

# WOMEN'S EFFECTIVE RIGHTS TO LAND

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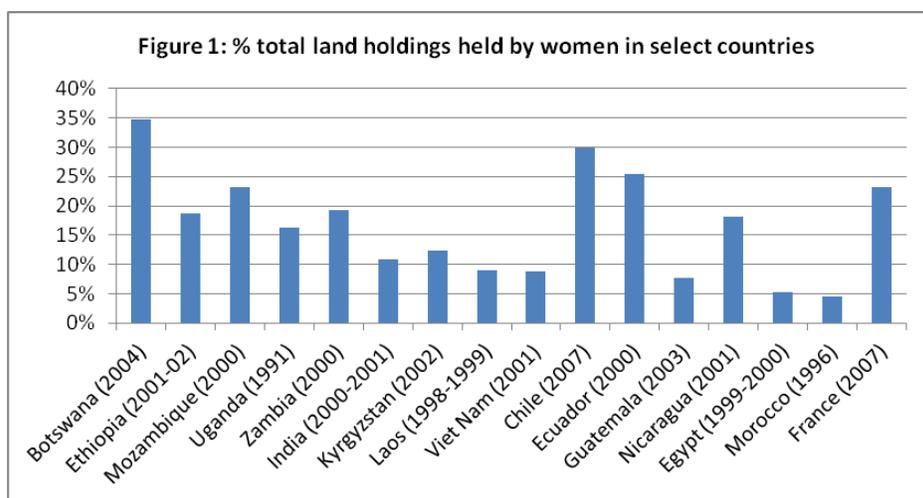
THIS FACT SHEET WILL FOCUS on women's rights to rural land in non-industrialized regions and how state policy affects (or does not affect) changes in those rights. Worldwide, countries with different social, cultural, and economic situations maintain similar discriminatory land tenure<sup>1</sup> systems with regard to women's land rights. Although data from agricultural censuses and surveys and cadastral information are partial, available information confirms the existence of strong gender disparities in land rights for women in most countries, regardless of the level of economic development. The figure below<sup>2</sup> gives us an idea of how many rural women have access to agricultural land, though it does not tell us what type of rights they have, whether they own the land, are renting or sharecropping, or are simply allowed to farm it. That type of information at the national level is not available for the great majority of countries. This fact sheet will attempt to show that the institutional arrangements for agriculture and for land rights set over the last 30 years are not adequately addressing the strong existing gender and social inequities in land tenure systems. The first section explores the importance of land rights, particularly for women. The second section reviews land policies, legislation, and programs that seek to change or legalize land tenure systems. The third section attempts to assess women's effective rights to land. The final section mentions some responses women have made to situations of unequal land rights.

<sup>1</sup> Land tenure is the set of norms and practices that defines the different land rights of individuals or groups in a given society. They are either formally recognized in legislation or acknowledged by communities as legitimate (customary tenure).

<sup>2</sup> The figure shows the percentage of holdings (out of the total number of land holdings) operated by women alone or with others regardless of management, organization, size, or location. A holding is the land and/or livestock kept, which is used wholly or partly for agricultural production and is operated as one legal entity. The landholder is the person with access to land who is reported to farm the holding.

## WHY ARE LAND RIGHTS IMPORTANT FOR WOMEN

The importance of land for rural societies is related to the power it gives to landholders; those who control land have a certain amount of power over those who do not, especially in rural areas.



Source: Elaborated by author from FAO Gender and Land Rights Database (accessed January 2013)

Gender differences with regard to land rights, status, and opportunities often give men control over women and their labour. Struggles and movements for either land or gender equity are political, and as such involve concessions, at least in the short run, by one group to another.<sup>3</sup>

Advocating for women's rights to land is justified considering that gender-equal land rights is a human, social, and economic right; one of the basic elements of citizenship or membership in a society; and a safety net for low-income and low-asset persons and households in both rural and urban contexts. In rural societies, land is a critical asset, especially for agriculturally-based livelihoods and food security. In addition, land has many meanings for rural populations: it means home, shelter, refuge in time of need, and citizenship. Secure access to land not only provides rural women the basic means for subsistence and market production, but also ensures them livelihood security and a sense of belonging through inclusion in social and cultural

<sup>3</sup> The link between land relations and power-gender relations is explored in Lastarria-Cornhiel & García-Frías (2005).

institutions, particularly governance institutions. Its social and psychological values for rural women and their families are equally important and have longstanding historical roots.

