



## MODULE 4

# Gender Issues in Land Policy and Administration

## Overview

Over the last few decades, many donor and implementing agencies, including the World Bank,<sup>1</sup> International Fund for Agricultural Development (IFAD),<sup>2</sup> and Food and Agriculture Organization (FAO),<sup>3</sup> have expanded their programs and activities in land policy and administration. Land policy and administration projects can contribute inadvertently not only to gender inequality but also to more general social inequality by supporting individuals who are already advantaged by wealth, power, or custom to the disadvantage of those who are poor and vulnerable. Gender inequity can be diminished when women's rights are explicitly taken into account and when women participate in designing and implementing land policy and programs. In many cases increased gender equality can also lead to increased economic equality (Meinzen-Dick and others 1997).

The World Bank, IFAD, and FAO have increasingly recognized the importance of women's land rights and the failure of land administration programs to protect them. In its recent Policy Research Report on land (Deininger 2003), the World Bank recognizes that past initiatives often failed to discern how control of assets, particularly land, is assigned within the household. The Policy Research Report argues that strengthening women's land rights is important both for potential and gains to agricultural productivity and for household-level human capital investments, such as nutrition and child schooling. It advocates legal measures, education, and capacity building, as well as preferential treatment of women in public programs, such as those dedicated to land titling and land

reform. Upon request by United Nations member countries, FAO provides technical assistance for mainstreaming gender in agricultural policy and planning, usually by developing strategic policy documents in collaboration with ministries of agriculture and ministries responsible for gender issues. IFAD, as stated in its 2003–06 Plan of Action, aims to expand women's access to and control over fundamental assets (capital, land, knowledge, and technologies); strengthen women's agency, including their decision-making role in community affairs and representation in local institutions; and improve well-being and ease workloads by facilitating access to basic rural services and infrastructures.

### IMPORTANCE OF GENDER IN LAND POLICY AND ADMINISTRATION

Gender is a basic determinant of social relations and rights in households and rural communities.<sup>4</sup> Together with class, ethnicity, and caste, gender determines to a great extent a person's opportunities, aspirations, standard of living, access to resources, status in the community, and self-perception. In addition, women's rights to resources influence their ability to produce and their behavior as producers.

In most developing countries, land is a critical asset, especially for the urban and rural poor. Land rights—whether customary or formal—act as a form of *economic access* to key markets, as well as a form of *social access* to nonmarket institutions, such as the household relations and community-level

governance structures. In addition to economic and social access, rights to land also often confer rights to other local natural resources, such as trees, pasture, and water.

Depending on the norms governing intrahousehold decision making and income pooling, however, women may not fully participate in these benefits if they do not have independent or direct rights over household land. There is evidence that improvements in women's independent property rights have positive economic benefits. Comparative analysis of data from Honduras and Nicaragua, for example, suggests a positive correlation between women's land rights and their overall role in the household economy: women gain greater control over agricultural income, gain higher shares of business and labor market earnings, and more frequently receive credit (Katz and Chamorro 2003).

Land is a particularly critical resource for a woman in the event that she becomes a de facto household head as a result of migration by men, abandonment, divorce, or death. In both urban and rural settings, independent real property rights under these circumstances can mean the difference between having to depend on the natal or husband's family for support and forming a viable, self-reliant, women-headed household. Women's land rights within marriage may afford them greater claims on the disposition of assets upon divorce or death of their husband, as Fafchamps and Quisumbing (2002) found in rural Ethiopia. Moreover, for widows, control over land may be one of the few ways that elderly women can elicit economic support from their children, in the form of either labor contributions to agricultural production or cash and in-kind transfers. In the absence of other forms of social security, the elderly rural population relies heavily on intergenerational transfers for their livelihoods; children are more likely to contribute to their parents' well-being if the latter retain control over a key productive resource such as land (Deere and Leon 2001). As HIV and AIDS increase the number of women-headed households, a widow's ability to make a claim to her husband's land becomes more urgent.

Rights to land and natural resources increase a woman's bargaining power within the household, which results in increased allocation of household resources to children and women as well as increased household welfare (Katz and Chamorro 2003; Quisumbing and Maluccio 2003). Quisumbing and Maluccio also find a positive relationship between the amount of assets (including land) that a woman possesses at the time of marriage and the shares of household expenditures devoted to food, education, health care, and children's clothing. Women's rights to land and natural resources can impact women's empowerment as well, not only household welfare. Panda and Agarwal (2005) have indicated that

women with property ownership are less vulnerable to domestic violence in some parts of India. However, careful program design, planning, and implementation are needed because possible responses to the empowerment process are domestic violence and community reprisal toward women who seek independent rights in many countries.

Land rights may also empower individuals to participate more effectively in their immediate communities and civil society at large. Facilitating women's greater participation in extra-household institutions diminishes men's dominance of community-level decision making and builds women's organizational skills, social networks, and social capital. Women with land rights are more likely to be active members of their communities, and, as a result, community institutions themselves are more likely to be responsive to women's needs.

## **GENDER EQUITY ISSUES AND LAND POLICY**

The basic gender policy within the context of land administration should promote *secure access to land and other natural resources for women, independent of men relatives and independent of their civil status*. Such a policy stance is the basis for identifying and establishing instruments that eliminate, or at least decrease, gender bias with regard to natural resource tenure in land administration programs, including titling and registration, privatization, and natural resource management.

Two sets of legal framework and institutions govern access and ownership issues for community and private land: the formal and the customary systems.

### **Formal legal framework and institutions**

Over the last few decades, many nations have reformed their constitutions and civil codes and have either incorporated gender-neutral language (favoring neither men nor women) or explicitly recognized women's rights and prohibited discrimination based on gender. Many nations have also modified land and property laws and regulations so as to guarantee women's equal property and inheritance rights.

Thus, most Latin American nations passed legal reforms during the 1980s and 1990s to remove discriminatory clauses in codes applying to family (marriage, divorce, and marital property) and inheritance.<sup>5</sup> They also modified land allocation laws and regulations (for example, for agrarian reform and land titling programs) to recognize and give women equal land rights explicitly. Similar movements to reform legislation occurred in Africa and Asia.

The formal institutions that establish and maintain land tenure systems (by establishing and enforcing rules for

accessing, using, and controlling land) include the land registry, cadastre, titling agency, and land use agency.<sup>6</sup> These institutions provide information on legal norms and regulations regarding land rights and land use, as well as specific information on the holders of land rights. Institutions that issue titles and record transfers can play a particularly important role in securing women's rights to land; land stuaese agencies may become involved in natural resource management interventions.

However, passing formal legislation is usually not sufficient. Many laws recognize and protect women's rights to land (such as property and land ownership rights, equal inheritance rights for daughters and sons, and marital property rights for women), but enforcement of these laws is sporadic, and attempts by women to have the law enforced can be painfully difficult.

Reasons for this failure of enforcement include conflictive legislation, institutional weakness, and the pervasive influence of gender bias. It is not uncommon that although some laws may guarantee gender equality with regard to land rights (for example, a land law), other laws, such as family or personal laws, may be based on patriarchal norms and undermine or directly contradict the concept of equal land rights by not giving wives equal rights to marital property or daughters equal inheritance rights. On the other hand, if formal law is not culturally sensitive and does not build on local practices that are positive for women, the priority of gender equity may be ignored. Another frequent problem with land legislation and regulations is that rights and obligations may not be defined clearly.

Even where legislation is generally positive toward women's land rights, in many countries the state and its institutions, including the judiciary, exert only a weak presence beyond major urban areas. Institutional structures, capacities, internal coordination, and attitudes are also often weak. All too frequently, the state lacks, or is unwilling to commit, resources to advocating, promoting, enforcing, and protecting women's rights to land and property. In the absence of state institutions to enforce equal rights for women as well as other laws, such as land use laws, local customary norms and practices predominate.

Another difficulty with some gender-equal legislation can be traced directly to patriarchal values and attitudes that hinder the implementation of 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 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 effectively discriminates against women and may actually deprive them of customary access and other rights.

Finally, even when legislation and state programs specifically address women's land rights and attempt to address constraints in programs, such as land reform and land titling, resistance from program implementers and participant populations can derail the "good intentions" of state programs, which results in token observance of women's legal land rights. Examples can be found in Bolivia (Giovarelli and others 2005) and Nicaragua (Lastarria-Cornhiel and others 2003), where, despite very positive and specific language in the land titling legislation regarding women's and men's equal land rights, the implementation of the titling program resulted in the great majority of the land being titled to men (see Thematic Note 4).

### **Customary norms and institutions related to land access and rights**

As mentioned earlier, formal law and state institutions often have limited effectiveness beyond major urban areas. Because of the difficulties state institutions encounter when administering and managing land and other natural resources, awareness has grown that management of land and other natural resources, management of land conflicts, as well as administration of land rights may be realized more effectively by local authorities and customary institutions.<sup>7</sup> As a result, policy makers in some nations are formally recognizing and utilizing customary institutions and local authorities. Local authorities may be community-recognized authorities or formally appointed by government.<sup>8</sup> In sub-Saharan Africa, a growing number of countries explicitly recognize customary tenure systems and rules. In many Asian countries, personal or religious law, or both, is recognized and has been in effect for many years. These personal laws have a great impact on inheritance and marriage practices regarding land and property. Customary institutions have important implications for women's rights to land. Land administration programs, therefore, require a deep knowledge and clear understanding of customary tenure systems to know how they will both affect and be affected by cultural norms and practices.

Cultural or local prohibitions against women's ownership of land are often more powerful than written laws that allow women to own land. These norms may determine which rights to land a woman can exercise freely: for

example, women may have the right to use a parcel of land or the right to gather fruit from it but not the right to bequeath it through inheritance, a right limited to their brothers and husbands. A woman's land-related rights are usually tied to her place in her ancestral family and her husband's family; here rights to land are viewed within the context of the distribution of wealth within the extended family. Legislative intervention alone cannot provide women with independent and effective land rights if they are not accepted and enforced culturally and socially.

Land rights in societies in which customary social structures and practices are predominant are generally determined by sociocultural and religious institutions, such as inheritance, marriage, and community land authorities. These customary tenure systems are diverse and encompass a large variety of social relations and rights related to land and other natural resources. In sub-Saharan Africa, for example, land ownership rights are often vested in a community or other corporate structure such as a lineage or clan. A significant proportion of the land is not controlled by individuals but rather by a group and managed according to community rules. Land allocated to individuals or households on a long-term basis tends to be parcels for producing food, building a home, or raising animals; rights to these parcels are generally inheritable. How this land is initially allocated to households depends on the local customary system. Most land parcels under individual or household control are transferred through inheritance, not the market.

Members of the community have different types of rights to land and natural resources depending on their lineage, ethnicity, status, gender, and marital status. In most societies, women, particularly married women, are not full and active participants in customary institutions. As secondary community members, their rights to land are generally derived from a man relative or husband. In many countries, cultural if not legal norms dictate that men are the owners of land and that women have access to land only through their relationship with a man relative, such as a father, husband, brother, or even brother-in-law.

Although customary tenure systems often do provide women with some basic security in situations when they are not living with a husband, this same system also favors men when control over land is determined (for example, through the allocation of community land for agricultural production or through inheritance practices). Because the men in the community usually control land allocation, they are able to claim individual rights when land scarcity converts the land into an asset and when family land becomes private property. In Kenya, for example, the subdivision of Maasai

group ranches caused widows to receive less-than-average parcel allocations, despite women's representation, in the statutory committee.<sup>9</sup> Women may not only lose the use rights to their husband's land but will also most likely be unable to claim temporary use rights to birth family land because their brothers will claim individual and private rights to the land they inherit from their fathers (see also Thematic Note 3).

Communities or lineages allocate land to their constituent families; that land, in turn, is allocated within the family and handed down to heirs through marriage and inheritance. These allocation and transfer practices are generally determined by kinship systems. Patrilineal kinship societies trace the family line through the paternal side, whereas matrilineal kinship systems trace the family line through the maternal side.

**INHERITANCE PRACTICES.** Inheritance practices are patrilineal, matrilineal, or bilateral. In patrilineal inheritance, land is generally handed down from father to son; if a man does not have any sons, his brother, nephew, or another man relative of his lineage often inherits his property. Daughters do not inherit land from their fathers, even though they are of the same lineage. The cultural norm is that daughters leave their birth community and family when they marry to live in their husband's community. Because wives are under the responsibility of their husband and family, it is believed that if they inherited land, their husband's family and lineage would obtain control over it.

Inheritance practices in matrilineal societies are more diverse. In matrilineal communities in South and Southeast Asia—for example, in some communities in India (Agarwal 1988) and some in Malaysia (Stivens 1985)—lineage and landed property are traced through the mother's line, and land is passed on from mother to daughter. In other matrilineal communities, as in Malawi and Mozambique, although lineage and property are traced through the mother's line, normally only men can clear land, which gives them control over this resource. Once land is in the lineage, it is handed down to a young man from his maternal uncle. In other African matrilineal communities, such as those in Ghana, even though family land is usually handed down from uncle to nephew, a woman can also inherit and acquire land in her own right within her own matriline (primarily) and her community (secondarily). A woman often inherits from a woman maternal relative (aunt, mother), although she can also inherit from her father. She retains this right even if she moves to another village (for example, if she goes to live with her husband's family).

In addition, rights to land and other resources in matrilineal communities are more diffuse.<sup>10</sup> Land and other wealth tend to be distributed and redistributed among lineage members through the mechanism of inheritance. This inheritance and wealth distribution pattern may be the result of the extended family nature of matrilineal societies. As the market economy exerts its influence by making production practices more labor intensive and market oriented, there is a tendency for matrilineal families to become less extended and more nuclear, for property rights to become less diffused and more concentrated, and for families to adopt patrilineal inheritance practices.

Bilateral inheritance practices, such as those found in Indonesia and the Lao People's Democratic Republic, tend to treat sons and daughters equally and sometimes to favor daughters who stay in the family home to care for elderly parents. A woman can count on inheriting part of the family assets whether or not she marries and even if she leaves her birth community. Societies with bilateral inheritance systems tend to be more gender equal with regard to land and power relations. In bilateral inheritance communities in Ecuador, for example, both wife and husband bring resources, including land, into the household, acquire resources together during marriage, and contribute their individual and joint resources to household productive and reproductive activities and goals on an equal basis. Because daughters and sons inherit land equally from their parents, women as well as men are able to enter into marriage, set up a household, and make decisions on an equal footing (Hamilton 1998).

Muslim inheritance norms are also bilateral, recognizing daughters' rights to family property (albeit a fraction of the share their brothers inherit). Where the customary tenure system is strongly patrilineal, however, Muslim norms may be ignored and strictly patrilineal inheritance practiced. In the Mossi communities of Burkina Faso, for example, although the majority of families are Muslim and in theory daughters inherit land, this practice is not observed. It would appear that the patrilineal Mossi practice of daughters not inheriting land prevails over Muslim norms. Only sons inherit land from their birth family, and daughters are given at most temporary use rights to their father's land if they leave their husband's home because of widowhood, divorce, or separation. Single daughters with children also have temporary use rights. Once women marry, their birth family relinquishes responsibility for them (Platteau and others 2000). A similar practice is found in Muslim communities in other African countries (such as Senegal) and in some countries of Eastern Europe and Central Asia (Albania, Macedonia, and Uzbekistan, for example).

**MARRIAGE PRACTICES.** Marriage practices in customary societies include marital residence (where the couple lives after marriage) and asset transfers (dowry and brideprice); both sets of practices determine how family land is allocated and who has rights to family land. In most patrilineal societies, residence after marriage is patrilocal (the couple and their children live in the husband's community), and family land is handed down from father to son. Women who marry into the community do not have rights to their husband's family land or community land. When a woman has the right to inherit from her birth family, the move to her husband's village reduces her ability to manage inherited land; this is one reason daughters give up their inheritance rights in favor of their brothers. Separated and divorced women leave their husband's house with no claim to any of his property. A widow, particularly if she has children, is generally permitted to stay on and work her dead husband's land until her sons can assume its management.

Customary tenure systems based on matrilineal kinship systems generally, although not always, practice matrilineal residency. A husband lives in the wife's village and is given land by her family to farm, but he has only use rights to this land. A new son-in-law is expected to pay what is often called brideservice, which normally consists of working for the bride's father, mother, or uncle for a period of time. After he has fulfilled his obligation, either a husband will stay in his wife's community—where the couple will set up their own household, and the wife's uncle or father may allocate a piece of land for the husband to cultivate<sup>11</sup>—or he may move back to his own matrilineal community, where he can acquire or inherit land from his matrilineage.

