



REALIZING WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES

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CONTENTS

INTRODUCTION	1
BACKGROUND: WHY FOCUS ON WOMEN AND LAND?	2
I. INTERNATIONAL AND REGIONAL LEGAL AND POLICY FRAMEWORK.....	5
A. International legal and policy instruments	5
B. Regional legal and policy frameworks.....	11
II. A HUMAN RIGHTS-BASED APPROACH TO WOMEN’S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES	14
III. GOOD PRACTICES TO REALIZE WOMEN’S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES	16
A. Overarching issues and practices.....	17
B. Security of tenure and prohibition of forced eviction	24
C. Legal systems and access to justice	28
D. Marriage and family.....	34
E. Land law, policy and programming	41
F. Institutional implementation	47
G. Awareness-raising and training	52
H. Particular groups of women	56

INTRODUCTION

The purpose of this publication is to provide detailed guidance for lawmakers and policymakers, as well as civil society organizations and other stakeholders, to support the adoption and effective implementation of laws, policies and programmes to respect, protect and fulfil women's rights to land and other productive resources. It is based on the results of an expert group meeting held on 25-27 June 2012 in Geneva, Switzerland, during which papers were presented from various sectors and regions. These papers, and the discussions which were informed by them, helped to bring to the surface many of the critical issues facing women today in relation to the enjoyment of their land rights. The publication also incorporates additional case studies submitted by key experts, as well as extensive thematic research.

Land itself can be understood to include farmland, wetland, pasture, rangeland, fishery, forest, as well as harvesting and hunting territories. Throughout this publication the phrase "women's rights to land" must be understood holistically and in a manner which is grounded in the international human rights framework. These rights entail the ability of women to own, use, access, control, transfer, inherit and otherwise take decisions about land and related resources. They also encompass women's rights to secure land tenure and to meaningfully participate at all stages of land law, policy and programme development, from assessment and analysis, programme planning and design, budgeting and financing, implementation, to monitoring and evaluation. Women's land rights must also be understood in the context of intersecting forms of discrimination (see also chap. III.A.2).

While this publication focuses on women's rights to land, it is also recognized that land is inextricably linked to women's access to, use of and control over other productive resources, such as property, fisheries, livestock and game. Therefore, the publication also uses the phrase "women's rights to land and other productive resources" to reflect this broader context.

The publication recommends strategies to be incorporated in domestic laws, policies and programming, as appropriate. States are encouraged to reflect the recommendations within whichever framework best suits their context. Land law is the system of codified rules that are enforced through institutions that govern land tenure. Other types of law, for example marriage and family law, are also relevant to the protection of women's land rights. Land policy refers broadly to the agreements, principles or guidelines which aid in the administration of land and other decision-making related to land. Land programming refers broadly to the activities or functions taken to implement land laws and policies, often by specific institutions responsible for such implementation.

Following this introduction, there is a background analysis of women's rights to land overall, as well as a brief summary of the international dimensions of land issues related to human rights. Chapter I presents an overview of both international and regional legal and policy instruments recognizing women's rights to land and other productive resources.

Building on the human rights principles and standards outlined in chapter I, chapter II discusses ways of advancing a human rights-based approach to women's rights to land and other productive resources. Chapter III presents recommendations accompanied by explanatory commentaries and good practice examples from countries. They are divided into eight sections:

- (a) Overarching issues and strategies
- (b) Security of tenure and prohibition of forced eviction
- (c) Legal systems and access to justice
- (d) Marriage and family
- (e) Land law, policy and programming
- (f) Institutional implementation
- (g) Awareness-raising and training
- (h) Particular groups of women

BACKGROUND: WHY FOCUS ON WOMEN AND LAND?

Women's access to, use of and control over land and other productive resources are essential to ensuring their right to equality and to an adequate standard of living. These resources help to ensure that women are able to provide for their day-to-day needs and those of their families, and to weather some of life's most difficult challenges. Women's access to land and other productive resources is integrally linked to discussions around global food security, sustainable economic development, as well as the pressing fight against the HIV epidemic and prevention of and responses to gender-based violence.

Throughout the world, gender inequality when it comes to land and other productive resources is intimately related to women's poverty and exclusion. The obstacles which prevent women from effectively enjoying these rights are complex and to a large extent context-specific. Still, many overarching similarities are apparent. Barriers which prevent women's access to, control and use of land and other productive resources often include inadequate legal standards and/or ineffective implementation at national and local levels, as well as discriminatory cultural attitudes and practices at the institutional and community level.

In many communities gender disparities with regard to land and other productive resources are linked to assumptions that men, as heads of households, control and manage land – implicitly reflecting ideas that women are incapable of managing productive resources such as land effectively, that productive resources given to women are “lost to another family” in the event of marriage, divorce or (male) death, and that men will provide for women's financial security.¹ Challenging these discriminatory ideas is critical.