Although rural income in many countries has become less dependent on agriculture, land continues to be a crucial resource for the survival and reproduction of rural households and communities. As rural households become more feminised<sup>4</sup> and the role of women in agriculture increases (Lastarria-Cornhiel 2006), land as a secure place to raise families and as a base for diversified livelihood strategies becomes more important, particularly for women since they are majorly responsible for family welfare (Quisumbing & Maluccio 2003; Smith et al. 2003). A number of studies have shown that household assets, including land, controlled by women result in improved household outcomes such as food security, investment in children's education, and improved health (Katz & Chamorro 2003; Mardon 2005).

These cultural and social values attached to land partially explain why the struggle for land is sometimes so tenacious, why communities remain on or return to ancestral areas, why families sometimes hold on to parcels that have minimal economic or productive value, and why women struggle to improve and secure their land rights. Wealth and socio-cultural norms largely determine who in the community has access rights to land, and in most societies both have determined that primary land rights be allocated to men. In many countries, particularly in Africa and in Asia, women have had no land rights or at best secondary rights to land through male relatives: their fathers, brothers, or husbands.

## **LAND LEGISLATION, POLICY, AND REFORM**

Equality of rights to land for women and men are not only a social and economic right, but also a political and human right. The formal and informal recognition and implementation of those rights is crucial for improving gender and social equity, especially in rural areas. The set of norms and

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<sup>4</sup> The feminization of rural areas is demonstrated in the increasing number of rural households in which a woman is the head or the reference person. Regional statistics show, for example, that in South America the percentage of female-headed households in rural areas has been increasing steadily over the last two decades, in some cases by 10 points (ECLAC 2010). Worldwide, some of the highest percentages of female-headed households are over 40% (e.g., South Africa, Swaziland, Argentina, Ukraine).

practices that defines the land rights of different individuals and groups in a given society are either formally recognized in statutory laws and/or are acknowledged by members of the community as legitimate (customary tenure<sup>5</sup>). Both types of tenure systems influence each other and change over time as social, cultural, and economic conditions change. The strength of either the formal or customary system varies greatly across regions and in rural to urban areas.

Over the years, international law has become more insistent and specific about women's basic rights to land and property and has addressed the issue of removing obstacles to women's ability to exercise these rights. Examples include the Universal Declaration of Human Rights (UDHR) adopted by the United Nations in December 1948, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) adopted in 1979. These international norms have had a significant impact on national legislations as women's advocacy groups have utilized them to press for reform, including land laws and regulations that explicitly recognize and give women equal property rights. Over the last few decades, many nations have passed legal reforms of constitutions and civil codes that utilize gender neutral language or that explicitly recognize women's rights and prohibit discrimination based on gender. In addition, legislation that mandates equal land rights for women and men, such as Land Laws, are now fairly common across the globe.

For example, women's movements in Latin America since the 1970s campaigned for the recognition of equal rights in order to remove married women from the tutelage of their husbands and to give them the same and equal property rights that men held. At the national level, many countries created national women's offices that advocate for and promote gender equity. As a result, during the 1980s and 1990s most Latin American nations passed legal reforms of constitutions and civil codes to remove discriminatory clauses in family (marriage, divorce, and marital property) and

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<sup>5</sup> Customary tenure can refer to different frameworks or realities. In this paper I am referring to land institutions with rules and practices that are followed by communities and local groups and that are not necessarily recognized by formal law and in fact may contradict formal legal norms.

inheritance codes.<sup>6</sup> They have also modified land allocation laws and regulations (for example, for land reform and land titling) to explicitly recognize and give women equal property rights. Similar movements to reform legislation have been occurring in Africa and Asia. The call for gender equity in land rights has become louder since the 1995 Beijing Declaration and Platform for Action and the 2000 Millennium Development Goals, highlighting land as a crucial factor for women's economic empowerment as well as for food security and the wellbeing of rural households.