**CURRENT TENDENCIES.** As inherited family land becomes scarce, and communities are no longer able to allocate land to new households, couples are more apt to purchase land. Is this land considered jointly owned marital property? Customary societies have different practices with regard to property acquired during marriage. The exclusion of daughters and wives from rights to family or lineage land may be part of the belief that women are incapable of owning land. When land is acquired by a couple, therefore, the husband assumes sole ownership, excluding his wife from any ownership rights. This customary practice may also be applied to other noncustomary acquisition of land, such as state programs of agrarian reform and resettlements.

In those customary societies in which women and men both own land, joint ownership of marital property is more

likely to be practiced. For example, in Java, where sons and daughters inherit family land, it is customary to regard land acquired during marriage as belonging to both husband and wife. If one spouse dies, half of the property remains with the surviving spouse while the other half is inherited by their children (Brown 2003).

In market economies, the question of gender equity within marital property has been a contentious issue because of prevailing patriarchal norms and values. In some market-based societies with legal systems based on common law, the recognition of both spouses' contribution to the acquisition of property during marriage has been difficult. In contrast, where legal tradition has recognized community property between spouses, the acceptance of marital property and coownership has had less opposition. Landed property acquired during marriage is generally regarded as marital property with both spouses having equal rights.

### **Sociocultural difficulties with women exercising land rights**

Women's secondary status, lower socialization, undervalued productive work, and illiteracy in many communities often make them reluctant to claim legal rights and participate in those institutions and activities seen as men's domains.

In addition, women incur significant social costs for going against cultural norms; these costs include social ridicule and the possible loss of social benefits. In some cases a backlash of domestic violence occurs against women who claim their land rights. The extended patriarchal family generally provides a structure for the lifelong basic welfare of all family members and for assistance in times of social or economic crisis. This is particularly significant for resource-poor rural women with young children. As observed in Macedonia and Uzbekistan, daughters do not inherit any land, in spite of Muslim norms that entitle them to inherit some family land. Daughters concede their rights to brothers to avoid conflict and maintain support from the extended family. Wives and daughters may not insist on having their names included on the title to household land because of potential conflicts with husbands or their family. In Brazil, for example, few women are aware of whose name is on the land title and do not request that joint titles be issued. In Bolivia focus group discussions revealed that some men were titling land in their sons' names, stripping their daughters and wives of legal land rights (Giovarelli and others 2005). Moreover, even when women have rights under the law, such as inheritance rights, women may not claim the rights because of their

preferences to have long-term social support from brothers and other family members rather than secure an asset that may not provide long-term economic security.

Women themselves may be reluctant to become publicly involved in political activities and community organizations for several reasons: inexperience in public speaking and participation, a lack of basic education and knowledge about how social and legal matters function, and domestic responsibilities that no one else will assume. Other more structural constraints include women's low literacy (including legal literacy), lack of skills in the dominant language, and lack of identity papers.

### **IMPLEMENTATION OF LAND ADMINISTRATION PROGRAMS**

Customary norms frequently do not give equal ownership of land and other assets to women and are typically resistant to change these power equations. Legislation to address this exists in most countries, but there are several limitations to implementation, including conflicting legislation, inadequate regulatory and management systems, inadequacy of institutions to implement changes at the local level, staff and community antagonism to women's equal rights, and lack of will and resources to address gender bias. Women often do not possess the financial resources, knowledge, and capacity to go against social norms and may not exercise their legal rights. Formal land distribution and titling programs may also ignore the need for gender equity if it is not an explicit objective of the programs.

The attainment of gender equity with regard to land rights consequently depends not only on legal recognition of those rights but also on overcoming social and cultural constraints. Some useful instruments include regulations for implementing formal land, property, and family legislation in ways that address gender bias with regard to land access and land rights, legal education programs for women and men, legal assistance programs, gender training for program implementers and program beneficiaries, and, last (but most important), participation by women in designing, planning, and implementing programs. Customary biases often mean that women will not have the ability to exercise their land rights until there is a shift in the thinking, attitudes, and understanding of men and women as well as officials and local authorities (see Thematic Notes for more on specific project and program design).

Gender issues should be addressed at all phases of programs that deal with land rights and natural resource management: (1) conceptualization of the problem(s) that

the program addresses, program design, and objectives; (2) implementation and program activities; and (3) monitoring and evaluation of project activities and objectives.

Although legislative reform programs, land distribution, or titling programs have a more direct impact on land ownership by women, other programs, such as community resource management, agricultural production and marketing development, and enterprise and credit development, need to use a specific gender lens to improve land ownership and access for women.

### **Program design and planning**

It is crucial that gender analysis be incorporated (1) from the very beginning of program design, (2) in the conceptualization of the land administration issues, and (3) within the program's objectives. Otherwise, a risk exists that the different social relations determining rights to land and other natural resources will not be understood. Attempts to incorporate gender analysis once a program's design and objectives are in place often result in unproductively forcing gender issues into a framework that may not accommodate them. Throughout the process planners should examine whether women or particular groups of women are being included or excluded from the program and why. Are women excluded because of the expense and time involved in including them? Does the program target mainly men because it is simpler to deal only with heads of households? Or are men predominantly targeted because local power structures make it more difficult to approach and include women? Assumptions need to be examined and questioned: is it assumed that the household head speaks for household members and is knowledgeable about all individuals' activities and resources and that resources and benefits are equitably distributed to household members through the household head?

Given information and attitude biases and the sociocultural and time constraints faced by women, concerted efforts and imagination need to be employed in obtaining women's points of view and thoughts on their needs and in integrating them into objectives.

Much of this information, and participatory methods for acquiring it, should be incorporated into the social assessment undertaken during the design phase. Legislation and customary norms surrounding land ownership and use are usually very complex and location specific. The social assessment for any land-related project, in addition to reviewing literature on local land tenure systems, should include community-level interviews of men and women key

informants as well as focus groups of potential men and women beneficiaries with respect to land tenure norms and practices. Detailed information regarding variations in, for example, multiple land-use rights, inheritance, and marital property can then be a valuable input to meeting the objective of strengthening women's land rights within the target area's sociocultural context.

Several types of training and for several populations will be critical elements in the success of gender-equity interventions—to increase the awareness and sensitivity of beneficiary populations, program staff, and land administration institution staff; to change social attitudes; to increase the participation of women in the system (in relevant institutions and support organizations); to increase the participation of women as beneficiaries; and to provide tools for implementing the interventions. Both women and men should always be included in training to prevent gender issues from being marginalized to women staff and beneficiaries.

Cambodia's land titling project provides an example of successful information campaigns that include gender issues at the local level. The educational activity includes both men and women and is careful to ensure that illiterate women are provided with appropriate information. All related materials are posted in a public place in the villages, literature on land rights and titling procedures is provided in pictorial form, meetings are held in local schools or community centers, and titles are issued locally. Involvement of both men and women field staff helps emphasize gender inclusiveness.

Apart from training of staff and beneficiaries, land administration projects would also benefit from social audit by independent NGOs so that program designers and implementers are held accountable for delivering the promised outcomes. A social audit is particularly for land distribution programs and could even be part of outside monitoring and evaluation.

### **Program implementation**

Once the implementation of major land policies or legislation begins, the objective of including women's participation in land programs should remain a priority. Programs can reduce many of the procedural barriers women face by making program activities and benefits available at the lowest possible level and by training staff at all levels to be conscious of the obstacles women face. The increased presence of women within the system—within the relevant government institutions and boards and among project staff and support institutions (such as advocacy groups)—will go a long way in increasing access for women beneficiaries.

In addition, activities that specifically target women must be integrated into implementation. For example:

- If the project deals with improved access to land and natural resources, such as land distribution or leaseholds, do project activities *explicitly* seek out and include women as beneficiaries, whether as individuals or as a group?
- If the project deals with resource conservation or resource management, are women specifically consulted about which communal resources need to be protected and how?
- Are women targeted to participate in natural resource project activities, such as reforestation and agroforestry?
- If the project seeks to increase agricultural production, do women have secure access to land and other productive resources, participate in factor and product markets, and have access to technological assistance and credit programs?
- Are projects such as technology transfer courses and credit programs organized so that women who have access to land but may not own it are able to participate?
- If producer or other associations (such as cooperatives) are to be established, are women who may have indirect tenure rights allowed and encouraged to join?
- Is the option of women-oriented activities—such as women’s cooperatives, women’s credit programs, or women agricultural extension agents—considered?

At the local project level, a potential impediment to women’s participation as beneficiaries is men’s resistance to policies and activities that directly benefit women. This resistance is based not only on the fact that men may want the benefits of these projects for themselves and often take them over, but also because participation in the project may give women a greater sense of independence. Thus, in addition to foreseeing and avoiding differential project impacts based on gender, constraints that flow from gender norms and practices also need to be considered.

### Monitoring and evaluation

The collection of appropriate gender-disaggregated data is a concern for all land administration projects and should be a priority, given the sizable investments in the land sector. Reviews of land programs and projects reveal that very little information and data are systematically collected to clarify the effects on women and their land rights. Many land titling programs, for example, do not even track the number of titles issued to men, to women, and jointly to husband and wife. The knowledge required includes information on

how land rights are distributed between different groups of women and men, and what effects differentiated land rights have on gender equity and on women’s capabilities. Planners should collect information such as (1) when a land administration project is being prepared, to guide project design and establish a baseline for further evaluation of program objectives; (2) when the project is implemented, to assess whether gender objectives are being attained; and (3) when the project is completed, to assess impacts. The best method to gather these data is to collect gender-relevant and gender-disaggregated data in the baseline, follow-up, and impact evaluation studies.

Detailed information gathered during project preparation regarding variations in, for example, multiple land use rights, inheritance, and marital property can be a valuable input for developing gender-specific indicators to measure the program’s differential impact on men’s and women’s rights to land, natural resources, and other community resources.

Once a land administration program is under implementation, it is appropriate to collect gender-disaggregated information at the household level. This information can serve the dual purposes of consultation for eventual adjudication and establishing baseline data for project monitoring and evaluation. As resources allow, the baseline survey should be administered in areas targeted for intervention, as well as in similar areas not targeted.

At the project level, information on project participation and benefits should be disaggregated by gender, including such things as personnel statistics and attendance at public information and training sessions, as well as participation in other activities and events that will benefit participants. At the community level, key informant interviews and beneficiary focus groups along the lines of those recommended for the social assessment can provide qualitative feedback to project managers about the perception of project impact and men and women beneficiary satisfaction.

Finally, land projects should administer at least one midterm and one project completion household sample survey to be able to track gender-specific changes against the baseline data. If designed properly and if sufficient time has passed to permit change, such information can allow the quantitative assessment of the impact of land policy reform and land administration projects on women’s economic opportunities, women’s empowerment, and intrahousehold bargaining power (see also Module 16).<sup>12</sup> Some examples of indicators are provided in Table 4.1.

Depending on the country or region, it may be relevant to also consider ethnicity and caste alongside gender (both

**Table 4.1 Monitoring and Evaluation Indicators for Gendered Access to Land and Property, Including Legal Rights and Land Dispute Resolution**

Indicator	Sources of verification and tools
Percentage of women and men actively participating in land-allocation committees	<ul style="list-style-type: none"> <li>• Committee meeting minutes</li> <li>• Interviews with stakeholders</li> <li>• Program or project records</li> </ul>
Percentage of women and men actively participating in natural resource management committees	<ul style="list-style-type: none"> <li>• Committee meeting minutes</li> <li>• Interviews with stakeholders</li> <li>• Local traditional authorities (such as a chief or local council)</li> <li>• Program or project records</li> </ul>
Over a set period, an increase of $x$ percent in incomes from land-based activities (such as agriculture or forestry) among women-headed and man-headed households in program areas	<ul style="list-style-type: none"> <li>• Household surveys</li> <li>• Socioeconomic data from statistics office</li> </ul>
Changes over $x$ -year period of project activities in household nutrition, health, education, vulnerability to violence, and happiness, disaggregated by gender	<ul style="list-style-type: none"> <li>• Household surveys, before and after</li> <li>• Project management information system</li> <li>• School records</li> </ul>
Among surveyed women and men in target group, $x$ percent rate their access to land, and land titling and dispute resolution procedures, as having improved during the period covered by the program or project	<ul style="list-style-type: none"> <li>• Interviews with women in target groups (for instance, a sample of women in the defined area); ideally the interviews should be conducted before and after any project or program activities</li> </ul>
Number of women with joint titles to land (either measured before and after the intervention or measured as a proportion of the total number of land titles issued over a set period)	<ul style="list-style-type: none"> <li>• Land registration department records</li> </ul>
Number of women with individual titles to land (either measured before and after the intervention or measured as a proportion of the total number of land titles issued over a set period)	<ul style="list-style-type: none"> <li>• Land registration department records</li> </ul>
Number of training sessions provided to relevant authorities for gender-sensitive land mapping and titling and for dispute resolution processes	<ul style="list-style-type: none"> <li>• Land registration authority records</li> <li>• Project or program records</li> </ul>
Number of women and men receiving legal literacy training	<ul style="list-style-type: none"> <li>• Program or project records</li> <li>• Training records</li> </ul>
Change in number of cases of women accessing legal advice regarding land claims (measured over a set period before the project intervention and compared with a set period after the project intervention)	<ul style="list-style-type: none"> <li>• Legal authority records</li> <li>• Records of paralegals</li> </ul>
Number and percentage of total of disputes resolved in favor of women's and men's land rights over a set period	<ul style="list-style-type: none"> <li>• Interviews with stakeholders</li> <li>• Land registration department records</li> <li>• Legal Office</li> <li>• Local traditional authorities (such as a chief or local council)</li> </ul>
Changes in legal norms regarding access and control of land with regard to gender over a set period	<ul style="list-style-type: none"> <li>• Land registration department records</li> <li>• Legal Office: statistics and interviews with key informants</li> <li>• Local traditional authorities (such as a chief or local council)</li> </ul>
Change in knowledge in sample group (the general community, land titling and administration staff, or legal tribunal staff) regarding women's and men's land rights and land titling and dispute resolution procedures	<ul style="list-style-type: none"> <li>• Group interviews or focus groups</li> <li>• Interviews, before and after</li> </ul>
Community satisfaction (disaggregated by gender and poverty ranking) with changes in land access, titling, and dispute procedures	<ul style="list-style-type: none"> <li>• Group interviews or focus groups</li> <li>• Interviews, before and after</li> </ul>

Source: Authors, with input from Pamela White, author of Module 16.

as comparative indicators and when collecting data), because women of lower castes or ethnic minorities are usually in the most disadvantaged situation.

## NEW AND EMERGING DIRECTIONS

Based on past experiences, program evaluations, and new and modified priorities, land policy and land administration programs are attempting to focus on social equity as well as economic growth. Participation by communities, local stakeholders, ethnic minorities, and women, although not yet generally the norm, is being discussed among policy makers and program officials, and attempts to articulate policy and implement programs with such objectives are being made. Several new mechanisms to increase local participation and social equity include community-based natural resource management, joint titling, and community titling.

Participatory natural resource management (or community-based NRM) has emerged out of decentralization programs as well as efforts to increase local participation. Community-based NRM can be, and should be, a good vehicle for participation by women, who are major users and knowledgeable caretakers of natural resources.

To prevent “elite capture” of community programs by local influential persons, such programs must consciously and continuously focus on the less powerful groups, such as women, so that their interests are not ignored. For these groups to participate *actively* and *effectively*, programs should be designed to (1) include women in program activities and committees and (2) target women for gender training and education. Women should be explicitly and consciously included in the community and program activities surrounding program implementation. In this way women appropriate the program as meaningful to their lives and may be able to counteract the patriarchal and gender-biased practices that exclude them from decision-making activities. This type of local appropriation also ensures that land-related programs continue despite changes in government. In terms of monitoring and evaluation, it is important to track community and household dynamics, particularly conflict, because this may be an important early warning sign of potential failure of the program. Asset distribution impacts directly the power balance between classes, groups, households, and household members, and early signs or indicators would be essential to ensure that project benefits are not cornered by an elite section of the beneficiaries (see Table 4.1).

Titling programs have recently taken up the mechanism of joint titles for spouses in an effort to increase the number

of women with legal land rights. When a titling program has the proper procedures and the political will to implement joint titling, the number of women holding title does increase (Giovarelli and others 2005). Joint ownership by married couples, however, is applicable only to land and property acquired by couples during marriage, such as purchased land or land acquired from the state. Many potential complexities influence whether individual or joint titling is most likely to improve and protect married women’s rights to land. Where women are unlikely to acquire land on their own through inheritance or purchase, and where norms do not include marital property, the allocation of state land (under land reform or resettlement programs, for example) should include mandatory joint titling. Consideration of local inheritance and marriage institutions, agricultural production practices, and the participation of women in the design and planning of land programs will help sort out these complexities.

