

REALIZING WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES

SECOND EDITION



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REALIZING WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES

SECOND EDITION

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* In compliance with internal policy, OHCHR does not attribute authorship of its publications to individuals.

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EXECUTIVE SUMMARY

Women's rights to land and other productive resources are essential for realizing their rights to equality and to an adequate standard of living, among many other rights. Women's secure access to land and resources supports their independence and autonomy, provides for their day-to-day needs and those of their families and allows them to weather some of life's most difficult challenges. Realizing women's land rights is an integral part of the gender-responsive implementation of the 2030 Agenda for Sustainable Development.

And yet, prevailing gender inequalities, combined with the amplified effect of multiple and intersecting forms of discrimination, undermine women's exercise of their rights to land and other productive resources. Patriarchal gender relations also exclude those facing discrimination based on their sexual orientation, gender identity and gender expression, such as lesbian, gay, bisexual, transgender and intersex (LGBTI) people. Certain global trends – such as commodification and financialization of land, climate change, biodiversity loss, land degradation and urbanization – are exacerbating pressure on land and the natural resources, housing and livestock attached to it. **Chapter 1. Global context and trends: Why focus on women and land?** illustrates the current global context surrounding women's rights to land and productive resources.

At the same time, normative and policy frameworks to protect and promote women's rights to land have developed at national, regional and global levels. Evolving guidance and jurisprudence have articulated the application of human rights standards in the context of women's entitlements to own, use, access, control, transfer, inherit and otherwise take decisions about land and related resources. New international instruments have been adopted and applied. The 2030 Agenda, adopted by the United Nations General Assembly in 2015, is grounded in the Universal Declaration of Human Rights and informed by international

human rights standards. The efforts being made to attain the Sustainable Development Goals provide excellent opportunities to promote the rights to land and other productive resources of women and girls and others who are at risk of being left behind because of the multiple and intersecting forms of discrimination they face. These include indigenous, peasant and rural women, women affected by HIV, displaced women and women in informal settlements. **Chapter 2. Global framework: What are the standards that protect women's land rights?** provides an overview of the relevant normative, legal and policy frameworks at international and regional levels.

Chapter 3. How can we protect women's rights to land? summarizes key principles of a gender-responsive and human rights-based approach to land, namely the principles of universality and inalienability, indivisibility, interdependence and interrelatedness, equality and non-discrimination, participation and inclusion, impact assessment and due diligence, accountability and rule of law, transparency, empowerment, sustainability and international cooperation. The chapter also considers how the 2030 Agenda resonates with these principles.

Chapter 4. Promising practices: Practical steps to secure women's rights to land and other productive resources presents recommendations for realizing

women's rights to land based on promising practices and lessons learned from around the world in various contexts, including:

- Ensuring women's land rights in formal laws
- Legal systems and access to justice
- Marriage and family
- Security of tenure and prohibition of forced evictions
- Governance, institutions, policies and programmes
- Promoting women's voice, agency and participation
- Women facing multiple and intersecting forms of discrimination

Each of these sections is further divided into relevant themes, all of which contain recommendations for realizing women's land rights supplemented by commentaries that include examples of promising practices. Case studies with more

detailed analysis from 10 countries in different contexts complement the discussion.

In this publication, the term "land" encompasses farmland, wetland, pasture, rangeland and forests, as well as harvesting, hunting and fishing territories. It also includes land used for human settlement. Likewise, the phrase "women's rights to land"¹ should be understood as the ability of women to own, use, access, control, transfer, inherit and otherwise take decisions about land and related resources, as well as women's rights to secure land tenure (including community, customary, collective, joint and individual tenure). These also encompass rights to meaningfully participate in discussions and decision-making on land laws, policies and programmes throughout the cycles of assessment and analysis, planning and design, budgeting and financing, implementation, and monitoring and evaluation.

¹ See Box 1.

INTRODUCTION

This is the second edition of *Realizing Women's Rights to Land and Other Productive Resources*, a joint publication of UN Women and the Office of the United Nations High Commissioner on Human Rights (OHCHR). The purpose of this updated edition is to provide 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, with information updated through mid-2019. In particular, the second edition clarifies how women's rights to land and other productive resources are relevant to the achievement of the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in 2015.² The 2030 Agenda is grounded in the Universal Declaration of Human Rights and international human rights standards deriving from the Declaration and other international human rights treaties. The efforts to attain the Sustainable Development Goals (SDGs) provide important opportunities to advance women's rights to land and other productive resources.

In this publication, land is understood to include farmland, wetland, pasture, rangeland and forests, as well as harvesting, hunting and fishing territories. It also includes land used for human settlement. Throughout this publication the phrase "women's rights to land" should be understood holistically and in a manner that 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, as well as women's rights to secure land tenure (including community, customary, collective, joint and individual tenure). They also encompass rights to meaningfully participate in discussions and decision-making on land law, policy and programming throughout the cycle of assessment and analysis, planning and design, budgeting and financing, implementation and monitoring and evaluation. Women's land rights are affected not only by gender discrimination but also by the

amplified effect of multiple and intersecting forms of discrimination.

While this publication focuses on women's rights to land, these rights cannot be separated from women's access to, use of and control over other productive resources such as housing, natural resources and livestock attached to the land. Therefore, the publication employs 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 and other stakeholders 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, strategies or guidelines

² See UN General Assembly 2015a.

at national and local levels that 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.

Chapter 1 provides the rationale for an analysis of women's rights to land and a brief overview of the international context for considering land and human rights. Chapter 2 reviews international and regional legal and policy instruments recognizing women's rights to land and other productive

resources. Chapter 3 discusses ways of advancing a gender-responsive and human rights-based approach to women's rights to land and other productive resources. And Chapter 4 presents recommendations for how States can realize women's rights to land and productive resources based on promising practices and lessons learned from around the world, which are explained in the accompanying commentary.

In this second edition, the validity of provisions of laws and policies cited has been verified as of July 2019.

1

GLOBAL CONTEXT AND TRENDS: WHY FOCUS ON WOMEN AND LAND?



This chapter provides an overview of the current global context and trends that demand increased attention to the protection and realization of women’s human rights in the context of their access to, use of and control over land and other productive resources. It highlights how such access, use and control are relevant to women’s enjoyment of their human rights, illustrates the increasing pressure on women’s rights in terms of the governance of land tenure and presents emerging opportunities for their realization.

An essential element for the enjoyment of human rights and sustainable development

Women’s rights to land and other productive resources (see Box 1)³ are essential to ensuring their right to equality and to an adequate standard of living. These resources support women’s independence and autonomy, provide for their day-to-day needs and those of their families and allow them to weather some of life’s most difficult challenges. Regardless of whether a woman lives in a rural or urban setting, land rights have major implications for the realization of her rights to equality, property, food, health, housing, water, work and education, among others.

³ As of the drafting of the second edition, no international human rights instrument exists that explicitly recognizes a universal “right to land”, although the ability to own, use, access and make decisions on land are closely linked to the enjoyment of a number of universal human rights provided in legally binding instruments. The most recent and elaborated concept of a human right to land is provided in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UN General Assembly 2018a). The United Nations Declaration on the Rights of Indigenous Peoples (UN General Assembly 2007) also recognizes the rights of indigenous peoples to their ancestral lands, territories and resources. General recommendation No. 34 of the United Nations Committee on the Elimination of Discrimination against Women also recognizes “rural women’s rights to land, natural resources, including water, seeds and forests, and fisheries as fundamental human rights” (UN CEDAW 2016a). However, the scope of these instruments does not provide for a universal right to land applicable to all. Thus, in this publication, the terms indicated in Box 1 are aligned with the definition of the right to land provided in UN General Assembly 2018a.

Recognition has increased of the importance of women’s access to, use of and control over productive resources, including land, and the links to human rights.⁴ A positive correlation exists between ensuring women’s land rights and their enhanced enjoyment of a broad range of rights, as

BOX 1

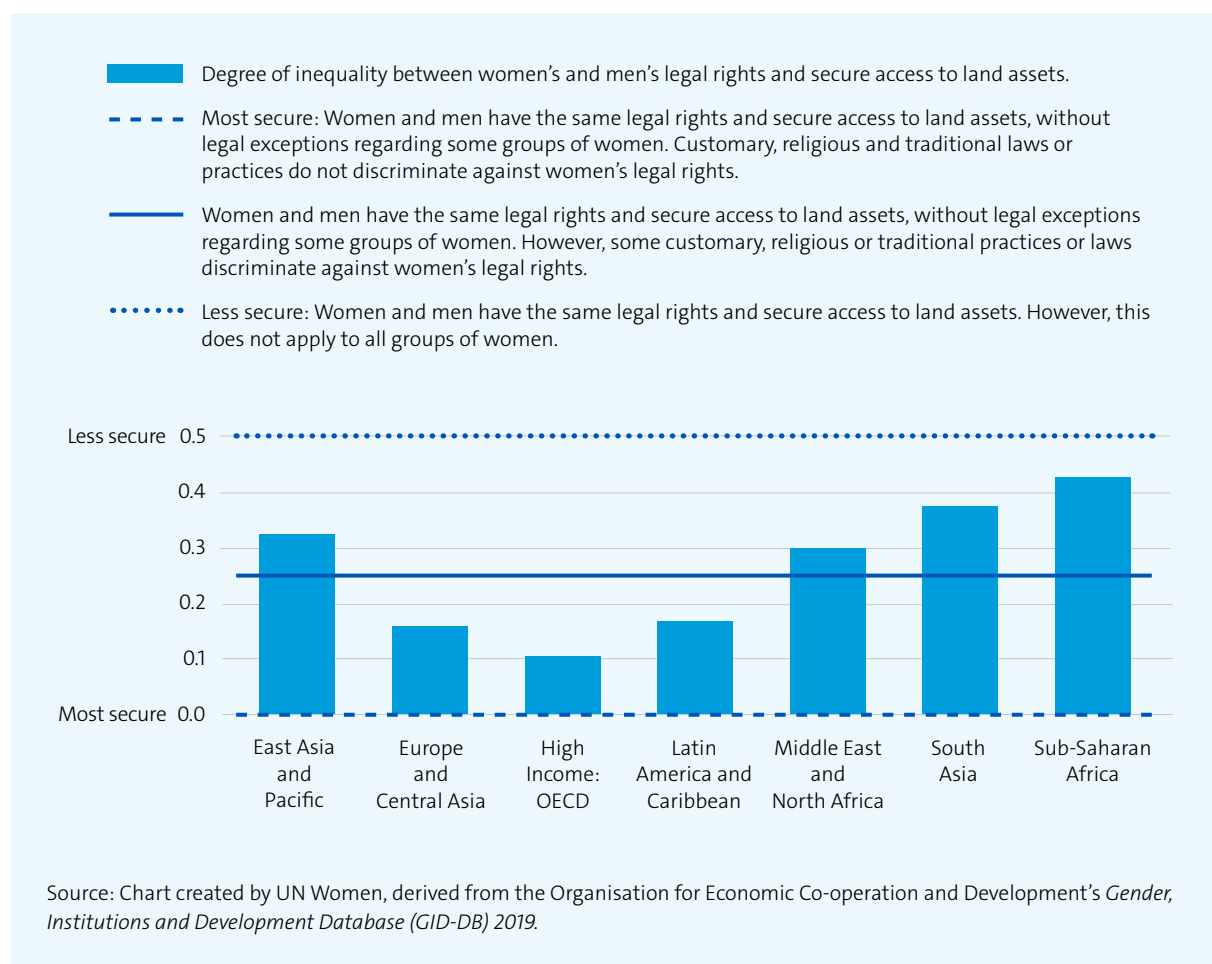
Working definition: “women’s rights to land and other productive resources” / “women’s land rights”

In this publication, “women’s rights to land and other productive resources” or “women’s land rights” mean the ability of women to own, use, access, control, transfer, inherit and otherwise take decisions about land and related resources, as well as women’s rights to land tenure security (including community, customary, collective, joint and individual tenure). They also encompass rights to meaningfully participate in discussions and decision-making on land law, policy and programming throughout the cycles of assessment and analysis, planning and design, budgeting and financing, implementation and monitoring and evaluation.

well as improved household welfare and reduced vulnerability to domestic violence and HIV. This holds true in both rural and urban areas. Women acquire more power and autonomy in their families and communities as well as in their economic and political relationships. By diminishing the threat of forced eviction or poverty, direct and secure land

⁴ OHCHR 2015.

FIGURE 1
Level of Insecurity of Women’s Access to Land Assets, 2019



rights boost women’s bargaining power in the home and improve their levels of public participation.⁵

Realizing women’s land rights is an integral part of the gender-responsive implementation of the 2030 Agenda for Sustainable Development.⁶ The adoption of the 2030 Agenda in 2015 and the subsequent efforts to attain the Sustainable Development Goals (SDGs) have underscored the importance of rights to land and tenure security in achieving sustainable development in relation to: ending poverty (SDG 1); ending hunger and ensuring food and nutrition security (SDG 2); achieving gender equality

and the empowerment of women and girls, including ending violence against all women and girls (SDG 5); making cities sustainable (SDG 11); combating climate change (SDG 13); and protecting terrestrial ecosystems and reversing land degradation (SDG 15). Secure land rights also contributes to achieving other SDGs, including those relevant to achieving peace and security (SDG 16), reducing inequalities (SDG 10) and ending the HIV epidemic (SDG 3), as well as to the core principle of the 2030 Agenda of leaving no one behind, which means that efforts to attain the SDGs must contribute to eliminating all forms of discrimination and inequalities.

⁵ See also ActionAid 2008.

⁶ UN Women 2016a.

Prevailing gender inequality

Significant gender inequalities remain in access to, use of and control over land and other productive resources around the world. It is difficult to make generalized statements about women's land rights, even at the regional level.⁷ However, the pattern that emerges across countries is that women consistently own less land than men, regardless of how ownership is conceptualized, and in many cases the gender gaps are quite large.⁸ Globally, almost one third of employed women work in agriculture, including forestry and fishing, with agriculture remaining the most important employment sector for women in low-income and lower-middle-income countries. Yet, less than 13 per cent of agricultural landholders are women, although this varies widely among regions.⁹ Based on analysis of 180 countries, "164 countries explicitly recognize women's rights to own, use, make decisions and use land as collateral on equal terms with men. However, only 52 countries guarantee these rights both in law and practice because of discriminatory customary laws."¹⁰ This means that women and men have equal rights to own, use and control land in law and practice in only 29 per cent of countries that were studied. In 62 per cent of countries, women are limited in claiming and protecting land assets because of customary, religious or traditional laws

⁷ Doss et al. 2013. "Over the past decade, stakeholders have made a variety of generalized claims concerning women's landownership, both globally and in Africa. Typically, these claims include statements with single statistics, such as "women own less than 2 percent of the world's land" or "women own approximately 15 percent of land in Africa south of the Sahara". These claims are problematic because they are not substantiated by empirical evidence, do not reflect variations in landownership across or within countries, do not acknowledge differences in landownership regimes, nor address comparative ownership by men in the same contexts. Neither do they address the difference between ownership and control of land. The lack of a clear understanding behind statistics on gender and land also leads to an inability to clearly articulate a policy response to the potential inequalities faced by women and men."

⁸ Ibid.

⁹ FAO 2020a.

¹⁰ OECD 2019a.

and practices. In 9 per cent of countries, women do not have the same legal rights as men to own, use or control land (see Figure 1 on facing page). These findings underline the importance of strategies that address both de jure (or direct) and de facto (or indirect) discrimination to realize substantive gender equality in accessing, using and controlling land and other productive resources.

Overcoming such de jure and de facto discrimination can contribute to the attainment of the SDGs,¹¹ including:



BOX 2

De jure and de facto discriminations

De jure or direct discrimination happens when laws, policies and programmes intentionally exclude certain people from protection, equal treatment or service provision.

De facto or indirect discrimination occurs when laws, policies or practices appear to be gender neutral but in their interpretation or implementation have the effect of being discriminatory.

Source: OHCHR 2020a.

Impact of global trends on women's rights to land and other productive resources

Women's rights and access to land and other productive resources cannot be divorced from the broader context of globalization: the global economic system, macroeconomic policy and actions by States and the private sector, including

¹¹ The examples of relevant SDGs are not exclusive. Overcoming such discrimination may also contribute to the attainment of other SDGs.

BOX 3

“Land-grabbing”

Forced dispossession of land is often referred to as “land-grabbing”. While there is no agreed definition of the term or its scope, it is often used to refer to forced dispossession of land in the context of large-scale land acquisitions and leases for agricultural and other investments, development and infrastructure projects – such as the construction of dams, roads and resort areas for tourism – and extractive and industrial activities. The term is also used to describe the dispossession of land in the context of unsettled land claims and armed conflict.

Land-grabbing can occur in various contexts, including urban areas through, for example, investments and speculations in land as part of inner-city redevelopment or gentrification (UN Human Rights Council 2017, para. 37) or as a form of violence against minority groups (UN Human Rights Council 2017, para. 11 (b)). For girls and women, “land (or property)-grabbing” can also occur in the contexts of inheritance or divorce (UN CEDAW 2017a, para. 34).

international development cooperation, foreign direct investment and trade. Intensifying land pressures around the world, including the phenomenon of “land-grabbing” (see Box 3) and spiralling commodification and financialization of land, are eroding women’s land rights worldwide. It has been argued that technological developments enable more transparent, efficient and secure registration of land.¹² However, these developments have also accelerated commodification by facilitating rapid and large-scale land transactions in financial markets while excluding people who do not have access to digital technologies from such forms of registration (see Box 4).

Sustainable and inclusive economic growth requires equal access to opportunities, resources and benefits for all segments of society, including for both women and men. International and national

¹² Tripoli and Schmidhuber 2018.

normative and policy frameworks are critical for fostering an environment that recognizes and promotes women’s land rights in a globalizing world.

Commodification and financialization of land

Creating an enabling environment for women to exercise their land rights requires viewing land and its multidimensional use as a basis for the enjoyment of human rights, not 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.”¹³ This approach links security of tenure to integration in land markets, including land registration and titling promoted by international financial institutions as part of structural adjustment programmes, as a means of achieving successful land markets and, through them, efficient land allocation and economic growth, poverty reduction and increased food security. However, “the creation of a market for land rights may itself have a series of undesirable consequences ... Land sales tend to favour not those who can make the most efficient use of land, but those who have access to capital and whose ability to purchase land is greatest.”¹⁴ Moreover, the commoditization of productive land in private hands reduces the options for local communities and authorities to make land available to women and others who are not able to access land markets.¹⁵

This discourse is also 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.¹⁶ “Individual titling can also become a source of conflict and

¹³ Gelbspan and Nagaraj 2012: 12.

¹⁴ UN General Assembly 2010: 7, 10.

¹⁵ Wegerif, forthcoming, on the impact of commodification of land. See also UN Human Rights Council 2017.

¹⁶ See also Rights and Resources Initiative 2015.

legal insecurity if it conflicts with customary rules regarding tenure, for example, as regards communal land ownership. Indeed, individual titling, combined with the marketability of land, may not be compatible with the recognition of customary forms of tenure with respect to communal land and common property resources, putting groups that do not use the land intensively or do not occupy it permanently at a particular disadvantage.”¹⁷

Land markets have often proven to be exclusionary, and land concentration is on the rise with globalization and the concomitant concentration of wealth and rising inequality. In the food and agricultural sector, increasing dependency on food imports by once self-sufficient or food-exporting countries, globalization of food systems and low yields due to extreme climate events led to volatile international food commodity markets in 2007/2008. Subsequently, international investors have targeted vast tracts of land, resulting in land rushes and land-grabbing. This has been especially pronounced in Africa.

Over the last decade this investor interest has moved from acquiring direct control of land to a focus on controlling and profiting from agricultural input and output markets as part of the process of financialization. This brings with it increasing control of the sector by financial and geopolitical interests. For financial investors, land and agricultural production are often viewed as asset classes in which to invest if they offer the highest level of return. Greater returns can now be made from capital gains and rents than from investing in actual agricultural production.¹⁸ However, for the communities that depend on it, land is the basis for livelihoods and ecosystem functioning. Land speculation and trading in land as a commodity often results in forced evictions and the deprivation of livelihood of local communities as well as in environmental degradation.¹⁹ Women farmers, in particular, are disproportionately affected by large-scale land grabs and dispossession because

¹⁷ UN General Assembly 2010: 10.
¹⁸ Wegerif, forthcoming.
¹⁹ FIAN International 2018.

BOX 4

“Digitalization and financialization of land”

Technological developments, such as blockchain technology and satellite imagery, are expected to serve as tools for more transparent, efficient and secure land registration. However, they can create an enabling environment for powerful financial actors to invest and trade in land as a financial commodity, while excluding local communities that do not have access to such technologies from registering the land they have been living and working on.

For example, in northern Brazil, local communities tried to register their lands in the Rural Environmental Registry (Cadastro Ambiental Rural, CAR) – an open online system based on GPS data – as part of their struggle to defend themselves against land-grabbing. However, they discovered that their lands had already been registered by agribusiness companies.

Source: Seufert et al. 2018.

of their unequal access and control over land and productive assets, coupled with limited mobility and decision-making power in the household and the community and greater obstacles in accessing justice to defend their land rights.²⁰

Overcoming the challenge above can contribute to the attainment of the SDGs,²¹ including:



²⁰ UN Women 2014.

²¹ The examples of relevant SDGs are not exclusive. Overcoming the challenge concerned may also contribute to the attainment of other SDGs.

Climate change, biodiversity loss and land degradation

Land, water, air and biodiversity are indispensable for life. The present and future of both nature and people are dependent on a safe, healthy and sustainable environment. Climate change, land degradation and loss of marine and terrestrial biodiversity are inextricably linked in chains of mutual causation (SDGs 13, 14 and 15). Land degradation has affected up to three quarters of the total land area, caused to a great extent by rapid expansion and unsustainable management of agricultural and grazing lands and driven by high consumption in more developed countries in tandem with increasing consumption in developing and emerging countries. This, in turn, is contributing significantly to biodiversity loss and climate change. Degradation of soils from unsustainable industrial agriculture and other development releases billions of tons of carbon – an estimated 50 to 70 per cent of their original carbon stock – into the atmosphere in the form of carbon dioxide, while soils lose organic matter and fertility.²² Land degradation affects 3.2 billion people, especially rural communities, smallholder farmers and the very poor in drylands – about 40 per cent of the world’s land area – with women and children most affected by drought, food insecurity, displacement and other consequences.²³ Further, rising sea levels are eroding coastal lands while changing ocean temperatures affect the hydrological cycle and precipitation patterns, with significant impacts on land use.

Human influence on the natural environment has caused up to 1 million species to face the risk of extinction in the near future. Such a catastrophic loss of biodiversity, driven by land development and deforestation, among other factors, imperils the earth’s interconnected ecosystems, threatens human life, settlements, sources of food, clean water and air and weakens natural defences against extreme weather and natural disasters.²⁴ Over a billion people rely on forests for their livelihoods,

and forests are critical for climate stabilization and biodiversity. Yet only 15 per cent of global forest cover is intact; 30 per cent has been cleared, another 20 per cent has been degraded and the rest is fragmented. In 2018, 12 million hectares of tropical forest were lost – including 3.6 million hectares of old growth primary rainforest, which stores more carbon than other forests and contains irreplaceable biodiversity – much of it due to fire.²⁵

Climate change is further compromising women’s land rights. Significant fluctuations in the temperature of land and water bodies are increasing the frequency and intensity of extreme weather events and natural disasters, including droughts, floods and fires. Women’s livelihoods based on land are jeopardized by the adverse effects of climate change, including through reduced crop, fodder and forest yields and disruptions in food and water supply. This scenario presents major challenges to many farmers, especially women small landholders who struggle to adapt to climate change and build climate resilience. The Intergovernmental Panel on Climate Change states that “climate change and climate variability worsen existing poverty and exacerbate inequalities, especially those disadvantaged by gender, age, race, class, caste, indigeneity and (dis)ability”.²⁶ Women small farmers may face greater obstacles in responding to climate change compared to men. For example, due to time constraints caused by the disproportionate burden of unpaid care and domestic work, women farmers are less likely to have time to acquire and practice climate-resilient agricultural knowledge, information and skills. Unequal access to financing, extension services, tools, technology and land and other productive resources also limit women farmers’ capacity to invest in climate-resilient livelihoods.²⁷

Climate change, biodiversity loss and land degradation affect livelihoods and access to traditional lands, resources and territories and may prevent or inhibit related cultural, religious and customary practices. For indigenous peoples, the adverse

²² Schwartz 2014.