Inheritance laws and practices are often cited by women's organizations as gender biased, and many countries, including those in Africa and Asia, have reformed their inheritance codes. Since most smallholder land is inherited, this means of acquiring land is important for women. In Latin America, where inheritance codes have been traditionally equal and bilateral (both daughters and sons inherit from both parents), rural women as well as men tend to own land. In Ecuador, it was found that more land parcels were owned by individual women (as opposed to joint ownership) than by individual men (Doss et al. 2011). In India, reforms to the Hindu Succession Act have attempted to give daughters inheritance rights to land. The 1956 legislation recognized inheritance rights for daughters and sons, but then gave families the option of writing wills that disinherited daughters. In 2005, the Indian government modified the Hindu Succession Act to clearly give daughters full and equal inheritance rights.

Reform of inheritance codes includes not only inheritance within families, such as inheriting from one's parents, but also inheritance from one's spouse which is dictated by marital property laws. For example, in sub-Saharan Africa and most of Asia, land acquired during marriage is considered the property of the person who acquired it, not property of the couple. The difficulty in changing marital property norms to recognize the contribution of both spouses in the acquisition of property is becoming gradually easier due to efforts by land titling programs to issue joint titles to spouses. The state, by insisting that land belongs to both spouses, particularly if the land being titled has been allocated by the state, contributes to the

improvement of women's land rights and increases the amount of land in women's hands. In Ethiopia, for example, the Revised Family Code of 2000 gave equal rights to spouses during the conclusion, duration, and dissolution of marriage, and required equal division of all assets between the husband and wife upon divorce, although adoption of the law has not been uniform across all the regions within Ethiopia. The Ethiopian land titling and registration program provides some evidence that land titling does not necessarily have to work against women. In Ethiopia's low-cost, community-based land certification scheme, land administration committees at the *kebele* level (the smallest administrative unit in Ethiopia) were required to have at least one female member. Both the land titling exercise and the issuance of certifications were conducted publicly in village assemblies for transparency (Deininger et al. 2008). In regions where a photo, in addition to a name, was required for certification, women were considerably more likely to have their names on a deed.

With regard to land policies and reforms, in general terms they attempt to change land tenure systems. They do this by targeting one or more of the basic characteristics of land tenure systems: **access, distribution, or tenure security**. Tenure policies may seek to change rules for **access to land** through tenure reform by privatizing collective farms, outlawing tenancy, or privatizing customary land systems. For example, in Eastern Europe, Central Asia, and Russia, since the late 1980s and the 1990s, tenure reform has involved mainly privatization of lands that were previously collectives, cooperatives, or state farms. These reforms have either returned land to pre-socialist era owners (as in Latvia) or have parcelized collectively farmed lands to ex-collective or state-farm workers (as in Moldova and Albania).

Although tenure reform in this region has taken diverse forms, in part due to the level of land collectivization previously achieved under communist governments, what has been similar across most of the region is that as private property became the predominant form of land ownership, new property owners have been mostly men. Although legislation was gender equal, land allocation programs and the titling programs that follow them have generally granted the male head of household ownership rights to land parcels. In addition, it appears that in rural communities, in spite of decades of socialist government and gender equal laws, de facto property rights in land and

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<sup>6</sup> See Deere and León (2001) for an exhaustive review and analysis of women's rights to land in Latin America for the last few centuries and particularly since the 1950s.

inheritance practices conform to patrilineal custom.<sup>7</sup> A possible factor contributing to this reversion to customary norms is a rejection on the part of the population of the previous socialist state and its policies, including policies that imposed gender equity from the top down.