Community titling is a process to legalize rights to land (and other natural resources) that belongs to a community and to which community members have access rights. Community titling is often implemented where there is the risk that influential persons, corporations, or other communities may claim that land as their own. This process is innovative in that the state legally and formally recognizes a group’s (a community’s) communal rights to land. The boundary of the community land is defined, the community is assigned the title to that land, and the title is registered in the registration system. Parcels within the community, such as those held by individuals and families, are not generally surveyed and registered. Examples of community titling can be found in Bolivia and Mozambique. Very real concerns exist, however, that women’s rights to land and other resources may not be recognized. Program officials and local authorities need to take steps to involve women fully in the community titling process.

In concluding this Overview, it is important to bring up two difficult issues—difficult because of their complexity and because they are rooted in the local context. First, when is titling of individual land parcels appropriate? At what point is a customary tenure system no longer able to allocate and administer rights to land and other natural resources fairly and efficiently? When does the legal formalization of land rights become the appropriate mechanism for improving access, and what might be lost in the process? These interrelated questions need to be approached not only from economic and legal viewpoints, but also from social and cultural viewpoints. Thematic Note 4 addresses the issue of women’s rights to land within land titling programs more fully.

The second issue is related to women's rights within customary tenure systems. What can be done to improve women's access to land and to secure those rights in societies, such as patrilineal communities, that systematically deny wives and daughters property rights? Gender relations in general and land rights in particular need to be addressed simultaneously. Some mechanisms for addressing them

together include campaigning for changes in customary practices through education and advocacy programs and introducing formal legislation that provides wives and daughters with rights to land that the established system does not give. An effective program will very much depend on the local context and on full participation of the local population, both women and men.

## Gendered Access to Land and Property

Land and tenure systems consist of the social relations that are established around natural resources, particularly land, water, and trees; they determine who can use what resources and how they are to be used. Gender, together with class, ethnicity, and caste, is one of the most important determinants of land rights in households and rural communities, including land tenure relations. It is useful to distinguish between different tenure rights, particularly between *control of* and *use of* land and other natural resources. Control of land and resources is the command an individual or group has over them and over the benefits derived from them.<sup>1</sup> Use rights allow a person to use land or resources for particular activities. Use rights may include some decision-making power over the production process and use of the resource but do not necessarily include enjoying the full benefits derived from the resource. Those who *control* access to land also tend to control and benefit from the labor of those who use the land.

Programs that seek to improve access to land vary from programs recognizing communal land tenure systems (with both individual and common property) to those seeking to formalize land rights into freehold ownership rights. Given these varied options, an important initial question to ask when considering land access programs is: when is legal formalization the appropriate mechanism for improving access, and what might be lost in the process?

### KEY GENDER ISSUES

Women and men have three general mechanisms for obtaining rights to land: (1) through social and kinship relations at the local level, (2) on the land market, or (3) from the state. These mechanisms are embedded in institutions that create, modify, and influence land tenure systems: sociocultural institutions, state institutions, and market economy. An examination of how they influence land tenure systems is useful in understanding gendered rights to land and in

proposing and implementing gender-sensitive policies and programs. Depending on a country's historical development and current socioeconomic and political conjuncture, one set of institutions is generally more important than the others in determining land rights. All three sets of institutions, however, influence and interact with each other in determining the specific tenure relations of a society. In all of these institutions, it is important to understand the gender differences in land uses and priorities, what rights men and women claim, and women's needs.

### Sociocultural institutions

In societies in which customary practices and traditional social structures are predominant, rights to most land are generally determined by sociocultural and religious institutions such as inheritance, marriage, and community allocation. These customary tenure systems are diverse, with a large variety of property relations and rights. Particularly in places where land is relatively abundant, as in some areas of sub-Saharan Africa, primary land ownership rights are often vested in the community or other corporate structure such as a lineage or clan. Community authorities allocate some of this communal land to individuals and their families (generally for cultivation with long-term rights), and other land and resources are held as common property. A significant proportion of the land and the natural resources may be common land, controlled not by individuals but by the group and managed according to community rules.<sup>2</sup> In regions where land is quite scarce, such as Southeast Asia, very little arable land is available for allocation by community authorities; most community land is held by individuals and families.

The community determines access to communal land, forests, pastures, and water sources; generally, the basic criterion is membership in the community. Besides family or lineage considerations, gender is another membership element. Access rights to common land and its

natural resources tend to be more broadly distributed throughout the community. Land-poor households make much use of resources found on common lands: for example, they may gather firewood and collect water, gather forest products, collect fodder for animals, or graze their animals. Because women in many societies depend on their husbands or a man relative for access to household land, access to common land and resources is particularly important to them.

Land allocated to individuals on a long-term basis tends to be parcels for producing food, building a home, or raising animals; rights to these parcels are generally inheritable. How this land is allocated initially to households depends on the particular customary system. In spite of individual control over these parcels, however, in many societies the community retains some rights, such as the right to gather firewood and water, or gleaning rights to gather grain or pasture animals after the harvest. These rights are important for women.

Land parcels under individual or household control are generally transferred through inheritance, not the market. With few exceptions, it is men who inherit land. For example, in The Gambia, Mandinka women, like most women in sub-Saharan Africa, do not inherit land, nor are they generally able to receive land allocations from community authorities. When a woman marries, her husband gives her cultivation rights to a plot of land; she cultivates the land to provide food and other goods for herself, her children, and husband, but she does not have other property rights to it, such as the right to pass it on to heirs. In addition, she is obligated to work her husband's crops in exchange for these cultivation rights.

Customary tenure norms provide women with some basic security in situations when they are not living with a husband, but the reality is that many customary tenure systems are no longer capable of ensuring that households and women have access to sufficient land and other resources. A number of factors, including a growing market economy, increasing poverty, and commercial agriculture, are converting land into an asset, accentuating land scarcity, and privatizing (and individualizing) land rights. Within these situations, vulnerable women such as widows and divorced, separated, or abandoned women are unable to access land. When family or lineage land becomes privatized as a result of market economy development or state action (such as titling), opportunities arise for land policy and programs to promote women's equal ownership rights. Unfortunately, privatization has often led to women losing any rights they may have had.

## **Allocations from the state**

The state, through various agencies, allocates land to its citizens through redistributive land reform programs, resettlement programs, leasehold arrangements, market-driven land reform, land privatization programs, and antipoverty programs. These rights can range from use rights to leasehold to private individual ownership rights. Even where the legal norms for these programs do not explicitly discriminate against women, traditional norms and attitudes of program officials and participating populations work against considering women as equal participants and as property holders. For example, access and use rights to state forests are very important for women for gathering firewood, fodder, water, food, and medicinal plants. State officials, however, vary enormously in how they treat women and men. In some areas, women are harassed or denied entry. On the other hand, in the Mabiru forest in Uganda, forestry officials work with women's craft groups to identify forest products that can be sustainably harvested.

Redistributive land reform has been carried out across the globe and, recently, particularly in Latin America and Asia. The distribution of land in most cases has directly benefited men household heads by adjudicating land to them and ignoring wives and, in some cases, even single women household heads.<sup>3</sup> Recently, some land reform programs have attempted to integrate gender equity into their efforts. In India, for example, some states (Madhya Pradesh and West Bengal) have made concerted efforts to allocate land to women (Brown, Ananthpur, and Giovarelli 2002). In Brazil the land reform agency in August 2000 finally acknowledged the legal norm of joint property established in the 1988 constitution by announcing that it would include the names of both spouses on property documentation (Deere 2003). In South Africa, although national agrarian reform policy and offices articulate the importance of and need for gender equity, district and local level offices do not have the mechanisms and tools to implement this gender policy (Walker 2003).

The resettlement of communities and households often occurs as a result of land improvement programs such as land reclamation and water control projects (irrigation, flood control, and so forth). Land administration issues related to these projects include the allocation of previously noncultivated land or newly improved land to farming households and the conversion of customary rights to private individual rights as land is increasingly considered a productive asset. A frequently used mechanism for allocating or titling improved land is to revert such land to the state and subsequently allocate parcels to eligible farmers,

either as leasehold or as private individual property (freehold). As land is improved and becomes more valuable, women may lose their traditional use rights to land. In addition, program officials and technicians generally focus their communications and beneficiary activities on men household heads.

Privatization involves changing land rights from collective or communal rights to private individual rights. In Eastern Europe mass privatization of state farms, collectives, and cooperative farms took place during the 1990s. In sub-Saharan Africa privatization of communal land has been and continues to be the result of both market forces and state efforts (such as tenure reform and land titling). As with other state programs, such as agrarian reform and resettlement, the practice has been to privatize land to men household heads. When Albania, for example, privatized and distributed collectively owned land, the state followed patriarchal norms and titled land intended for the family overwhelmingly to men household heads (Lastarria-Cornhiel and Wheeler 1998). The same pattern of granting land rights to men and ignoring women's rights can be found in state leasehold and market-assisted land reform programs.

### **Land market**

Market economy institutions also play a significant role in allocating land rights. Market economies are generally based on private property rights and the marketability of these rights. Consequently, land rights are usually acquired through the market (for example, by buying, selling, and leasing) at market values.

Capital (either savings or access to credit) is required to purchase land on the market, and thus the ownership of assets is crucial. Women who wish to participate in the market, particularly those from landless and smallholder families, are unlikely to have such assets. If they engage in wage work, their earning power is generally insufficient to accumulate savings. The productive work they perform in their household is usually unremunerated. Men family members will most likely control the few assets that low-income households own. In addition, women often lack information on the land market, such as the availability of parcels for sale and land prices. For these reasons, women find it more difficult than men to participate in the land market and programs such as market-driven land reform.<sup>4</sup>

On the other hand, for those women who are able to acquire capital, the market is one mechanism for acquiring land that is generally not influenced by cultural bias or state policies. Land acquired by women on the market often

escapes the restrictions and limitations placed on customary land by men-dominated family and lineages. In addition, a woman's daughters may inherit this land, because it is not considered family or lineage land.

Within the process of market formation, however, the increasing privatization of land rights generally has a negative effect on women's traditional rights to access land. Customary societies find it more difficult to enforce their rules and practices for allocating community resources, such as land, based on the need to provide resources to community households for their welfare and sustenance. During this transition period, what is regarded as customary norms and practices begins to change as social actors adapt their behavior to changing conditions, often at the cost of groups, such as women and minority ethnic groups, who are considered secondary members of the community.

### **POLICY AND IMPLEMENTATION ISSUES**

The basic issues that affect gender-responsive outcomes in programs dealing with land access are found in two areas: program implementation and the participant population. These programs have generally tended to direct their activities and communication to men household heads in the belief that the household is a unified group whose members have the same goals and interests and that other household members and producers, such as women, will obtain benefit through the man household head.

In addition, policy makers, program planners, and project implementers are influenced by their own values and attitudes concerning women's abilities and rights. In Zimbabwe in 1998 the senior minister in charge of the land resettlement program rejected women's demands that land certificates be automatically registered in both spouses' names. He also did not permit that land earmarked for redistribution be offered to women heads of households and single unmarried women. The minister maintained that such moves would cause families to break up because they would accord women too much freedom.<sup>5</sup>

The norms, values, and practices of participating populations also influence how land access programs are implemented. Land allocation programs that attempt to include women may encounter resistance from community authorities and other adult men. Control over land is a significant source of status and power in rural societies, and those who hold that power are often loath to share it. Program officials and implementers may also find that women themselves are reluctant to participate because of illiteracy, inexperience, or fear of ridicule and reprisal (see Overview). Project actions

to overcome these constraints on the part of both women and men include informational and training activities for the participating population (both women and men), local authorities, and local land administrators.

Where land reform programs are market based, small-holder women are constrained from participation by lower access to capital as compared to men.

## **GOOD PRACTICES AND LESSONS LEARNED**

Although no single land-access project has had unqualified success in allocating land to women and men at equitable levels, some projects have been able to increase the number of women participants and beneficiaries. In addition to facilitating women's individual access and rights, programs that promote collective land rights for women, such as programs that help them to purchase or lease land as a group, can be a very beneficial option (Agarwal 2003).

### **Rice land in The Gambia**

An agricultural development program in The Gambia had a land component that combined land improvement and land reform.<sup>6</sup> Planners made the decision to reclaim degraded lowland areas during the design phase of the project using participatory methods that involved community members and authorities. The communities that wanted to participate in the reclamation activities formally requested assistance, and community mobilization teams visited them to establish site management committees. Again, all these activities utilized participatory rural appraisal methods.

The project devolved ownership of the land from individual landowners to the community, and the community provided labor for the reclamation activities. After reclamation, the community redistributed the land, on an equal basis, to those who had provided labor for reclamation. The majority of reclamation workers were women and made up 90 percent of the land beneficiaries (22,216 women from different ethnic groups).

### **Leasehold of forest land in Nepal**

A project in Nepal granting landless households access to forest land demonstrates successful efforts to include women. Currently, 25 percent of the participants are women; in addition, there are 74 all-women groups and 112 women group leaders. The project also employs local women group promoters to organize and attend group meetings, promote the project, organize groups, give

training, and detect problems. By working within groups, women have also been able to increase their human capacity and their ability to increase productivity both in domestic and productive work (see Innovative Activity Profile 1 for more details).

### **Community-based natural resource management in Namibia**

Initiated in 1993, a project in Namibia sought to devolve rights over wildlife and tourism to local communities.<sup>7</sup> One of the project's main objectives was initially to increase benefits to Namibians from sustainable local management of natural resources. One of its specific objectives was to increase the number of women participating in officially recognized management bodies over natural resources. By 1998, 22 percent of the members of these management bodies were women. Social surveys, as well as organization and training provided by community resource monitors, provided a mechanism to integrate women into community-based management. Income generation activities based on the use of renewable natural resources also benefited women.

Unfortunately, the project lacked tools for participatory development and socioeconomic and gender analysis. As a result, gender and social equity objectives were not sustained. A midterm review found these deficiencies and recommended steps to remedy them through research and training. A gender assessment in 2005 found that great strides were made in the program's gender balance at the national level, in a greater number of women standing for election in the conservancy management committees, as well as in women's benefits from capacity development and training.

### **Homestead land purchase program in India**

Programs that help landless families in rural India to purchase small plots are one way of providing secure housing for the rural poor and, assuming the plot is large enough, some land for home gardens or another household enterprise.<sup>8</sup> These productive activities provide supplemental income and may improve household nutrition and food security. They also provide space for productive activities under women's control. The experience in India has shown that participation by beneficiary communities and households in all aspects of the program, from identification of suitable land to land development plans, contributes to successful implementation and to satisfaction by beneficiary households.

An innovative feature of many of these programs in India is that the land titles (*patta*) are issued jointly to both wife and husband, sometimes with the name of the wife listed first. In some cases, land title is issued to women only. This practice is attributed to greater gender awareness and sensitivity on the part of community authorities and committees (*panchayats*).

## **GUIDELINES AND RECOMMENDATIONS FOR PRACTITIONERS**

Guidelines for increasing women's participation in land access programs will be somewhat different for individually owned land than for common property. Women tend to have more equitable access to common property, and their rights to use common land, depending on local rules, may not be challenged. *The principal guideline is to include women's voices and interests in natural resource management programs.* For programs that allocate land as leasehold or private property, *the principal guideline is to allocate land equitably to both women and men.*

### **Common property**

Programs that deal with common property must recognize women's access rights to common land and natural resources. Women's rights should be the same rights that other community members enjoy. When, for example, programs are established to title community land, care should be taken to recognize the women in the community (both married and unmarried) as members of the community having the same rights as men community members.

Programs that affect access to and management of common property, such as natural resource management programs, should recognize women's dependence on these resources and accommodate gender-differentiated management practices. Increasing shortages of resources, changing values (from use value to market value) for land and other

natural resources, modifications in family structures, growth of commercial agriculture, and other changes are modifying social relations and cultural norms around common property. Under these conditions, women's rights to these resources may become more tenuous. Programs should seek to preserve and improve women's rights to access these resources. This objective means that programs must have an understanding of how different groups within the community relate to common property resources.

Natural resource management programs should consequently consider what role gender plays in access to and control of community resources and consider how to ensure women's participation. Issues that should be considered include the following:

- Gaining explicit awareness of women's different interests in accessing land, trees, forests, water, and other common resources, as well as of their level of control over these resources
- Ensuring that program objectives and activities do not reduce women's access to common property (for example, because of privatization or concessions)
- Recognizing, during program design, women's particular constraints (in law and norm and in practice) in accessing and managing land and other resources, and putting forward activities to reduce these constraints
- During project implementation, monitoring women's access to common property and women's involvement in managing these resources.