²³ IPBES 2018.

²⁴ IPBES 2019.

²⁵ World Resources Institute 2019.

²⁶ IPCC 2019: 451.

²⁷ UN Human Rights Council 2019a. See also UNDP 2020.

effects of these processes can cause spiritual and cultural loss. Women in many rural communities hold expert knowledge of ecosystems and sustainable land management practices. Indigenous women often play an essential role in protecting biodiversity and sustain knowledge about their lands and territories.²⁸

The adverse effects of climate change intensify threats to ecosystems, affecting women who rely on them for their livelihoods along with their families and communities. In common with all human rights defenders, women defending these ecosystems face risks, including intimidation, criminalization, assault and assassination, as well as the specific threat of gender-based violence.²⁹

Efforts by States to mitigate or adapt to the impacts of climate change, if not properly carried out, can exacerbate the situation and threaten women's rights not only to development, food, water, land and culture but also to freedoms of expression, assembly, association and political participation.³⁰

Climate change mitigation measures (SDG 13) need to be human rights-based and gender-responsive to be effective and leave no one behind. As a means of reducing greenhouse gas emissions from fossil fuel energy production and combustion, the global community has made significant progress towards the adoption of renewable energy. However, the risks that large-scale renewable energy projects can pose need to be assessed and mitigated to realize the environmental and gender equality benefits of sustainable energy (SDG 7). For example, geothermal energy can threaten fresh water supplies, wind power can encroach on pastoral or agricultural lands, the construction of hydropower dams may result in displacement of entire communities – often disproportionately affecting indigenous peoples in addition to loss of biodiversity – and large-scale solar power development can harm habitats and

wildlife. Any advances in renewable energy thus require corresponding regulation that analyses their direct and indirect costs and ensures their environmental and social sustainability. Other carbon emission reduction strategies, such as forest conservation, could lead to the displacement of indigenous peoples and peasants from the land they have been living and working on.³¹ Women's human rights, especially those of peasant and indigenous women, are undermined when they are excluded from meaningful participation in decision-making on and monitoring of climate change mitigation measures and their perspectives and experiences are not reflected in an environment, social and human rights impact assessments for such measures.

Overcoming the challenge above can contribute to the attainment of the SDGs,³² including:



Urbanization

Rapid urbanization and the correlated rise of informal settlements continue to be major trends. By 2050, 66 per cent of the world's population is projected to live in urban areas, and it is estimated that one in seven people live in slums today.³³ Informal settlements tend to be built in areas of low land

²⁸ See Joint Submission of Grand Council of the Crees et al. 2011 and Aguilar et al. undated.

²⁹ UN Human Rights Council 2019a.

³⁰ Ibid.

³¹ UN General Assembly 2015b.

³² The examples of relevant SDGs are not exclusive. Overcoming the challenge concerned may also contribute to the attainment of other SDGs.

³³ Land Portal Foundation undated; Habitat for Humanity undated.

value that are vulnerable to the impacts of climate change and natural disasters such as floods, earthquakes and landslides, among others.³⁴ The experiences of people living in informal settlements is directly affected by both their insecure tenure and their gender. Public services and infrastructure – such as energy, water and sanitation facilities and public transport – are often denied to inhabitants of informal settlements because of their lack of secure tenure, calling attention to the urgency of the attainment of SDGs 6 (water and sanitation for all), 7 (sustainable energy for all), 10 (reducing inequalities) and 11 (sustainable cities and communities). Women often bear the burden of the lack of such services and infrastructure. Where basic infrastructure such as access to clean energy or safe drinking water is lacking, women and girls spend long hours queuing for water or cooking with dirty fuels, compromising their health and safety and taking up valuable time that could otherwise be spent on paid work, education, leisure or rest.³⁵ Moreover, women are often excluded from decision-making on urban and spatial planning, budgets and management of towns, cities and informal settlements, especially in contexts of land scarcity and poverty.

Overcoming the challenge above can contribute to the attainment of the SDGs,³⁶ including:



³⁴ UN CEDAW 2018: para. 4.

³⁵ ECOSOC 2019a.

³⁶ The examples of relevant SDGs are not exclusive. Overcoming the challenge concerned may also contribute to the attainment of other SDGs.

Opportunities

While gender inequality in land rights persists along with a myriad of other global challenges, important advances have been made and opportunities have emerged for women's land rights. Under international human rights law, understanding of women's land rights has been further elaborated.

Over the past few decades, many countries have reformed their constitutions and national laws to guarantee women's equal property and inheritance rights. According to the Organisation for Economic Cooperation and Development (OECD) Social Institutions and Gender Index, a majority of countries in the world legally recognize women's rights to own, use, make decisions about and use land as collateral on equal terms with men.³⁷ Such progress has not been uniform and nor have these legal advances been necessarily applied in practice. For example, OECD data indicate that only 44 countries accord women the same inheritance rights as men in both law and practice, while 29 countries do not grant female surviving spouses and daughters the same rights as their male counterparts to inherit land and non-land assets.³⁸ Levels of legal protection are uneven, and significant gaps in the legal framework still exist in many countries. Further action beyond legal reform is required to ensure women's substantive equality and human rights.

At the same time, new research has emerged on the importance of women's land rights to women's status and bargaining power, as well as to household welfare and intergenerational transfers.³⁹ This has bolstered the global call to action to strengthen women's land rights⁴⁰ and the creation of tools and guidelines to address obstacles to realizing them.⁴¹ Resources, data and tested approaches have been

³⁷ OECD 2019a.

³⁸ Ibid.

³⁹ Meinzen-Dick et al. 2019.

⁴⁰ See, for example, Kilimanjaro Initiative, 2016; Cadasta – Her Land, Her Story 2019.

⁴¹ See, for example, OHCHR 2015; GLTN undated; FAO 2013.

developed to support stakeholders in making the case for stronger land rights for women.⁴²

Furthermore, the implementation of the 2030 Agenda has opened space for addressing women's land rights. Member States of the United Nations are in the process of putting in place actions to align, measure and monitor progress towards SDG achievement within national contexts. At the same time, practitioners, government officials and other stakeholders need to understand and analyse context-specific needs in order to localize the 2030 Agenda. To do so, countries are aligning their national development plans with the SDG framework and its targets and indicators, developed by the Inter-Agency Expert Group on the SDGs (IAEG-SDGs) and adopted by the United Nations General Assembly.⁴³ These are opportunities to integrate concerns for gender equality on land rights in national plans and policies.

In recent years, international human rights standards have also been further articulated in relation to women's rights to land and other productive resources. For example, in its general recommendation No. 34 on the rights of rural women, the

Committee on the Elimination of Discrimination against Women clarified women's rights in relation to land and natural resources as well as in agricultural and land policies.⁴⁴ The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas recognized the right of peasant women and other women working in rural areas "[t]o equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes".⁴⁵

Persistent gender inequalities and global trends such as commodification and financialization of land, climate change, biodiversity loss, land degradation and urbanization undermine women's rights to land and productive resources and their enjoyment of human rights. In recognition of these challenges, national and international initiatives to protect and promote women's land rights have been undertaken, including the adoption of the 2030 Agenda and articulation of women's land rights in international human rights standards. This momentum must be seized to accelerate efforts to realize women's land rights.

⁴² For example, Resource Equity 2020; Resource Equity undated; FAO 2020a; World Bank 2020a; OECD 2020.

⁴³ SDG framework available at United Nations undated and SDG indicators at UNDESA 2019.

⁴⁴ UN CEDAW 2016a.

⁴⁵ UN General Assembly 2018a, art. 2h.

2

GLOBAL FRAMEWORK: WHAT ARE THE STANDARDS THAT PROTECT WOMEN'S LAND RIGHTS?



Lack of access to land and other productive resources has a negative impact on women's enjoyment of human rights. Moreover, the violation of certain human rights, such as the rights to information, expression, participation, association, education and freedom from violence, prevent women from accessing land and other productive resources.

International legal and policy instruments lay out a clear foundation for women's rights to land and other productive resources. These rights are guaranteed in various international human rights instruments that are detailed below. As underscored by international human rights bodies and mechanisms, States have the obligation to respect (refrain from interfering with the enjoyment of), protect (prevent others from interfering with the enjoyment of) and fulfil (adopt appropriate measures towards the full realization of) human rights related to access, use and control over land and other productive resources. States are also required to ensure equal access to land, housing, property and other productive resources for both women and men.

This chapter provides an overview of international and regional legal and policy instruments that are particularly relevant to women's rights to land and other productive resources. The list of the instruments presented here is not exhaustive but aims to offer a general view of the legal and policy environment regarding women's rights to land.

A. International legal and policy instruments

1. International human rights instruments

Various human rights instruments guarantee women's equal rights related to access, use and control over land.

The **Universal Declaration of Human Rights**, in its Article 2, sets out the principle of non-discrimination, including based on sex, in the enjoyment of rights guaranteed in the Declaration. Among many other rights, the Declaration recognizes the rights to property, food, housing and education.

The **International Covenant on Civil and Political Rights**, in its article 3, guarantees equality between women and men, and it prohibits discrimination based on sex, among other grounds, in its article 2. The Covenant also recognizes the rights to life, private and family life, liberty and security of person; to equality before the courts and tribunals and equal protection of the law; to information; to freedom of movement, association, assembly and expression; to freedom from torture and cruel, inhuman

or degrading treatment; to self-determination; to participate in public affairs; and to remedies.

Article 3 of the **International Covenant on Economic, Social and Cultural Rights** similarly calls on States parties to "undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant" and prohibits discrimination based on sex. The Covenant also recognizes the rights to food, housing, education, health, culture, work and association (trade unions).

The **Convention on the Elimination of All Forms of Discrimination against Women** calls on States parties to end discrimination against women in laws, policies and practices, including through the adoption of temporary special measures. Its article 2 obliges States to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against women". Article 5 provides for States' obligation to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices

CASE 1

The United Nations Committee on the Elimination of Discrimination against Women, *Cecilia Kell v. Canada*

In this case, the Committee found that Canada had violated articles 2 (d) and (e) and 16.1 (h) read in conjunction with article 1 of the Convention by failing to prevent the eviction of an aboriginal woman from her house while she was seeking protection in a domestic violence shelter. The Committee recommended, inter alia, that Canada compensate the victim and provide her with adequate housing and recruit and train more aboriginal women to provide legal aid to women from their communities, including on domestic violence and property rights.

(UN CEDAW 2012)

which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women”. Its article 14.2 stipulates States’ obligation to eliminate discrimination against women in rural areas in participating in and benefitting from rural development. This includes the right to education, access to credit and loans, housing and agricultural technologies and the right to participation. Importantly, it also includes guarantees of equal treatment in land and agrarian reform as well as in land resettlement schemes. Article 15.2 obliges States to accord women equal legal capacity in civil matters, in particular “equal rights to conclude contracts and to administer property”. Article 16 calls on States parties to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”. According to article 16.1 (h), States must ensure “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration”.

The **Convention on the Rights of the Child**, the **International Convention on the Elimination of All Forms of Racial Discrimination**, the **Convention**

on the Rights of Persons with Disabilities and the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** also guarantee various rights related to access, use and control over land and other productive resources.

As illustrated below, the bodies that monitor the implementation of the international human rights treaties – including the United Nations Human Rights Committee, the United Nations Committee on the Elimination of Discrimination against Women⁴⁶ and the United Nations Committee on Economic, Social and Cultural Rights⁴⁷ – frequently call on States parties to ensure women’s human rights related to access, use and control over land and other productive resources⁴⁸ in relation to the implementation of treaties concerned.

Land and human rights

At the time of writing, the United Nations Committee on Economic, Social and Cultural Rights was developing a general comment on economic, social and cultural rights and the governance of land tenure.⁴⁹ Once adopted, the general comment is expected to provide articulation of State obligations on economic, social and cultural rights in the context of the governance of land tenure as well as guidance on how to protect and promote such rights in relation to land.

Principle of non-discrimination in relation to land

In its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, the United Nations Committee on Economic, Social and Cultural Rights states that “eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer

⁴⁶ See also UN CEDAW 2019a, 2019b, 2019c, 2019d, 2019e.

⁴⁷ See also UN CESCR 2001, 2003, 2008.

⁴⁸ See also articles 13, 14 (2), 15 (2) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly 1979) and article 11 of the International Covenant on Economic, Social and Cultural Rights (UN General Assembly 1996).

⁴⁹ OHCHR 2019.

historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes that cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.” For indigenous women, this means addressing systemic forms of continuing discrimination related to States’ dispossession of indigenous peoples’ lands, territories and resources.⁵⁰

Equality in marriage

The United Nations Committee on the Elimination of Discrimination against Women, the United Nations Committee on Economic, Social and Cultural Rights and the United Nations Human Rights Committee have explicitly recognized equality in marriage over the management of property, including lands.

In its general recommendation No. 21 (1994) on equality in marriage and family relations, the United Nations Committee on the Elimination of Discrimination against Women underscored that “the right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence, and in many countries will be critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and for her family”. It also stated that in countries undergoing agrarian reform or land redistribution “the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed.” The Committee remarked:

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women

⁵⁰ UN CESCR 2009.

CASE 2

The United Nations Committee on the Elimination of Discrimination against Women has issued a number of recommendations to specific States to address discrimination against women with regard to land, inheritance and property

In 2017, it recommended that Kenya recognize the principle of equality in all areas of marriage, including property; reinstate the requirement of spousal consent for any transactions related to marital property in the *Land Laws (Amendment) Act* of 2016, repeal the Law of Succession and ensure equal rights between men and women with regard to inheritance (UN CEDAW 2017b). In the same year it also issued recommendations to Sri Lanka, referencing the SDGs, recommending that it repeal discriminatory provisions of the *Land Development Ordinance* in relation to succession, inheritance and joint ownership; and amend all personal laws by removing discriminatory provisions regulating ownership, inheritance, transfer and disposal of land (UN CEDAW 2017c). It also expressed its concern that Vanuatu’s customary land ownership system does not guarantee women’s equal right to land ownership and inheritance.

(UN CEDAW 2016b)

are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.⁵¹

The Committee has also specifically recognized that

in many States, including those where there is a community property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman’s ability

⁵¹ UN CEDAW 1994, para. 35. See also UN CEDAW 1994, paras. 7-8, 26-29 and 30-34, as well as UN CEDAW 2010, paras. 26, 34, 47-48 and 51-53.

CASE 3

The United Nations Human Rights Committee, *views, Avellanal v. Peru*

In this case, the petitioner challenged the application of article 168 of the Peruvian Civil Code, which stipulated that when a woman is married only the husband is entitled to represent matrimonial property before the Courts. The Committee found that this provision contravened Peru's obligations under the International Covenant on Civil and Political Rights.

(UN Human Rights Committee 1988)

to control disposition of the property and the income derived from it." The Committee has noted that discriminatory practices that prevent women from acquiring ownership of land are prohibited – for example, practices authorizing only the "head of household" to sign official documentation such as landownership certificates and receive pieces of land from the government. It has urged governments to abolish the concept of head of household in administrative practices and recognize joint or co-ownership of land as well as to amend national legislation to ensure joint or co-ownership.⁵²

In 2013, the Committee further elaborated on the economic consequences of marriage, family relations and their dissolution in its general recommendation No. 29. The Committee called on States parties to "provide for separating the principles and procedure dissolving the marriage relationship from those relating to the economic aspects of the dissolution. Free legal aid should be provided for women without the means to pay for court costs and attorney fees, so as to ensure that no woman is forced to forgo her economic rights to obtain a divorce" (para. 42). The Committee also reminded States that they are "obligated to provide, on divorce and/or separation, for equality between the parties in the division of all property accumulated during the marriage. States parties

⁵² UN CEDAW 1994, para. 31. See also UN CEDAW 2017c, paras. 38-39.

should recognize the value of indirect, including non-financial contributions with regard to the acquisition of property acquired during the marriage." They are also obliged to "adopt laws relating to the making of wills that provide equal rights to women and men as testators, heirs and beneficiaries". Regarding intestate succession, the Committee also called on States parties to adopt laws that ensure, inter alia, the prohibition of disinheritance of the surviving spouse and the criminalization of property dispossession/grabbing.⁵³

Earlier on, in its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the United Nations Committee on Economic, Social and Cultural Rights stated that "women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so".⁵⁴

In 2000, building on its jurisprudence,⁵⁵ the United Nations Human Rights Committee, in its general comment No. 28 on equality of rights between men and women, stated that "the capacity of women to own property ... may not be restricted on the basis of marital status or any other discriminatory ground" and that States parties must ensure that the "matrimonial regime contains equal rights and obligations for both spouses with regard to ... the ownership or administration of property, whether common property or property in the sole ownership of either spouse".⁵⁶

Rural development

In 2016, in its general recommendation No. 34 on the rights of rural women, the United Nations Committee on the Elimination of Discrimination against Women clarifies States parties' obligations to ensure the

⁵³ UN CEDAW 2013.

⁵⁴ UN CESCR 2005, para. 28. See also UN CESCR 1997, para. 10.

⁵⁵ Earlier, in the United Nations Human Rights Committee 1990, the Committee underscored that "during marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, [...] and administration of assets."

⁵⁶ UN Human Rights Committee 2000.

rights of rural women and considers rural women's rights to land and natural resources as fundamental human rights. It clarifies that under the Convention, States parties have legal obligations to:

- take all measures, including temporary special measures, necessary to achieve the substantive equality of rural women in relation to land and natural resources, and design and implement a comprehensive strategy to address discriminatory stereotypes, attitudes and practices that impede their rights to land and natural resources;
- pay special attention to customary systems, which often govern land management, administration and transfer, and ensure that they do not discriminate against rural women;
- raise awareness about rural women's rights;
- ensure that legislation guarantees rural women's rights to land, water and other natural resources on an equal basis with men, irrespective of their civil and marital status or of a male guardian or guarantor, and that rural women have full legal capacity.

The Committee also recommends that indigenous women in rural areas have equal access with indigenous men to ownership and possession of and control over land, water, forests, fisheries, aquaculture and other resources that they have traditionally owned, occupied or otherwise used or acquired, including by protecting them against discrimination and dispossession.⁵⁷

Prohibition of forced evictions

The United Nations Committee on Economic, Social and Cultural Rights, in its general comment No. 7 (1994) on the right to adequate housing – forced evictions, elaborated on standards for the prohibition of forced evictions. It recognizes that “Women in all groups are especially vulnerable [to forced eviction] given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including home ownership) or rights of access to property or accommodation, and

their particular vulnerability to acts of violence and sexual abuse when they are rendered homeless”.⁵⁸

Right to food

In its general comment No. 12 (1999) on the right to adequate food, the United Nations Committee on Economic, Social and Cultural Rights observed that availability in the context of the right to food “refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand”. The Committee specifically notes that national strategies to implement the right to food “should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; ... maintaining registries on rights in land (including forests).”⁵⁹

Climate change

In its general recommendation No. 37 on gender-related dimensions of disaster risk reduction in the context of climate change, the United Nations Committee on the Elimination of Discrimination against Women recognizes that States have an obligation to promote and protect women's equal rights to land and natural resources and to take positive measures to guarantee the availability and accessibility of these rights.⁶⁰ The general recommendation articulates how women's lack of access to land, secure land tenure and other productive resources increase their vulnerability to climate change and how their right to land should be protected and promoted in the context of disaster risk reduction.

⁵⁷ UN CEDAW 2016a.

⁵⁸ For more about the gendered impact of forced eviction, see, OHCHR 2012a.

⁵⁹ UN CESCR 1999, paras. 12 and 26.

⁶⁰ UN CEDAW 2018, para. 72 (a).

The **United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas** (adopted by the United Nations General Assembly in 2018)⁶¹ recognizes that “[p]easants and other people living in rural areas have the right to land, individually and/or collectively, [...], including the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living, to have a place to live in security, peace and dignity and to develop their cultures”. It further recognizes that “peasant women and other women working in rural areas enjoy without discrimination” the right to “equal access to, use of and management of land and natural resources, and to equal or priority treatment in land and agrarian reform and in land resettlement schemes”. The provisions of the Declaration, in particular those pertaining to land, are of particular interest in the realization of the rights of peasant women and women working in rural areas to land and natural resources.

The **United Nations Declaration on the Rights of Indigenous Peoples** (2007) provides that indigenous peoples have the right to the lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired and that States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned. The Declaration also provides that indigenous women shall be protected from discrimination and that particular attention shall be paid to their rights and special needs.

The **Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) of the International Labour Organization (ILO)**, adopted in 1989, provides that “the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized”.⁶² In addition, the principle of “free, prior and informed consent” provides that indigenous

communities have the right to give or withhold consent to any proposed projects that may affect the lands they customarily use, own or occupy. This principle is also acknowledged in several international human rights instruments, including the United Nations Declaration on the Rights of Indigenous Peoples.

The **United Nations Guiding Principles on Business and Human Rights**, a set of soft law principles endorsed by the United Nations Human Rights Council in 2011, are directed at States and business enterprises. The Guiding Principles clarify States’ respective duties and responsibilities to protect and respect human rights in the context of business activities and to ensure access to an effective remedy for individuals and groups affected by such activities. States and business enterprises should also comply with the Guiding Principles in their activities in relation to land, including in their value chains. The gender guidance for the Guiding Principles,⁶³ issued by the Working Group on Business and Human Rights in 2019, provides further guidance on how to apply a gender lens to their implementation.

2. International policy instruments, principles, guidelines and recommendations

International policy instruments

Key international policy instruments relevant to women’s rights and gender equality call for the protection and promotion of women’s equal land rights. The **Beijing Declaration and Platform for Action**, adopted at the Fourth World Conference on Women in 1995 – the most comprehensive set of policy commitments made by States on gender equality, the empowerment of women and women’s rights – called on governments to enable women to obtain affordable housing and access to land and to undertake legislative and administrative reforms to give women equal access to economic resources, including the right to inheritance

⁶¹ UN General Assembly 2018a.

⁶² ILO 1989.