In Sub-Saharan Africa, tenure reform has often sought to transform customary tenure land into individualized private property. During privatization, men (and particularly male heads of household) acquire complete and legal ownership of land (Davison 1988). Individualized and private ownership transfers the few rights, such as cultivation rights, that women and minority groups may have to land under customary rules to those men who are able to claim private property rights to land (Lastarria-Cornhiel 1997). More recently, there is the trend to formally recognize customary tenure and land authorities. There is a strong debate on the implications of this devolution trend for women's land rights (Whitehead & Tsikata 2003).

Redistributive land reform has been utilized to modify skewed **land distribution** patterns in an attempt to reduce great disparity in distribution. Regardless of the reformed distribution structure across households, however, women hold less land than men in most societies. As Deere and León (2001) have shown, redistributive reform in Latin America from the 1950s to 1980s distributed land mostly to male household heads. Reform programs in the great majority of cases granted land to the household head under the assumption that all household members would benefit.

In most of Asia, land reform during the last half of the twentieth century has been characterized as both redistribution and change of tenure rights. Most of them have focused on converting tenants into smallholder owners such as the Indian reforms of the 1950s and those of Japan after World War II. While most of these reforms disregarded women's rights to land, in the last few decades some have attempted to include women. In West Bengal, for example, the state decreed in 1992 that reform land was to be issued to both spouses as joint property wherever possible. But it seems that peasant unions, village authorities, and male household heads, as well as land reform authorities have worked against or simply ignored this directive. A 2003 study

found that less than 10 percent of the land parcels were jointly titled to spouses and only 5 percent were titled to women (Jacobs 2010 citing a 2003 study by Anil Chakrabarti).

China, of course, has followed a different model: the household responsibility system. Collective farms were disbanded in the 1980s and long-term use rights to agricultural land were distributed to community households to be farmed individually. While ownership rights to agricultural land remain in the public domain, the use rights to exploit farmland have been privatized. These reforms have given men control rights over household land parcels (Li 1993; Li & Bruce 2005).

Women also experience weaker **tenure security** than men. In most of Africa and Asia, women hold indirect or secondary rights to land in the sense that their access to land is through their father, brother, or husband. These secondary rights become even weaker during transition periods—such as marriage, divorce, or widowhood—and during societal change such as the formation of market economies and conflict situations (Peterman 2012). Tenure security is assured by the presence, effectiveness, and legitimacy of land institutions,<sup>8</sup> whether state or customary. These institutions enforce land access rules and regulations and manage land conflicts. Land policy can strengthen land institutions and increase tenure security. The most common program utilized since the 1980s to increase the security of private property—land titling and registration—initially granted legal rights to land overwhelmingly to men. Attempts to correct this trend have included the joint titling of land to both spouses. In Latin America this has resulted in a significant increase in the number and percentage of women acquiring legal title to land parcels (Deere & Leon 2001; Deere 2011). Nonetheless, when the amount or extension of land is considered, the great majority of it is still owned by men, indicating that women are acquiring legal title to small land parcels (Lastarria-Cornhiel 2009). While land titling programs are able to increase tenure security

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<sup>8</sup> Formal and customary land institutions record (either in written or oral form) who has what rights to land, determine the rights and responsibilities of land rights, and participate (together with judicial institutions) in enforcing the observance of these rights. Formal land institutions include land registries, land use institutes, cadastral offices, and land notaries. Customary land institutions generally consist of community land authorities or land councils.

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<sup>7</sup> For an example of this dynamic see Lastarria-Cornhiel and Wheeler (2000) on Albania and Giovarelli et al. (2001) on Kyrgyzstan.

through the granting of legal and registered rights, these programs tend to benefit those who already have land, disregarding the significant proportion of rural households without any land.