### **Allocation of land as private property**

Programs that seek to facilitate access to or allocate land as private property, whether owned individually or by a group, have slightly different guidelines. Women's rights to landed property may be contested within the community and the household, and there will be a tendency to allocate land rights to men household heads (see also Thematic Note 4).

## Legal Reforms and Women's Property Rights

### KEY GENDER ISSUES

Joint titling and inheritance are most often cited as the main issues when considering women's legal rights to land. Do married women have a legal right to the land that is owned or used by the household? Do women have the right to inherit land from their husbands and fathers? Although these legal questions are critical, inheritance and joint titling must be considered as part of a much greater web of issues, both legal and customary, if a complete picture of women's property rights is to emerge. To paint a more accurate picture of women's property rights, the following issues are crucial:

1. Do women have the legal right to own land or hold long-term use rights to land?
2. Do women have the customary and socially accepted right to own or control land?
3. Do women's current legal property rights make sense, given the culture in which they live? That is, could or would the majority of women claim their legal rights?
4. Do the answers to these questions change if women are married, single, divorced, widowed, or in a polygamous relationship?
5. Do women know and understand their rights?
6. Do women have any means to enforce their rights?

It has become clear in the last 10 years that men's rights to land do not necessarily translate into the household's rights to land. One primary reason for this situation is that households in rural areas of developing nations are not nuclear families functioning as solitary units. Rather, these households generally include the parents of one of the spouses and operate within a larger family system, which often uses ancestral land and sometimes tribal land. Moreover, when these households break down and change, women whose property rights exist only through their husbands immediately become very

vulnerable. It is at this point of change that individual legal and customary rights to land within the household become important.

This Thematic Note focuses specifically on women's legal and customary rights to land and how to effectuate them.

### CONCEPTUAL FRAMEWORK

Four categories of legal rights to land affect women: (1) the rights women hold in marriage (shared tenure); (2) the right to land when the marital household changes through polygamy, divorce, or abandonment; (3) the right to receive land through inheritance; and (4) the right to purchase land. These are affected by both formal and customary law.

Scholars and service providers have taken two main approaches to these legal issues—a rights-based approach and a more gradual, institution-building approach (Tripp 2004). A rights-based approach focuses on formal legal reform as the key to women's property rights. This approach gives particular attention to the constraints imposed by customary laws and practices and to problems in implementing antidiscrimination laws. The philosophy behind the institution-building approach is that customary law and institutions should be supported. Formal law is viewed as a catalyst to expedite a process of change, but the actual ability of formal law to bring about change, especially in the household arena, is considered limited. The institution-building approach asserts that legal reforms undermine local systems of adjudication and create a rigidity in customary laws that prevents them from being modified and used flexibly (Gopal,<sup>1</sup> cited in Tripp 2004).

These two approaches are not as divergent as they seem at first. They differ in their starting points only; neither approach would advocate ignoring the other. Each recognizes that legal reforms must be accompanied by legal

education for women, education for officials and those who implement or enforce laws and customs, and the inclusion of women in technical services, access to credit, and policy making.

## **POLICY AND IMPLEMENTATION ISSUES**

Getting the right legislation and effective implementation and judicial enforcement are crucial. Discussed here are legislations on shared tenure, polygamy, divorce, abandonment, and inheritance and conditions in the land market that affect women's access to land and property.

### **Shared tenure**

“Shared tenure” is a broad term that includes land co-owned within a household and may also include communal ownership of land.<sup>2</sup> The substantive issue for women is whether they have a right to share land tenure with their husbands or communities, and, if so, what limits are placed on that right. Formal legal rules for joint titling have to take into account the following issues:

1. Which property is jointly owned? Inherited land? Purchased land? Land distributed by the state? In many countries ancestral land is excluded from joint property (in formal law or under customary law), and most land that belongs to the household is ancestral land.
2. Who will manage the marital property? Managing the community property can be as important as formally owning it, because it may include mortgage or sale of the property. *Joint management* requires the spouses to act jointly regarding the community property; *sole management* allows one spouse the sole power to manage jointly held property; and *equal management* gives either spouse, acting alone, the power to manage the whole of the property that is jointly titled (UN-HABITAT 2005). Most countries have adopted a combination of management rules, the application of which depends on the nature of the property at issue. For example, one spouse can make all decisions except those related to the house and land, which require the agreement of both spouses (Deere and Leon 2001).<sup>3</sup>
3. Do consensual unions trigger the joint titling rules and protections? Do religious or customary marriages trigger them? Many women are not legally married, especially where customs and traditions predominate. Legal marriage can be expensive and time-consuming and may require residence documentation that women do not

have. In other cases, marriages are religious or customary and therefore do not include the rights reserved for marriage under the civil law.

4. Is there a mandatory registration requirement for joint titling? Even where the law presumes that married couples hold their land in joint ownership, often mandatory registration of that joint ownership is not required. Without joint registration of land, one party may have to go to court to exercise her right—a difficult and unlikely step.

### **Polygamy, divorce, and abandonment**

In most non-Western countries, polygamy exists in one form or another, whether it is legal or illegal under formal law. Polygamic practices affect women by affecting household income; even if the two wives do not live together in one household, their husband must support two families. The livelihoods of first wives are threatened when their husbands take second wives. Additional children require more of the household income. Even without additional children, already tight resources are distributed to the second wife—and often these resources include a plot of land.

Laws against polygamy are rarely enforced and have little effect on behavior. In fact, where polygamy is illegal, women may be more vulnerable; often second wives have no rights under formal law if polygamy is not recognized.<sup>4</sup> Legal protections for first wives, even those who are formally married, are rare. In most instances the husband is not formally married to either wife, placing the first wife in serious economic jeopardy when her husband takes a second wife.

The existence yet illegality of polygamy is tricky when considering rules for joint titling. If a man actively supports two households, in whose name should the land be registered? If joint titling is allowed only for formal marriages, but a first wife provided resources and sweat equity for land, should that land be titled to the second wife if that marriage is formalized? What if the first marriage was formal, but the two spouses have been separated for years (although not formally divorced), and each now maintains different relationships? To whom should the land be titled?

### **Inheritance**

A woman might inherit land in two main ways: as a daughter from a parent or as a wife from a husband. Inheritance of land by daughters or widows is often the main way through which women acquire ownership rights to land. Many pluralistic legal systems allow the marriage to determine

the inheritance regime that applies. For example, if a person marries as a Muslim in India, the inheritance rules are different than if a person marries as a Hindu.

Very often, although formal law provides daughters with the right to inherit land, they will not inherit in fact, or they will not enforce their right to inherit. In patrilocal societies, daughters move from their parents' home and land to live with their husbands, so the land they may inherit is of little use to them. Often the family is responsible for a dowry or other expenses related to marrying their daughter, and those expenses are considered her share of the wealth of the family. Under customary law in many countries, inheritance of land by daughters is directly related to marital residence and to the customary means of distributing wealth.<sup>5</sup> In focus group interviews in rural areas of Karnataka, India, and the Kyrgyz Republic (two countries where inheritance by daughters is mandated by law), most women stated that they would not request land from their families even if they were legally entitled to it.

Inheritance of land by spouses is even less likely to occur than inheritance by daughters in patrilineal and patrilocal societies. Ancestral land is closely guarded in most communities around the world. Wives, with no blood relationship to their husband or his clan or community, are often given use rights to the house and land but not the right of ownership. Sometimes those use rights exist only if the widow has had children with the deceased partner. Depending on the depth and breadth of these use rights, they may be a worthwhile compromise. In countries such as Burundi or Rwanda, for example, where land is extremely scarce and most, if not all, communities are patrilineal, the division of ancestral land between children and their mother may not be feasible and realistic. Long-term use rights to the land, on the other hand, may be much more politically feasible. If the use rights include the right to mortgage or lease out the land, and if widows have control over how the land is used, these use rights will not differ substantially from ownership. Additionally, in many societies, although children but not mothers inherit land, the inheritance comes with the responsibility to care for the mother, an arrangement preferred by many women in the Kyrgyz Republic, for example. On the other hand, land grabbing of widows' land (by sons or brothers of the deceased) is a major problem in Uganda and other African countries that cannot be ignored.

## Markets

Ancestral land is often not available to women, and so participation in the land market is critical to women's ability to

sustain a livelihood, but this participation may be limited. Because of traditional gender roles and a lack of independent financial resources, women in many countries rarely purchase land, either independently or jointly with their husbands. Land ownership is economically empowering for women; thus, women's land ownership can be threatening to men. For example, under Muslim personal law in the Philippines, a woman must have her husband's consent to acquire any property by gift, except from her relatives (Giovarelli 2006).

It may be easier for women to lease land than to purchase land, and land market programs should not focus exclusively on ownership markets. Leasing land is less psychologically threatening than purchasing land and requires fewer entry resources. Of course, it should be noted that leasing is less psychologically threatening to the status quo for the very reason that it does *not* create long-term secure property rights in the borrower/lessee. In Burkina Faso, for example, the increased and changing market value of land has had the surprise effect of creating avenues outside traditional channels for women to lease land over the long term, anonymously (Bruce and others 2006). Men landholders who have excess land are more willing to lease to women because women cannot claim permanent rights to land. Husbands generally support this borrowing of land by their wives, and women are therefore better able to cultivate land independently, even though they do not own it (Giovarelli 2006).

## Implementation

As stated earlier, legal solutions are effective only if they are socially accepted and enforced. Changing the law can be difficult, and sometimes it takes years to win one small battle. Changing people's attitudes toward a new law once it passes can also be difficult. Many examples exist of legal efforts that were ineffective in helping women gain rights to land, as well as some examples of legislation that even caused harm. At its best, legal reform is a necessary prerequisite for change, but, even then, legal reform alone is never enough. A review of two World Bank Land Titling Projects (in Bolivia and Lao PDR) found that although formal law that mandated joint titling and registration was in place, women did not gain equal rights to land. The unequal outcome was related to cultural practices and biases, lack of information, or nonenforcement of legal rules. The number of titles issued to women or in joint ownership increased only after each of these issues was addressed (Giovarelli and others 2005).

Perhaps the most critical point to be made regarding formal legal solutions is that legal solutions must be part of a

larger effort to provide education, training, and other means of raising awareness about women's lack of land rights and the consequent impact on the larger economy, well-being of the family, and position and viability of women's livelihoods.

Before addressing the institutions that enforce law, two points must be made about the laws themselves. First, gender-neutral language can be gender biased in its interpretation. For land legislation to be inclusive of both men and women, at a minimum it must explicitly recognize women's and men's equal rights to land. In Bolivia, for example, the law that establishes the legal basis for the current titling program specifically states that in the distribution, administration, tenure, and use of land, equity criteria will be applied in favor of women *and independently of their civil status*.<sup>6</sup> The last phrase is important because it does not require that a woman be the head of the household or married to be eligible for land rights. The most useful provision to date is Article 28[g], which makes the INRA (state land agency) director (and the provincial INRA directors) responsible for ensuring that legal gender rights are observed in implementing the INRA law.

Much of the explicitness will be found in the regulations to the major laws, rather than in the laws themselves. Regulations, which lay out the details of how a law will be implemented, rarely go through the checks and balances of the legislative process. Rather, they are promulgated by state agencies and approved by one person—for example, the Minister of Lands or the prime minister. This practice can cause problems in many different ways. For instance, the law can generally or even specifically favor equal rights for women, but the regulations may not require the names of the husband and wife on the land title, as occurred in Indonesia. The registration law and accompanying regulations are silent on the issue of joint titling, and some registration officials were not certain that land could be titled jointly (Lastarria-Cornhiel and others 2003).

The registration process itself can create barriers for women to own land. In Brazil the registration regulations required that personal documents such as proof of marriage, proof of citizenship, or identity cards be presented to register land, but women lacked this documentation and were not registered. In Lao PDR women have a difficult time proving ownership of property because many families, particularly in rural areas, do not have documentation of ownership or other land rights. If documentation is required for taxation, for example, the man head of the household traditionally deals with these formal and

written procedures, and his name appears on these types of documents.

Beyond what the law or custom requires and what regulations allow, for a law to be enforceable, women need legal awareness (knowledge of what is legally possible), legal information (specific and detailed knowledge of how to record land rights and engage in land transactions), and legal empowerment (the social and institutional ability to assert claims and secure land rights). Women must also understand the complexity of land issues, the relationship between different laws and practices, the options available, and the limitations of the legislation and the implementing bodies. Knowledge of both formal systems and informal systems for exercising land rights is critical in most parts of the world, and the legal situation can be quite complicated.

An important, and often missed, step toward making women's land rights secure and sustainable is providing awareness, information, and enforcement mechanisms to those who implement or enforce those land rights. Other household members, local leaders, judges, and land professionals must all understand the law and its implications and how to use and follow the law. The rule of law is more likely to have value if there are many people who understand the land law and rely on it to protect their rights.

Effectuating major legal change requires a sustained effort to implement the changes, including sensitizing the public to the changes and eventually gaining public support. Although workshops, training materials, and mass media campaigns can alert the public to new laws, they can do little to change attitudes or actions unless they are augmented by the efforts of local people who both understand and support the legal changes. Combining a mass media effort with the sustained presence of knowledgeable people at the village level will have a much more lasting effect.

Judicial enforcement of land rights is also critical and can save or harm women's property rights. In Tanzania the Land Act and constitution are progressive and mandate equality for men and women. In support of these laws, the Tanzanian High Court invalidated customary norms preventing women from selling land. In Kenya the land registration program was carried out during a time when gender was not part of the development agenda. At that time, land adjudication committees were men dominated and lacked the skills and time to carry out their duties properly, which included registering all rights (primary and secondary) to land. Women's secondary rights often went unregistered. In a later case, however, the court ruled that when the husband was registered as sole owner of property and the property

was acquired during the subsistence of the marriage, evidence of co-ownership may be given under the Married Women's Property Act of 1882 and Section 126 of the Registered Land Act (Giovarelli 2006).

Uganda granted judicial capacity to local councils at the village, parish, and subcounty levels in an attempt to encourage inexpensive, expedient, and culturally appropriate justice. The local councils share concurrent jurisdiction with magistrates' courts but also are connected to customary law as they are lay judges and make their decisions based on local norms and social ties. The local councils also hear cases related to land disputes. Such courts should have been more accessible to women, but it was more difficult for women to get justice in these courts, because women could neither pay for legal service nor effectively fight against their basic position as outsiders in the men-dominated community. Women often choose to go to magistrates rather than the local councils. Informal justice does not have the legal authority and leverage of state power and has wide discretionary powers to define custom. In this instance the local councils have little ability to make dramatic pronouncements about women's rights to land, and at the same time lack authority to enforce formal laws, which may favor women's rights (Giovarelli 2006).

Legal assistance or legal aid for women is also critical to enforce their rights to land. Legal aid centers provide services to women while simultaneously feeding back information to policy makers on land issues that affect women and policy changes that are required.

## **GOOD PRACTICES, LESSONS LEARNED, AND GUIDELINES FOR PRACTITIONERS**

Implementation efforts and changing attitudes and knowledge of beneficiaries and communities as well as institutional agents and project staff are critical for success. Participation of women in all stages of the project, as well as among institutional and project staff, is another factor. Such efforts may include the following:

*Talk to women.* Some legislative and social changes may be more readily accepted than others, by both men and women, and part of the process needs to involve listening to women to understand what legal rights are most valuable to them and the impact of various legal situations.

*Take family law into account.* Land projects that incorporate legal reform must consider family law as well as land law to have an impact on women's rights. Yet family law is rarely considered as part of land administration projects, usually owing to lack of funds for the legal review or lack of awareness of the issues.

*Keep consistent gender focus through all stages of a program.* In the World Bank's Land Administration Project in the Philippines, the gender-mainstreaming plan encompassed the whole project cycle, from influencing legal reforms to installing gender-sensitive monitoring and evaluation systems.

*Include men and not just women.* The Philippine project struggled to balance its efforts to include women and its need to include and train men as well. At one point the project focused more on women than men, also to the program's detriment. If men are to be "brought along" and included in making cultural changes, they must also be involved in training and in the design of the project.

*Attend to legal regulations.* Regulations have a major impact on how the more general land laws are implemented and must be considered along with formal and customary laws. For example, it is critical to understand whether the documentation required for land registration is available or common to women. If not, the requirements should be revised so that women and men have equal opportunity for registering land.