⁶³ UN Human Rights Council 2019b, Annex.

and ownership of land and other property.⁶⁴ The **International Conference on Population and Development** (Cairo, 1994) also called on governments to promote and strengthen women's access to productive resources, their ability to own land and their right to inherit property.⁶⁵

International policy instruments on sustainable development, habitat and food security also set the achievement of gender equality in land rights as a policy priority. At the **United Nations Conference on Sustainable Development** ("Rio+20") in 2012, Heads of State and Government resolved to "undertake legislative and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology". The **New Urban Agenda** (Habitat III), endorsed by the United Nations General Assembly in 2016, envisions cities and human settlements that achieve gender equality and increased tenure security for all that is gender-responsive, paying particular attention to security of land tenure for women as key to their empowerment.⁶⁶ Earlier, Habitat II in 1996 called on States to support community projects, policies and programmes that aim to remove all barriers to women's access to affordable housing and property ownership; promote awareness campaigns, education and enabling practices regarding legal rights with respect to tenure, land ownership and inheritance for women; and promote mechanisms for the protection of women who risk losing their homes on the death of their husbands.⁶⁷ In the **Plan of Action of the World Food Summit** in 1996, governments pledged to "promote women's full and equal participation in the economy, and for this purpose introduce and enforce gender-sensitive legislation providing women with secure and equal

access to and control over productive resources including credit, land and water".⁶⁸

The **Declaration and Programme of Action of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance** (2001) recognizes the rights of indigenous peoples and people of African descent relevant to their ancestral lands.⁶⁹

A number of principles, guidelines and recommendations are available for protecting and promoting women's land rights, as illustrated below.

Land tenure

Housing, land and property are interconnected and addressed together in many international human rights standards.⁷⁰ For example, the **Guiding Principles on Security of Tenure of the Urban Poor** (2013), developed by the Special Rapporteur on adequate housing, provide that States and other relevant actors strengthen diverse forms of tenure and prioritize the tenure arrangements of the most vulnerable and marginalized. They also provide that States take measures to improve security of tenure, promote the social function of property and ensure access to justice. Principle 6 guides States to combat discrimination on the basis of tenure and promote women's de facto and de jure equality, "regardless of age, civil, marital or social status and independent of the relationship with male household or community members".⁷¹

The **Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests** in the Context of National Food Security, under the auspices of the Committee on World Food Security in 2012, are the first guidance on the governance of land negotiated by States internationally.⁷² They reiterate the principle of gender equality, calling on States to "ensure that women and girls have equal tenure rights and access to land, fisheries

⁶⁴ United Nations 1995, chap. I, resolution 1, annex II, paras. 58 (m), 61 (b) and 165 (e).

⁶⁵ United Nations 1994, chap. I, resolution 1, annex, para. 3.18.

⁶⁶ UN General Assembly 2017, para. 35.

⁶⁷ United Nations 1996, chap. I, resolution 1, annex II, para. 78 (b), (e) and (g).

⁶⁸ FAO 1996, part one, appendix, objective 1.3 (b).

⁶⁹ United Nations 2002a.

⁷⁰ See also OHCHR 2012a.

⁷¹ UN Human Rights Council 2013a.

⁷² FAO 2012.

and forests independent of their civil and marital status” and provide guidance on various aspects of the governance of tenure with reference to the principle of gender equality. On indigenous women specifically, they provide that “indigenous peoples and other communities with customary tenure systems that exercise self-governance of land, fisheries and forests should promote and provide equitable, secure and sustainable rights to those resources, with special attention to the provision of equitable access for women. Effective participation of all members, men, women and youth, in decisions regarding their tenure systems should be promoted through their local or traditional institutions, including in the case of collective tenure systems.” To assist in the implementation of the Guidelines towards the achievement of responsible gender-equitable governance of land tenure, the Food and Agriculture Organization (FAO) developed a guide, *Governing Land for Women and Men* (2013).⁷³ Similarly, *Safeguarding Land Tenure Rights in the Context of Agricultural Investment* (2015) provides guidance on how to manage agricultural investment while respecting human rights.⁷⁴

Land and conflict

The **Guidance Note of the Secretary General on “The United Nations and Land and Conflict”** was issued in 2019.⁷⁵ It provides detailed guidance on human rights-based and gender-responsive approaches to land and conflict, inter alia:

- United Nations support should incorporate gender-responsive approaches to promote women’s rights to own, access, control and inherit land, particularly in the context of United Nations assistance to national dialogues, transitional justice and legal reform initiatives. Support should include domesticating land-related gender-responsive international standards; protecting women’s access to land, particularly during restitution processes; and ensuring due attention is given to enforcement measures.

⁷³ FAO 2013.

⁷⁴ FAO 2015.

⁷⁵ United Nations 2019.

- Incorporate in the United Nation’s assessment and planning, specific land-related aspects for women relating to ownership, access to and control over land, inheritance and family law on death and divorce.

Forced eviction and displacement

The **Basic Principles and Guidelines on Development-based Evictions and Displacement** (2007),⁷⁶ developed by the then Special Rapporteur on adequate housing, address the human rights implications of development-linked evictions and related displacement in rural and urban areas. They include specific references to women’s human rights and gender equality requirements. For example, they encouraged States to “adopt and implement special measures to protect women from forced eviction” and to take into account the differential impacts of forced evictions on women when conducting an impact assessment.

The 2005 **Principles on Housing and Property Restitution for Refugees and Displaced Persons** (“the Pinheiro Principles”), endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, are designed to protect the rights of refugees and displaced persons and recognize the principle of gender equality. They encourage States to “ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.”⁷⁷

The **Guiding Principles on Internal Displacement** (1998) address the specific needs of internally displaced persons and include provisions on women’s land rights. For instance, the Guiding Principles provide that “the authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation.”⁷⁸

⁷⁶ UN Human Rights Council 2007, annex I.

⁷⁷ ECOSOC 2005, principle 4.

⁷⁸ ECOSOC 1998.

The **Madrid International Plan of Action on Ageing** and the Political Declaration (2002) calls for action to “[p]rovide legal advice and information to older persons in situations of displacement and dispossession of land and other productive and personal assets”.⁷⁹

Food security

In 2010, the then Special Rapporteur on the right to food articulated States’ obligations to respect, protect and fulfil in the context of the right to food and land as “the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people’s access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil)”. He also observed that “there remain laws and social customs such as those ensuring that the land of a deceased husband belongs to his sons, not to his widow, despite the flagrant violation of women’s rights to which this leads” and “as a result, women still represent a significant minority of the total number of titleholders ...”.⁸⁰

In his report on women’s rights and the right to food in 2012, the then Special Rapporteur discussed the threats to women’s right to food, identifying the areas that demand the most urgent attention, such as ensuring women’s access to productive resources. He reviewed the main obstacles that women face in accessing land, extension services and credit. He also noted that “in order to make a stronger contribution to poverty alleviation and to women’s empowerment, agriculture research and development could take into account the specific constraints faced by women and their preferences”. Finally, he highlighted the importance of involving women in the design, implementation and assessment of all policies.⁸¹

In “**Large-Scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge**” (2009), he recommended including sex-disaggregated data in impact assessments.⁸²

The **Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security**, adopted by the FAO Council in 2004, also refer explicitly to land in the context of the right to food. In particular, guideline 8 (access to resources and assets) encourages States to “respect and protect the rights of individuals with respect to resources such as land, ... without discrimination” and, where necessary and appropriate, to “carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land ...”. It also provides that “States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit.”⁸³

HIV and AIDS

The **International Guidelines on HIV/AIDS and Human Rights** (2006) provide that “anti-discrimination and protective laws should be enacted to reduce human rights violations against women in the context of HIV, so as to reduce the vulnerability of women to infection by HIV and to the impact of HIV and AIDS. More particularly, laws should be reviewed and reformed to ensure equality of women regarding property and marital relations and access to employment and economic opportunity. This would allow for discriminatory limitations to be removed on rights to own and inherit property, enter into contracts and marriage, obtain credit and finance, initiate separation or divorce, equitably share assets on divorce or separation, and retain custody of children.”⁸⁴

⁷⁹ United Nations 2002b.

⁸⁰ UN General Assembly 2010, paras. 2 and 31.

⁸¹ UN Human Rights Council 2012.

⁸² UN Human Rights Council 2009.

⁸³ FAO 2004.

⁸⁴ OHCHR and UNAIDS 2006.

3. The 2030 Agenda for Sustainable Development

The 2030 Agenda for Sustainable Development, adopted in 2015, is grounded in the Universal Declaration of Human Rights and international human rights treaties and informed by international human rights standards derived from such treaties. The 2030 Agenda is expected to be implemented in a manner consistent with these international human rights standards. The 17 Sustainable Development Goals (SDGs) seek to realize the human rights of all and are universally applicable to all people in all countries – leaving no one behind. The efforts being made to attain the Goals provide excellent opportunities to enable women and girls, who face multiple and intersecting forms of discrimination, to enjoy their rights to land and other productive resources.



The 2030 Agenda provides for realizing women’s land rights under SDG 5 to achieve gender equality and empower all women and girls, specifically through target 5a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.



Women’s land rights are also covered in SDG 1 to end poverty in all its forms everywhere, and related target 1.4: By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.



SDG 2 to end hunger, achieve food security and improved nutrition and promote sustainable agriculture addresses women’s land rights through target 2.3: By 2030, double the agricultural productivity and incomes of small-scale food

producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.



Other goals and targets are relevant to achieving equal land rights for women, including SDG 10 to reduce inequality within and among countries and target 10.3: Ensure equal opportunity and reduce inequalities of outcome, including by eliminating discriminatory laws, policies and practices and promoting appropriate legislation, policies and action in this regard.



Also pertinent is SDG 16 to promote the rule of law at the national and international levels and ensure equal access to justice for all and target 16.3: Promote the rule of law at the national and international levels and ensure equal access to justice for all.



Considering the global nature of the risks and obstacles to women’s land rights, targets set out under SDG 17 on finance, technology, capacity-building, trade and systemic issues are also relevant to the realization of women’s land rights.



As illustrated in Chapter 1, attainment of the above-mentioned Goals, together with the principle of leaving no one behind, further contribute to the attainment of other SDGs, such as Goals 3, 6, 7, 9, 11, 12, 13, 14 and 15, and possibly more.

B. Regional legal and policy frameworks

Africa

Legal instruments

Several provisions of the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** (2003) address women's land and property rights. State parties are required to ensure that in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage; grant to women, whatever their marital status, access to adequate housing; promote women's access to and control over productive resources such as land; and guarantee their right to property (arts. 7, 16 and 19). The Protocol also provides that a widow has the right to an equitable share in the inheritance of the property of her husband, and that women and men have the right to inherit, in equitable shares, their parents' properties (art. 21). In addition, the Protocol requires that State parties "take appropriate measures to ... provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food" in the context of women's right to food security (art. 15).⁸⁵

Policy instruments

In 2017, through the **African Union's Declaration on Land Issues and Challenges in Africa**, African States have resolved to "strengthen security of land tenure for women [who] require special attention".⁸⁶

The **Guiding Principles on Large Scale Land Based Investments in Africa** (2014) are based on a key recommendation of the **Nairobi Action Plan on Large Scale Land-Based Investments in Africa**,⁸⁷ adopted at the High Level Forum on Foreign Direct Investments in Land in Africa in 2011. Among the six fundamental principles, the fourth is to: "respect the land rights of women, recognize their voice,

generate meaningful opportunities for women alongside men, and do not exacerbate the marginalization of women."⁸⁸ This yields three guiding principles that refer to promoting gender equality in land governance as a means to ensure that large scale land based investments (LSLBI) promote sustainable development; LSLBI respect women's equal rights to own, access, control, and use land under different tenure regimes; and LSLBI contribute to sustainable development through employment and wealth creation benefitting women.

The **Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights**, adopted by the African Commission on Human and Peoples' Rights in 2010, recognize the principle of gender equality and women's equal rights to property and land.⁸⁹ Among other provisions, they specify that African States are obliged to "ensure equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women. This includes the obligation to take measures to modify or prohibit harmful social, cultural or other practices that prevent women and other members of vulnerable and disadvantaged groups from enjoying their right to property, particularly in relation to housing and land" (para. 55 (viii)).

The African Union Commission, the United Nations Economic Commission for Africa and the African Development Bank developed the **Framework and Guidelines on Land Policy in Africa**, which were adopted by the African Union in 2009. These state that "[b]etter and more productive use of land requires that the land rights of women be strengthened through a variety of mechanisms including the enactment of legislation that allows women to enforce documented claims to land within and outside marriage. This should come hand in hand with equal rights for women to inherit and bequeath land, co-ownership of registered land by spouses and the promotion of women's participation in land administration structures. To ensure full

⁸⁵ African Union 2003.

⁸⁶ African Union 2017.

⁸⁷ African Union et al. 2011.

⁸⁸ African Union et al. 2014.

⁸⁹ African Commission on Human and People's Rights 2010.

CASE 4

Maria Eugenia Morales de Sierra v. Guatemala, the Inter-American Commission on Human Rights

In this case, the petitioner challenged the Guatemalan Civil Code, which conferred the power to represent the marital union on the husband and empowered him to administer marital property. The Commission found those provisions to be in contravention of the obligations of Guatemala under the American Convention on Human Rights.

(Inter-American Commission on Human Rights 2001)

enjoyment of land rights, these measures must be part of an ideology that removes issues regarding the land rights of women from the private sphere of marriage and family, and places them in the public domain of human rights.”⁹⁰

Asia-Pacific

Policy instrument

In 2012, the Association of Southeast Asian Nations (ASEAN) adopted the **ASEAN Human Rights Declaration**,⁹¹ which recognizes the right to adequate and affordable housing.

Europe

Legal instrument

Article 17 of the **Charter of Fundamental Rights of the European Union** (2012) provides that “everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss.” The prohibition of discrimination “based on any ground such as sex, race, colour, ethnic or social

⁹⁰ African Union Commission et al. 2010.

⁹¹ Association of Southeast Asian Nations 2012.

origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation” is stated in article 21.⁹²

Article 1 of **Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1952)** states that “every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” Article 14 of the Convention sets out the principle of non-discrimination on any ground “such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.⁹³

Policy instruments

The **Recommendation of the Commissioner for Human Rights of the Council of Europe on the Implementation of the Right to Housing** of 30 June 2009 states that “equal access to credit and finance, equal rights in respect of inheritance of land and property and the elimination of gender-biased customs and traditions that hinder women’s enjoyment of housing rights are critical issues. Laws and policies must be articulated and implemented in ways that recognise the specific constraints and vulnerabilities of women in relation to the right to housing.” The Recommendation also calls on States to “ensure that domestic violence laws include provisions to protect women’s right to housing, including the right to privacy and security”.⁹⁴

Arab region

Legal instrument

Article 31 of the **Arab Charter on Human Rights** (2004), adopted by the Council of the League of Arab States, declares that “everyone has a

⁹² European Parliament et al. 2012.

⁹³ Council of Europe 1952.

⁹⁴ Council of Europe Commissioner for Human Rights 2009, sects. 4.3.6 and 5 (6). See also Council of Europe 2011.

guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property". According to article 3, each State "undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability" and "pledges to take all the requisite measure to guarantee equal opportunities and effective equality between men and women ...".⁹⁵

The Americas

Legal instrument

Article 1 (1) of the **American Convention of Human Rights** (1969) provides for the principle of non-discrimination in the enjoyment of the rights recognized under the Charter.⁹⁶ In an Advisory Opinion on Costa Rica in 2017 on obligations regarding gender identity and same-sex partnerships, the Inter-American Court of Human Rights stated that this article prohibits discrimination based on the grounds of sexual orientation, gender identity or gender expression. It also advised that under articles 1, 11, 17 and 24, a State must recognize same-sex couples in the same way it does heterosexual couples, including with regards to property, inheritance and succession.⁹⁷

In 2001, the Inter-American Commission on Human Rights found that a law that privileges the husband in the administration marital property is a violation of the Convention (see Case 4).⁹⁸

⁹⁵ League of Arab States 2004.

⁹⁶ Organization of American States 1969.

⁹⁷ Corte Interamericana de Derechos Humano 2017.

⁹⁸ Inter-American Commission on Human Rights 2001.

Policy instruments

In *The Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights* adopted in 2011, the Inter-American Commission on Human Rights sets out a number of priority measures that States should take to ensure women's equal access to and control over economic and financial resources, including land, property and housing, such as adopting legislative measures and creating the conditions that will enable women to have full access to and control over their economic resources, unencumbered by any form of discrimination; reviewing any laws and policies that might have a discriminatory impact on women in terms of their access to and control over economic resources, both within and outside of marriage; and guaranteeing adequate and effective judicial remedies to enable women to report violations of their right of access to and control over economic resources.⁹⁹

In consensus documents adopted by the **Regional Conference on Women in Latin America and the Caribbean**,¹⁰⁰ States agreed to formulate and implement public policies to broaden sustainable access for women to land ownership and access to water, other natural and productive resources, services, financing and technologies;¹⁰¹ ensure women's access to productive assets, including land and natural resources, and to productive credit in both urban and rural areas;¹⁰² and adopt an approach of gender, race and ethnic equality and the corresponding measures in relation to economic, fiscal and tax policy, agrarian reform and access to ownership of land, housing and other productive assets in order to ensure the equitable distribution of wealth.¹⁰³

⁹⁹ Inter-American Commission on Human Rights 2011, para. 331.

¹⁰⁰ ECLAC undated.

¹⁰¹ ECLAC 2007.

¹⁰² ECLAC 2010.

¹⁰³ Ibid.

3

HOW CAN WE PROTECT WOMEN'S RIGHTS TO LAND?



In order to create effective solutions that work for women, embracing an overarching gender-responsive and human rights-based framework is essential. A gender-responsive and human rights-based approach has been taken in the formulation of the recommendations contained in this publication, which are also informed by good practices to secure women's rights to land and other productive resources.

This chapter summarizes key elements of this approach. It also illustrates how these human rights principles are relevant to the 2030 Agenda for Sustainable Development.

Gender-responsive laws, policies, programmes and public services are formulated and/or delivered in ways that take into account gender inequalities and respond proactively to overcome and eliminate such inequalities in order to achieve gender equality, women's rights and women's empowerment.

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.¹⁰⁴ Solutions must reflect international human rights standards, take due consideration of the specific needs of women, promote women's rights, ensure that women are able to meaningfully participate at all stages, guarantee that women are empowered to know and claim their rights and provide for accountability and access to remedies in cases where rights may have been violated.¹⁰⁵

Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations of States established by international law. Responsibilities of business enterprises, as articulated in the United Nations Guiding Principles on Business and Human Rights, should also be taken into consideration. This approach should also be applied to laws and regulations related to development issues. It helps to promote the sustainability of development work, empowering

people – especially the most vulnerable and marginalized – to participate in policy formulation and hold accountable those who have a duty to act. People are accordingly recognized as key actors in their own development rather than as passive recipients of commodities and services.

This approach helps to identify rights-holders and their entitlements and corresponding duty-bearers and their obligations. It promotes strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. Under such an approach to development, the main objective while developing laws, policies and programmes should be the fulfilment of human rights. Legislation, policies and programmes should also address practices and traditions that discriminate against women.

Principles and standards derived from international human rights instruments should guide legislation and policy processes as well as programming in all sectors, including land and other productive resources, and in all phases of the programming process: assessment and analysis, programme planning and design (including setting of goals, objectives and strategies), budgeting and financing, implementation, monitoring (including the use of disaggregated human rights indicators) and evaluation.¹⁰⁶

The human rights principles and standards relevant to women's land right are listed in Box 5 and

¹⁰⁴ The general information on the human rights-based approach concept and on some of the principles contained in this publication is based on OHCHR 2006.

¹⁰⁵ See also UNDG 2003.

¹⁰⁶ For more information on the use of human rights indicators as tools to measure progress, see OHCHR 2012b.

explored below.¹⁰⁷ The integrated approach of the 2030 Agenda and the Sustainable Development Goals (SDGs) resonates with these human rights principles, and illustrative links to the SDGs are indicated under each.

Universality and inalienability

Human rights, including those related to access, use and control over land, are universal and inalienable. As stated in Article 1 of the Universal Declaration of Human Rights, “all human beings are born free and equal in dignity and rights”. All people everywhere in the world are entitled to them. The human being to whom they belong cannot voluntarily give them up and nor can others take them away from her or him.

The Universal Declaration of Human Rights is a basis for the 2030 Agenda. Different from the previous Millennium Development Goals (MDGs), the SDGs involve the entire world, developed and developing countries alike.¹⁰⁸

Indivisibility, interdependence and interrelatedness

Human rights are indivisible. Whether of a civil, cultural, economic, political, social or environmental nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights and cannot be ranked in a hierarchical order. This applies also to women’s human rights related to access, use and control over land.

The realization of one right often depends, wholly or in part, on the realization of other rights. For instance, women’s rights related to access to, control over and use of land, including rights to food, housing and property, are integrally related to women’s right to full equality under the law, which requires

¹⁰⁷ The following principles were included in *The Human Rights-based Approach to Development Cooperation* (UNDG 2003): universality and inalienability; indivisibility; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; accountability and rule of law.

¹⁰⁸ See for example, para. 5 of UN General Assembly 2015a.

that women have legal capacity to own, administer and manage property, as well as women’s right to a life free from violence.

The principles of indivisibility, interdependence and interrelatedness also resonate with the integrated approach adopted by the 2030 Agenda and the interconnections among the various Goals.¹⁰⁹ The 2030 Agenda also provides a pathway for addressing collective rights, such as the right to development and human rights relevant to the protection of the environment.

Equality and non-discrimination

All individuals are equal and are entitled to their human rights relevant to access, use and control over land without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status, as explained by the human rights treaty bodies.

States must adopt all appropriate measures to eliminate discrimination against women in access, use and control over land and other productive resources; this includes also the adoption of temporary special measures.¹¹⁰ Both formal (de jure) and substantive (de facto) discrimination should be eliminated (see Box 2). Eliminating formal discrimination requires ensuring that a State’s constitution, laws and policy documents do not discriminate on prohibited grounds. For example, laws should protect women’s equal rights to own, inherit and administer property and land individually and collectively. Eliminating discrimination in practice requires more than just laws, however. Practices, customs and traditions that discriminate against women should also be eliminated, and special measures may be required to facilitate social and cultural changes that enable women to claim these rights. States also have to properly tackle the multiple and intersecting forms of discrimination suffered by many women – for example, older women,

¹⁰⁹ See, for example, paras. 5 and 7 of UN General Assembly 2015a.

¹¹⁰ UN General Assembly 1979, art. 4.

women with disabilities, women living with or affected by HIV, indigenous women, peasant women, refugee or displaced women or women belonging to minority communities.

This principle is a basis for the 2030 Agenda's commitment to leave no one behind.¹¹¹ SDGs 5 and 10, as well as SDG 16 (target 16.b), underscore the importance of this principle for achieving sustainable development.

Participation and inclusion

Every person is entitled to active, free and meaningful participation in, contribution to and enjoyment of civil, economic, social, cultural and political development for the realization of human rights.

The principles of participation and inclusion have to be considered in all phases of the legislation, policy and programming processes: assessment and analysis, programme planning and design, budgeting and financing, implementation and monitoring and evaluation. Access to information, as well as meaningful consultation and participation in decision-making relevant to access, use and control over land, should be equally guaranteed for both women and men.

SDGs 5 (target 5.5) and 16 (target 16.7), for example, reflect the relevance of this principle for achieving sustainable development.

Impact assessment and due diligence

Decisions related to land can have profound impacts on the livelihood and living conditions of individual and communities. States need to assess the impact of laws, policies and programmes, in particular their specific impact on women's rights and gender equality, before, during and after their implementation. Agreements between companies and States on land and natural resources need to be assessed with similar precautions. When

negative impacts are identified, corrective actions should be taken to avoid human rights violations and, in cases where breaches of human rights have occurred, remedies should be provided.

The United Nations Guiding Principles on Business and Human Rights¹¹² provide guidance for States and business enterprises on how to protect and respect human rights in business activities, including through the use of human rights impact assessments, and how to ensure remedies in case of breaches. Businesses need to carry out human rights due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, including women's access to, use of and control over land and other productive resources.