## **EFFECTIVE RIGHTS TO LAND**

Why have legislation, land policies, and land programs failed to protect and promote gender-equal land rights? There are at least three basic reasons: (1) the weakness of state land institutions, (2) patriarchal norms and practices, and (3) official recognition of customary tenure systems. Even where legislation is progressive towards women's land rights, in many countries the state and its institutions, including the judiciary, have a weak presence beyond major urban areas. The state, therefore, does not have the resources, or is unwilling to commit resources, for advocating, promoting, enforcing, and protecting women's legal rights to land and property. In rural communities where customary tenure and patriarchal values are still strong, *de facto* land rights and inheritance practices conform to patrilineal custom. When Nicaragua initiated a land titling program in the early 1990s that was supposed to issue joint titles for household land to both spouses, men often insisted on excluding their wives and putting their sons or brothers on joint titles (Agurto & Guido 2002). More effective training of titling officers and household members was eventually carried out to counteract this trend.

Another reason for the failure of land legislation and programs to increase women's rights to land can be directly traced to patriarchal norms and attitudes that influence formal legislation and/or hinder the implementation of land legislation and state programs in a gender equitable manner. Most common is "gender neutral" legislation and programs that, because they ignore the normative and practical constraints women face in obtaining land rights, are, in fact, biased against women. Land distribution and land titling programs are a good example of this type of discrimination. Although land titling programs may have no gendered requirements, and national laws uphold gender equality, the "custom" of titling only household heads in fact discriminates against women and may actually deprive them of secondary rights. Patriarchal norms prescribe that men are the heads of household and farmers, and thus more capable of managing household assets.

Even where legislation and state programs specifically address women's land rights and

attempt to promote gender-equal land rights, resistance from program officials and target populations during implementation are able to derail the "good intentions" of state programs resulting in token observance of women's legal land rights. Such an example can be found in Bolivia where, in spite of very positive and specific language in the land and titling legislation regarding women's and men's equal land rights, the implementation of the land titling program during the first nine years resulted in the majority of land titles being issued to men. In 2006, a number of ad hoc regulations regarding the participation and inclusion of women were formally incorporated into the titling process, significantly increasing the titling of women whether individually (from 17 percent in 2005 to 24 percent in 2010) or jointly (from 26 percent to 39 percent). The increase in titles issued to women is certainly reason for optimism. The amount of land titled to women, however, is quite small compared to men's (Lastarria-Cornhiel 2009; Ramírez Carpio 2010; Deere 2011).

In the wake of state failure to "modernize" land tenure and land administration systems, there has been a recent trend towards acknowledging and validating customary (local) tenure systems in regions such as sub-Saharan Africa where customary tenure systems are still quite strong and functional (Whitehead and Tsikata 2003).<sup>9</sup> This trend is closely related to decentralization and is often touted as an attempt to engage local populations in a participatory process. In reality, the strength of the customary (or local) is often related to the absence of state institutions, either because the state is not able to provide state services to all its populations or because some areas resist state presence. Therefore, policy makers are reverting to customary systems and devolving control over land and natural resources to local institutions and authorities. These local institutions allocate resources, resolve disputes and conflicts, and maintain a record of landowners, users, and their rights. Most of these are influenced by patriarchal norms and practices that consider only men to be legitimate owners of land.

As Whitehead and Tsikata (2003) and others have pointed out, this reversion to customary tenure

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<sup>9</sup> Razavi (2003) edits a volume of recent thinking regarding women's land rights within different contexts and geographic areas, including land reform, land tenure reform, globalization, and the return to customary tenure.

systems is taking place without recognizing their inherent biases. Local institutions and authorities are not necessarily equitable or participatory. How equitable or inequitable local processes and relations are regarding land rights is context specific and depends on colonial history, economic structures, ethnic relations, and kinship and marriage relations and structures. All of these local-specific factors influence gender relations and women's rights to land and property.

When a customary tenure system is able to ensure that households in the community have sufficient resources to provide for their own subsistence needs, lower status persons such as women are also usually assured the means to provide for themselves and their families—though their access to land and land-based resources is indirect and often dependent on a male relative (Gray & Kevane 1999). The reality today, however, is that many of these customary tenure systems are no longer capable of assuring households (and the women of these households) access to sufficient land (Platteau 2002). A number of factors, including a growing market economy, increasing poverty, and global commercial agriculture, are converting land into an asset, changing the concept of property and resulting in land scarcity and in rights to land becoming more individualized.