*Use existing law to its best advantage, regardless of customary law.* The Guayape Valley Agricultural Development Project in Honduras, funded by the Canadian International Development Agency, worked proactively with the Honduras Titling Agency to use the limited gender-related legislation that already existed to its fullest extent in order to include wives on land titles. The project was very effective in titling wives, despite strong inheritance and marital property practices that excluded women, because the project held gender training programs for project staff, government titling staff, the beneficiary population, and local authorities. The project also reviewed titling procedures to make them more accessible to and inclusive of women.

*Train all implementers of the project on women's land rights.* Although *beneficiaries* were trained in a World Bank land project in Panama and one in the Philippines, training of project staff was limited or lacking completely. In both projects the lack of gender training for staff led to less effective implementation of the gender strategy. On the other hand, in a U.S. Agency for International Development (USAID) Natural Resources Project in Namibia, a full-time gender trainer was hired for two years to work with staff and beneficiaries, leading to a very positive result in terms of women's involvement in the nature conservancies.

*When possible, encourage the legal norms that provide women with access and control over land rights.* For example:

- Co-ownership of land and property is the presumption for land acquired during a marriage or consensual union.

- Registration regulations include specific direction as to registration of married couples and those living in consensual unions.
- Legislation requires both husband and wife to consent to a transaction involving land acquired during the marriage or cohabitation, regardless of whether the land is registered in the name of both or only one partner.
- For countries where polygamy is practiced, even if it is illegal, legislation states that when a second wife is taken all property belonging to the first marriage or consensual union will be partitioned and divided. In this case, the husband would have only his share to distribute to his new wife and children.
- Widows' rights to the use and control of land needs to be established as a priority policy issue when developing property system legislation.

*Provide legal services to women to help them enforce their rights to land, once those rights are established.* Enforcement of legal rights or customary rights to land often requires legal advocacy, especially where women lack information or are poorly educated.

## Land Dispute Resolution

The management of land disputes involves the review of land tenure rules and the behavior of landholders with regard to these rules. As such, land dispute management is part of the justice system of any regime (whether formal or customary) and should be fair, equitable, and accessible to all. In many areas, especially rural, the formal justice system is not only inaccessible but culturally alien. Where the formal justice system is minimally present because of distance, weak state institutions, or scarce resources, customary and informal (alternative) dispute management processes are the most appropriate.

Both formal and customary tenure regimes increasingly recognize and use nonjudicial, alternative procedures for managing disputes. In reality, formal, customary, and alternative dispute resolution procedures are not exclusive.

### KEY GENDER ISSUES

Women as a stakeholder group have great difficulty gaining recognition for their disputes around land rights for two reasons: status and identity. The lower status of women in many societies has already been discussed. In addition, successful mobilizations around land conflicts generally occur along class or ethnic lines, because class and ethnicity are public identities. Gender is not easily perceived as a collective identity, particularly for women in rural areas, because they have minimal power, authority, and public action. Land conflicts that involve a claim by a woman are often intrahousehold claims around divorce or inheritance. Their resolution is generally limited to intrahousehold discussion and negotiation; rarely do they transcend household boundaries to reach community and local authorities.

A further complication is that a wife is often considered an outsider in a husband's household and community. Since women's rights to land are transmitted through the men in their family or household, it is considered shameful for a

woman to make a public claim for what she believes are her land rights. In the Kyrgyz Republic, for example, women have rights under formal law to the household's land and house when the household unit breaks down, yet it is shameful to assert individual rights within Kyrgyz and other Central Asian cultures. In most cases divorced or separated women no longer have access to the land, which customarily belongs to their husband's family. In addition, because women generally have no possibility of paying the fees required by the formal system, they rarely apply to court (Giovarelli and others 2001).

Given this context, the main gender issues in land dispute resolution include (1) the recognition of women's rights to land by formal judicial processes and officials and by the community and customary land authorities and (2) women's access to dispute resolution institutions. Resolving these issues involves a shift in perception, in which women's rights and claims to land cease to be regarded as a private, intrahousehold issue and are recognized as a public, societal issue. If this shift is to occur, it will require programs and actions that extend beyond legislation, including gender training and education for judicial officials as well as officials at state institutions. It will also require gender training and information dissemination for local populations involved in land programs. Finally, the facilitation of women's access to institutions that resolve land disputes (whether formal or customary institutions) will require proactive programs to overcome the barriers women face in approaching and dealing with these institutions.

Access to dispute resolution institutions is a part of democratic rights. Women's equitable participation in managing land disputes will also, in practice, improve their rights to land by setting precedents in law and by clarifying both formal and customary norms regarding daughters' and wives' rights to land and property. Success in resolving land disputes

will also encourage women in general to claim and demand their rights to land and property.

In addition, women's ability to participate successfully in the process for resolving land disputes will increase women's empowerment and status in the community and within their households.

## **POLICY AND IMPLEMENTATION ISSUES**

The principal issues for women in the resolution of land disputes are (1) access to dispute resolution institutions and (2) legal pluralism. The basic objectives for a judicial system that is both fair and gender sensitive include accessibility, transparency, efficient and timely process, predictability, and manifest impartiality.

### **Formal dispute management**

Formal judicial systems employ a number of mechanisms and procedures to manage land disputes. These include land commissions, public advocates for agrarian issues, adjudication, and arbitration. Formal judicial systems are supposed to be transparent, unbiased, and impartial and to adhere strictly to the law; they also, however, tend to be litigious, setting one party against the other and seeking punishment and retribution rather than restoration and transformation. A notable exception is court-mandated arbitration, found in common law systems, during which court action is suspended and a mutually agreeable solution is sought.

Women's access to courts is severely limited in many countries. Practices such as seclusion of women hinder the possibilities for women to claim their rights. In many rural areas, it is shameful for a woman to appear in court to claim her rights with respect to men family members, as documented in India, for example, by Agarwal (1994). In many countries, women are underrepresented in the judiciary, and prejudices about the credibility of women witnesses are widespread. Court fees may also constitute an obstacle for rural women, who tend to have less access to cash than men. Women's access to courts may also be constrained by norms limiting their legal capacity and preventing them from bringing judicial disputes autonomously.<sup>1</sup> Most countries have repealed these formal norms, and some countries have granted women equal access to legal remedies—yet legal and judicial practice may be lagging.

The problem for most low-income rural residents, including women, is the distance (geographical, cultural, and social) and cost involved in resorting to formal judicial institutions. With a few exceptions—such as land reform or

systematic land titling programs, which send land commissions, agrarian advocates, or arbitration teams into rural communities—rural residents are unlikely to deal with formal dispute institutions. In addition, women are less likely than men to have the preparation and legal literacy to deal with officials and opposing parties on an equal basis.

Where formal law recognizes women's equal land rights, women are able to take their cases to court, and their legal rights are likely to be upheld. In the Kyrgyz case mentioned earlier, customary law enforced at the village level does not give women access to land upon divorce. Some exceptions exist if the couple have children and the husband leaves the house. However, if a woman goes to court seeking divorce and property division, the written law is generally enforced. Women who petition the court must provide proof of their investment in the house, and they are compensated for that investment. In addition, the court generally compensates women for their portion of the household land share if their name appears on the land share certificate. Women generally consider that, in the case of divorce, written law regarding division of property is better than customary law (Giovarelli and others 2001).

### **Customary dispute management**

Given the access difficulty with formal systems, customary or informal dispute resolution procedures may be more appropriate in some rural areas. Customary tenure regimes contain institutions and authorities to manage land conflicts. These institutions, through customary land authorities, enforce the rules mediating access to land, allocate land to community members as well as noncommunity members, and manage land conflicts. Customary systems generally adapt quickly to changing conditions that spark conflict, such as commercial agricultural production, increasing population density, and evolving land markets.

When the community regards these institutions and its authorities as legitimate, customary tenure regimes are highly successful in settling land conflicts, and community members enjoy high levels of tenure security. Functionality and legitimacy, however, do not automatically result in transparent and equitable governance. Land distribution patterns in customary systems may be highly skewed, and some community groups, such as women and ethnic minorities, may be denied access to land.

The last decade has witnessed renewed interest in the role of customary institutions in settling disputes. Niger's 1993 Rural Code requires a mandatory conciliation procedure to be undertaken before customary authorities before initiating

judicial proceedings. Where communities with customary tenure regimes are linked with the formal regime, their judicial systems are embedded in the formal one. The formal regime recognizes the geographic and policy domains of the customary judiciary system. The trend toward decentralizing land administration depends strongly on embedded customary institutions to carry out state responsibilities.

For women, customary institutions have both advantages and disadvantages. On the one hand, compared to courts, customary institutions may provide more easily accessible (both geographically and economically) and speedier forums for rural women. These institutions may also enjoy greater social legitimacy. On the other hand, although their nature varies considerably from place to place, customary institutions are often gender biased in composition and orientation. Even though women may believe they have a legitimate claim in a land dispute, their secondary status within the family and the community may discourage them from approaching customary authorities. These land disputes may involve a family member, either from the woman's own family or her husband's family, who engages in intimidating actions. If women do approach customary land authorities and obtain a favorable decision, community and family members may ignore the decision. In frequently documented instances, young widows have lost their land to their husbands' parents and siblings (see, for example, Strickland 2004); this land grabbing occurs despite customary norms that guarantee a widow long-term use rights to her deceased husband's land to support herself and her children. In an ever-growing number of cases, people no longer respect these rights, and the institutions responsible for enforcing them—chiefs and elders—are either unable or unwilling to do so. Because customary institutions are constituted by men elders in most places, they may apply a men-biased interpretation of customary law. Women may even be discriminated against procedurally, because they may need a man intermediary to bring a dispute and to appear before the authority.

Some countries have attempted to improve the gender outlook of customary institutions. India's constitution, as amended in 1993, provides for direct election of members of *panchayats* (local government institutions rooted in tradition) and reserves one-third of the seats for women. South Africa's constitution recognizes the role and status of traditional institutions, although they are subject to the principles of the constitution. Similar norms are contained in Uganda's constitution. It is difficult to assess whether this type of norm is effective in reforming deeply rooted institutions. In both India and South Africa, most customary institutions reportedly

continue to be dominated by men elites and to favor a gender-biased interpretation of the law.<sup>2</sup> Guaranteeing women's representation through quotas is an important tool, but women sitting in councils may in practice not speak, may act merely as spokespersons for their men relatives, or may otherwise face resistance to their role.

### **Alternative dispute resolution methods**

Nonjudicial or alternative dispute resolution approaches provide another avenue for resolving conflicts in situations in which customary systems do not provide an answer and both parties are reluctant or unable to use formal dispute resolution procedures. Unlike the formal and customary approaches described earlier, alternative dispute resolution (ADR) methods emphasize decision making between the parties to the dispute rather than decision making by a third party. The parties involved agree to enter into a collaborative process of negotiation that will help them to arrive at a joint decision. The negotiations revolve around mutual interest, rather than around positions or rights, and the principal ADR procedures are negotiation, community consultation, mediation, and conciliation. A combination of these approaches, involving negotiation, advocacy, and consensus building, is often most effective, because land and natural resource disputes involve a number of stakeholders with varying interests and differing levels of economic and political power.

Although at first glance ADR methods may appear to be a less biased and more accessible means for women to resolve land disputes, these methods also assume that the parties are relatively equal in power. If women have secondary status and significantly less power than the opposing party, they will have difficulty negotiating on an equal basis and may not gain anything significant from the negotiation process.

### **Legal pluralism**

In many countries, formal and customary land tenure regimes overlap in jurisdiction, which results in situations in which more than one institution has authority over legal rights, and multiple bodies can resolve disputes. These institutions can include customary authorities, religious leaders, and governmental bodies. Legal and institutional pluralism can give rise to contradictions and ambiguities between statutory and customary rules and legal norms. How exactly different legal orders interact and influence each other depends on power relationships between the

bearers of different laws. Although legal pluralism can provide a means of coping with ecological, livelihood, social, and political uncertainty, it also exacerbates knowledge uncertainty (Meinzen-Dick and Pradhan 2002).

In the last several decades, numerous countries with vigorous customary societies have reformed their land legislation and given formal legal recognition to customary tenure regimes.<sup>3</sup> In some cases, as noted, the formal regime recognizes the geographic domain and policy scope of the customary judiciary system, and customary dispute resolution bodies are embedded in the formal body. This accommodation between formal and customary jurisdiction reduces ambiguities resulting from legal pluralism.

Legal pluralism enables individuals to use more than one type of law, customary or statutory, to rationalize and legitimize their decisions or their behavior. During disputes and negotiations, claims are justified by reference to legal rules. Parties will use different normative repertoires in different contexts or forums depending on which law or interpretation of law they believe is most likely to support their claims.

Legal pluralism can be disadvantageous for some groups, such as poor and uneducated women, for whom formal state institutions are distant, expensive, and conceptually foreign. It also offers opportunities for forum shopping by those whose financial and educational status enables them to operate in both customary and state legal systems. Women are often disadvantaged in the contradictions and accommodations arising between customary and statutory legal systems. Customary law often does not allow women to own land, but formal law may provide for equal rights to land ownership. State institutions and officials, however, are often reluctant to enforce women's rights to land because of lawmakers' and state officials' own patriarchal values and norms. For example, in Zimbabwe, although formal law provides for equality between men and women, customary law views women as minors. A Supreme Court decision in 1999 ruled that because under customary law women are minors, a woman could not inherit her father's property under the formal law even though she was named in his will.

Nevertheless, women also have opportunities to engage in forum shopping and appeal to different legal spheres. In some cases, when their rights are threatened by men's manipulation of custom, women call upon customary norms to retain control over their land. In other cases women appeal to statutory laws when this same system is not used against them. Women's groups and legal associations that promote and struggle for recognition of women's rights to land often prefer to present their dispute cases to the formal legal system in order to have judicial precedent,

or they may appeal to district and provincial land officials, by citing legal statutes, to recognize a property right that local customary authorities deny them.

In Ethiopia the current constitution has provided an opportunity for addressing the conflict between customary laws and the more egalitarian provisions of the civil code. The constitution revokes the abolition of customary and religious personal laws, but it allows disputants to determine which laws to apply in personal disputes. Consequently, if any disputant does not wish to apply customary or religious personal law, she or he may request that civil law provisions be applied. According to Gopal, anecdotal evidence indicates that personal law arbitrators and courts (customary bodies) are reconsidering the application of customary and religious personal laws because women disputants may prefer to transfer decisions to civil courts.<sup>4</sup>

## **GOOD PRACTICES AND LESSONS LEARNED**

The Legal Assistance to Rural Citizens (LARC) project in the Kyrgyz Republic is designed to assist and teach farmers and the rural population in general how to apply the law in resolving their land disputes. In 2003 the project began to offer legal services to the rural population, to commercial and nongovernmental organizations, as well as to clients of international organizations dealing with land and agrarian law issues. The project receives support from a number of agencies, including the World Bank, the United Nations Development Programme, the Swiss Agency for Development and Cooperation, and the U.S. Agency for International Development (USAID).

The final report of the project (LARC 2006) recounts how LARC personnel helped to resolve a number of land disputes. A number of women had approached LARC for assistance with land disputes, and most of their cases resembled men's: village or local authorities had attempted to take the land the claimant had received from the land reform and assign it to someone else. It appears that in most cases local officials were attempting to reassign land to other men in the village. The report did not include any land disputes arising from divorce, which perhaps indicates that this type of dispute is uncommon or that women are reluctant to take such disputes to court.

In one case a woman who was an invalid was given the family house as a gift by her father, who used the appropriate official documentation. The woman's uncle and cousins refused to leave the house, however, and drew up a document certifying their right to the house. The woman was initially discouraged from taking the case to court by local

authorities, “because it is not normal for rural people to go to law with relatives” (LARC 2006: 21). The woman took her case to the rayon and oblast courts but was unsuccessful in moving it forward. After three years she approached LARC and finally achieved a consensus with her extended family.

Clearly, the LARC project did assist women with land disputes and was successful in having their rights recognized through the judicial system. What is surprising, however, is the negligible number of intrahousehold cases (such as inheritance and divorce) brought to court by women.

## **GUIDELINES AND RECOMMENDATIONS FOR PRACTITIONERS**

Guidelines for improving women’s access to dispute resolution processes include recognition of women’s legal and customary land rights by land administration, land authorities, and other land institutions; improving women’s literacy regarding their land rights and legal processes; and improving access to land dispute institutions.

At the national level, beyond legislation, judicial institutions and land administration programs (such as land reform, land resettlement, and land titling) need to review their procedures for land dispute management to ensure that women as well as men can access these services and be treated fairly and equitably. These procedures begin with facilitating women’s ability to approach offices and officials; this may involve bringing land dispute processes to local areas.