Accountability and rule of law

When human rights violations and abuses occur within their territory and/or jurisdiction, including in the context of business activities, States must take appropriate steps to ensure through judicial, administrative, legislative or other appropriate means that those affected have access to effective remedy.¹¹³ Thus, when women's rights related to access, use and control over land and other productive resources are adversely affected, States must investigate, punish and redress such violations or abuse. In all cases, aggrieved rights-holders should have access to effective judicial mechanisms to institute proceedings for appropriate redress. Additionally, States should provide

¹¹¹ See, for example, para. 4 of UN General Assembly 2015a.

¹¹² OHCHR 2013.

¹¹³ The OHCHR Accountability and Remedy Project (ARP I) addresses enhancing the effectiveness of judicial mechanisms for business-related harm. UN Human Rights Council 2016a, 2016b.

effective and appropriate non-judicial grievance mechanisms¹¹⁴ and facilitate access to effective non-State-based grievance mechanisms¹¹⁵ dealing with business-related human rights harms. Aggrieved rights-holders should be able to choose the grievance mechanism most appropriate for their circumstances and should not be precluded from accessing judicial mechanisms as a condition of engaging with non-judicial remedial options.

States should establish appropriate monitoring mechanisms and provide effective and gender-responsive remedies as a matter of priority to properly comply with their obligations of respecting and protecting human rights relevant to access, use and control over land.¹¹⁶ While States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction, they are not generally prohibited from doing so, provided there is a recognized jurisdictional basis. Within these parameters, some human rights treaty bodies recommend that States take steps to prevent abuse abroad by business enterprises within their jurisdiction,¹¹⁷ and the Working Group on Business and Human Rights has urged States to create mechanisms and processes to redress extraterritorial adverse impacts caused,

or contributed to, by business enterprises domiciled in their jurisdiction.¹¹⁸

The 2030 Agenda also underscores the importance of this principle in, for example, SDG 16 (target 16.4).

Transparency

States are obliged to implement decision-making processes in a transparent manner. Transparency means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement. It also means that enough information is provided and that it is provided in easily understandable forms. This means, for example, that women should have access to information regarding specific land policies, programmes, private-public partnerships or concession contracts that might nullify or impair their enjoyment of the rights to land and other productive resources. Women should also be able to know, for instance, which state authorities are responsible for specific cases and which business enterprises are involved in the specific projects or public-private partnerships relevant to land.

Transparency in the formulation and implementation of public policies empowers the public to access social services, participate in the formulation of policies and demand protection of their rights.¹¹⁹ Facilitating women's access to information is a powerful strategy in protecting their land rights.

The 2030 Agenda also requires the development of effective, accountable and transparent institutions (SDG 16, target 16.6) as a necessary element for sustainable development.

Empowerment

A human rights-based approach is premised on empowering women and men to claim their rights. States are obliged to undertake all necessary measures to empower women so that their land rights

¹¹⁴ For example, State-based non-judicial grievance mechanisms such as the OECD National Contact Point system, or complaint mechanisms set by national human rights institutions or by labour inspectorates. The second phase of OHCHR's Accountability and Remedy Project (ARP II) looked at improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms. UN Human Rights Council 2018a, 2018b.

¹¹⁵ For example, company-based grievance mechanisms or mechanisms of multi-stakeholder initiatives.

¹¹⁶ For example, UN Women et al. 2018 provides guidance on how to develop non-discriminatory and inclusive justice systems, including in the context of land rights. The third phase of OHCHR's Accountability and Remedy Project (ARP III) has been examining how to enhance the effectiveness of non-State-based grievance mechanisms in cases of business-related human rights abuse. See UN Human Rights Council 2020.

¹¹⁷ UN CESCR 2017.

¹¹⁸ UN Human Rights Council 2019b, Annex. See, for example, its para. 50 (c).

¹¹⁹ OHCHR 2007: 5.

are realized on an equal basis with men. Access to education, information and decision-making processes are key to women's empowerment.

SDG 5 (targets 5.5, 5.B and 5.C) provides an entry point for applying this principle.

Sustainability

States should design laws, policies and programmes relevant to access, use and control over land and other productive resources that sustainably ensure the equal enjoyment of human rights by women for both present and future generations.¹²⁰ Sustainability implies that infrastructure and mechanisms critical to the realization of human rights are resourced and maintained. With respect to land, sustainability is also integrally related to environmental protection.

The 2030 Agenda's integrated approach across the three dimensions of sustainable development¹²¹ – economic, social and environmental – provides a strategic channel to realize sustainable and inter-generational enjoyment of human rights.

¹²⁰ For example, UN CESCR 1999, para. 7.

¹²¹ See, para. 2 of UN General Assembly 2015a.

International cooperation

States are obliged to use maximum available resources for the progressive realization of land rights. This includes the use of resources from international cooperation. Development assistance should also contribute to the realization of human rights.

SDG 17 on global partnership of the 2030 Agenda resonates with this principle.

Efforts to apply these human rights principles will help ensure that laws, policies, programmes and activities on women's access to, use of and control over land and other productive resources respect human rights, advance gender equality and are sustainable. The 17 Goals and 169 targets set for the implementation of the 2030 Agenda reflect various elements of these principles and seek to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls.¹²² Attaining these Goals and targets in an integrated and indivisible manner with a strong focus on the principle of leaving no one behind provides a decisive and practical channel to apply a human rights-based and gender-responsive approach to the realization of women's rights to land and other productive resources.

¹²² Preamble of *ibid.*

4 PROMISING PRACTICES: PRACTICAL STEPS TO SECURE WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES



This chapter presents recommendations for realizing women’s rights to land and other productive resources based on promising practices and lessons learned from around the world.

Women’s rights to land rights are being protected and promoted in various contexts. This chapter suggests ways to realize women’s land rights in the context of:

- A. Ensuring women’s land rights in formal laws
- B. Legal systems and access to justice
- C. Marriage and family
- D. Security of tenure and prohibition of forced evictions
- E. Governance, institutions, policies and programmes
- F. Promoting women’s voice, agency and participation
- G. Women facing multiple and intersecting forms of discrimination

Under each context, recommendations for realizing women’s land rights are provided, supplemented with commentaries that include examples of promising practices.

Further technical guidance is contained in the UN Women’s policy guidance tool, “Women’s Land Rights and Tenure Security in the Context of the Sustainable Development Goals (SDGs)”. The tool offers guidance for policymakers, development practitioners, civil society organizations and gender equality advocates on how to make the most of the opportunities provided by the 2030 Agenda to advance women’s land rights, including the various entry points suggested in this chapter.¹²²

A. Ensuring women’s land rights in formal laws

1. Guarantee women’s land rights in the constitution

RECOMMENDATIONS:

National constitutions should:

- Explicitly recognize human rights and gender equality in all domains, including security of tenure in land and housing, and prohibit discrimination in property and inheritance matters.
- Ensure that women’s equal right to access, use and control land and other productive resources

is specifically recognized, including equal rights with men with respect to the acquisition, administration, control, use and transfer of land.

- Recognize that women have an equal and independent right to acquire, administer, control, use and transfer property irrespective of their marital and family status.
- Recognize the right to land of indigenous peoples and of peasants and other people working in rural areas, while ensuring gender equality in the enjoyment of this right, in line with the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas.
- Ensure that discrimination against women is formally prohibited in all areas, including laws, customs and practices.

¹²³ UN Women 2019.

- Ensure that international human rights instruments, such as the Convention on the Elimination of All Forms of Discrimination against Women, are incorporated into national law as applicable and that reservations are removed.

Commentary and promising practices

National constitutions offer the highest form of legal protection and recognition of women’s land rights. While many provide for gender equality, some specifically recognize women’s land, housing and property rights.

For example, in Paraguay, the 1992 Constitution provides, among the fundamental principles of agrarian reform, for women’s participation in reform plans on the basis of equality with men and support for rural women.¹²⁴ The Constitution of the Plurinational State of Bolivia, of 2009, provides that the State has the obligation to “promote policies aimed at eliminating all forms of discrimination against women in the access to, ownership and inheritance of land” (art. 402).¹²⁵ The 2008 Constitution of Ecuador provides that “the State shall guarantee equal rights and equal opportunity to men and women in access to property and decision-making in the management of their common marital estate” (art. 324).¹²⁶ In Brazil, the 1988 Constitution states that both women and men, regardless of their marital status, can be allocated property rights or concessions under agrarian reform (art. 189) or in case of unopposed and uninterrupted occupation of urban land (art. 183 (1)).¹²⁷

The 1994 Constitution of Malawi stipulates that, on the dissolution of marriage, women have the rights to a fair disposition of property that is held jointly with a husband and to fair maintenance together with the children (art. 24 (1) (b)). In addition, its article 24 (2) states that “Any law that discriminates

against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women such as ... (c) deprivation of property, including property obtained by inheritance”.¹²⁸

Namibia’s Constitution provides that “men and women ... shall be entitled to equal rights as to marriage, during marriage and at its dissolution” and that “all persons shall have the right to acquire, own and dispose of all forms of ... property individually or in association with others ...” (arts. 14 and 16). It also recognizes that international human rights treaties are self-effecting once ratified (art. 144), which makes international human rights standards such as the Convention on the Elimination of All Forms of Discrimination against Women directly applicable within the national legal system.¹²⁹

Another example is Japan, which provides in its 1946 Constitution that “... with regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes” (art. 24).¹³⁰ Equally, the 2010 Constitution of Kenya provides for the elimination of gender discrimination in law, customs and practices related to land and property (art. 60).¹³¹

In relation to the right to participate in political and public life, the 2015 Constitution of Nepal explicitly guarantees women’s right to participate in all state structures and bodies on the basis of the principle of proportional inclusion (art. 38 (4)).¹³²

The 2013 Constitution of Fiji prohibits direct and indirect discrimination on the grounds of sex, gender, sexual orientation, gender identity and expression, marital status or pregnancy, among other grounds (art. 26(3)(a)).¹³³ Canada’s 2011 Constitution

¹²⁴ Paraguay 1992.

¹²⁵ Plurinational State of Bolivia 2009; amendment to the Constitution in 2016 did not affect the provision concerned.

¹²⁶ Ecuador 2008; constitutional reforms in 2011, 2015 and 2018 did not affect the provision concerned.

¹²⁷ Brazil 2010; amendments to the Constitution up to 2017 did not affect the relevant provisions.

¹²⁸ Malawi 2010; amendments up to 2017 did not affect the provision concerned.

¹²⁹ Namibia 1990.

¹³⁰ Prime Minister of Japan and His Cabinet 1946.

¹³¹ Kenya 2010.

¹³² Nepal 2015.

¹³³ Fiji 2013. See also OHCHR 2016.

guarantees not only general equality between women and men but also explicitly recognizes the equal rights of indigenous women and men in their enjoyment of the “aboriginal and treaty rights of the aboriginal peoples” (art. 35 (4)).¹³⁴

Constitutional reforms present an opportunity to nationalize human rights instruments that protect women’s property rights. For example, in 2014, Tunisia withdrew all of its specific reservations to the Convention on the Elimination of All Forms of Discrimination against Women, and its new Constitution reflects that change. Such a change lays the groundwork for amendment to Tunisia’s personal status and other codes that have discriminatory provisions so that they meet its commitments under the Convention.¹³⁵

2. Harmonize national laws, policies and programmes

RECOMMENDATIONS:

Laws, policies and programmes should:

- Be effectively consolidated and harmonized so that consistent and coherent legal and policy frameworks protect and promote women’s equal right to access, use and control land and other productive resources. In doing so, the multiple and intersecting forms of discrimination faced by women should be taken into consideration (see also “Combat multiple and intersecting forms of discrimination”).
- Ensure that new legislation provides for the amendment and/or removal of provisions contained in other areas of law, such as civil codes and laws on personal status, family and marriage, property, housing and land and/or laws on land restitution that contradict the legislation adopted so as to ensure a consistent legal framework that promotes women’s human rights and gender equality.

¹³⁴ Available at Constitute Project 2020.

¹³⁵ Tunisia 2014; see also Human Rights Watch 2014.

- Be developed with the effective and meaningful participation of all, including civil society organizations, representatives of communities and an equal participation of women.

In harmonizing laws, policies and programmes:

- Law reforms should provide for strengthening institutional structures, including customary and statutory institutions, to ensure effective implementation of laws, policies and programmes related to women’s rights to land and other productive resources.
- Laws, policies and programmes related to agriculture, natural resources (such as mining and water), environmental protection, climate adaptation and mitigation, trade and investment, among others, need to be harmonized in order to respect gender equality and women’s right to land and other productive resources.

Commentary and promising practices

Women’s land rights are best protected when laws and policies pertaining to these rights are harmonized and comprehensive.

Most women gain access to productive resources primarily within the context of marriage and the family, within the context of inheritance or, to a lesser extent, through government or other social programmes (for example, via land reform) or through access to markets. This means that many types of laws will be relevant to the protection of women’s land rights, including marriage and family law (which addresses issues of marital property, inheritance and divorce) as well as land law (which may address issues of land reform), personal status law and property law. All such laws should be reviewed and/or amended as needed in order to ensure the greatest protection of these rights, in conformity with international human rights standards.

It is important to ensure that legal and policy standards are harmonized so that women’s rights are consistently protected. Such harmonization ensures that any gaps in legal frameworks or legal

protections are appropriately filled and that existing laws and policies do not discriminate against women or otherwise prejudice their situation owing to either conflict or incoherence. In addition, States should also ensure that new laws and policies provide for the amendment and/or removal of provisions contained in other areas of law and policy (such as civil codes, family and marriage law, property law and land law and policy, including those on land restitution and agrarian reform) that contradict any new law and policy, so as to ensure a consistent framework that promotes women's human rights and gender equality. Such harmonization efforts should take into consideration multiple and intersecting forms of discrimination (e.g., the combination of discrimination based on gender, race, class, indigenous status, geographic location) such that no women will be left behind.

An example from Uganda shows why such harmonization is important: Strategic litigation on the *Divorce Act* (1904) and its *Succession Act* (1972) successfully led to the nullification of sections of the law that were discriminatory against women, including those pertaining to the administration of property at the dissolution of marriage.¹³⁶ However, it became clear that the reform in family law does not automatically lead to the protection of women's rights to land either as divorcees or separated partners unless property law is also aligned to such changes. The lesson from this experience is that family law and property law need to be in harmony for there to be effective protection.

Mozambique stands out as a good example of where land law and other laws – for example, the *Family Law* (2004) – have been harmonized to improve the situation of women's land rights.¹³⁷ Similarly, Namibia's National Gender Policy 2010-2020

provides for removing all components that discriminate against women to bring customary laws in line with the Constitution.¹³⁸ Kenya's *National Land Policy* of 2009 recognizes that "land reforms should be accompanied by constitutional reforms if they are to be effective" and that the Constitution needs to protect the rights of women with respect to access to and ownership of land rights.¹³⁹ The policy further elaborates where law reforms are needed to ensure women's land rights, such as gender equality in laws on matrimonial property and the legal protection of the rights of women in pastoral areas. It also calls for action by the Government to eliminate cultural practices that discriminate against women. In India, the National Policy for the Empowerment of Women of 2001 encourages changes in personal laws such as those related to marriage, divorce and maintenance so as to eliminate discrimination against women. As a result, the *Hindu Succession Act* of 2005 granted women equal inheritance rights to ancestral and jointly owned property, although its enforcement appears to be weak.¹⁴⁰

Mexico's 2012 *General Law on Climate Change* is an example of the harmonization of laws and policies incorporating gender equality considerations as well as addressing multiple and intersecting forms of discrimination. The law mandates national and local governments to develop national policy on climate change adaptation and implement relevant programmes, including those on sustainable land management. It provides that climate adaptation and mitigation measures must respect gender equality and women's empowerment together with the rights of indigenous peoples, local communities, migrants, children and persons with disabilities, among others (art. 26).¹⁴¹

¹³⁶ *Uganda Association of Women Lawyers & Others v. Attorney General 2004; Law and Advocacy for Women in Uganda v. Attorney General 2007.*

¹³⁷ Mozambique 2004.

¹³⁸ Namibia 2010.

¹³⁹ Immigration and Refugee Board of Canada 2007.

¹⁴⁰ Xu 2013.

¹⁴¹ Mexico 2016.

3. Combat multiple and intersecting forms of discrimination

RECOMMENDATIONS:

Laws, policies and programmes should:

- Prohibit de jure and de facto discrimination against women in relation to access, use and control over land and other productive resources on the basis of the compounded impact of multiple and intersecting forms of discrimination, including sex, race, income, ethnicity, indigenous identity, colour, descent,¹⁴² language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, economic and social situation or other status.
- In this regard:
 - Ensure that women in situations of vulnerability or from marginalized communities have equal access to land and other productive resources. Such women include indigenous women, peasant women, women living in rural areas or in informal settlements in urban areas, women with low caste status, women of African descent, women living with or affected by HIV, displaced women, women with disabilities and minority women, as well as LGBTI people.¹⁴³
 - Ensure that the situation of particularly marginalized or excluded women is adequately addressed through specialized programming

¹⁴² Discrimination based on descent includes discrimination based on caste. See UN CERD 2002.

¹⁴³ For the definitions of persons with various sexual orientation, gender identity and gender expressions, see UN Free and Equal undated. While the publication predominantly uses the terms lesbian, gay, bisexual, transgender and intersex (LGBTI), people in different contexts may also identify themselves with other terms and may face the same human rights violations. It is important to respect the terms, names and pronouns people use to refer to themselves.

and outreach and through the adoption of temporary special measures (see Box 6).¹⁴⁴ To this end, community-based assessment, informed by grassroots perspectives, should identify who is marginalized with respect to access to, use of and control over land and develop specific protection measures for them – including temporary special measures.

Commentary and promising practices

Effective laws, policy and programming in the area of women's access to productive resources and land reflect women's heterogeneity and diversity. They should also reflect the fact that women may be differentially affected by multiple and intersecting forms of discrimination. In particular, when it comes to issues of land, women may be affected by discrimination related to marital status, economic status, widowhood, abandonment, racial/ethnic identity, health status, disability, age, sexual orientation, gender identity, displacement or other status. For example, single, widowed or "abandoned" women may be shunned by their communities and unable to access land. Victims of domestic violence may be trapped when their access to land and other productive resources is contingent on their relationship with their violent partner. Women with disabilities and LGBTI persons may be excluded from decision-making around land and other productive resources, rendering their needs invisible.

Each of these groups of women encounters different barriers with respect to their ability to access, use and control land and other productive resources, and each should be considered within the scope of policy and programme development, including in assessment and analysis, programme planning and design, budgeting and financing, implementation and monitoring and evaluation. Some of the specific issues and particular groups of women noted above (namely indigenous women, peasant women, women affected by HIV and displaced

¹⁴⁴ For better understanding on temporary special measures, see UN CEDAW 2004.

BOX 6

Temporary special measures

Temporary special measures are among necessary strategies taken by States towards the achievement of de facto or substantive equality of women with men in the enjoyment of their human rights. They are sometimes also called “affirmative action” or “positive discrimination”, with slight variation of their understanding.

Temporary special measures are time-limited. They must be discontinued when their desired results have been achieved and sustained for a period of time. They are designed to serve a specific goal of achieving de facto equality for women. They are not considered as a form of discrimination.

Not all measures favourable to women are temporary special measures. The provision of general conditions in order to guarantee women and girls’ enjoyment of their human rights are not temporary special measures.

Source: UN CEDAW 2004.

women and women in informal settlements) are also addressed in more detail in the section on “Particular groups of women” below.

Many women are almost completely dependent on their relationship with a man to access land (be it a father, husband, uncle or son), making it difficult if not impossible for them to access, use and control land in their own right. It is especially important that laws, policies and programmes related to land and other productive resources are sensitive to these issues and ensure that women are able to access these resources regardless of their personal or marital status. The elimination of laws and practices that disadvantage women with respect to access to land, property and other productive resources could, for example, help to reduce intimate partner violence. Secure land tenure increases the social and political status of women

and offers an avenue to economic justice. By diminishing the threats of displacement, dispossession, food insecurity and poverty, secure land rights and land tenure can boost women’s bargaining power in the home and strengthen their participation in economic and public life.¹⁴⁵

Single women in particular face serious challenges and are an invisible population in some countries. In India, they have organized across the country, resulting in the formation of the National Forum for Single Women’s Rights. The National Forum has advocated for the rights of single women to enjoy their land and property rights with respect to both their natal and marital homes and for single women to be allotted land to build a house.¹⁴⁶

Some national laws, policies and programmes address multiple and intersecting forms of discrimination. The *Uganda National Land Policy* (2013) recognizes the land rights of women, children, ethnic minorities, pastoral communities and dwellers in informal settlements and slums as well as other vulnerable groups, including persons living with or affected by HIV, persons with disabilities and internally displaced persons.¹⁴⁷ Similarly, the *Nepal Financial Bill* (2015) actively promotes rights to land for different groups of women by providing specific tax or payment exemptions; the law has separate articles and provisions for senior citizens, single women or widows, people with disabilities, dalits and landless women.¹⁴⁸ In Sri Lanka, the North East Housing Reconstruction Programme (2004-2011) helped finance the reconstruction of houses damaged by the war. Priority was given to women heads of households in the application process.¹⁴⁹ Similarly, the *Kenya National Land Policy* (2009) requires special interventions to be undertaken to deal with the intersectional issues related to poverty, HIV and gender. It also recognizes the land rights of children

¹⁴⁵ Heise and Kotsadam 2015.

¹⁴⁶ Majumdar 2010.

¹⁴⁷ Uganda 1995.

¹⁴⁸ IOM 2016a.

¹⁴⁹ See World Bank 2020a

CASE STUDY:

Ensuring the rights of all women under Namibia's *Communal Land Reform Act*

In Namibia, much of the rural population lives on communal land owned by the state and customarily allocated to members of the community by traditional leaders. Under pre-independence customary law, women's access to land was primarily through their husbands, fathers or some other male relative. One of the aims of the *Communal Land Reform Act* (2002), therefore, was to increase tenure security for women and other vulnerable groups. While the Act called for the registration of land use rights in communal areas, it also established two provisions to specifically benefit women: At least 4 out of the 11 seats on Communal Land Boards were reserved for women; and widows and widowers – instead of the Chief or traditional authority – were given the right to reallocate their spouse's land.

Despite these steps forward, the Act did not directly articulate the principle of non-discrimination, and no temporary special measures to promote women's land use registration were implemented. Moreover, it did not mandate the collection of disaggregated data on communal rights holders, preventing national monitoring and evaluation of the Act and precluding informed policy change promoting women's land rights.

A study performed by the Legal Assistance Centre around five years after the Act's passage found that some traditional leaders were reluctant – and even refused – to allocate land to young, single women due to the concern that it would threaten established gender norms. Indeed, young women were discouraged from applying for independent communal land rights despite the passage of the Act because of such cultural and socio-economic barriers. Consequently, applications for land use rights from women mostly came from older women who were single, widowed or divorced.

Many women are still unable to gain tenure security on communal land as prescribed by the

Act. A 2017 study in the Ohangwena, Omusati, Oshana and Oshikoto regions found that 14.8 per cent of women surveyed did not receive land they applied for, often because the community leader believed that the requested land was too large for a woman.^a Research has also shown that widows are being charged illegal fees for land reallocation or are harassed or even evicted by their deceased husband's families to deter their claims to land. Unfortunately, widows may not report harassment or other crimes, despite the laws in place to protect them, for fear of retaliation from their community or family-in-law.