Since women often do not have direct control over land and financial resources, they tend to lose their indirect or secondary rights when societal changes occur because those who have traditionally controlled resources are able to increase their own rights, often at the expense of those with secondary rights.<sup>10</sup> In part this occurs because of market forces, but also because of social and cultural change. As land becomes a marketable asset, family and community members who in the past would have respected a woman's access rights to land may violate or ignore those rights, particularly in the case of vulnerable widowed and divorced women. Witness the multiple cases of widows in sub-Saharan Africa whose in-laws stripped them of their home and land immediately after their husband's funeral (Peterman 2012).

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<sup>10</sup> While reasons for guaranteeing women's land rights include the productivity argument (women are rural producers and secure land rights would make them more efficient producers) and the poverty argument (granting land rights to women would help assure food security and well being for rural families), this fact sheet focuses on the human rights argument.

A promising example can be found in Rwanda, where land and inheritance laws are consistent. The inheritance law was reformed in 1999 mandating that all children, regardless of sex, inherit equally and that legally married spouses own property together as community property. Then, the reform of land tenure in 2005 stated that women and men, married or single, have equal rights to land.<sup>11</sup> Rwanda now has the best conditions for gender equity with regard to land rights in sub-Saharan Africa. Results of a study on a pilot land registration project found that daughters and sons are inheriting land equally (Ayalew et al. 2011).

## WOMEN'S RESPONSE

Women have not remained passive while their rights are being eroded; they fight to protect and regain them. They have successfully formed informal groups, associations, or cooperatives to secure their rights, protect or acquire more land, or mobilize labor and inputs.<sup>12</sup> In many instances they have been successful in advocating for gender-equal land legislation and challenge dynamics when land program implementation is gender biased. An interesting case is the women of the Bodhgaya movement in India who insisted on receiving land in their names when land they had fought for was being distributed only to male household heads (Agarwal 2002). Individually, women have also utilized social and political influence to protect their rights to land, sometimes becoming involved in long and complicated judicial processes.<sup>13</sup>

While still the minority, some women are acquiring direct rights to land, either from their families or through land purchase. However, women are still disadvantaged and unable to fully participate in the market system because of low monetary income, lack of capital, low social status, minimal political power, little or no education, and imperfect factor markets.

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<sup>11</sup> Unfortunately, the requirement of legally married couples in both the 1999 and 2005 legislation excludes the great number of women who are not legally married and those in polygamous marriages.

<sup>12</sup> For examples see Thomas-Emeagwali (1991) on Nigeria; Linares (1992) on Senegal; Deere & León (2001) on Latin America.

<sup>13</sup> Mackenzie (1995) in Kenya, Bruce (1994) in Tanzania, and Ngaido (1993) in Niger cite cases of women claiming customary rights to family land.

Some promising efforts by NGOs to improve women's status and land rights are legal literacy and legal assistance programs. These programs offer workshops, accessible publications such as graphic booklets, and media such as radios and videos in the local language to educate women on their legal rights (Knox et al. 2007). In sub-Saharan Africa, associations of women lawyers have offered legal assistance programs and have trained paralegals to assist rural and urban women to defend their land rights.

## RECOMMENDED RESOURCES

Food and Agriculture Organization of the UN (FAO), Gender and Land Rights Database  
<http://www.fao.org/gender/landrights/en/>

International Center for Research on Women, Assets and Property Rights  
<http://www.icrw.org/what-we-do/property-rights>

Food and Agriculture Organization of the UN (FAO), Gender, Equity and Rural Employment Division  
[http://www.fao.org/economic/es-policybriefs/briefs-detail/en/?no\\_cache=1&uid=40497](http://www.fao.org/economic/es-policybriefs/briefs-detail/en/?no_cache=1&uid=40497)

Landesa Center for Women's Land Rights  
<http://www.landesa.org/women-and-land/>

IFPRI Gender Research Area  
<http://www.ifpri.org/book-20/ourwork/researcharea/gender>

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