Other interventions are the same as have been mentioned in previous Modules: gender-responsive training for information and attitude change to national and local institutional staff, customary leaders, and beneficiary populations. Training at the local level has an additional objective: the cooperation of local authorities is essential for any program to be successful. Their cooperation in land dispute resolution is just as important, particularly because they will most likely be involved in the process.

At local levels, the gender composition of arbitration and adjudication bodies should also be considered. For example, Uganda has mandated that women be included in adjudication bodies. Their inclusion may increase women’s ability and willingness to approach such public institutions.

Land administration projects should undertake specific activities to disseminate knowledge among women about their statutory and customary rights and entitlements and about dispute resolution; they should also provide legal assistance for dispute resolution. Activities should include practical application of the knowledge that is disseminated, as well as activities that improve procedures for

resolving land disputes at local levels. In addition to information dissemination, projects or programs should include guidelines or mandates for including a substantial number of women in project activities and on local land boards, as indicated earlier.

Legal literacy programs are essential to teach women about their rights and about how to manage the institutions that should be protecting and enforcing their rights. In addition to training regarding land and property rights, leadership training enables women to act in a more organized and effective manner.

Numerous organizations deal with land rights and gender issues, ranging from governmental agencies to informal community organizations. A small number of organizations in each country deal with the issue of women’s land and property rights; perhaps the most prominent ones are those associated with legal professions such as the women’s lawyers associations found in many sub-Saharan African countries. Legal organizations are generally NGOs that provide free or low-cost legal counsel and advice to resource-poor groups and persons. One mechanism for providing legal counsel that has become quite widespread among legal organizations is the training of paralegals, who work with communities and disadvantaged groups. Many of these legal organizations also engage in advocacy for women’s land rights by lobbying legislative bodies for legal reform on marital property and equal inheritance, and by pressuring land program officials to recognize women’s legal land rights. These organizations also work with the public by providing education or awareness programs. Legal aid organizations can play an important role in providing legal counsel for women attempting to have their rights to marital property and inheritance recognized and in setting legal precedents.

### **Dispute resolution within land administration programs**

Although many potential disputes can be prevented by transparent and consistent procedures, mechanisms must be developed to resolve disputes that arise either during or after adjudication. The trend in land administration is to avoid having disputes reach the court because (1) courts do not always have the expertise in land law to apply accepted principles consistently, (2) the court process is usually excessively long and costly and thus discourages all but the most economically valuable claims, and (3) disputants, particularly women, often have unequal powers to acquire legal advice and to sustain their claims.

The solutions include special tribunals that can be established not only during initial adjudication but also to settle land matters over time. Typically tribunals include land specialists and involve procedures that are less costly and time-consuming than those used by the courts. In the Bolivia titling program, for example, the titling regularization process involves resolution of disputes during titling adjudication by

community members, which helps the community to become invested in the process. However, there is still a need for clearer rules and procedures on the part of the state titling agency. In areas with strong traditional laws, the involvement of recognized community elders or authorities can facilitate dispute resolution, but they may not be inclined to recognize women's land rights (Giovarelli and others 2005).

## Gender-Responsive Titling

**T**he formalization of property rights through land titling and registration guarantees state support for the landholder in his or her claims. Other positive development results may be expected from titling, including increased investment and agricultural production arising from improved access to factor markets such as credit. Not only should the formalization of land rights for women protect women's access to and control of land and facilitate access to production factor markets, but it may benefit them in other ways as well. Research suggests that property ownership increases a woman's bargaining power within the household and her status as a citizen in the community.<sup>1</sup>

This Thematic Note focuses almost entirely on the titling of individuals rather than on formal recognition of community rights to land. Like individual titling, community titling may fail to recognize women's rights to land by recognizing and collectively recording only adult men or household heads as community members. The titling of community land is normally an internal process conducted by community authorities, and so it is more difficult to create opportunities for recognizing women's land rights, because the process itself is based on customary norms and institutions. The challenge is to discover how to influence community authorities to recognize women as community members with equal rights to community land.

### **BENEFITS FROM GENDER-RESPONSIVE TITLING**

The principal argument in favor of land titling programs has always been the positive effects of clear ownership rights on agricultural productivity and access to credit (Deininger 2003). From an intrahousehold perspective, this argument can be extended to advocate for greater gender equality in the distribution of property rights.

The linking of land rights and credit access, however, for smallholders and particularly for women landholders, may not always be realized. Numerous studies have shown that even with title to land, smallholders and low-income households in rural and urban areas continue to find access to commercial credit elusive (Barham, Carter, and Sigelko 1995). There is no reason to believe that this situation would be different for women with legal land titles. In addition, in the absence of insurance, low-income households are often reluctant to use their landed property as collateral, especially if they rely on agriculture, with its inherently high risks. These households prefer to use other types of collateral, such as a percentage of the harvest or other assets, to obtain credit.

Nevertheless, denying women the opportunity to participate in land programs that increase their secure rights to land may affect their ability to produce. This argument is based on the supposition that women have the capacity to farm as well as men—in other words, there are no significant intrinsic differences in the agricultural productivity of men and women farmers. Previous studies of gender differentials in farm productivity have generally supported this hypothesis (for example, Lastarria-Cornhiel 1988). Almost all of this literature, however, is plagued by methodological problems related to a lack of parcel-level, gender-disaggregated data (Quisumbing 1996). A recent parcel-based study conducted in Lao PDR in 2004–05 (financed by the World Bank) attempted to contribute to this debate (box 4.1).

Granting women legal rights to land will give wives greater power to prevent the alienation of family land needed to support the family, yet this very protection highlights the conflicting objectives of programs to formalize land rights. One principal objective of titling is to make it easy to alienate land, which is a prerequisite for a dynamic land market and a dynamic credit market based on land collateral. Another principal objective is, or should be, to

Relationships between land ownership, farm management, and technical efficiency in rice production were examined through an analysis of data from a 2004 survey of households participating in a land titling program in Lao PDR. Parcels owned or managed by men were, on average, significantly larger than parcels owned by women or jointly with women, but the use of agricultural inputs—including irrigation, fertilizer, pesticides, and farm machinery—did not vary significantly by the gender of the parcel owner or manager. Average rice yields were also statistically identical on men- and women-managed parcels: approximately 2,000 kilograms per hectare. Taken together, the descriptive statistics suggest that women have significant formal property rights in land, as both sole and joint owners of agricultural

*Source:* Katz and Lastarria-Cornhiel 2006.

parcels, and that women seem equally likely to use agricultural inputs on their (smaller) fields. In addition, women appear to achieve the same (unconditional) level of productivity from their land as their men counterparts.

The data revealed some important gender differences, however. Women's parcels were a good deal smaller than men's, and they exercised effective decision-making control over only half of the parcels they owned. In addition, although men and women obtained the same average yields on parcels dedicated to rice production, the marginal returns to both land and chemical inputs were significantly lower for women, which indicates that potential differences in land quality and input application give women farmers a productivity disadvantage.

secure the assets needed for the families of rural smallholders to gain their livelihoods. This second objective would argue for protection against dispossessing vulnerable family members of their only real asset. Formal recognition of women's rights may make it more difficult for men to sell or mortgage land without their wives' permission. But land titling programs also need to take measures to secure a smallholder family's land against alienation.

Economic benefits of titling to widows, divorcees, and aged women have been enumerated earlier, as well as the empowerment benefits.

## **POLICY AND IMPLEMENTATION ISSUES**

Numerous titling and registration programs have been implemented in Africa, Asia, Eastern Europe, and Latin America as a necessary measure to ensure the property rights of smallholders and increase their access to other production factors, particularly credit. Titling programs, in their design and implementation, have not been gender responsive for numerous reasons. Perhaps the main reason is that they are conceived as legal and technical programs, ignoring the complex sociocultural relations involved in assigning land rights to particular persons. The issues of power, social status, and cultural norms that are embedded in land tenure systems and that determine (1) the different kinds of land rights and (2) who has land rights are seldom

taken into account (see the Overview for a more detailed review of these issues). These sociocultural relations inevitably impact titling processes in determining (1) who will participate in the program and (2) whose rights are recognized. More specific issues that can influence titling and registration include legislation and regulations, institutions and staff, procedures and processes, and training. Issues of gender bias and negative sociocultural norms in legislation, regulation, procedures and processes, and institutional staff, as well as access to the system at the local level and bearable cost are critical (see Overview and Thematic Note 2).

A review of the "one title holder per household" practice has shown the following:

- Titling guidelines do not call for the identification of more than one property-right holder in the household.
- Titling procedures do not allow for inquiry into the number of property-right holders in the household.
- Titling forms do not permit the listing of more than one property-right holder.
- Titling brigades are not trained to look for and identify more than one property-right holder.
- Titling activities with communities and households (informational meetings, workshops, and so forth) focus on men heads of household and do not encourage or facilitate the participation of other persons, including women.

In addition to these explicit or implicit institutional and procedural constraints, processes associated with implementation are, at best, more difficult for women than men to traverse. Sociocultural norms do not perceive women to be full and equal participants in the community and the economy, and women sometimes lack the skills and confidence to approach institutions that have traditionally been the domain of men.

## GOOD PRACTICES AND LESSONS LEARNED

Legislation and policies related to land rights and property, in language and in intent, should not mention only men as holders of land rights. Nor should they be gender neutral. Policy and legislation must explicitly assert and affirm women's equal rights to land and property, and those rights should be independent of women's (and men's) civil or marital status. In Bolivia, for example, the law that establishes the legal basis for the current titling program specifically states that in the distribution, administration, tenure, and use of land, equity criteria will be applied in favor of women *and independently of their civil status*.<sup>2</sup> The last phrase is important because it does not require that a woman be the head of the household or married to be eligible for land rights.

Legislation should deal with the many different household arrangements that occur in real life. Besides the nuclear family, comprising one husband and one wife who are legally married, there are couples who are married under customary rules but not civil law, couples who are in consensual unions (that is, they are not married but are in an enduring relationship), and polygamous marriages. The legitimacy of these different kinds of household arrangements and their implication for the land rights of household members should be dealt with in a gender-sensitive manner. (See Thematic Note 2 for more details regarding land rights within different types of households and changing households.)

The regulations that are drawn up to implement legislation must specifically counteract constraints to women's ownership rights. It may also be necessary to review other legislation and regulations to ensure that they do not impose such constraints. For example, in Bolivia, although the land law clearly upheld women's land rights, irrespective of civil status, legislation for the land registry required that couples be legally married to be registered as co-owners.

Formal recognition of women's rights to land involves a number of land administration agencies, including land titling agencies, land registries, and judiciary offices. Some or all of these institutions will be involved in land titling and

registration projects, and their specific policies and procedures will affect whether women are granted formal legal rights to land. All of these institutions need to undertake gender-sensitivity training with respect to land and property rights and the constraints women face in asserting those rights.

A number of practices increase the likelihood that women will be included in the implementation of land titling programs. Some of the problems faced by women include traversing the geographic and social distance to program officials, lack of knowledge or information, and the interplay between statutory and customary legal systems. Programs can reduce many of the procedural barriers and some of the customary constraints by making their activities and benefits available at the lowest possible level and by training staff at all levels to be conscious of the obstacles women face.

There is growing recognition that the practice of issuing titles to just one person in the household (the head of household) often denies other persons their land rights. As mentioned, more than one person may hold rights to a particular parcel of land, or, if there is more than one parcel, different persons may have rights to different parcels. Wives, for example, often have clearly recognized and legitimate use rights to household land. One of the first determinations, therefore, that needs to be made in the identification of property holders is to clarify who, besides the household head, holds rights to household landed property. The types of titles that can be issued to individual households and parcels, depending on the number of property holders and legal options, include individual title, joint title, and co-ownership titles.

## Cultural norms affecting women's land rights

Land titling and registration programs will encounter cultural norms and practices that influence who is recognized as a legitimate property holder. These may vary within project areas and may conflict with formal legal norms. Issues that most affect women's rights to land are related to marital property and inheritance. (See the Overview for more information regarding marriage and inheritance practices that affect land rights.) For example, customary inheritance rights may not be in accord with legislation regarding intestate inheritance that mandates equal inheritance rights for daughters and sons and inheritance rights for surviving spouses. Titling and registration programs should draw up guidelines and procedures for dealing with the distribution of family land to heirs in ways that conflict with the formal law.

Marriage practices are other cultural norms that may influence land rights in ways that differ from formal legislation. The customary norm and practice in both matrilineal and patrilineal societies are that land inherited or received from one's family remains the property of that person and his or her lineage—it does not become part of the conjugal couple's property.

A potential problem is how land allocated by the state is viewed by the beneficiaries and who exactly are the beneficiaries. Very often land titling programs are part of, or occur subsequent to, land allocation programs. If the allocated land is clearly state land, it should not be considered lineage or family land, and land rights should be assigned according to formal law. In that case social equity concerns would indicate that the land be allocated and titled to both spouses and to single heads of families, whether men or women. In Bolivia, for example, the land titling project adopted the procedure that land parcels titled for the first time would be titled to the couple, not only to the head of the household.

In some cases, however, the land allocated by the state may be land that the community and its families formerly owned. This practice occurred frequently in some Eastern European countries, including Albania and Latvia, during the 1990s. Families may therefore believe that the land is actually theirs and that the allocation program is simply returning the land to them. In this case the issue of lineage will most likely influence which persons are believed to be legitimate property holders. Lineage issues may become a potential problem in Lao PDR, for example, as the titling program moves from urban to rural areas. Some rural areas are patrilineal, and women do not generally acquire landed property through parents or marriage. The land administration program will need guidelines and procedures to determine whether state allocation regulations or lineage norms determine the appropriate property holder(s) for a land parcel.

### **Joint titling**

When the importance of wives' rights to household land is recognized, one mechanism used in titling land is to issue joint titles to both spouses and not only to the household head. Where legislation recognizes marital property to include assets (such as land) acquired during marriage,<sup>3</sup> determining when a piece of landed property was acquired should clarify whether the property should be titled to the conjugal couple or to one of the spouses. Legislation in Bolivia and Lao PDR, for example, recognizes marital property for spouses, and the procedures of the land titling projects

in those countries also explicitly require that land acquired by a couple is titled jointly. In addition, Bolivia stipulates that land granted by the state to a family is marital property and should be jointly titled. Joint title is an important document for women in vulnerable situations such as separation, divorce, abandonment, and widowhood because they do not need to follow an administrative or judicial process to prove that the property they had with their husband or companion does belong to them.

One issue that land administration programs may encounter is informal conjugal unions. In most countries that have recently reformed legislation to be more inclusive and sensitive with respect to gender issues, the legislation explicitly states that legal marriage as well as consensual union be considered the basis for marital or community property. As mentioned, the 1996 land law in Bolivia states that men and women, regardless of civil status, have equal rights to land. The Bolivian land administration project, therefore, requires that when a legal title or regularization certificate is issued for land held by a couple—irrespective of whether they are married or in a consensual union—both names must be included in the space provided for the title holder, recording the woman's name first and then the man's.

On this point, one issue is whether to recognize consensual unions if the legislation mentions only legal marriage and does not explicitly recognize consensual unions. This issue could be dealt with in the titling regulations and procedures by suggesting that evidence of joint use rights requires the joint titling option. Social assessments on this issue should inquire as to the prevalence of consensual unions in that society and the land use rights of both spouses. The results from this social assessment should guide decisions by land administration with respect to consensual unions.

Once it has been established whether joint titles are to be issued to consensual unions as well as legally married couples, it is necessary to determine which relationships are consensual unions. Most legislation that recognizes consensual unions also has a procedure for legal recognition of consensual unions. Others may simply list some basic criteria for consensual unions. In Bolivia titling procedures indicate that field appraisals by titling brigades must verify effective possession regardless of civil status (married, divorced, separated, single, widowed) or gender. In Colombia co-ownership does not have to be proved, only stated as true. In these cases land titling procedures accept consensual unions if couples meet these criteria or possess a certificate of legal recognition. In some countries where personal identification papers are an issue, particularly for low-income

and illiterate persons, undertaking any legal procedure, such as establishing a consensual union, is problematic. A land administration project in rural Peru found a solution to this problem by issuing co-property titles. Under a co-property title, a couple's marital status (formal or consensual) is not considered, and both persons own a separate share of the property rather than owning the property together as a whole (Deere and Leon 2001). Land titling guidelines and procedures could include the option of issuing co-property titles to a couple if they cannot produce a certificate of consensual union.