To promote women's rights to and use of land as envisioned in the *Communal Land Reform Act*, more holistic action is needed. Community-wide sensitization trainings should be implemented to raise awareness of women's land rights. By doing this, more women would be inclined to navigate and benefit from the legal system, using the Act's procedures for appeal, for example. More measures should also be put in place to promote women's land use, such as a quota of 50 per cent of each gender on land boards and other relevant bodies, affirmative action measures for women in land-use allocation processes and the promotion of joint or group land registration. Beneficiaries' rights should also be defended by, for example, requiring family members' consent before any lasting and major changes are made to land allocation. Furthermore, the *Communal Land Reform Act* should be supported by gender-responsive and complementary family laws and policies, such as instruments protecting the rights of long-term cohabiting couples. Lastly, sex-disaggregated data must be collected so that progress in women's land tenure security can be tracked.

^a Shapi et al. 2017.

Sources: Dianne Hubbard, Legal Assistance Centre, Namibia; Hubbard 2018.

and youth.¹⁵⁰ Subsequently, the 2010 Constitution¹⁵¹ anchored many of the provisions of the Land Policy in law, and the *Land Act* (2012) affirmed the principles of the “elimination of gender discrimination in law, customs and practices related to land and property in land” and “non-discrimination and protection of the marginalized”.¹⁵² In Pakistan, the *Transgender Persons (Protection of Rights) Act* (2018) recognized the identity of transgender persons and prohibited discrimination against them, including in relation to the right to reside, sell, purchase, rent or otherwise occupy or inherit a movable or immovable property.¹⁵³

B. Legal systems and access to justice

1. Harmonize plural legal systems to protect women’s rights

RECOMMENDATIONS:

Laws, policies and programmes should:

- Transform (through interpretation, review, amendment and/or repeal) all laws (statutory, religious and customary), regulations, customs and practices that discriminate against women or that in any way limit or negatively affect their access to, use of and control over land and other productive resources.
- Ensure that all justice mechanisms, including religious and customary mechanisms, respect, protect and fulfil women’s land rights and that the relevant authorities are held accountable when they fail to do so.
- Support women in claiming their rights and challenging discriminatory aspects of formal, religious and customary law.

¹⁵⁰ Kenya 2009.

¹⁵¹ Kenya 2010.

¹⁵² Kenya 2012a.

¹⁵³ Pakistan 2018.

- Seek effective ways to bring coherence among formal, religious and customary systems so as to advance gender equality and women’s empowerment, particularly as related to access, use of and control over land and other productive resources.

Commentary and promising practices

Many countries have situations of dual or multiple justice systems, with statutory, customary and/or religious laws in place. The relationship between these laws is determined by their status within the legal system. This varies across countries, ranging from full or partial recognition to non-recognition of customary and/or religious law. In countries with different ethnic or religious groups, customary or religious legal systems may stipulate a range of personal laws, therefore changing women’s legal status depending on her origin. A study of 43 African jurisdictions found that 18 constitutions overtly recognize customary law but only if it does not contravene protections against discrimination using a clear legal test.¹⁵⁴ Globally, 12 constitutions recognize customary law and explicitly exempt it from being challenged on the grounds of discrimination.¹⁵⁵ And in some countries, customary law is granted statutory recognition as a source of law with no mention of how a conflict between the constitution and the customary law should be handled.¹⁵⁶

An example of how statutory law and legal pluralism can influence women’s land and property rights can be found in Sri Lanka’s rules of inheritance. The Sri Lankan Constitution (1978 as amended up to 2015) recognizes equality for women and men and non-discrimination based on sex (art. 2) and yet

¹⁵⁴ Hallward-Driemeier and Hasan 2012.

¹⁵⁵ Ibid., citing Botswana, The Gambia, Ghana, Lesotho, Sierra Leone, Zambia and Zimbabwe; see also World Bank 2013, citing Fiji, India, Mauritius, Singapore and Sri Lanka.

¹⁵⁶ For example, Botswana, Cameroon, Chad, Equatorial Guinea, Ethiopia, The Gambia, Ghana, Kenya, Lesotho, Liberia, Malawi, Mali, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Sierra Leone, South Africa, Sudan, Eswatini, Togo, Uganda, United Republic of Tanzania, Zambia and Zimbabwe. Hallward-Driemeier and Hasan 2012.

precludes judicial review of laws that were adopted before 1978 (art. 16).¹⁵⁷ Some laws governing rights to inheritance predate 1978 and provide for unequal rights between women and men; under art. 16, these laws cannot be subject to judicial review for constitutionality.

Even in countries where statutory law supposedly trumps customary and/or religious law, the reality is that custom and religion continue to play a pivotal role in the lives of women and men. Women's equal land rights have been of special concern because customary law has often been used to deny women these rights. For example, a study from Rwanda found that despite basic awareness of a new law providing equal rights to land and inheritance for women and men, customary law – which gives preference to men's rights – continued to have a strong influence on how marriage, inheritance and land titling were regulated in rural areas.¹⁵⁸ Even in contexts where formal laws are progressive and awareness is high, specific interventions are needed to encourage adaptation of customary and/or religious legal system to uphold the rights of women if these are to be consistently realized.

Under international human rights law, States are required to ensure the realization of women's rights to equality, such as in family law, regardless of the source of the law. In countries where legal pluralism exists, States are also required to establish national mechanisms to ensure the effective implementation of equality and non-discrimination between women and men by (a) bringing customary, religious or indigenous laws systems into line with international human rights law and/or (b) providing options to opt out from such systems and challenging customary, religious or indigenous law under the statutory law on the violation of the rights to equality and non-discrimination.¹⁵⁹

Good practices in law and policy help ensure the protection of women's rights in the context of

customary or religious systems. Divergence between formal statutory law and customary and/or religious law can be addressed at the highest level, namely with constitutional protections. For example, the Constitution (1995) in Uganda prohibits “[L]aws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status” (art. 33).¹⁶⁰ The Uganda National Land Policy (2013) states that the Government shall “modify the rules of transmission of land rights under customary land tenure to guarantee gender equality and equity” (art. 41 (iii)); “ensure that the decisions of traditional land management institutions uphold constitutional rights and obligations with regard to gender equity” (art. 42 (iii)); “by legislation, protect the right to inheritance and ownership of land for women and children” and “ensure that both men and women enjoy equal rights to land before marriage, in marriage, after marriage and at succession without discrimination” (art. 65 (a and b)); and “solicit the support of faith based institutions and cultural leaders ... to protect the rights of women and children” (art. 68 (iv)).¹⁶¹

The courts have been another vehicle for addressing conflict between legal systems. In Kenya, in the *Ntutu* case (2008),¹⁶² the High Court heard arguments by the sons of the deceased that Maasai customary law of succession does not recognize the rights of daughters to inherit the estate of their fathers. However, in rendering its decision, the Court applied international human rights law, international covenants and treaties that had been ratified by Kenya, as well as previous case law. The Court upheld the right of the daughters to inherit equally from the assets of the estate.¹⁶³

¹⁵⁷ Parliament Secretariat of Sri Lanka 2015; amendments did not affect this provision.

¹⁵⁸ IDLO 2013.

¹⁵⁹ For example, UN Human Rights Council 2015a and UN CEDAW 2013.

¹⁶⁰ Uganda 1995a; amendment in 2017 did not affect this provision.

¹⁶¹ Uganda 1995b.

¹⁶² High Court of Kenya 2000.

¹⁶³ Similar examples exist elsewhere. For examples from Uganda, see footnote 136. In Eswatini, the High Court ruled that married women have a right to register property in their own name, rather than solely in their husband's name. See also *Aphane v. Registrar of Deeds & Others* 2010.

In the *Bhe* case,¹⁶⁴ the Constitutional Court of South Africa found that the practice of male primogeniture (the custom of the firstborn male inheriting the entire estate), as provided for under customary law, was discriminatory, and it classified as unconstitutional all legislation that allowed such discriminatory laws to be applied. Following this decision, South Africa enacted the *Reform of Customary Law of Succession and Regulation of Related Matters Bill* (2008), which gave widows and daughters and widowers and sons equal inheritance rights regardless of statutory or customary marriage. In *Mojekwu v. Mojekwu*,¹⁶⁵ the Nigerian Court of Appeal similarly held that the Nnewi custom of *Oli-ekpe* (prohibiting the inheritance rights of females and providing that the eldest male in the family will inherit) was discriminatory, and any form of societal discrimination on grounds of sex was held unconstitutional and against the principles of an egalitarian society.

Other similar examples are the cases of *Ephraim v. Pastory & another*,¹⁶⁶ in which the Tanzanian High Court invalidated customary norms preventing women from selling land, and *Mmusi and Others v. Ramantele and Another*,¹⁶⁷ in which the Botswana High Court ruled that the customary laws providing for male-only inheritance of the family home were discriminatory and illegal under the Constitution.

Efforts have been made to ensure better coexistence between statutory laws and customary law and practice. Namibia's *Communal Land Reform Act* of 2002, while keeping customary land tenure rules largely intact, altered customary administration structures.¹⁶⁸ This meant that although traditional authorities may still allocate customary land and revoke rights to it, applications for customary land must be made in writing. The decisions made by traditional authorities are subject to the approval of community land boards, the jurisdictions of which are determined by the Minister of Lands. The Minister appoints the board members, who typically number at least 12. The community land

boards must include four women (two engaged in farming and two who have other substantive expertise relevant to the functions of the board). These community land boards can, in practice, provide an extra layer of protection for women.

Namibia's *Communal Land Reform Act* of 2002 also provides that both widows and widowers have a right to remain on their land after the death of their spouse, even if they subsequently remarry. If a surviving spouse who stays on the land remarries and dies, the new surviving spouse will also have a right to remain on the land. However, if the second surviving spouse dies, the land reverts to the traditional authority to determine who has the right to stay on the land. This decision must be made in consultation with the members of the concerned family or families identified by the traditional authority with reference to the relevant customary law.

Malaysia provides an example of different legal systems working together to protect women's social and economic status. Its Constitution and land legislation recognize the equal rights of women and men to own and inherit land. Land ownership is legally based on a customary Malay law called *Adat Perpatih*, a matrilineal system that recognizes jointly-owned marital property. As Islam is the official religion, sharia law is used to resolve conflicts related to religious and family matters for Muslims. In cases of divorce, the sharia courts determine the proportion of ownership for the spouses on the basis of the contribution of each spouse. The courts have developed a practice of reconciling Islamic law and custom. Under sharia law, the wife can claim a third of the value of the land acquired during the marriage, which may be increased depending on the nature of the work done by her on the property. When a woman has helped to cultivate the land, however, sharia courts in Malaysia generally recognize her entitlement to half of the property. This case illustrates how customary law and religious law are not always detrimental to women's land rights and can coexist with and be used by other legal systems in the context of legal pluralism.¹⁶⁹

¹⁶⁴ *Bhe and Others v Khayelitsha Magistrate and Others* 2004

¹⁶⁵ *Mojekwu v Mojekwu* 1997.

¹⁶⁶ High Court of the United Republic of Tanzania 1989.

¹⁶⁷ *Mmusi and Others v. Ramantele and Another* 2012.

¹⁶⁸ Republic of Namibia 2002.

¹⁶⁹ Tempra 2018.

2. Promote the positive aspects of customary systems for women

RECOMMENDATIONS:

Laws, policies and programmes should:

- Promote and interpret customs and practices that favour women's access to, use of and control over land and other productive resources.
- Encourage customary and religious leaders to raise awareness within their own communities about women's rights to land and other productive resources.
- Engage communities in discussions about gender-responsive interpretations of religion, customary law and statutory law.
- Protect tenure rights exercised by women and recognized under customary tenure systems while facilitating gender equality in the governance of such rights.

Commentary and promising practices

Aspects of customs and norms that actively promote women's rights should be supported. The amaHlubi community of KwaZulu-Natal province, South Africa, provides a good example of how customary law can be applied in a way that recognizes gender equality. The amaHlubi apply customary law in the area of property ownership but, unlike many other communities in the country, they interpret it in a way that recognizes equality between women and men. As a result, land is allocated to all women and men who want to acquire it in their own right.¹⁷⁰

Where discriminatory aspects exist, change should be promoted while taking into account that customs and traditions are not static; they can and do change over time. Considerable variations exist between and within customary legal systems as

well as statutory systems. The Australian Agency for International Development's Pacific Land Programme has observed that "individuals and institutions involved in land law and administration can ensure that women have adequate input into decision-making and that interpretations of custom that give greater recognition to women's rights are favoured over interpretations that give less recognition to them".¹⁷¹

In most cases, the positive aspects of custom and tradition can be illuminated, cultivated and strengthened. Indeed, reinforcing positive aspects of traditional land tenure systems that encourage and support women's access to productive resources can produce strong results. In the United Republic of Tanzania, where discrimination against women in terms of land rights is widespread because men are seen as the heads of households and the holders of the land, women in land formalization processes have made up as little as 2 per cent of those having their land rights registered. Yet in Gongoni village, Oxfam has supported Women and Poverty Alleviation in the United Republic of Tanzania to ensure that women's rights to land are recognized and legally secured through Certificates of Customary Right of Occupancy. Village leaders allocated land almost equally between men (52 per cent) and women (48 per cent), and some couples registered their land jointly with certificates showing both their names and photographs.¹⁷²

Working with positive aspects of custom and tradition can help improve land rights for women. Through community engagement to improve women's land rights in a customary tenure context in Northern Uganda, a "lost" role that elder women played in customary institutions was identified, whereby elder women would be called on to assist in issues that involved women. This "lost" role was revitalized and strengthened by local customary leaders, which had the effect of improving outcomes for women.¹⁷³

¹⁷⁰ World Bank 2006.

¹⁷¹ AusAID 2008: 88.

¹⁷² Wegerif 2015.

¹⁷³ Hannay and Scalise 2014.

Likewise, women's land rights can be improved by leveraging customary leaders' desire to govern well. In Niger, prescribed gender roles prevent women from actively participating in food production. However, enlightened imams helped to convince men as well as community leaders that the whole community benefits when women gain land rights and access to modern agricultural techniques. They used their influence to show that women gaining land rights and working in agriculture are not contrary to religious norms or customary or formal law.¹⁷⁴

Customary justice systems can be mobilized to play a positive role in protecting women's property rights – particularly if this role is backed up with general legislation. In addition, traditional leaders and decision makers should receive training about women's rights and their responsibilities to uphold these rights. In Kenya, for example, local traditional authorities have been made aware of the contributions women make to their communities. Under the 2010 Constitution, traditional leaders have increased responsibility for protecting and enforcing constitutional rights, including women's land rights. In the Ol Posimoru community, elders drafted a new local constitution (known as a *katiba*) that protects women's property rights.¹⁷⁵

In Namibia, as a result of increased women's participation in traditional dispute settlement and in the number of women traditional leaders, traditional authorities in some areas have supported widows in asserting their rights to remain on their deceased husbands' communal land and resisting efforts by relatives to remove them.¹⁷⁶

A UN Women programme in sub-Saharan Africa to reduce women's vulnerability to HIV and to mitigate its impact through improved access to property and inheritance has improved the knowledge and awareness of more than 2,000 traditional and community leaders on women's property and inheritance rights through training, advocacy, outreach and community dialogues. Engagement

¹⁷⁴ Ministry of Foreign Affairs, The Netherlands 2016.

¹⁷⁵ USAID 2012.

¹⁷⁶ Ubink 2018.

of these stakeholders has resulted in enhanced commitment and positive support for women's property rights.¹⁷⁷

Such efforts should be undertaken with care, however, and always with the rights of women in mind. Means should be provided for women to opt out of traditional, customary or religious processes should they so choose and instead appeal to formal systems. Formal justice systems should be accessible to all women, regardless of their social status.¹⁷⁸ In all cases, women and girls should be empowered to know their rights and how to claim them. (See also "Ensuring access to justice and enforcement".)

Women may be exercising tenure rights that are not recognized by statutory law. In the effort to recognize or allocate land and resource tenure rights, laws, policies and programmes should avoid infringing on and provide legal protection to such existing rights. These may include communal, collective, indigenous and customary tenure rights, including ancestral rights, traditional rights, subsidiary tenure rights such as gathering rights, use rights, overlapping and periodic rights, shared rights, unrecorded rights and informal rights. Recognition and legal protection of such tenure rights should be made in order to promote gender equality.¹⁷⁹ (See also "Ensure gender equality in land titling and registration".)

3. Ensure access to justice and enforcement

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure that all women and girls benefit from legal literacy campaigns (see section on "Community awareness-raising and legal literacy" below) and

¹⁷⁷ UN Women 2016a.

¹⁷⁸ UN Human Rights Council 2015a recommended that formal justice should be preferred to informal justice for the settlement of all family matters.

¹⁷⁹ FAO 2012, 2016.

are able to access formal avenues of justice that protect their rights.

- Ensure that courts, as well as agrarian and land tribunals, are fully accessible and affordable to all women and girls and that all women and girls are able to access low-cost or free legal aid and other legal services in their own language. Courts and legal services should aim to be gender-responsive in terms of physical accessibility, travel distance and opening hours.
- Ensure that justice mechanisms are provided with the necessary human, financial, legal, technical and other resources to make them effective and able to work in a gender-responsive manner.
- Ensure that legal professionals, including judges, prosecutors and lawyers, are reminded of women's equal rights to land and other productive resources under national and international law, as well as sensitized on gender-responsive judicial procedures, and receive regular training on this issue.
- Provide religious and customary justice authorities with information and training on women's rights, as well as other relevant support, in order for them to effectively protect women's rights within the scope of their jurisdiction and encourage fair decision-making about women's land rights.
- Ensure that women and girls are able to opt out of religious and customary processes should they choose and appeal to formal justice systems on land-related disputes and for redress.
- Support, through financial and other means, positive local initiatives that affirm women's position and leadership, and support women's equal rights to land and other productive resources, including via community-led paralegals, watchdogs, land tribunals and other community strategies.
- Put in place effective and gender-responsive mediation and conflict resolution mechanisms to address land claims and disputes.

Commentary and promising practices

Rights mean little if they cannot be claimed and enforced. Access to justice mechanisms for women and girls means that they are able to access legal processes that are legitimate, gender-sensitive, affordable, easy to follow and physically accessible. Furthermore, the person filing must believe that a chance exists for the claim to have a favourable outcome or have faith in the fairness of the results. Judgements upholding rights should be adequately enforced.

For formal legal systems, evidence suggests that justice chains – the series of steps that women must take to access justice – can become more responsive to women's needs through one-stop shops and legal aid, investing in women service providers and providing specialized courts and gender-responsive judicial decision-making.¹⁸⁰ Limited time and mobility available to women – due to unequal care and domestic responsibilities in the family – and the cost of litigation, fear of reprisals or discrimination and stigma they may face in the justice system often prevent women from accessing justice. Courts, including agrarian or land tribunals, should strive to make their services gender-responsive by, for example, adjusting opening hours and judicial procedures and providing mobile legal services, affordable legal aid and services in local languages. Information on rights and procedures to claim rights should be made available to women and girls.

Customary and/or religious justice and dispute resolution systems may be more accessible than other forums, particularly in rural areas. In Rwanda, for example, appearing before an *abunzi*, or mediation committee, is a first step in seeking redress for a land rights-related dispute. The *abunzi* are traditional dispute resolution mechanisms. By law, villages have mediation committees made up of at least 30 per cent women. They tend to be respected members of the community, so their decisions have weight. The *abunzi* may therefore be much more accessible to the community than a traditional court.¹⁸¹

¹⁸⁰ UN Women 2011.

¹⁸¹ See FAO 2020b.

At the same time, informal or customary justice systems are still subject to local power structures from which women are typically excluded, and adjudicators may still rely on traditional gender norms and not have the knowledge, skills or desire to apply the law. For example, in Viet Nam, grassroots mediation committees and groups in villages have a tendency to resolve land disputes involving women and men according to custom rather than the law. In this way, mediation groups and committees can reinforce customs and practices that discriminate against women, especially when disputes arise between family members and within the village, often in the name of social harmony and based on the idea that women have a responsibility to act in a way that maintains peaceful relations in the family.¹⁸²

Many women's rights organizations have successfully established entirely new structures at the community level that can protect women's rights in practice. Several strategies have been used by women and their advocates at the local level to effect positive change. For example, some organizations are training community watchdogs and paralegals to protect women's rights.

In Kenya, grassroots women's groups such as GROOTS Kenya have organized community paralegal training to strengthen the capacity of community watchdogs.¹⁸³ Programming that fosters closer relations between informal justice systems and local legal aid providers, such as paralegals, has had positive results. Similar initiatives have been spearheaded by other grassroots women's groups in the region, such as Seke Rural Home Based Care (Zimbabwe),¹⁸⁴ Ntengwe for Community Development (Zimbabwe),¹⁸⁵ Ntanhah Village Women Common Initiative Group (Cameroon),¹⁸⁶ Rwanda Women's Network (Rwanda),¹⁸⁷ Coalition Of Women Farmers (Malawi),¹⁸⁸ International Women

Communication Centre (Nigeria)¹⁸⁹ and Grassroots Sisterhood Foundation (Ghana).¹⁹⁰

In Kyrgyzstan, community-based advisers on legislation were established. Women and men were trained on major land-related issues to provide free advice to villagers and help women understand the process of applying for land.¹⁹¹ This experience was later successfully replicated in Tajikistan.¹⁹²

These local initiatives are promising and should be directly supported by governments and others seeking to better promote and protect women's land and property rights and ensure that women have access to justice to claim these rights.

When considering enforcement of property rights for women within the justice system, international human rights instruments can be used in impact or strategic litigation¹⁹³ to hold States accountable for their international obligations. In United Republic of Tanzania, the High Court denied redress to women who were removed from their deceased husbands' property by their in-laws. The women petitioned the United Nations Committee on the Elimination of Discrimination against Women for violations of their rights under the Convention on the Elimination of Discrimination against Women. The Committee ruled that the country's legal framework that codifies customary laws and treats widows and widowers differently in terms of ownership, acquisition, management, administration, enjoyment and disposition of property is discriminatory and violates the Convention. It held that it should grant petitioners appropriate reparation and adequate compensation commensurate with the seriousness of the infringement of their rights, and that it should ensure that all discriminatory customary laws limiting women's equal inheritance rights are repealed or amended and brought into full compliance with the Convention.¹⁹⁴

¹⁸² UNDP Viet Nam 2013.

¹⁸³ ActionAid Kenya et al. 2018.

¹⁸⁴ Wangulu 2011.

¹⁸⁵ Huairou Commission undated.

¹⁸⁶ Ibid.

¹⁸⁷ International Land Coalition 2011.

¹⁸⁸ Oxfam in Malawi and LANDac 2018.

¹⁸⁹ Huairou Commission undated.

¹⁹⁰ Dzifa Torvikey 2016.

¹⁹¹ Landesa 2020.

¹⁹² USAID 2016a.

¹⁹³ Impact or strategic litigation is the practice of bringing lawsuits to effect social change.

¹⁹⁴ See UN CEDAW 2015.

In Colombia, in 2014, OHCHR supported the Land Restitution Unit of the Ministry of Agriculture and Rural Development, through analysis of judicial decisions on land restitution, to strengthen the application of a gender-responsive approach in the courts as a part of the transitional justice process. The analysis helped the Unit identify where judgments had not responded to the full entitlements of certain groups of women claimants, such as peasant women, widows, indigenous women, women heads of household and women indicated as spouses of restitution holders. It also helped identify inconsistencies between restitution judgments and existing national laws and regulations and international human rights standards in relation to these women's rights.

