all the country case studies. As already mentioned, this is an area where donor support and funding is lacking. This can happen at the level of the state, with support to gathering direct data concerning men and women, that is, sex-disaggregated data, including data on assets. Nicaragua provides a positive example of this (Deere et al. 2012). Furthermore, there is a need for data from donors themselves. While gender mainstreaming needs to be part of every project or programme, prior to, at the inception of and during programmes, it has also been found that evaluations of programmes and projects too often lack a focus on gender issues. More efforts should therefore be geared towards obtaining data, but also towards producing data through gender-focused evaluations. There again, cultural barriers will have to be taken into account. A project funded by several donors carried out in Tanzania shows that efforts to produce gender-sensitive data may be obstructed by the actors involved. Whereas the project prescribed the reporting of the proportion of Certificates of Customary Rights of Ownership issued to women, this requirement was 'forgotten' or deemed 'unimportant', and implementers felt that it was being imposed from above by the donors.

6. Conclusions

This report has looked at the role of development assistance in land reforms and in promoting gender equality in those reforms.

The role of donors, in fact, has been twofold: at certain times they have pushed the gender-equality agenda, while at other times they have inspired through their example, or by setting up incentives to give women ownership of land and other productive resources. The case studies show that sometimes the push has been appreciated, while at other times it has led to a lack of national ownership of legal reforms promoting more gender equality. The case studies also show that donor support has at times been ambiguous, supporting advocacy of gender equality on the one hand, while supporting titling projects where only men benefited on the other hand. This points to the often too weak mainstreaming of gender by donors, as well as to the fact that, like governments, donors do not always put into practice the commitments they have made in policies. This is most visible in the small amounts of funding allocated to gender issues outside the 'soft' sectors of health and education.

It has been noted that, for the countries examined, there has been a trend lately towards recognising customary tenure systems, in particular in Africa, paralleled with giving more attention to women's rights to land. This has been supported, and in some cases driven, by donors.

The literature review and the case studies show that legislation *is* important and that a lot of gender-sensitive legislation has been put in place during the past twenty years. In most cases (but not all: not in all countries, and not in all matters) legislation ranges from quite good to progressive. Moreover, the analysis presented in this report clearly shows that it is not sufficient to focus either on land legislation and land administration, or on civil law such as marriage law and inheritance law. The framework supporting women's rights to land needs to have a strong basis in both areas.

However, the analyses in the five case studies show that the 'easy part' is the legislative reforms themselves: the difficult part is their implementation and enforcement. Given that gender-sensitive (land) legislation is in place or being put in place today in many developing countries, and indeed in four of the five case study countries, it is not legal changes that should be the main element on donor organisations' to-do list!

When working with rights and access to resources, it is important to understand that rights are constantly negotiated, claimed and contested – or concerted and cemented. Therefore, while the distribution of land to female owners is important, it is equally important to ensure women's access to the institutions that can help enforce those rights. Thus, while this analysis has focused on legal frameworks and women's rights to land, it is clear that other elements are needed to help enable women to acquire and keep land, as well as to be able to make use of it. And for this, it is relevant to include women's literacy, and especially their legal literacy, as well as their access to organisation, information and economic resources, in the 'gender-equality puzzle'. Here, donors have already been active, and often in adverse political environments, but further efforts are needed.

An important point to make is that, while gender-sensitive laws and legal frameworks are important, as are structures and incentives that can promote equal access to opportunities for women and men, the case studies clearly show that individuals are able to make a difference in the quest to strengthen women's rights. Individual 'spearheads' for a certain development or certain argument were often mentioned during the interviews in the case study countries. Their influence may be visible throughout the different phases of the policy process, whether in research, policy formulation or implementation. That said, however, it is also important to remember to consider class issues when analysing gender rights. Women are not just women; they also belong to a class. Therefore, while there is a need for female representation at all levels of administration, female representation in itself may not change anything if party, class or ethnicity considerations overrule gender identity. Class, as well as culture, affects women differently. Cultural practices are (generally) a greater barrier than the legal obstacles. In Latin America, religion also has an influence: women are seen and see themselves as subordinate to men, and disrespect for their husbands may ultimately be seen as disrespect for God. In customary systems some practices may be discriminatory, but they may also be a way people represent themselves and what their roles should be along strong lines of gender differentiation. Overcoming these barriers can take time, and this has been shown to be the case not only at the local level. It can, for instance, take a long time to harmonise legislation, and resistance to gender equality can take place even at the level of parliament!

Related to this, the importance of gender-disaggregated data cannot be overstated, as it is only with such data that it is possible to make women's situations visible, both with regard to the disadvantages that they face and the importance that they have

in contributing to the income and well-being of their families, as well as production in society. Several of the evaluations of donor organisations' interventions highlight that there is a need to address the gender effects of development interventions specifically, and that this need is rarely met. Consequently, the international donor organisations themselves contribute to the lack of gender-disaggregated data and thus allow the lack of visibility of gender inequalities (or the importance of results obtained where conditions between genders are more equal) to continue. In this way, potential data and arguments in favour of more equal rights between women and men are lost.

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