### **Marital property and polygamy**

Polygamous households present another set of issues in relation to marital property.<sup>4</sup> Not all societies outlaw polygamy, and even if they do, the law is generally ineffective if polygamy is customary or traditional. Polygamy seriously affects women's rights to property, however, and generates much tension and anxiety over land rights in many countries. Polygamy complicates legislation requiring written consent of spouses to dispose of property; it also complicates provisions on inheritance and co-ownership of land. Legislating around polygamy is difficult, but to ignore formal or informal polygamy is to protect women's property rights inadequately. The situation is made even more difficult by the fact that many men refuse to acknowledge or discuss polygamy, and women are often hesitant to raise the issue.

No effective and gender-sensitive titling procedures have been developed for polygamous households. Several countries have attempted to legislate land rights for women in polygamous marriages. In Ethiopia, for example, the Oromiya regulations (2002) require that the husband and wife be jointly certified for their commonly held land. In a polygamous marriage a husband is allowed to get a holding right certificate with only one of his wives, and the other(s) receive an independent right certificate. The use right of a family is not affected if either the husband or the wife or both leave the area. Under Burkina Faso's 1990 Family Code, if a couple is monogamous, their property is marital property, but if there is more than one wife, all property is separate property.

Where polygamy is widely practiced but illegal, however, it is ignored in relation to land rights. Field research in the Kyrgyz Republic revealed that women were concerned that they would lose not only their husbands but also rights to their husbands' incomes if their husbands took second wives. Women state that husbands generally favor second wives, so while their husbands are living, the first wives'

incomes and security are threatened. A first wife is also vulnerable to having to divide property among all of the husband's heirs. On the other hand, second wives are also a very vulnerable group: a second wife has no legal rights to any of her husband's income or property.

### **Cultural differences arising from rural-urban differences and a market economy**

Legal norms and practices regarding land rights in rural and urban areas differ in many societies. In Lao PDR, for example, permanent land use titles are awarded to urban landholders under the Lao Land Titling Program, whereas rural landholders are awarded land use certificates that are valid for three years. Aside from legislation, there are other urban and rural differences. For example, it appears that customary norms and practices tend to change as people move from rural to urban areas. A study of customary land tenure systems in Lao PDR mentioned that titling land to women in Hmong villages "simply would not work, despite the laws of the country," yet it observed that recently Hmong families in urban areas have not adhered strictly to this custom, and both sons and daughters inherit land (Lao PDR, Ministry of Finance 2002: 59–60). Nevertheless, as the titling program in that country extends from urban to rural areas, it will have to deal with this conflict between formal and customary legal norms. In many societies land titling programs will need to establish ways of dealing with customary property and ownership norms that do not correspond to gender-equal statutory laws.

Illiteracy and lack of access to services may have a greater impact in the implementation of land titling and registration projects in rural areas. In Bolivia, as in many Latin American countries, low-income rural women often lack the identification cards required by titling procedures. The missing papers can either slow or prevent a claim, so more flexible procedures might be considered, such as the verification of identity by community leaders or a program component that makes it easy to obtain identification.

In a market economy, rural and urban differences can also affect property rights, especially notions of individual ownership. The market economy exerts its influence in urban areas by making production practices more labor intensive and market oriented. Land rights tend to become more individualized (less communal), families tend to become more nuclear (less extended), land rights tend to be acquired through purchase (rather than inheritance), and customary practices tend to become less prevalent. These tendencies are

also seen in rural areas where intensive commercial agriculture is practiced, particularly among small and medium-size farm holdings. In these situations lineage considerations may diminish in importance, and opportunities for more flexible inheritance practices may arise. As a land market develops, more opportunities exist for both wife and husband to own land they have acquired together, for women to purchase land, and for bilateral inheritance practices to develop. Legislation, regulations, and titling procedures should build on these opportunities to formalize women's rights to land. Unfortunately, the practice in the past has been to strengthen men's individual land and property rights, to the detriment of wives, daughters, and daughters-in-law.

## **GUIDELINES AND RECOMMENDATIONS FOR PRACTITIONERS**

As the discussion throughout this Note suggests, land titling and registration guidelines should take regional differences into consideration and require procedures that accommodate different contexts. Much of this contextual information, and the participatory methods for acquiring it, should be incorporated into the social assessment undertaken during the design phase. Detailed information regarding variations in, for example, multiple land use rights, inheritance, and marital property can then be a valuable input for strengthening women's land rights within the target area's sociocultural context. Wherever possible, titling procedures should not ignore or remove any land rights women may already hold and, wherever possible, should strive for gender equity in granting land rights.

Relevant issues are the quality of legislation and regulation and, more important, effective processes that bring the law in an equitable fashion to women. At the national level, formulation of non-gender-biased legislation and regulation and effective implementation institutions are important (see Thematic Note 2 for more details).

Political will on the part of executive and legislative bodies is of prime importance in this sphere. It ensures that gender policy not only is included in legislation and regulations but also translates into (1) objectives and guidelines for titling programs and related institutions and (2) resources for gender-equity programs and activities at the local level.

In the programmatic sphere, clear and concrete implementation guidelines, and gender-sensitive training are crucial. Gender guidelines, tools, and training should include the consideration of customary local institutions and practices that largely determine who has what rights to land and how that land can be used.

Because titling programs create opportunities for land grabbing and elite capture of land, one project activity with potentially positive effects for women and men is to inform communities in advance that land is being adjudicated. This information will help communities prevent the loss of their land rights to powerful or influential persons.

In the past, titling programs have tended to be designed by national agencies with minimal consultation, discussion, and dialogue with local stakeholders with regard to local problems, program objectives, and potential solutions. When they are excluded, stakeholders generally do not identify with a program and its objectives. Nor are they invested in its success. Local stakeholders with power or authority have been able to influence program implementation for their own interests at the cost of other stakeholders who have not directly benefited from state programs. Because women usually wield little power and have minimal public influence, their interests are often ignored and their rights violated even though legal codes mandate otherwise. For example, the effort to extend land rights to women during the 1990s via joint titling in Nicaragua had unexpected outcomes: most of the joint titles were not between spouses but between men relatives, such as a father and son or a brother and brother. The proportion of joint titles issued between 1992 and 1997 was an impressive 33 percent, but only 8 percent was issued to spouses (Lastarria-Cornhiel and others 2003). It is likely that joint titling by men relatives occurred to avoid including wives on the property title.

On the positive side, programs that seek active participation by local stakeholders are more likely to achieve their objectives. Civil society organizations can be very successful at promoting gender equity by their activities on the ground. Officials in the national sphere and especially in the programmatic sphere should be aware of local conditions and the limits and opportunities they present. Consideration of these opportunities and limits often determines the success of programs and the achievement of policy objectives.

## Nepal: Women Gain a Voice and Greater Access to Resources through the Hills Leasehold Project

### PROJECT OBJECTIVES AND DESCRIPTION

**T**he Hills Leasehold Forestry and Forage Development Project (HLFFDP), supported by IFAD, is unprecedented in Nepal in its commitment to transferring assets directly to the poor. The project's combined objectives are to raise living standards among the poor and to regenerate degraded forest land. The project leases users' rights to forest land (which had become degraded through common access) to groups of 5–10 poor households, who are in charge of rehabilitating the land and entitled to use the forest products. Leases are renewable after 40 years. A further objective of the project is to empower the communities concerned by forming and training groups and mobilizing savings and access to credit.

Forests were to be restored principally by banning grazing in the leasehold sites, and households were to generate income by producing livestock fodder and forage and pursuing other activities. The major inputs were the subsidized provision of high-yielding grasses, seedlings of fodder trees, improved animal breeds, veterinary services, training programs, and agricultural credit.

Until 1995 the project confined its activities to four districts and then extended gradually to six more districts. The amended project target was to form 2,040 leasehold groups of

14,600 poor households and to restore 13,000 hectares of degraded forest. To join a group, a household had to have less than half a hectare of land (or none) and an annual income below the poverty line, although a degree of flexibility was permitted. Priority was given to landless and near-landless groups, disadvantaged tribal groups, and women-headed households.

The project supports leasehold forestry as opposed to community forestry. Over one-third of Nepal's population participates in community forestry programs, whereas leasehold initiatives are at an early stage. Community forestry measures are directed at entire communities and concentrate on forest conservation. Leasehold forestry involves a redistribution of assets in favor of the poor by leasing degraded sites to specific groups of resource-poor farming households. The leasehold groups are smaller and more homogeneous, and their legal status remains insecure. Antagonism between the two forestry approaches has been replaced by more constructive ideas concerning their coexistence or integration.

### GENDER APPROACH

When the project was designed, an explicit objective was to integrate gender and disadvantaged (ethnic) group issues and considerations in the approach and its implementation. Nine activities related to this objective were outlined within planning, training, extension, and monitoring and evaluation. Women and households headed either *de jure* or *de facto* by poor women were to receive special attention.

A key aspect of the gender agenda within the project was the leadership provided by two project leaders, one from Nepal's Department of Forests (DOF) and one from the Food and Agriculture Organization. These managers, who were both men, had the confidence and foresight to hire a three-woman gender team and grant them the autonomy to develop an innovative strategy. The team's goal was to challenge the organizational culture of the implementing

**What's innovative?** Landless women and men lease degraded forest lands and obtain complementary training in sustainable land management, basic literacy, and awareness of women's legal rights. Local women group promoters are employed to ensure that women's voices are heard and that women play leadership roles. Group promoters link with professional women to build supportive networks.

agencies and make men counterparts in the DOF and the project coordination unit more aware of and responsive to the realities of rural women.

The team added an objective on gender equality to its plan; previously gender equality had not been explicitly taken up by project staff. The plan was to implement activities at the policy, district, and grassroots levels, but the team chose to focus on recruiting and developing a cadre of women group promoters throughout the project area. The promoters would mobilize rural women to participate in the leasehold groups.

Gender and leadership training was provided to the group promoters through formal training sessions and study tours to learn from other projects. Given the paucity of women staff within the implementing line agencies, the team identified gender focal persons (mostly men) within these agencies and developed the gender skills of these individuals through training, coaching, and guidance. These technical staff thus gained an awareness of gender equity issues, women's rights (including those outlined in international agreements such as the Convention on the Elimination of All Forms of Discrimination against Women), and the community work of the group promoters.

Another element of the strategy was to foster networking and communication. Two magazines were developed and distributed, one to exchange information among gender focal points in the technical agencies in the district and another created by the group promoters at the grassroots level. Articles in the group promoters' magazine boldly expressed their positions on issues related to gender and women's rights and were widely circulated throughout the DOF.

In 1999 the women group promoters began to organize group meetings, promote the project, organize groups, give training, and note problems. Training was given to couples (husbands and wives) who were prospective beneficiaries of the project. Women, mostly from ethnic minorities, were given priority in training to manage tree and plant nurseries and other relevant activities. Through these activities women have acquired technical knowledge and basic literacy and are much more aware of their legal rights. Women's participation and leadership roles were favored by the all-women group promoters. Currently, 25 percent of the participants are women, there are 74 all-women groups, and there are 112 women group leaders.

## **BENEFITS AND IMPACTS**

The project demonstrated impacts in the areas of poverty and gender.

## **Project impacts**

After nine years of implementation, the HLFFDP was recognized within the development community of Nepal as an innovative, unique project that achieved a significant impact on the lives of group members, especially women, as well as on the environment. Key successes are the following:

- Forty-year leases give 1,800 household groups user rights over degraded forest land totaling 7,400 hectares.
- Once restored, the forest areas are a rich source of fodder, timber, and fuel as well as trees and plants that the groups use and sell.
- Goat ownership has increased from an average of two to five per household, as has revenue from goat sales (to \$100 per household per year).
- Income from grasses, grass seed, and other forest products is now significant (up to \$70 per household per year), although weak market linkages and inadequate information on demand and market prices have limited sales in some areas.
- The 120 leasehold intergroups and 18 multipurpose cooperatives created during the project have been instrumental in tackling market issues because of their strong bargaining power and success in creating market outlets. Infrastructure grants made to groups and intergroups helped build culverts and bridges, renovate schools, complete 160 small drinking-water supply projects, and improve trails and footpaths.
- The women group promoters formed their own association, which continues to advocate for women's rights related to forest management and to promote women's access to livestock and forest development resources at the local and national levels.

## **Gender impacts**

Meetings held with women participants of HLFFDP through an initiative of the International Land Coalition's Women's Resource Access Programme (WRAP) in 2001 revealed their perspectives on the project's impact.<sup>1</sup> (For more information in WRAP, see [www.landcoalition.org](http://www.landcoalition.org).)

Saving time was the biggest benefit noted by the women, because they spent less time collecting grass, fodder, and fuelwood, which were more plentiful, closer to their homes, and located in familiar places. Many women emphasized that the substantial technical assistance, knowledge, and credit they received had better equipped them to use their new-found time.

Empowerment through group action is another benefit: regular meetings provide a forum to discuss project-related issues and general community matters. Both women's group

meetings and mixed meetings are held. Women's participation is generally greater at the meetings of women-only leasehold forestry groups than at the mixed groups, and it is easier to ensure their participation in the women-only groups. In the all-women group meetings, extremely sensitive issues such as domestic violence are easily addressed. In this regard many women see the group meetings as both a "protective court"—where instances of domestic violence can be brought out into the open and challenged—and a place to confront social issues and become stronger.

Moreover, through the training program most women have acquired basic literacy skills, and the group members are much more aware of their legal rights and the importance of education and adequate health, sanitation, and nutrition for themselves and their families.

Through the workshops, training courses, and community meetings, women were progressively exposed to the world around them. Several group leaders were interviewed on television and on a weekly radio program on leasehold forestry. Young women in particular expressed a dramatic increase in their self-confidence, which they attributed to their group work, group discussions, and decision-making abilities.

Many workshop participants expressed their satisfaction at the increased amounts of food and livestock fodder that resulted from their access to leasehold forest land. With the acquisition of leasehold land, many women started cultivating mulberries and vegetables and selling *chiraito* (*Swertia* spp., a medicinal plant used to treat malaria and other health problems). The income generated from this activity is used for children's school needs, medicine, food, clothing, and group savings. Men still control most household income, but women are now more involved in household decision making.

The women interviewed about HLFFDP felt that men were more accepting of women's status and of their right to have agricultural land in their name. About 20 percent of titles are now estimated to be registered in women's names. The women also felt that men had increasingly accepted and supported this transition and the accompanying shifts in responsibility and power. Many women attributed this change to changes in their own level of confidence, which has increased over the years because they have gained access to land and received training and credit. Their husbands are willing to support these women, who have demonstrated the many benefits that can be derived from their increased responsibility and decision-making ability. Others attribute this acceptance to their husbands' belief that credit is more easily obtained by women and to the recognition that institutions (governmental and nongovernmental) increasingly favor pro-poor and pro-women schemes.

## LESSONS LEARNED AND ISSUES FOR WIDER APPLICABILITY

Although the HLFFDP project is considered a success, issues are seen with security of tenure, high cost of intervention, need for increased focus on lower-cost and local technologies and knowledge, and need for increased use of support organizations.

Gender integration has contributed to successes like the following:

- Giving women secure access to land and forestry can transform their lives.
- Much of the project's success at producing benefits for women is due to the strategic interventions of the project's gender team and their capacity- and team-building efforts with the group promoters. The sense of trust and solidarity that evolved provided the group promoters with high levels of motivation and pride. Their status also improved through linkages with the gender team to high-level project staff and government officials.
- Special training in gender awareness and other gender-sensitive activities can provide women with new skills and resources to challenge their traditional roles and gain secure access to natural resources.
- Talking to poor women and men, listening to their views and perceptions, and learning from their knowledge can provide valuable insights that cannot be gained elsewhere. The method should be easily replicated, and the different needs and opportunities of the men and women reflected here could be the basis of gender-responsive actions in projects and programs.
- The participation of women and disadvantaged groups requires more active promotion by providing appropriate sensitization training to all project staff, as well as to members of communities in which leasehold forestry is introduced. The transfer of the lease from men to women should be encouraged in cases in which the men leasehold group members are inactive.
- One gap is related to the institutionalization of the approach. The DOF lacks a formal institutional directive for gender mainstreaming and a single structure to address the issue, so the nearly all-men department remains ignorant about the benefits that could be derived from a gender focus. One solution would be to build gender structures into the Ministry of Forests and Soil Conservation and the DOF. Although a gender cell now exists, a woman coordinator requires significantly more resources and capacity building to be effective.