OHCHR-Guatemala provided technical assistance to 11 indigenous organizations, including indigenous women and communities, relating to litigation cases on rights to land. The support included: increasing awareness of affected communities about international human rights standards; analysing risks against communities and individual human rights defenders; providing advice to lawyers and organizations for the design of advocacy strategies and implementation of judicial decisions; connecting them with United Nations human rights mechanisms; and building their capacity to communicate and disseminate information about human rights. In parallel, OHCHR has also worked with the authorities to improve their knowledge of international standards, provide technical assistance for the development of the necessary protocols and policies and ensure the implementation of judicial decisions with a human rights approach. In the community of San José Poaquil, after the Constitutional Court recognized the community's right to administer its own land and territories, OHCHR supported the indigenous authorities to exercise this right, including through the development of a census and a community-led cadastral survey.¹⁹⁵ In 2019, indigenous women, including 15

¹⁹⁵ A cadastral survey measures the extent, value and ownership of land.

Maya Q'eqchi women survivors of Sepur Zarco,¹⁹⁶ were trained on international human rights standards and mechanisms in order to strengthen their capacity to advocate for and claim their rights as indigenous people to land and territories.

C. Marriage and family

1. Ensure gender equality in marital property rights

RECOMMENDATIONS:

Laws, policies and programmes should:

- Recognize full or partial community of property as the default marital property regime.
- Ensure the joint administration of marital property, particularly as related to immovable property, and ensure that clear consent requirements are in place for the transfer or sale of such property, requiring the informed written consent of spouses.

Commentary and promising practices

Marital property is a key issue in understanding the status of women's rights related to land and other productive resources. Marital property refers to property acquired by either spouse during marriage. Different legal regimes may be applied to marital property: A separate property regime means that property acquired by one spouse during

¹⁹⁶ In 1982, during Guatemala's internal armed conflict, several Maya Q'eqchi leaders initiated a process to obtain legal titles to their land. As a result, members of the military captured and disappeared the men and subjected the women to domestic and sexual slavery. In 2016, the "abuelas" of Sepur Zarco filed a case and the court issued a conviction for sexual slavery as an act of war for the first time in the country. Importantly, the court also ruled on reparations to be granted to the victims of Sepur Zarco and to their communities as a whole. The reparation order addresses denials of the rights to health, education and access to land, and orders the Government to reopen the legalization processes for the land of the affected communities. See UN Women 2018.

marriage remains the sole property of that spouse; while a community property regime means that all property acquired during marriage by either spouse belongs equally to both spouses.¹⁹⁷ Countries may apply very different default approaches to marital property, ranging from “full separation of property”,¹⁹⁸ to “partial or limited community of property”¹⁹⁹ to “full community of property”.²⁰⁰ In 34 countries, husbands are solely entitled to administer and dispose of marital property.²⁰¹

Marital property provides for rights within the context of marriage and is conceptually distinct from the notion of inheritance, covered in the section on “Equal inheritance rights” below.²⁰²

In many countries, a marital property approach reflecting an “equalization of marital property” when a marriage ends has been put in place, recognizing women’s non-economic and indirect contributions to marital property. This is the case in Austria, Canada, Croatia, Denmark, France, Germany, Greece, Italy, the Netherlands, New Zealand, Norway, Spain, Sweden and the United States of America.²⁰³ Where full community of property or partial community of property is the default regime, prenuptial agreements can also generally be used to provide couples with greater choice, as appropriate, if they prefer greater separation of property and finances.

¹⁹⁷ OECD 2019a.

¹⁹⁸ Wherein all property acquired by the spouses prior to and during their marriage remains the separate property of the spouse who acquires it. ICRW 2007.

¹⁹⁹ Wherein assets acquired by each spouse prior to the marriage are regarded as separate property, and those acquired after marriage, along with the income earned during marriage by each spouse, are regarded as joint property, with limited exceptions. Ibid.

²⁰⁰ Wherein assets and income brought into the marriage and acquired during the marriage become joint property of the couple. Ibid.

²⁰¹ OECD 2019a.

²⁰² This is because if laws on marital property provide for a certain division of the couple’s assets on dissolution of the marriage, the assets, which rightfully belong to the surviving spouse, will not form part of the deceased’s estate. Legal Assistance Centre 2005.

²⁰³ Women and Law in Southern Africa Research Trust–Malawi and Canadian HIV/AIDS Legal Network 2011.

Many countries have adopted partial or full community of property as their default marital property regime for civil marriages. For example, Ethiopia’s *Revised Family Code* (2001) provides for partial community of property as well as joint administration of marital property. Consent of both spouses is mandatory for the transfer of common property. The law also provides that, in the event of dissolution, common property will be divided equally between the spouses.

The Brazilian *Civil Code* of 2002 provides for the equality of rights and duties of spouses and for the application, in the absence of prenuptial agreements, of a regime of partial community of property, with each spouse having equal rights to administer common property and to administer her or his own separate property. The Federal Supreme Court decision in 2011 extended the application of this provision to same sex couples.²⁰⁴

Cambodia’s *Civil Code* of 2007 [2011] also provides for partial community of property as the default regime, noting that a wife and husband have equal rights to use, obtain benefits from and manage joint property. Each spouse is allowed to use the joint property in accordance to need, and joint property may be sold or donated only with the consent of both spouses. The law also provides that a wife has equal rights with her husband in divorce and that wives and husbands have equal rights to common property after marriage.²⁰⁵

Joint ownership of marital property is usually not the norm in countries that are influenced by or adopt Islamic personal law. Nevertheless, promising legal approaches have emerged to address marital property in these contexts. The 2002 *Civil Code* in Turkey brought about a greater level of gender equality in marriage, with the husband no longer the leader or the representative of the family.²⁰⁶ A married couple may contractually choose a form of marital property ownership as provided by the law, where joint ownership is an option. The community

²⁰⁴ Caulfield 2011.

²⁰⁵ See ILO 2014.

²⁰⁶ Republic of Turkey 2002.

property regime with equal shares between spouses became the default regime if a couple did not choose otherwise. Each spouse retains individual ownership rights over his or her personal property, or that which was acquired prior to the marriage or received as personal gifts during the marriage, but both spouses have equal rights over acquired property and the marital home. The potential of these progressive legal changes lies in balancing them with continued respect for Muslim law and custom.²⁰⁷

2. Apply gender equality in marital power and the “head of household” concept

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure equality between women and men in the administration of housing, land, productive resources and property in marriage and as heads of household. This may require:
 - Abolishing the notion of marital power that enables unequal power relation between women and men in marriage.
 - Avoiding de facto discrimination against women in the application of the concept of “head of household” in legal designations and entitlements, including in the provision or allocation of land and other productive resources.
 - Recognizing women as “head of household” on an equal basis with men so that they enjoy the same legal, financial or social entitlements.
 - Consulting the heads of household and other rights holders in relation to all legal, civil, economic, and social transactions (e.g., land registration, property assessment, censuses, household surveys).
- Ensure that women and LGBTI heads of households are able to enjoy their human rights and land rights on an equal footing to men through

²⁰⁷ Tempra 2018.

specific measures, including temporary special measures. In this regard, take into consideration the multiple and intersecting forms of discrimination faced by different groups of women and also by LGBTI people.

Commentary and promising practices

Legislation in relation to the marital property regime will realize gender equality only if both spouses have equal decision-making power.

Some civil and customary legal systems grant marital power to one spouse (generally the husband) over the other (generally the wife) as well as over joint property. Such provisions run deeply counter to the right to equality between women and men. The notion of marital power often assumes that husbands are the heads of the households, or legal representatives of households, with the authority to make decisions on behalf of the couple or family without the consent of their spouse/s, including exclusive rights to administer property. International human rights law is clear on the prohibition of marital power.²⁰⁸ Cameroon, Chile, the Congo, Côte d’Ivoire, and the Democratic Republic of the Congo all have community property as the default marital property regime, which normally signals important rights to marital property for women. Yet in each of these countries, laws provide that the husband alone administers marital property, leaving women with little actual power.²⁰⁹ A study of 43 African countries found that 22 formally recognized males as the head of the household, giving them sole discretion to represent the household and make household decisions.²¹⁰

In many countries, marital power provisions have been changed. Botswana’s *Abolition of Marital Power Act* of 2004 provides for equality of marital powers for couples married in community of property, but it excludes customary and religious marriage.²¹¹

²⁰⁸ For example, UN General Assembly 1979, art. 16 (h).

²⁰⁹ World Bank 2015.

²¹⁰ Hallward-Driemeier and Hasan 2012.

²¹¹ See UN Women 2016b.

Mozambique's *Family Law* of 2004 established gender equality in all aspects of family law.²¹² Namibia took a similar approach in its *Married Persons Equality Act* of 1996, which abolished the marital powers of the husband and placed spouses on an equal footing.²¹³ Likewise, under Turkey's *Civil Code* of 2002, the husband is no longer considered to be the head of the household, and husband and wife have equal status within marriage.

Similarly, the past few decades in Latin America have seen major improvements in women's legal status, particularly with regard to family law. Most countries have repealed laws identifying the husband as the head of household and limiting the capacity of women to administer family property.²¹⁴

In practice, the head of household concept closely parallels the notion of marital power, although cloaked in more gender-neutral language. While women are sometimes deemed to be heads of their households, this is most often the case when no man is present. As such, the effect of the concept has been one of bias against women. For example, the application of head of household provisions in land titling programmes has tended to prefer recognition of men's rights exclusively. As FAO has pointed out, "... while land reform programmes adopting the household as the beneficiary unit and issuing land titles to the (male) household head may still provide female household members with access to land, they may undermine their bargaining power – and thus their social position".²¹⁵

Around the world, a number of States have been doing away with the male head of household concept. In the Republic of Korea, for example, the Constitutional Court in 2005 abolished the family headship system, whereby inheritance moved from the male head of the household to his son, because it contravened the Constitution. The amendment to the *Civil Law* came into effect in January 2008.²¹⁶

²¹² See WLP 2020.

²¹³ Namibia 1996.

²¹⁴ World Bank et al. 2009: 125-171; UN-Habitat 2006a.

²¹⁵ FAO 2007: 21.

²¹⁶ Immigration and Refugee Board of Canada 2007.

Recognizing the role of both women and men as heads of household and rights holders can influence the outcomes of land tenure reforms. In Albania, men are the sole representatives of the household for legal matters, while women are typically seen as a household caretaker with no voice in decision-making. This is reflected in land rights registration. The number of women applying for property registration is three times less than the number of men applying, and in 2014 only 14 per cent of all applicants to register land rights were women. A promising pilot project in Pogradec District worked to provide information to both women and men in households and adopted land registration procedures that helped identify all rights holders in the household (not just relying on the head of the household's information). By 2016, 40 per cent of property registrations in the project area were in the name of women, compared with the national average of 14 per cent.²¹⁷

Application or use of the head of household concept should pay particular attention to women heads of household, who are typically poorer, have less access to resources than their male counterparts and bear the disproportionate burden of unpaid care and domestic work, and who would benefit from targeted interventions to improve their standard of living, including through access to land and other productive resources.

3. Eliminate discrimination in inheritance rights

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure equality between women and men, as well as between girls and boys, in all matters related to inheritance.
- Ensure that the surviving spouse(s), regardless of gender or whether the surviving spouse(s) has (have) children, has (have) at a minimum

²¹⁷ Ministry of Foreign Affairs, The Netherlands 2016.

continued occupancy and use rights with respect to the marital home as well as to moveable and immovable property, including land, without precondition.

- Discourage the practice of inheritance renunciation and take active steps to educate women and men about the negative impact of this practice.
- Address inequalities between women and men in other spheres of marriage, such as in administration of marital property, so that such inequalities do not undermine women's autonomous decision-making over inheritance.

Commentary and promising practices

Inheritance is property passing at the owners' death to heirs or those entitled to succeed.²¹⁸ It is a fundamental way in which wealth is transferred between generations within a family as well as a society. It has emerged as a key in the struggle for realizing women's land, housing and property rights, including within the context of HIV. OECD data indicate that in 55 out of 180 countries, "customary, traditional or religious laws provide daughters and/or widows with a lower share of inheritance than sons and/or widowers".²¹⁹ While it is well understood that some customary and religious laws can be discriminatory, statutory laws can also be problematic for women and girls. In some countries, customs and regulations on inheritance have accelerated the practice of property-grabbing, or "disinheritance", against widows.

For many women, law and/or custom too often preclude their ability to benefit on an equal footing to men – if at all – which renders them unable to tap into the economic benefits and security that inheritance can bring. Evidence shows that lack of inheritance can potentially inhibit agricultural investment made by women.²²⁰ Considering that women are key actors in the agricultural sector in many developing economies, this can have a broad-

er impact on food security, income and well-being not only for women themselves but also for their families, communities and the broader economy. On the other hand, gaining inheritance rights increases daughter's autonomy,²²¹ women's economic empowerment²²² and education levels for girls.²²³

While inheritance is closely related to marital property rights, they are also conceptually distinct. Inheritance rights do not and cannot supplant a woman's property rights in marriage, but they are important and can bring about a genuine improvement in women's socio-economic status.

Concerning inheritance from a deceased spouse's estate, most countries in the world now provide for the surviving spouse, regardless of gender, to have equal inheritance rights to the marital home as well as to moveable and immovable property. Some countries, for example Canada, designate a "spouse's share" of inheritance,²²⁴ which is a portion of the deceased's estate that will automatically devolve to the surviving partner. In many cases, other family members (for example, children of the deceased) are also provided for, although in some circumstances only if the value of the estate exceeds the spouse's share.

While many countries do not provide for equal inheritance rights between women and men, important advances have been made. In Sierra Leone, for example, equality in matters of inheritance is now provided for through the *Devolution of Estates Act* of 2007, but this does not apply to property held under customary law.²²⁵ Ghana's *Intestate Succession Law* of 1985 also provides for the spouse and children of a person who died intestate (i.e., without a will) to inherit most of the property of their deceased spouse/parent.²²⁶

Inheritance also applies to daughters inheriting from their parents' estate. In India, the *Hindu Succession (Amendment) Act* of 2005 removed

²¹⁸ FAO 2018.

²¹⁹ OECD 2019a.

²²⁰ Dillon and Voena 2017.

²²¹ Roy 2008.

²²² Peterman 2011.

²²³ Harari 2018.

²²⁴ See CLEO 2018.

²²⁵ Kaindaneh, et al. 2015.

²²⁶ Ghana 1985.

provisions in the 1956 *Hindu Succession Act* that discriminated based on gender. In particular, the Act resulted in daughters becoming equal inheritors of coparcenary property,²²⁷ thereby giving them the same legal rights as sons.

In Nepal, the *Act to Amend Some Nepal Acts for Maintaining Gender Equality*, 2063 of 2006 brought some inheritance rights for daughters in line with those of sons by removing the provision that daughters must return property they inherited from their family on marriage; however, it does not provide for married women to be equal coparceners.²²⁸ A widow has full rights to use her property, even if she remarries, and daughters have the same rights related to food, clothing, education and health as sons.²²⁹

In the Middle East and North Africa, inheritance laws and practices are governed in many countries by sharia (or Islamic) law, which determines how inheritance shares are to be distributed within the family. In matters of inheritance, in general, a woman's share will be half that of a male in the same position. This system of males inheriting twice as much as females has been justified on the basis of men's duties under sharia law to maintain their families. Many Islamic women's rights advocates see the practice of unequal inheritance as contrary to women's rights and as reinforcing women's subordination within the family and society.²³⁰

Some countries have altered the application of Islamic law on inheritance in statutory law. Under the Turkish *Civil Code* of 2002, female and male children and female and male surviving spouses have equal inheritance rights to land and non-land assets, but in practice Islamic law and customary inheritance and dowry norms may take precedence. Property is often registered in men's names and inheritance patrilineal, while daughters who received a dowry are often excluded from inheritance.²³¹

²²⁷ Coparcenary is the legal concept whereby two or more people inherit a title equally between them.

²²⁸ Co-partners are persons who equally share an inheritance.

²²⁹ See OECD 2019b.

²³⁰ Tempra 2018.

²³¹ See OECD 2019c.

Customary practices and traditional structures, as well as fear of stigma and social exclusion or ostracism, can also force women to renounce their already reduced inheritance and to hand it over to a male member of the family. In several places, measures have been taken to address this. In the State of Palestine, the Head of the Higher Council of Sharia Jurisdictions and Head of the Sharia High Court issued a notice in 2011 that imposed certain conditions before a woman could be considered to legally renounce her inheritance share. These include the passage of at least four months after the deceased person's death before a renunciation of inheritance can be registered. The relevant authorities are also required to verify the real value of the inheritance share, based on a report by three experts authorized by the municipality or local council. This protocol is aimed at helping women to retain their inheritance shares and protecting them from losses as a result of reduced valuations of those shares.²³²

In Jordan, an amendment to the *Personal Status Law* provides that property of the deceased should be registered in the name of the testator immediately after death and mandates a three-month waiting period before a woman can waive her inheritance rights. This amendment addresses the situation in which women lost their inheritance rights as they were approached by male relatives following the death of a son, husband or father and asked to sign documents that waived these rights.²³³

Another impediment to women's enjoyment of inheritance rights is the lack of proper documentation on which to establish a legal basis for claims, such as identity cards and birth, marriage and death certificates. To rectify such a situation, under the HIV and legal empowerment programme of UN Women, GROOTS Kenya, a grassroots network of women's self-help groups and community organizations, organized local registration drives to assist women and children in vulnerable situations

²³² UN Human Rights Council 2011a.

²³³ See OECD 2019d.

to obtain the required documentation to establish legal claims for inheritance.²³⁴

Women's relative lack of power within the household, combined with resource constraints, poses particular concerns when they claim inheritance rights. Under conditions of economic hardship, high unemployment and limited access to land, women may find it difficult to realize their inheritance rights for their own benefit. For example, a woman can find herself under severe pressure from both her marital and her natal family about her potential inheritance. Her husband and his family may push for inheritance from her fathers' estate to increase the amount of land under the effective control of the husband. However, the wife's inheritance may be perceived as eroding her brothers' share, and thus may jeopardize her good relations with them and undermine the safety net provided by her natal family.²³⁵ For women to enjoy equality in inheritance, their autonomy and gender equality in other spheres of marriage and family may also need to be guaranteed.

The general recommendations No. 29 on economic consequences of marriage, family relations and their dissolution (2013) of the United Nations Committee on the Elimination of Discrimination against Women provides guidance on gender equality in marriage, including practices relevant to land and property.²³⁶

4. Protect the rights of women in cohabitation, polygamy and customary marriage

RECOMMENDATION:

Laws, policies and programmes should:

- Recognize the equal rights of spouses regardless of whether a marriage, union or partnership is

civil, religious or customary (including polygamous marriages, regardless of whether polygamy is or is not legal).

- Ensure that women in customary or de facto unions enjoy the same property and inheritance rights as women married under civil law.

Commentary and promising practices

Improving property rights that come from relationships that are not formal marriages can be complex. If the basis of marital property is a legal marriage, then many women in other sorts of unions or partnerships can be excluded from marital property rights protections, which is why a human rights approach can be critical. For instance, couples may live with each other for many years, have children and share resources but may have not taken either the formal or customary steps to legalize their relationship because the cost of doing so is too high. Marriage celebrations are costly affairs, and sometimes bride price is more than the average person can pay. If the marital property rights apply only to formalized legal marriages, women and men in other relationships can be excluded from legal protections.²³⁷

Dealing with polygamous marriage is one of the more difficult issues when it comes to addressing women's land, housing and property rights. While many countries legally prohibit polygamous marriage, which is considered a violation of women's rights under international human rights law,²³⁸ it is still widely practised. In some countries, women married under polygamous or customary arrangements are left in a legal "black hole" without the protection afforded by civil law marriage and are subject to discriminatory practices. For example, mandating joint property rights based on civil marriage can be problematic for women in polygamous marriages because the husband may then choose only one of his wives to be named on the title. Thus, where

²³⁴ GROOTS Kenya 2019.

²³⁵ Norwegian Refugee Council 2017.

²³⁶ UN CEDAW 2013.

²³⁷ Ibid.

²³⁸ See UN CEDAW 1994.

polygamous marriages still exist, States should take the necessary measures to ensure the protection of women's economic rights in such marriages.²³⁹

A number of countries have taken such measures. In Kenya, for example, the *Law of Succession Act* of 1972, revised edition of 2018 [2015], provides that “a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent monogamous marriage to another woman, nevertheless a wife ... and her children are accordingly children within the meaning of this Act.” Accordingly, the law makes no distinction between wives in polygamous marriages and wives in monogamous marriages.²⁴⁰

Where polygamy is widely practiced and recognized as a legal marriage, the marital property system can be crafted in a way that prevents preference for one wife or selection of only one marriage to legitimize. In Mali, the *Family Code* (2011) provides for the separation of estate as the default marital property regime for both monogamous and polygamous marriages, providing the original owner with the right to administer property during marriage (art. 396).²⁴¹

In 2009, the South African Constitutional Court upheld a lower court decision that all the widows from a polygamous Muslim marriage would be entitled to claim from the estate of a husband who dies intestate (i.e., without leaving a will).²⁴² Research also suggests that in addition to legal protection, wives in polygamous marriages also benefit from awareness-raising programmes so that they know and can claim their rights.²⁴³

On customary marriages more generally, Mozambique's *Family Law* (2004) stipulates the obligation to register customary or religious marriages with civil authorities and recognizes de facto or common-law marriages. It also recognizes customary law

marriages and non-formal unions, and women married under custom can claim marital property.²⁴⁴

In Jamaica, the 2003 *Family Property (Rights of Spouses) Act*, which entered into force in 2006, recognizes the rights of women living in a cohabitation arrangement with a man for at least five years.²⁴⁵ Trinidad and Tobago's *Cohabitation Relationships Act* of 1998 also provides for the jurisdiction of courts to make orders in respect of interests in property and maintenance for women or men who are living or have lived together as husband and wife on a bona fide domestic basis, even though they were not married to each other. Cohabitants have similar rights to property as married spouses.²⁴⁶

In Cabo Verde, where de facto unions are more common than legal marriages, the 1997 *Civil Code* provides that the former are legally recognizable if certain conditions are met (among them, at least three years together having children). When the conditions are met, the same property rights apply as for married couples, including joint ownership of property acquired during the marriage and equal division of property in divorce (art. 1712).²⁴⁷

5. Ensure gender equality in divorce

RECOMMENDATION:

Laws, policies and programmes should:

- Ensure equal land and property rights for women and men in the event of divorce and dissolution of marriage.

Commentary and promising practices

Division of property in the event of divorce is closely related to the issue of marital property regimes, discussed above, and is generally subject to marriage

²³⁹ UN CEDAW 2013.

²⁴⁰ Kenya 2012b.

²⁴¹ See OECD 2019e.

²⁴² *Hassam v. Jacobs NO and Others* 2009.

²⁴³ Howland and Koenen undated.

²⁴⁴ Mozambique 2004.

²⁴⁵ UN Women et al. 2018.

²⁴⁶ See OECD 2019f.

²⁴⁷ See Instituto Nacional de Estatística Cabo Verde, *Mulheres e Homens Em Cabo Verde* 2015.

and family law. Women’s property rights in divorce situations are critical because divorce could lead to poverty; unequal rights in divorce are also a real barrier to women leaving abusive relationships. In some countries, divorce can be tantamount to destitution for women. Some 29 per cent of countries restrict women’s equal legal right to property and other non-land assets after divorce or separation.²⁴⁸ The United Nations Committee on the Elimination of Discrimination Against Women’s General recommendation No. 29 on economic consequences of marriage, family relations and their dissolution (2013) provides guidance on gender equality in divorce and separation, including practices relevant to land and property.