In recent years there has been increased recognition of the importance of women's access to, use of and control over productive resources, including land. There is a

positive correlation between ensuring women's rights to land and other productive resources and improved household welfare, as well as enhanced enjoyment of a broad range of rights for women. This holds true in both rural and urban areas. As a consequence, women acquire more power and autonomy in their families and communities, as well as in their economic and political relationships. Rural women also feel that secure land rights in particular increase their social and political status, and improve their sense of confidence and security. By diminishing the threat of forced eviction or poverty, direct and secure land rights boost women's bargaining power in the home and improve their levels of public participation.²

In the context of HIV, women's rights to inheritance and property are “... a crucial factor in reducing women's vulnerability to violence and HIV, as well as empowering women to cope with the social and economic impact of the epidemic at the household level”³ (see also chap. III.H.2). Similarly positive effects have been reported in connection with domestic violence, with research showing that women's ownership of property is associated with lower levels of both physical and psychological violence.⁴ Evidence also suggests that countries where women lack landownership rights or access to credit have on average 60 per cent and 85 per cent more malnourished children, respectively.⁵

Important progress has been made in legal protection. For example, over the past few decades, many countries have reformed their constitutions and national laws to

¹ Canadian HIV/AIDS Legal Network, *Respect, Protect and Fulfill: Legislating for Women's Rights in the Context of HIV/AIDS*, vol. two, *Family and Property Issues* (2009).

² See also ActionAid International, “Securing women's rights to land and livelihoods a key to ending hunger and fighting AIDS”, ActionAid International Briefing Paper (June 2008).

³ UNDP, *Voices and Visions: The Asia Pacific Court of Women on HIV, Inheritance and Property Rights* (2008).

⁴ Pradeep Panda and Bina Agarwal, “Marital violence, human development and women's property status in India”, *World Development*, vol. 33, No. 5 (2005).

⁵ Organisation for Economic Co-operation and Development (OECD) Development Centre, “Gender equality and the MDGs: what are the missing dimensions?”, 2010, available from www.oecd.org/dev/poverty/45987065.pdf (accessed 22 July 2013); and Netherlands, Ministry of Foreign Affairs, *Women's Economic Empowerment to Foster Food Security: Case Studies from Developing Countries* (2011).

guarantee women's equal property and inheritance rights.⁶ According to UN Women, at least 115 countries specifically recognize women's property rights on equal terms with men.⁷ Such progress has not been uniform.⁸ Levels of legal protection are uneven and in many countries there are still significant gaps in the legal framework.

A major part of the remaining challenge revolves around implementation and enforcement. Even in countries where good laws exist, women frequently do not enjoy their rights to access and control productive resources. Implementation is too often hindered by sociocultural norms and women's lack of knowledge of their entitlements.⁹

There is no one-size-fits-all solution; but lessons have been learned. "Socioeconomic contexts determine the appropriateness of different types of rights to land and property – including individual rights, joint-titling and group rights. Continued efforts are needed to promote gender-sensitive legislation, enforce existing legislation, make judicial systems more accessible and responsive to women, and provide legal aid to women seeking to claim their rights."¹⁰

LAND AND ITS INTERNATIONAL DIMENSIONS

Land demands particular attention. Land is key to a life with dignity and a basis for entitlements which can ensure an adequate standard of living and economic independence and, therefore, personal empowerment.¹¹ Regardless of whether a woman lives in a rural or urban setting, land rights also have major implications for the achievement and enjoyment of her human rights such

as the right to equality, food, health, housing, water, work and education.

Women's access to productive resources in general, and land in particular, cannot be divorced from the broader context of macroeconomic policy and the global economic system. Inclusive growth requires equal access to opportunities and resources for all segments of society, including for both women and men. The international community has an important role to play in fostering an international environment which recognizes and promotes women's land rights. Doing so, however, requires a departure from viewing land principally as a commodity. "... The prevailing discourse around land rights has assumed the form of individuating and commoditizing entitlements to land, where access and ownership are conceived in liberal market terms and land is narrowly understood as property."¹² This discourse is at odds with many traditional, collective and indigenous understandings of land rights, which view land not as a financial commodity to be privatized and sold, but as a life-sustaining resource to be shared and protected.

Throughout the world, market pressures on land are rapidly increasing, and land markets have often proven to be exclusionary and land concentration is on the rise. Research shows that over the past 10 years alone, at least 80 million hectares of land have been leased in large-scale land acquisitions – an area 20 times the size of the Netherlands.¹³

Within this context, it is reported that just 1 per cent of the world's women actually own land.¹⁴ When researchers compiled an approximation of the distribution of land by gender (in this case in five Latin American countries), they found it to be "extremely unequal".¹⁵

Add to this the reality that in an era of climate change

⁶ World Bank, Food and Agriculture Organization of the United Nations

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