## Honduras: A Pilot Project Protects Women’s Rights to Productive Resources

In Honduras the Land Access Pilot Project (Proyecto Acceso a la Tierra [PACTA]), initially supported by the World Bank, promotes poor people’s acquisition of land, increases the awareness of joint property rights over production resources, and implements legal alternatives to guarantee those rights regardless of whether a couple is married. The project also promotes equal participation by household members in rural enterprises, the formation of enterprises managed by women, and the development of a training process that contributes to greater gender equity.

### PROJECT OBJECTIVES AND DESCRIPTION

Between 2001 and 2004 PACTA emphasized the acquisition of land and the formation of sustainable economic enterprises by self-organized landless and land-poor rural families. The pilot tested a strategy in which the private sector provided credit to buy land and the public sector provided funds for complementary investments and technical assistance to improve the land’s productivity. The pilot was implemented on a larger scale in 2005–07 and then extended for another three years of implementation and evaluation from 2007 to 2009.<sup>1</sup>

**What’s innovative?** Through public-private sector collaboration, a pilot project enables landless and land-poor rural families to obtain land and manage it productively. The project has devised innovative legal strategies to ensure that women, regardless of whether they are legally married, gain equal rights to the new production resources and more equal participation in new rural enterprises.

The project seeks to reach rural people with little or no access to land. Project components include technical and legal assistance to rural producers, land purchase loans, and complementary subproject grants. The project was designed with a participatory monitoring and evaluation system. PACTA also incorporated lessons from the experiences of the World Bank over the years in promoting access to land, including providing complementing services with the land purchase schemes, not imposing any models of production or association, using existing institutions where possible, encouraging stakeholder participation (PACTA’s board has members from government, financial institutions, local technical units, and producer organizations), and stressing participatory project preparation.

### GENDER APPROACH

The gender strategy was not formulated at the beginning of the pilot in 2001 but was deemed crucial as the pilot progressed. By the end of 2003, a gender approach was incorporated in the three-year implementation plan for the expanded pilot (2005–07). The project has implemented a number of gender-related strategies and activities (table 4.2).

### BENEFITS AND IMPACTS

PACTA demonstrated impacts in the areas of both poverty and gender.

#### Poverty impacts

The average income of families in PACTA enterprises had increased by 130 percent as of 2004 compared to the initial levels before the project. By the end of 2004, 1,226 families that participated in the pilot were employed, and about 700–900 person-year equivalents of employment had been generated. This productive labor use is likely to increase as farms develop

**Table 4.2 Gender-Related Activities and Strategies Pursued during Three Stages of the Expanded PACTA Land Access Pilot, Honduras, 2005–07**

Design stage	Implementation stage	Monitoring and evaluation stage
Proposed a standard conceptual framework for rural development from the gender equity perspective in PACTA	Included a gender equity perspective in the operations and technical assistance manual	Documented experiences to systematize them
Conducted a diagnostic study to identify strategic gender equity actions that needed to be developed	Trained the local technical units so they could do their work from a gender equity perspective	Proposed indicators to be included in the project's baseline survey so that changes in gender relations within the family could be measured
Formulated a gender equity strategy	Developed a systematic training and follow-up process in one of PACTA's geographic areas	n.a.
Incorporated a gender equity approach when making up business plans, as an incentive for local technical units	Promoted the project among organized women's groups to encourage them to participate	n.a.
	Implemented legal alternatives in selected businesses to ensure that a couple has equal ownership rights over production assets	n.a.
	Incorporated gender-related components into business plans	n.a.

Source: PACTA project documents.

and consolidate. Of the 1,226 families, 980 were day laborers, sharecroppers, or other kinds of subsistence producers. The rest were poor families with access to municipal forest land or communal land.

The local support networks that coalesced around PACTA enterprises constitute a potentially important source for community economic initiatives. An example is the alliance between PACTA enterprises; a regional producer cooperative, COPRAUL (Regional Cooperative of United Farmers Ltda.); a program for marketing and processing agricultural products, PROACTA; and a local service provider that works with PACTA enterprises. In a process led by COPRAUL, these organizations cooperated to develop a purchasing and warehouse operation that enabled the 250 members of COPRAUL to sell their potato crop directly to major buyers, including a chain of supermarkets. Finally, PACTA seems to show a positive impact in reducing migration to major cities in Honduras and to the United States among families who participate in the project.

### Gender impacts

Clearly, the project has helped women to own land. Among the women participating in the project in 2005, 20 percent were direct members who had acquired land and received the corresponding technical assistance and training.<sup>2</sup> Women who were not direct members could still obtain

funds if they actively managed business ventures. The project differentiates between women who are partners in businesses and the wives or household partners of men who are business partners. The participation of women who are household partners of men PACTA members started in 2005 (table 4.3). Previous land projects did not consider the skills, abilities, and interests of women family members and so did not include business- or work-related activities performed or managed by women in the business plan. That business plans now include the activities of women family members who are not business partners is an important innovation of this project. As of 2006, the percentage of new enterprises that assigned resources in their investment plans to income-generating activities managed by a wife or household partner of a men PACTA member was 17 percent. This figure is lower than the target of 30 percent, but it indicates that the inclusion of women family members in business plans enables services and support to reach more women.

### LESSONS LEARNED AND ISSUES FOR WIDER APPLICABILITY

In its pilot phase, PACTA laid the foundation for enterprises established with its support to implement measures and actions that give husbands and wives equal access to the

**Table 4.3 Measurable Impacts of PACTA**

Variable	Indicator	Objective	Results
Equal access to technology	Percentage of women and percentage of men who use technology in their productive activities	50% of men and 40% of women	30% of men members and 30% of women members
Equal access to training	Percentage of women who have received training in aspects related to enterprise development and who are applying the acquired knowledge	100% of women members and 30% of wives or household partners of men members	100% of women members and 10% of wives, household partners, or both of men members
	Percentage of men who have received training in aspects related to enterprise development and who are applying the acquired knowledge	100% of men members and 20% of husbands or household partners	100% of men members and 20% of household partner of women members
Equal participation of men and women in enterprises participating in PACTA	Number of women's groups that have formed and developed enterprises	Three groups	One all-woman enterprise and four enterprises in which women are the majority
	Increase in women's participation in enterprises as direct members	20%	20%
	Percentage of new enterprises that assign resources in their investment plans to activities that generate incomes managed by the wife or household partner of men members	30%	17% of new enterprises formed between 2005 and 2006
Participation in the decision-making process	Percentage of mixed enterprises (in which both men and women are business partners) in which women are board members with decision-making power	30%	24% (mixed enterprises, 2005–06)
Rights to land and other productive resources	Percentage of enterprises that have taken legal measures to ensure that title to the land is issued to the couple, once the loan is paid off	10% of the total number of contracts	5.5% in 2005–06
	Percentage of new enterprises that stipulate rights favoring the couple regarding land and resources in their constitution document, in their rules or agreements, or in more than one of these	40% of new enterprises that began to participate in the project in 2005	9.7%
Participation in monitoring and evaluation	Percentage of men and women in families participating in monitoring and evaluation activities	50%	30%

Source: PACTA participatory evaluation and monitoring and information system.

land and other production assets. Lessons learned include the following:

- The participation of women in decision-making processes is crucial to ensure women's successful participation in business enterprises.
- To achieve the proposed objectives, it is necessary to invest in raising awareness and training staff of local technical units in gender equity.
- Developing business plans with the participation of the whole family is essential to ensure the inclusion of women in production activities.
- Providing family-oriented information and awareness encourages men to change their attitude toward their family obligations, value their wives' or partners' contribution to production activities, and recognize their wives' or partners' ownership rights over any assets they may acquire.
- Women's organization skills and experience facilitate joining the project.
- The main obstacle to women's participation in production and business activities is that they are almost exclusively responsible for raising children. Presently the enterprises that women can pursue successfully require little time and include small, profitable enterprises such as growing strawberries. An integrated development vision should foster the public institutions that rural families need to address such basic necessities as health care, education, day-care facilities, and public services so that families can increase their capacity to engage in a business venture.
- Product marketing must be strengthened, and technical assistance to make production more competitive must be guaranteed, especially for women's production activities, given that they have been excluded from acquiring such knowledge.

In its gender-related work, PACTA faces a number of challenges:

- Implementing the project's gender strategy while addressing cultural differences
- Expanding and strengthening alliances with public and private sector organizations that can help promote integrated family development and ease women's child-rearing responsibilities so that they can participate successfully in business activities
- Encouraging local support networks established with project support to adopt a gender-related perspective
- Creating awareness of the importance of gender training at all levels of PACTA staff.

## NOTES

### Overview

This Overview was written by Susan Lastarria-Cornhiel (University of Wisconsin-Madison) and reviewed by Nata Duvvury (Consultant); Victor Mosoti and David Palmer (FAO); Ruth Meinzen-Dick (IFPRI); Sabine Pallas (International Land Coalition); and Malcolm Childress, Edward Cook, and Indira Ekanayake (World Bank).

1. According to information from Malcolm Childress and Mukta Mahajani of the Land Policy and Administration Thematic Group, the World Bank has increased the number of land administration projects in the rural sector almost sixfold since 1995, from 4 to 23. The total loan portfolio has increased at a similar rate, from \$172 million to \$1,037 million. The number of rural development projects with a land administration component increased from 51 to 74.

2. For example, between 1978 and 2005, 21 percent of IFAD's projects in Latin America and the Caribbean (19 of 92 projects) had components for improving land access and tenure security (Hopkins, Carpano, and Zilveti 2005).

3. As a technical agency, FAO is currently collaborating with the World Bank on 30 land administration projects in 26 countries.

4. This Overview borrows heavily from Giovarelli and others (2005).

5. See Deere and Leon (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.

6. More extensive descriptions of these land administration elements can be found in FAO (2002).

7. Customary rules and practices refer to those that are followed by communities and local groups and are not necessarily recognized by formal law; in fact, they may contradict formal legal norms.

8. Local authorities (whether formally appointed or community recognized) may not administer land and natural resources equitably or even legitimately by local norms. Experience from a number of countries has shown that oversight and supervision from a higher level of government are needed to avoid problems such as elite capture and to ensure that local authorities follow relevant formal law.

9. E. Mwangi, "Subdividing the Commons: The Politics of Property Rights Transformation in Kenya's Maasailand," CAPRI Working Paper 46 (Washington, DC: CGIAR System-Wide Program on Collective Action and Property Rights, 2006), [www.capri.cgiar.org/wp/capriwp46.asp](http://www.capri.cgiar.org/wp/capriwp46.asp).

10. House ownership is also important in addition to land ownership. Particularly in the South Asian and Latin American context, women in a landless laborer household supplement the subsistence income from wage earning

with supplementary food from kitchen gardens on the housesites.

11. The land allocated by the woman's family to her husband is not his to alienate or pass on. If he leaves the community and leaves his wife, the land returns to the lineage.

12. See the GAL *eSourcebook* for suggested monitoring and evaluation indicators for each Thematic Note ([www.worldbank.org](http://www.worldbank.org)).

### Thematic Note 1

This Thematic Note was written by Susan Lastarria-Cornhiel (University of Wisconsin-Madison) and reviewed by Nata Duvvury (Consultant); Victor Mosoti and David Palmer (FAO); Ruth Meinzen-Dick (IFPRI); and Malcolm Childress, Edward Cook, and Indira Ekanayake (World Bank).

1. Most tenure systems have control rights such as freehold ownership under freehold tenure, commons, family land under customary tenure, and devolution of rights of state land. These systems often coexist or overlap in an area.

2. Customary allocation and management of land and other natural resources may or may not conflict with formal legislation and regulations. Customary authorities and rules operate in situations in which state agencies are not able to enforce natural resource management rules on the ground.

3. Comprehensive reviews of land reforms by Deere and Leon (2001) for Latin America and Agarwal (2003) for India reveal how few women received land from land reform programs.

4. A recent study in Ghana, for example, has shown that women heads of households, as compared with men heads, are significantly less likely to acquire land through purchase and rental (Quisumbing and others 1999).

5. United Nations-Office for the Coordination of Humanitarian Affairs, "Zimbabwe: Focus on Women's Lack of Access to Land," OCHA and Integrated Regional Information Network, December 4, [www.irinnews.org/report.aspx?repor tid=40021](http://www.irinnews.org/report.aspx?repor tid=40021).

6. The Lowlands Agricultural Development Programme (LADEP) is funded by the IFAD and the government of The Gambia.

7. The LIFE Programme is a joint program between U.S. Agency for International Development (USAID) and Namibia, the World Wildlife Fund (WWF), and Namibian NGOs.

8. For a review of this type of land reform, see Nielsen, Hanstad, and Rolfes (2006).

### Thematic Note 2

This Thematic Note was written by Renee Giovarelli (Consultant) and reviewed by Nata Duvvury (Consultant); Victor Mosoti and David Palmer (FAO); Ruth Meinzen-Dick

(IFPRI); and Malcolm Childress, Edward Cook, and Indira Ekanayake (World Bank).

1. G. Gopal, "Law and Legal Reforms," 2020 Focus No. 06: Brief 12 (Washington, DC: International Food Policy Research Institute, 2001), [www.ifpri.org/2020/focus/focus06/focus06\\_12.asp](http://www.ifpri.org/2020/focus/focus06/focus06_12.asp).

2. The term "owned" is used throughout this Thematic Note, but it is meant to include long-term use rights that are like ownership.

3. Civil Code of the Dominican Republic, Art. 1421, 1428; Family Code of Honduras, Article 82; Family Law in Mexican States of Aguas Calientes, Oaxaca, and Sonora; Civil Code of Ecuador; Civil Code of Guatemala.

4. Some case law from common-law African countries retroactively vests legal recognition on a polygamous (illegal) union for purposes of inheritance or divorce and maintenance.

5. On the other hand, women in matrilineal societies are often in a very powerful position in relation to land rights. For a general discussion, see Strickland (2004).

6. Article 3, Paragraph V, Servicio Nacional de Reforma Agraria, Ley No. 1715, passed in 1996 and popularly known as the "Ley INRA."

### Thematic Note 3

This Thematic Note was written by Susan Lastarria-Cornhiel (University of Wisconsin-Madison) and reviewed by Nata Duvvury (Consultant); Victor Mosoti and David Palmer (FAO); Ruth Meinzen-Dick (IFPRI); and Malcolm Childress, Edward Cook, and Indira Ekanayake (World Bank).

1. In some African and Asian countries, women are still considered minors and cannot enter into transactions or initiate official procedures without an adult man.

2. See Brown, Ananthpur, and Giovarelli (2002) for India and Walker (2003) for South Africa.

3. Examples of legislative reform that recognize customary land tenure are Australia (1976), Bolivia (1995), Mozambique (1997), Niger (1993), Philippines (1997), Senegal (1964), Tanzania (1999), and Uganda (1998).

4. G. Gopal, "Law and Legal Reforms," 2020 Focus No. 06: Brief 12 (Washington, DC: International Food Policy Research Institute, 2001), [www.ifpri.org/2020/focus/focus06/focus06\\_12.asp](http://www.ifpri.org/2020/focus/focus06/focus06_12.asp).

### Thematic Note 4

This Thematic Note was written by Susan Lastarria-Cornhiel (University of Wisconsin-Madison) and reviewed by Nata Duvvury (Consultant); Victor Mosoti and David

Palmer (FAO); Ruth Meinzen-Dick (IFPRI); and Malcolm Childress, Edward Cook, and Indira Ekanayake (World Bank).

1. This Thematic Note borrows heavily from Giovarelli and others (2005).

2. Article 3, Paragraph V, Servicio Nacional de Reforma Agraria, Ley No. 1715, passed in 1996 and popularly known as the “Ley INRA.”

3. Most marital property laws exempt inherited property from becoming part of community property.

4. This section on marital property and polygamy is taken largely from UN-HABITAT (2005).

### Innovative Activity Profile 1

This Innovative Activity Profile was prepared by Catherine Ragasa (Consultant), with input and review from Sabine Pallas (International Land Coalition) and Jeanette Gurung (WOCAN). This Profile was largely drawn from ILC (2001), IFAD (n.d.), and Gurung and Lama (n.d.).

1. This section is mainly based on ILO (2001).

### Innovative Activity Profile 2

This Innovative Activity Profile was prepared by Catherine Ragasa (Consultant), with input from Aleyda Ramirez (FAO-Honduras) and Francisco Pichon (World Bank), and reviewed by Susan Lastarria-Cornhiel (University of Wisconsin-Madison). This Profile was largely drawn from the Project Appraisal Document and Implementation Completion and Results Report (World Bank 2000, 2007) and personal communication with the project team.

1. This account mainly describes impacts as of 2007.

2. Only one family member may represent a family in a business as a direct partner, to avoid duplicating nonreimbursable transfers.

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