Many countries have strengthened women’s rights on divorce to ensure greater equality, with divorce laws providing that women are entitled to keep their separate property plus half the joint marital property. In Cambodia, the *Marriage and Family Law* of 2007 (2011) recognizes the equal property rights of wife and husband in divorce, unless agreement was reached otherwise. Wives and husbands have equal rights to joint property acquired after marriage and in calculating the joint property, and housework is deemed to have the same value as work outside the house (art. 980).²⁴⁹ The Plurinational State of Bolivia and the Bolivarian Republic of Venezuela provide similar equal protections for wives and husbands under their *Family Code* (1988)²⁵⁰ and *Civil Code* (1982),²⁵¹ respectively.

D. Security of tenure and prohibition of forced evictions

1. Protect legal security of tenure

RECOMMENDATIONS:

Laws, policies and programmes should:

- Recognize legal security of tenure within rural, urban and peri-urban areas across the “continuum of land rights” (e.g., customary, group, collective, leasehold, freehold) and ensure that legal security of tenure is recognized and enforced for women on an individual basis irrespective of marital or other status.
- Ensure that female victims of domestic violence enjoy security of tenure and that they have “a right to reside” in their marital homes.

Commentary and promising practices

The guiding principles on security of tenure for the urban poor provide that “[s]ecurity of tenure is understood as a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one’s home in security, peace and dignity. It is an integral part of the right to adequate housing and a necessary ingredient for the enjoyment of many other civil, cultural, economic, political and social rights. All persons should possess a degree of security of tenure that guarantees legal protection against forced eviction, harassment and other threats.”²⁵²

Land tenure is properly understood as a “bundle of rights in land”, which can include the right to occupy, enjoy and use; to cultivate and use productively; to sell, gift or bequeath; to mortgage or rent; or to transfer. Land tenure systems – ranging from informal to formal – determine who can use what resources for how long and under what conditions. In practice, land tenure may take a variety of forms, such as ownership, rental (public and private) agreements, cooperatives, leasehold or informal settlement – including informal occupation of land.

Land tenure is often deemed either secure or insecure. The reality is more nuanced. Seen holistically, certain factors can make land rights more secure for women. Under the international human rights

²⁴⁸ OECD 2019a.

²⁴⁹ See ILO 2014.

²⁵⁰ Plurinational State of Bolivia 1988.

²⁵¹ Bolivarian Republic of Venezuela 1982.

²⁵² UN General Assembly 2018b; UN Human Rights Council 2019c.

framework,²⁵³ States are obliged to take immediate measures aimed at conferring legal security of tenure on those persons and households currently lacking such protection, in genuine consultation with the affected persons and groups, regardless of the type of tenure they have. Therefore, notwithstanding the type of tenure, all persons must possess a degree of legal security of tenure, which guarantees legal protection against forced eviction, harassment and other threats.

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas provides that “States shall take appropriate measures to provide legal recognition for land tenure rights, including customary land tenure rights not currently protected by law, recognizing the existence of different models and systems”. It also provides that “States shall protect legitimate tenure and ensure that peasants and other people working in rural areas are not arbitrarily or unlawfully evicted and that their rights are not otherwise extinguished or infringed” (art. 17 (3)).²⁵⁴

UN-Habitat has established a “continuum” of land rights, encompassing both informal and formal tenure systems. While no single form of tenure can meet the different needs of all social groups, a range of land tenure options enables both women and men from all social groups to meet their changing needs over time. Each point along this continuum can provide for women’s land rights, provided that discrimination is prohibited and that women are granted legal security of tenure. However, care should be taken to ensure that women’s rights are respected and that the concept of security of tenure itself is seen from an integrated gender perspective.²⁵⁵

The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security specify that States should safeguard legitimate tenure rights against threats and infringements, i.e., they should

protect tenure rights-holders against the arbitrary loss of their tenure rights, including forced evictions (see Chapter 1).

In Ghana, the *Land Bill* approved in 2017 aims to consolidate and streamline the multiple constitutional provisions, customary laws and practices, policy instruments, common law and judicial decisions that govern and administer land. The Bill provides for spousal consent in the disposition of property and prohibits discriminatory practices in relation to land. The impacts of its implementation are yet to be assessed.²⁵⁶

The *Uganda National Land Policy* (2013),²⁵⁷ and the corresponding Uganda National Land Policy Implementation Action Plan (2015/16-2018/19),²⁵⁸ seeks to harmonize and streamline the complex tenure regimes for equitable access to land and security of tenure as one of its main policy objectives. It states clearly that a good land tenure system must guarantee security of tenure and must correct provisions that constitute discrimination against women.

Namibia’s *Flexible Land Tenure Act* of 2012 provides for more planning, servicing and ownership of land in informal settlements in order to create alternative forms of land titles that are simpler and cheaper to administer than existing forms of land titles; to provide security of title for persons who live in informal settlements or who are provided with low income housing; and to empower the persons concerned economically by means of these rights.²⁵⁹

Because women most often gain access to land and housing through their relationship with a man, widowhood and domestic violence present a serious concern from the point of view of women’s security of tenure. Namibia’s *Communal Land Reform Act* of 2002 gives surviving spouses who reside in rural areas the right to remain on land allocated

²⁵³ UN CESCR 1991.

²⁵⁴ UN General Assembly 2018a.

²⁵⁵ Barry and Augustinus 2016.

²⁵⁶ See OECD 2019g.

²⁵⁷ Uganda 1995b

²⁵⁸ Uganda 2015.

²⁵⁹ UN General Assembly 2018b, para. 38.

to their deceased spouses.²⁶⁰ This right is not affected by remarriage. In some countries, such as Brazil, India and Serbia, national domestic violence legislation now provides that victims of domestic violence are allowed to stay in the marital home, regardless of who owns it.²⁶¹

2. Protect women's rights in land titling and registration

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure the default joint titling/joint registration of land, housing, property and productive resources.
- Ensure that married and unmarried women alike are able to benefit equally from titling and registration programmes.
- Ensure that titling and registration programmes are accompanied by effective awareness-raising initiatives aimed at educating women and men about women's rights to land and other productive resources.
- Support and empower women who obtain land titles to maintain their control over the land and other productive resources.

Commentary and promising practices

Land surveying, titling and registration are the main ways that land rights are recorded in most countries. Land titling and registration reforms can present an important opportunity for implementing equal rights for women in land and can help make women's rights more secure by documenting and bringing them under the protections of the formal land administration system. Yet titling and registration programmes have historically

not benefited women to the same degree as men and can also pose the risk of exacerbating pre-existing gender and other inequalities.²⁶² Common obstacles include: lack of understanding of social and cultural aspects of land rights and how they intersect with the land titling and registration system; few women in key roles in land administration and programmes; women's lack of awareness of the benefits and implications of land titling; little involvement of women in land programme design; and limited participation of women overall.²⁶³ According to the FAO technical guide on governing tenure, care should be taken to ensure that land formalization through titling and registration does not result in women losing rights that they enjoy under customary law – for example, rights to use, forage, cultivate or access common land.²⁶⁴ For indigenous peoples, especially women, land titling systems have historically compromised their right to land that is often collectively held.²⁶⁵

Joint ownership, when linked to marital property regimes, establishes joint rights to marital property for spouses. Joint titling and registration have several advantages that acknowledge the contributions of all spouses to the household economy (which, for women, are often in the form of labour rather than cash). It also offers greater protection to women should the marriage break down. For example, if the names of both spouses are registered, one spouse would not be able to forcibly evict the other. Joint titling/registration also provides for automatic continuity when one spouse dies. The name of the surviving spouse or spouses would already be part of the land titling/registration, eliminating the need for reallocation of the land and thus making it easier to enforce the prohibition of high reallocation fees.

A number of countries have passed agrarian legislation for the joint adjudication or titling of land to couples, overturning prior practice, including

²⁶⁰ The Act was amended in 2005 and 2013, but the amendments have not affected this provision.

²⁶¹ UN Human Rights Council 2011a.

²⁶² Deere 1985.

²⁶³ FAO 2013.

²⁶⁴ Ibid.

²⁶⁵ See Giovarelli et al. 2016.

Brazil, Colombia, Costa Rica, Honduras and Nicaragua.²⁶⁶ In Ecuador, the National Rural Development Programme (1991-1999) similarly adopted a joint titling approach. From 1999, joint titles became the norm for married couples and couples in informal unions as the law and state titling practice were brought into line with the new civil code.²⁶⁷ In Panama, reforms to the *Agrarian Code* also included joint titling as a requirement for the allocation of state lands.²⁶⁸ Similarly, Viet Nam's *Marriage and Family Law 2014* covered common property without discrimination between housework labour and income-generating labour (art. 29).²⁶⁹ In India, the Government has been issuing joint *pattas*, or title deeds, in the names of both husband and wife, thereby making women joint owners of land.²⁷⁰ In the Philippines, *Administrative Order No. 1* of 2001 protects the rights of both spouses to ownership of the land by requiring the issuance of emancipation patents or certificates of landownership award in the name of both spouses.²⁷¹

Ethiopia's *Land Law* provides that "[w]here land is jointly held by husband and wife or by other persons, the holding certificate shall be prepared in the name of all the joint holders."²⁷² The land certification programme there attempts to address gender bias by providing a joint certificate to spouses, conferring joint land ownership. Documentation in support of the certification includes maps of the land and photos of both husband and wife.²⁷³ Women are actively involved in the certification process, and land administration committees at the local level are required to have at least one female member.

In Lesotho, many marriages are informal and lack documentary proof of the relationship, although the couples put themselves forward as married

and the wife often takes her husband's name. Data collectors for a land-titling project did not require proof of marriage if the applicants used the same last name. Because joint rights to marital property are based on the marriage relationship, allowing the same last name to suffice as proof of marriage greatly increased the likelihood that women's rights to marital property would be recorded along with their husbands.²⁷⁴

Several lessons have been drawn from titling/registration programmes that have recognized (or failed to recognize) co-ownership between spouses via joint titling/registration. Researchers looking into these questions have surmised that legislation in this area should ensure that regulations and guidelines include the option of joint titling/registration, especially for marital property. They also recommend that the process and forms should facilitate the inclusion of more than one owner; that officials should receive training regarding marital property rights, co-ownership and joint titling/registration; and that information campaigns on the ground should explicitly inform both women and men about the latter.²⁷⁵ Furthermore, such programmes should be accompanied by other actions designed to ensure that titles and registration have an empowering effect. This includes actions designed to remedy historic wrongs, such as failing to acknowledge indigenous peoples' collective title to lands, territories and resources that are often held and used in common.

Additional steps are needed to understand the nature and scope of women's land rights, especially when land tenure systems are not based on private or individual ownership, such as in collective or communal tenure systems, in which rights exist in layers. In many collective tenure systems, rights are accorded for use, such as harvesting products from communal areas or using land for seasonal cultivation. An understanding of the different kinds of rights that women and men have within collective and communal tenure systems can help

²⁶⁶ UN Millennium Project 2005.

²⁶⁷ Radcliffe 2014.

²⁶⁸ UN-Habitat 2006b.

²⁶⁹ Socialist Republic of Vietnam 2014.

²⁷⁰ FAO 2020a.

²⁷¹ World Bank 2014.

²⁷² Tura 2014.

²⁷³ Deininger et al. 2009.

²⁷⁴ Giovarelli et al. 2012.

²⁷⁵ Lastarria-Cornhiel et al. 2003.

CASE STUDY:

Women resisting forced eviction: the landless people's movement in Beel Kuralia, Bangladesh

Since 1992, some 1,500 landless peasant families have been struggling to retain a total of 473.23 acres (191.59 ha) of *khas* (state-owned) land in their possession at Beel Kuralia, Bangladesh. In 1987, the Government adopted the Khas Land Management and Distribution Policy, according to which landless peasants should get priority in receiving *khas* agricultural land as permanent settlements for a period of 99 years. The policy sets criteria for widows and abandoned women to be given priority and guaranteed joint ownership of land between husband and wife.

Despite this policy, obtaining a title deed is a very complicated and lengthy process. Corruption and gender-based discrimination within the land administration and bureaucracy make it difficult for women to claim their land rights. In addition, these families have had to endure violence in the seemingly endless struggle to retain their land rights against illegal land-grabbing. On 2 May 1993, they were subject to brutal attempts to forcibly evict them. Their homes were looted and set on fire. During one attack, a young boy was caught and attackers chopped off his right hand. People accused the police of sheltering the perpetrators.

At that time, the Association for Land Reform and Development, a national non-governmental organization, brought together a group of journalists from the country's leading newspapers to investigate the attacks. They reported harassment, torture, killings and arson attacks on landless people's houses, which stirred the conscience and drew the attention of people from all walks of life. The Association facilitated the discussion with local political leaders, convened press conferences and dialogues both at national and local levels and published news in its journal *Bhumibarta*. It also supported the families with legal aid and awareness-building workshops between 1993 and 2017 so that they could fight systemic corruption in the local land administration and hold local elites accountable through court

processes. This support developed the capacities of local landless leaders, allowing them to benefit from the Government's Khas Land Management and Distribution Policy.

Unfortunately, corruption threatened this progress; influential locals forged title deeds and records, claiming these lands as their own. Due to the double claims of land ownership and pending disputes in administrative bodies and courts, governmental issuance of title documents stalled. For two decades, the cases made their way through different dispute resolution forums before the Supreme Court declared these lands as government *khas* lands. After this legal victory, the first batch of 215 widowed or abandoned single women of Beel Kuralia received their ownership deed in their individual name in 2013. In all, between 1993 and 2017, 1,210 of the 1,500 families in the region received title deeds lasting 99 years.

In 2016, 100 women who had received *khas* land formed five separate women farmers' groups, started practicing organic agriculture and applied a group approach for generating capital to invest and manage their bank accounts. Their land tenure security has thus helped to ensure food sovereignty, empowering women to have greater control on land use and the products they grow, such as paddy rice, onion, garlic and chilli, which has in turn allowed women to bargain for fair prices at the local market.

The success seen in Beel Kuralia extends beyond land tenure security; the landless women's movement is a valuable example of women's socio-economic empowerment. Many of these women leaders have taken the lead in fighting against land-grabbing, dispossession, early child marriage and other violations of women rights issues and have become critical actors in local mediation and arbitration processes.

Source: Rowshan Jahan Moni, Association for Land Reform and Development, Bangladesh.

ensure that women's rights are not lost in the often complex process of land rights documentation and registration. For example, a titling programme in Benin conducted a baseline census on all rights and obligations that attached to collectively held land of women and men. The census was used to design programme interventions and impacts so that they did not harm but rather protected all rights for both women and men.²⁷⁶

Land titling and registration do not necessarily guarantee that women will have and maintain control over such land. For example, smallholders who do not have sufficient resources and capacity to compete with large agribusinesses may face pressure to opt for selling land or engaging in contract farming. In contract farming, small farmers become essentially wage-earning agricultural labourers on their own land but without the benefits associated with paid labour, such as minimum wages, sick leave and other legislated benefits.²⁷⁷ Women tend to have fewer resources and less negotiating power than men and may be forced to sell land or to accept contracting farming with worse conditions. Support for women to produce from the land – including access to credits and loans, agricultural extension services and women farmers' cooperatives – need to accompany land titling/registration processes (see “Enable access to loans and credits” and “Provide agricultural extension services and inputs”). Likewise, States should support business models for contract farming that protect and promote the rights of small farmers, including women farmers, to land and other productive resources.²⁷⁸

3. Provide protection against forced evictions

RECOMMENDATIONS:

Laws, policies and programmes should:

- Provide women with legal protection against forced eviction in rural, urban and peri-urban areas at the hand of both public and private actors. This protection should consider the specific needs of women.
- Ensure that all forms of forced eviction at the hands of both public and private actors, particularly perpetrated against women (for example, disinheritance or “property-grabbing”), are illegal and subject to criminal penalties.
- In the case of evictions or relocations, all affected parties should be treated in a manner consistent with international human rights standards. At a minimum, ensure evictions and relocations do not render any person homeless or vulnerable to the violation of their human rights.
- Create gender-responsive and effective enforcement mechanisms, such as special police units, to ensure that women are able to claim their rights when they have been subjected to forced eviction, disinheritance or property grabbing. These enforcement systems should have all the human, financial, legal, technical and other resources needed to make them effective.
- Provide for gender-responsive remedies, including compensation, for all affected by forced eviction and displacement, taking into account subsidiary tenure rights held by women, including those exercised collectively.

Commentary and promising practices

States should explicitly prohibit the practice of forced evictions. These are defined as the permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land that they occupy without the provision of and access to appropriate forms of legal or other protection. Forced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water,

²⁷⁶ Giovarelli et al. 2012.

²⁷⁷ UN General Assembly 2011.

²⁷⁸ UN General Assembly 2011 provides detailed guidance.

health, education, work, security of the person and freedom from cruel, inhuman and degrading treatment and of movement. Property grabbing, or disinheritance, at the hands of private actors, may also be considered a form of forced eviction perpetrated against women.

The Basic Principles and Guidelines on Development-based Evictions and Displacement provide further guidance on protecting women's rights in the context of eviction and displacement.²⁷⁹

In South Africa, the *Prevention of Illegal Eviction from and Unlawful Occupation of Land Act* of 1998 provides for the prevention of forced eviction and further notes that “special consideration should be given to the rights of the elderly, children, disabled persons and particularly households headed by women, and that it should be recognised that the needs of those groups should be considered”. This Act builds on the Constitution, which recognizes “the right of everyone to have access to adequate housing and to be protected from arbitrary evictions”.²⁸⁰

Some countries also offer specific protection against property grabbing or disinheritance. Zambia's *Intestate Succession Act* of 1989,²⁸¹ for example, imposes criminal penalties on those who wrongfully deprive rightful heirs of their property. Zambia also established a special victim support unit within its police force to protect women from property grabbing after the death of a spouse and enforce their rights. This unit has been described as “an innovation that has helped to curb incidences of property-grabbing. The dissemination of its activities through women's NGOs, ... and the media, is enabling women to realize that they are not completely helpless when confronted with such situations.”²⁸²

In Malawi, the *Deceased Estates Act* of 2011 declares any property grabbing by a deceased spouse's relatives to be a criminal act and subject to criminal

prosecution.²⁸³ In Zambia, the *Wills and Administration of Testate Estates Act* of 1989²⁸⁴ prohibits “intermeddling” with the property of rightful heirs. Any person who wrongfully deprives a rightful heir of her or his property is liable to criminal sanction.

In Mozambique, legal support from trained paralegals in combination with awareness raising on rights to land and inheritance and on discriminatory social norms helped women at risk of dispossession to stave off inheritance conflicts and defend their rights against the growing number of land investors.²⁸⁵

E. Governance, institutions, policies and programmes

1. Make land and agrarian laws, policies and programming gender-responsive

RECOMMENDATIONS:

Laws, policies and programmes relevant to the governance of land should:

- Be harmonized, both in the process of their development as well as in their implementation, to ensure they are mutually reinforcing in their efforts to respect, protect and fulfil women's land rights, including in relation to specific areas (e.g., land titling and registration, access to loans and credits, agricultural extension services).
- Ensure that women's rights, needs and perspectives, including those of women facing multiple and intersecting forms of discrimination, are taken into account in land and agricultural law, policy and programme development, including in assessment and analysis, programme planning and design, implementation and monitoring and evaluation, and that processes are participatory and transparent.

²⁷⁹ UN Human Rights Council 2007, annex 1.

²⁸⁰ Strauss and Liebenberg 2014.

²⁸¹ Republic of Zambia 1989a, as amended in 1994.

²⁸² UN-Habitat 2005.

²⁸³ Malawi 2011.

²⁸⁴ Zambia 1989b, as amended in 1994.

²⁸⁵ Tanner and Bichieri 2014.

- Clearly articulate the principle of equality between women and men with respect to land allocation and ensure that women receive plots of equal size and value to those allocated to men in comparable situations within the context of land reform and/or land distribution programmes.
- Ensure that the full range of land tools (e.g., plans, guidelines, operational manuals, training modules, land tenure instruments, land records databases, monitoring and evaluation instruments) incorporate an integrated gender perspective, and promote women’s effective, secure and equal enjoyment of their land rights.
- Raise awareness on women’s and girls’ disproportionate share of unpaid care and domestic work, which is exacerbated by the consequences of unsustainable land management and environmental degradation such as displacement, relocation and loss of livelihood.
- Be aligned with international standards, in particular international human rights standards, indicated in Chapter 2.
- Consider adopting temporary special measures in policies and programmes to rectify inequality in access to land and natural resources for women.

Commentary and promising practices

Good law, policy and programming require an understanding of the gender dimensions at stake. Making women’s voices heard at all levels in decision-making is crucial (see “Guarantee meaningful participation in decision-making”). In order for land and agricultural laws, policies and programmes to benefit women, they should be designed from the outset with an integrated gender perspective. Taking into account their implications for both women and men of any activity is crucial to their successful implementation and sustainability. They should consider the particular challenges faced by women, including by those experiencing multiple and intersecting forms of discrimination, when it comes to access, use and control over land. Laws and policies that seem a priori gender-neutral can

discriminate against women, and thus their actual impact on gender equality needs to be carefully assessed and monitored.

Many countries have implemented land reform policies and programmes aimed at a more equal distribution of land between women and men. Some have also provided for a gender-responsive approach.

The Eritrean *Land Proclamation* of 1994, for example, explicitly states the principle of non-discrimination in land rights, but it should be noted that the project of allocating land to women in their own names has been complicated by men’s resistance and by lack of enforcement.²⁸⁶ In Burkina Faso, the law provides for the allocation of state-owned land without distinction based on sex or marital status. A rural land tenure reform process there culminated in a pioneering *Rural Land Law* adopted in 2009 and in substantial revisions, adopted in 2012, to the long-standing framework land tenure law, the *Réorganisation Agraire et Foncière*.²⁸⁷ In Mozambique, the *Land Act* of 1997 ensures that both women and men have rights in state-owned land.²⁸⁸ Together with the 2004 *Family Code*, these establish equal rights to property, both within and outside community-held land and to the sharing of marital assets including land (for common law and registered marriages).²⁸⁹ In the United Republic of Tanzania, the *Land Act* of 1999 explicitly affirms the equality of women’s and men’s land rights.²⁹⁰

In Malawi, the *National Land Policy* of 2002 stipulates that, in view of the increasing population pressure on land as well as the devastating effects of HIV, a clear policy on women’s access to land should always be considered in policy planning and implementation strategies.²⁹¹ The Land Policy influenced the country’s subsequent land acts, including the *Customary Land Act* (2016), which calls

²⁸⁶ Kibreab 2009.

²⁸⁷ See USAID 2010.

²⁸⁸ Mozambique 1997.

²⁸⁹ Locke 2014.

²⁹⁰ Amendments in 2004, 2005, 2009, and 2017 did not affect this provision.

²⁹¹ Malawi 2002.

for the quorum for the conduct of the business of customary land committees to be four members, including at least two women.²⁹²

In Brazil, the Ministry of Agrarian Development began in 2001 to apply a gender perspective in all of its administrative procedures, including facilitating women's participation in the agrarian reform process. Later, in 2007, the Ministry gave preference in the selection of agrarian reform beneficiaries to women heads of household, and the share of women beneficiaries continued to increase through 2017. The focus of the gender-equality policies has broadened over the last decade to include not only land rights but also women's access to other productive resources, such as infrastructure, credit, training and marketing services. The rural women documentation programme was a major success, with 1.35 million women obtaining some 2.7 million documents between 2004 and 2014.²⁹³

In the Philippines, the *Republic Act No. 6657* of 1988 (instituting the Comprehensive Agrarian Reform) recognizes that women must be guaranteed and assured equal right to ownership of the land, equal shares of the farm's produce and representation in advisory or appropriate decision-making bodies. The 2009 amendment provides for equal support services for rural women and lists a number of measures to promote women's economic empowerment.²⁹⁴

In Indonesia, under the 1960 *Basic Regulations on Agrarian Principles Law*, when one spouse dies, half of the matrimonial property is transferred to the surviving spouse. The remaining half is added to the deceased's estate and distributed among his/her heirs, who include the surviving spouse.²⁹⁵

In Nepal, in 2006, a 10 per cent tax exemption for land transferred to women was put in place. The same policy increased the exemption to 20 per cent in 2007 and 25 per cent in 2009. The High-level

Commission for Scientific Land Reform and other organizations and activists advocating for women's land rights proposed that the Government increase this tax exemption to 50 per cent. The *Financial Act 2072* (2015-16) contains provisions to encourage women to register land in their own names, providing a 25 per cent tax exemption during the registration of any deed where ownership is established in a woman's name. A 35 per cent tax exemption applies for land registration in the name of a single woman (whose husband has died). The exemption goes up to 50 per cent for the same in some remote mountainous districts. This is an example of a temporary special measure to rectify structural inequalities, including gender inequality.²⁹⁶

Agricultural programmes with a focus on women's land rights can yield positive outcomes in other areas. For example, in Zambia, secure inheritance rights for widows are associated with higher land investment by married couples, including fertilizer application, fallowing and use of labour-intensive tillage practices meant to reduce erosion and runoff in a changing climate. Investment is highest when the widow inherits, lower when someone in her family inherits and lowest when the land reverts to the chief or another family member.²⁹⁷

Land and agrarian laws, policies and programmes should be aligned with the international standards indicated in Chapter 2, including the Convention on the Elimination of All Forms of Discrimination against Women, the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, among others.

The UN-Habitat Global Land Tool Network (GLTN) evaluates land issues and tools from a gender perspective, develops capacity on gender and land issues and studies the tenure rights of women

²⁹² Malawi 2016a.

²⁹³ Deere 2017.

²⁹⁴ See FAO 2020c.

²⁹⁵ Tempra 2018.

²⁹⁶ IOM 2016.

²⁹⁷ Dillon and Voena 2017.

CASE STUDY:

Empowering women through land tenure reform in Rwanda

In 2004, Rwanda embarked on an ambitious land tenure reform programme aimed at increasing security of tenure for all landowners and eliminating all major forms of discrimination. This was largely achieved through the establishment and implementation of new legal, regulatory and institutional frameworks. The effect of such reform was transformational: The rights of women and other vulnerable groups of society are now being protected and enshrined as a matter of law, policy and practice.

The land tenure reform was based on principles set forth in the Constitution: gender equality, non-discrimination and the universal right to private property. Accordingly, women's land rights were prioritized in various governmental initiatives with the use of participatory and community-led processes. At each stage of the reform, women were not only consulted but also actively involved in running the reform programme.

The Systematic Land Registration (SLR) programme, a key governmental initiative from 2009 to 2013, supported the aim of eliminating gender discrimination and promoting women's tenure security by regularizing land ownership. Land surveying was performed by local surveyors and land claims were evaluated in participatory processes. The results were striking: According to 2017 data from the Rwanda Land Management and Use Authority, out of a total of 11,446,570 registered parcels of land,

19 per cent were registered to women individually versus 11 per cent registered to men. Importantly, a significant portion of land parcels (49 per cent) were registered jointly, formalizing women's and men's equal land rights.

Qualitative data from focus group discussions in 2017 similarly showed positive results. Women reported feeling more empowered because of the formal acknowledgement of their land rights and exercised increased influence in household decision-making. More specifically, women interviewed felt that they were no longer vulnerable in cases of divorce, were more confident to ask for bank loans – given that they could use their land as collateral – and felt more secure in their tenure as land sales required both the husband and wife's permission in cases of joint registration.^a

The land reforms ensured that, as a matter of law and practice, land registration is easier and more efficient for individuals to protect their land rights. In the Rwandan case, land tenure reform – and specifically land registration – has significantly contributed to women's increased land tenure security. Women and men are now both part of every stage of the administrative process, and their rights are protected without discrimination.

^a Ngoga 2018.

Source: Thierry Ngoga, Alliance for a Green Revolution in Africa (AGRA).

and the legal reforms that affect them. GLTN applies gender evaluation criteria, which are also an important resource for law and policymakers and civil society.²⁹⁸

2. Strengthen land authorities and institutions

RECOMMENDATIONS:

Laws, policies and programmes should:

- Put in place institutions to implement laws, policies and programmes related to women's land rights and ensure sufficient allocation of the budget to those institutions for their effective functioning.
- Emphasize training in women's rights, gender mainstreaming and participatory gender planning for all authorities and institutions responsible for land administration and tenure, including within the context of implementing land reform.
- Ensure that land authorities are held accountable under laws, policies and programmes for their delivery of programmes related to the effective and equal enjoyment of women's rights to land and other productive resources.
- Ensure coherence and clarity of functions and authorities between institutions responsible for the implementation of laws, policies and programmes related to the observance of women's rights to land and other productive resources.

Commentary and promising practices

Often a stark gap looms between the law and its implementation for multiple reasons. Yet, in all cases, effective institutions are pivotal to the implementation of laws, policies and programmes aimed at securing women's land rights. In the land sector, various institutions are relevant, whose set-up varies from country to country. Land institutions

include those directly responsible for the governance of land tenure, such as the allocation and administration of land rights, land management and land use.

States need to ensure that such institutions have the resources, capacity, expertise and commitment to make women's access to, use of and control over land and other productive resources a reality. Gender equality and women's empowerment fare far better in an environment where their land rights are clearly articulated, protected and promoted through the application of gender-responsive land laws, policies and programmes through effective institutions and authorities, both formal and customary.

Protecting women's rights effectively begins with providing capacity-building and training on women's rights and gender mainstreaming to all land officials charged with implementing land policies and programming. In addition, such institutions should adopt clear, transparent and participatory gender planning processes, in line with women's rights to participation. Such authorities should be held accountable for ensuring that gender is effectively mainstreamed into all programmes and that adequate programmes target women's land rights.

Women's land rights need to be prioritized within government agencies, advocacy organizations and donor partners to maintain and reinforce the pressure to address women's issues. In Vanuatu, the Department of Women's Affairs, given its limited resources and capacity, relies on a network of advocates within the land sector to support its efforts relating to women's access to land and other productive resources. The inclusion of women in articulating group rights to land helps ensure that benefit-sharing from that land reaches women and their families.²⁹⁹

In the Plurinational State of Bolivia, the National Institute for Agrarian Reform applies gender equality criteria to the distribution, management,

²⁹⁸ GLTN 2020.

²⁹⁹ Naupa 2017.

ownership and use of land.³⁰⁰ The Philippines's experience with the gender and development approach has been considered quite innovative in the region, and it has supported institutionalization of gender issues within key natural resource agencies such as the Department of Agrarian Reform, the Department of Agriculture and the Department of Environment and Resources.³⁰¹

In Ghana, the Land Administration Project (created under the 1999 *National Land Policy*, as amended in 2002) has a number of initiatives on gender training and awareness-raising for land sector agency staff and traditional authorities of the customary land secretariats.³⁰² In Kenya, customary authorities were encouraged to adopt positive provisions related to women's land rights from the new Kenyan Constitution in their deliberations on land and justice in their communities.³⁰³

Women's access to land agencies and information is key for gender-responsive land administration. For example, the Dubai Land Department has a specific service for women called Al Mahara, which is designed to cater to women's needs in the context of a vibrant real estate market and a culture that puts some constraints on women's mobility and access to public spaces. A woman can access all the Department's services and maintain her privacy at the same time; she does not have to visit the offices to use their land administration services, and a direct phone line connects her to a dedicated Al Mahara representative. She can also be picked up from any point in Dubai by car to facilitate her access and use of the services, and she can get advice and support on real estate investment and any of the services available. Between 2015 and 2018, Al Mahara was used by 136,723 women investors who undertook 316,986 real estate transactions. It maintains sex-disaggregated information on land transactions

and also supports women to participate in local and international events.³⁰⁴

3. Adopt gender-responsive land budgeting

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure that land budgeting reflects an integrated gender perspective and tracks how budgets respond to gender equality commitments and targets.
- Ensure that land budgeting is participatory and in particular reflects the meaningful participation of women.

Budget should be allocated:

- For the implementation of existing land laws and policies and programmes on land as well as for the development of new laws, policies and programmes that are necessary for advancing gender equality in the governance of land tenure.

Commentary and promising practices

Institutions charged with protecting women's rights to land and other productive resources will be successful only when they are adequately supported with both human and financial resources. Gender-responsive budgeting is budgeting that reflects an integrated gender perspective and tracks how budgets respond to gender equality commitments and targets.

In general, "gender-responsive budgeting has emerged as part of local development and community-based, community-driven or decentralized governance programmes, which enables local people to voice their needs, take part in local budget processes, as well as in budget monitoring and advocacy".³⁰⁵ In addition, gender-responsive

³⁰⁰ Deere 2017.

³⁰¹ USAID et al. 2014.

³⁰² Dzifa Torvikey 2016.

³⁰³ USAID 2014.

³⁰⁴ Tempra 2018.

³⁰⁵ ESCAP 2010.

budgets can support the production and dissemination of sex-disaggregated data and facilitate linkages between the national and local levels in budgeting and governance. UN Women has provided on-demand policy advice and technical support in this area to more than 80 countries, resulting in increased capacities of ministries of finance, line ministries and civil society to implement and monitor gender-responsive budgets.³⁰⁶

Gender-responsive budgeting can also illuminate the reasons for the gaps between policies and implementation. In South Africa, for example, the Women's Budget Initiative's main objective was to make the functioning of the Government transparent and to hold it accountable for implementing gender-responsive policies.³⁰⁷

In Rwanda, the Government allocated 5 million Rwandan francs to raising awareness about the *Matrimonial Regimes, Liberties and Succession Law* of 2000 among women. This law recognized, for the first time, the right of women and girls to inherit and own land and property,³⁰⁸ although it was not extended to those who marry under customary law including polygamous or religious unions, which is particularly common in rural areas.³⁰⁹

With few specific examples of gender-responsive land budgeting to be highlighted, this is an area where experts agree more needs to be done. Regarding land specifically, gender-responsive budgeting would help to ensure that women and men benefit equally from, for example, land allocation programmes and land reform processes. Specific resources should be set aside to make these programmes and processes meaningful to, and inclusive of, women. More generally, gender budgeting in this area would also help to ensure accountability and play a significant role in bridging the gap between gender-responsive land policy and its effective implementation.

³⁰⁶ UN Women 2014b.

³⁰⁷ Stotsky 2007.

³⁰⁸ FAO 2017.

³⁰⁹ LANDac 2017.

4. Conduct gender-sensitive data collection, monitoring and evaluation

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure the collection and analysis of sex-disaggregated data and gender statistics³¹⁰ on access to, use of and control over land and other productive resources and also ensure disaggregation of data on other relevant grounds, such as income, location, race and ethnicity, indigenous identity and disability, with a view to assessing the impact of multiple and intersecting forms of discrimination.
- Ensure that agricultural censuses focus attention on women smallholders and farmers.
- Ensure that monitoring and evaluation involve women and that women participate in the identification of qualitative and quantitative indicators to be monitored, the monitoring process itself and the analysis and evaluation of the results.

Collection and use of data should:

- Apply a gender-responsive and human rights-based approach to data and statistics and take into consideration the multiple and intersecting forms of discrimination women may face.

Commentary and promising practices

Law, policy and programmes on land and productive resources should not only take a human rights-based approach, with a focus on women's rights, in their design and implementation but should also incorporate a gender perspective throughout all phases, including monitoring and evaluation. In general, human rights-based and gender-sensitive monitoring and evaluation help to ensure that the policy or programme is being effectively implemented and that it benefits women and men equally.

³¹⁰ UNSD 2013.

A human rights-based approach to data means that the collection and use of data should apply the principles of (a) participation, (b) data disaggregation, (c) self-identification, (d) transparency, (e) privacy and (f) accountability. It also requires focused attention to assessing and measuring multiple and intersecting inequalities and discrimination.³¹¹

Sex-disaggregated data and gender statistics are very useful diagnostic tools. Based on the human rights normative framework, OHCHR recommends that “in addition to disaggregating commonly compiled statistics by sex ..., making women more visible in statistics and monitoring gender equality require women-specific statistics ...” and “expanding statistics in critical areas, such as ... access to assets (e.g., ownership of land, housing) ...”.³¹² OHCHR further recommends that the integration of a gender perspective in data should go beyond disaggregation by biological and physiological characteristics of sex, while underlining the need for careful handling of data on sensitive personal identity characteristics such as sexual orientation and gender identity.³¹³

FAO recommends in particular that “agricultural censuses should focus more attention on areas in which women are relatively more active and collect sex-disaggregated data on ownership of, access to and control over productive resources such as land, water, equipment, inputs, information and credit”.³¹⁴ It is providing guidelines and standards for the collection of comparable sex-disaggregated data in the World Programme for the Census of Agriculture 2020, which is the main source of statistical information on the agriculture sector. It has also developed Guidelines for Collecting Data for Sex-disaggregated and Gender-specific Indicators in National Agricultural Surveys, providing a set of indicators for monitoring gender inequality in agriculture and proposing feasible approaches to collecting the required data through agricultural

surveys or agricultural modules included in national household surveys.³¹⁵

The World Bank, FAO and the International Fund for Agricultural Development (IFAD) have provided specific guidance on establishing sound gendered monitoring and evaluation systems, setting gender-sensitive indicators and collecting sex-disaggregated data.³¹⁶ Collaborating with women’s rights organizations working on land can facilitate women’s participation in data collection, monitoring and evaluation.

In the Philippines, *Executive Order 273* on the Philippine Plan for Gender-responsive Development, 1995-2025, calls for incorporating gender and development concerns in the preparation of sectoral performance assessment reports and public investment plans.³¹⁷ In the Lao People’s Democratic Republic, the 8th Five-Year National Socioeconomic Development Plan (2016-2020) includes gender equality and advancement of women indicators, specifically to increase the proportion of women enjoying land rights to 50 per cent.³¹⁸ India’s Strategy for New India @ 75 (November 2018) discusses targets and indicators on women’s access to land and other productive resources, including recognizing and securing women’s rights over common property resources such as irrigation systems, fishing grounds, forests and water; prioritizing groups of women farmers seeking to lease land, water bodies, etc., at the village *panchayat* level; and the percentage of women owning land, livestock and housing.³¹⁹

At the regional level, the Nairobi Action Plan on Large-scale Land-based Investments in Africa (2011) also provides for the establishment of a “monitoring and reporting mechanism for tracking large-scale land-based investments with a view to ensuring that these ventures are beneficial to

³¹¹ OHCHR 2018.

³¹² OHCHR 2012b. See also OHCHR 2018.

³¹³ OHCHR 2018.

³¹⁴ FAO 2011.

³¹⁵ GSARS 2017.

³¹⁶ World Bank et al. 2009, in particular module 16 on Gender Issues in Monitoring and Evaluation.

³¹⁷ President of the Philippines 1995.

³¹⁸ Lao People’s Democratic Republic 2016.

³¹⁹ Government of India 2018.

CASE STUDY:

Gender-sensitive data collection and regulation in China

The All-China Women's Federation (ACWF), the largest women's organization in the country, plays a prominent role in promoting gender equality and safeguarding the rights and interests of women. One of its initiatives is a nationwide survey on the social status of women, conducted every 10 years in cooperation with the National Bureau of Statistics. The survey was conducted in 1990, 2000 and 2010. These surveys provide important information to legislators, government bodies and other organizations on progress and key issues related to gender equality, and they aim to lay a solid basis for facilitating policy and legal changes and promoting gender equality in the country. Rural women's land rights are identified in the 2010 survey as one of the six key issues faced by women in the past 10 years.

AWCF, as one of the main advocates for women's rights and interests in China, has therefore continuously advocated for securing rural women's land rights, making legal and policy recommendations to the legislature and relevant government departments.

In 2013, when China launched a nation-wide rural land registration and certification programme aimed at establishing a land registration system in rural areas, ACWF took several initiatives to ensure the programme promoted gender equality. It first conducted pilot projects to (a) understand the issues related to registering women's land rights and including women's names on land documents, and (b) explore effective measures to address these issues. Following these projects,

ACWF worked with the Ministry of Agriculture (MOA) to jointly issue a policy document in 2014 that requires the inclusion of women's names on documents in the land registration programme and also requires that local women's federations participate in land registration at the local level. To ensure implementation of this policy, in 2015, ACWF provided training and guidance for local land registration staff and women's federations in provinces nationwide.

In 2017, China's top legislature initiated the revision of the *Rural Land Contracting Law* (RLCL), which governs farmers' land rights. ACWF made recommendations to the legislature to strengthen the protection of rural women's land rights, and in December 2018, the revised RLCL was adopted. The amendment of the law adds two new articles to strengthen the protection of rural women's land rights: Article 16 stipulates that family members within peasant households shall enjoy equal rights and interests in contracted land; and article 24 stipulates that the names of all household members should be included in land certificates so as to ensure that women's names are included.

In 2020, ACWF will conduct another nation-wide survey on the social status of women in cooperation with the National Bureau of Statistics. The status of rural women's land rights will be included in this survey to measure the progress made in the last 10 years and the issues that still need to be addressed regarding rural women's land rights.

Source: Xiaobei Wang, China Development Research Foundation.

BOX 7

Key SDG indicators related to women's land rights and tenure security

Member States have agreed to track and report progress toward achieving women's land rights through three indicators:

1.4.2: Proportion of total adult population with secure tenure rights to land (a) with legally recognized documentation; and (b) who perceive their rights to land as secure, by sex and type of tenure.

5.a.1: (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure.

5.a.2: Proportion of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.

national economic development and local communities, including women ...".³²⁰

Civil society also has a key role to play in monitoring and evaluation. For example, the Uganda Land Alliance is an NGO that monitors the implementation of policies and structures established by the *Land Act* of 1998 to ensure that the new institutions operate in a gender-responsive manner.³²¹

At the global level, the implementation of the 2030 Agenda offers an extraordinary opportunity to strengthen women's land rights, by providing political space, a basis for advocacy and accountability mechanisms. Three SDG targets in particular offer the incentive and the means to monitor and measure women's land rights and tenure security. Countries have committed to ensure that by 2030:

- All women, in particular the poor and the vulnerable, will have equal access to ownership and control over land (SDG targets 1.4 and 5.a.).

- Women small-scale food producers will double their agricultural productivity and income through, among other means, secure and equal access to land (SDG target 2.3).

Progress towards these targets is being tracked primarily through three sex-disaggregated indicators: SDG indicators 1.4.2, 5.a.1 and 5.a.2 (see Box 7).

SDG target 5.1, "End all forms of discrimination against all women and girls everywhere" and indicator 5.1.1, "Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex," are also key for assessing and monitoring women's rights to land and other productive resources. SDG indicator 5.1.1 covers law on marriage and the family, including questions on equal rights to enter marriage and initiate divorce, equal rights to be recognized as head of household or head of family and equal rights to own, access and control marital property, as well as questions on customary law, religious/personal law and legal aid.

UN Women's Women Count programme aims to: create an enabling environment to address institutional and financial constraints and strengthen policies and practices governing the production and use of gender statistics; increase the regular production of gender statistics; build the technical and financial capacity to monitor the SDGs and other national and international commitments; and strengthen the capacity of all relevant actors to use gender statistics in policy, programmes and advocacy.³²² Working with partner agencies, it supports global monitoring of gender-related SDG targets. Its SDG Indicator Dashboard allows for viewing all the gender-related SDG indicators in one place, creating data visualizations and downloading fact sheets.³²³

³²⁰ African Union et al. 2011.

³²¹ Oceh Kanyarangareng 2000.

³²² UN Women 2020a.

³²³ UN Women 2020b.

5. Enable access to loans and credits

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure women's equal and independent access to loans and credits, in order to enable women to gain access to land and other productive resources regardless of marital status and without the requirement of a male (husband, father, brother, etc.) as co-signer or guarantor. Adopt temporary special measures when required.
- Encourage public and private financial institutions to develop and promote gender-responsive financial products and services to facilitate women's access to loans and credits.
 - Promote women's literacy and access to information, including financial literacy and information, so that they can access financial institutions and services in an informed manner.

Commentary and promising practices

Loans and credits can help women to obtain land, housing and property, yet women often find it difficult to access formal financial institutions and services. At the same time, land and property are typically necessary as collateral for loans and credits. A number of laws, policies and programmes have been developed, tested and applied over the past 25 years to promote women's access to finance, land, housing and productive resources.

In Nicaragua, for example, *Law 209* of 1995 grants priority to women in access to credit. *The Law on Equality of Rights and Opportunities* (Law 648, art. 13) states that women and men have the same rights to open a bank account and to obtain credit. The law also calls on the Government to promote women's access to credit and microcredit by integrating gender considerations in the design of national programmes and projects for women's

economic empowerment.³²⁴ In Brazil, *Ordinance 121* of 2001, issued by the Ministry for Agrarian Development, reserves 30 per cent of credit granted under national assistance programmes specifically for women.³²⁵ A 2004 amendment to the Land Act of 1999 in the United Republic of Tanzania grants equal rights and access to land, loans and credit for women.³²⁶ In the Philippines, the *Women in Development and Nation Building Act* of 1992 guarantees women equal access to government and private sector agricultural credit programmes, and the 1997 *Social Reform and Poverty Alleviation Act* also provides for credit programmes benefiting rural women.³²⁷

In the Lao People's Democratic Republic, the 2004 National Growth and Poverty Eradication Strategy provides for assistance to women in accessing rural savings and credit schemes.³²⁸ The Poverty Reduction Fund of the Steering Committee for Rural Development and Poverty Reduction has provided loans, bank credits with low interest rates and government grants for production to 356,865 persons of whom 182,012 were women (51 per cent).³²⁹

In Cambodia, in collaboration with the National Bank of Cambodia, the Rural Development Bank and other donors, the Government established guidelines and a strategic action plan to improve women's access to credit. Specific steps included promoting medium- and long-term credit services with lower interest rates in order to encourage effective, sustainable and widespread microfinance and linking products with markets through the provision of credit to farmers.³³⁰

Self-help groups, operating at the village or community level, are a proven approach for connecting women with financial institutions. Members' savings are collected and, through collective

³²⁴ See OECD 2019h.

³²⁵ Brazil 2001.

³²⁶ OECD 2010.

³²⁷ The Philippines 1992, 1997b.

³²⁸ FAO 2020a.

³²⁹ UN CEDAW 2017d.

³³⁰ FAO 2020a.

decision-making, are either deposited in rural banks, invested in joint projects or loaned to members. Based on a demonstrated track record of savings, rural banks will typically provide capital in the form of loans or credits that group members can use for land and other productive resources.³³¹ Policies and programmes could support such self-help groups or encourage public and private financial institutions to provide financial services to them.

Some promising evidence from the state of West Bengal, India suggests that stronger land rights for women can help with access to finance and influence over household financial decisions. Women in households that benefit from a government land-grant programme were more likely to report that they could convince other decision-makers in the family not to sell the household plot against their will. Women were also more likely to be involved in decisions to take loans from self-help groups or microfinance institutions and whether to make purchases related to food security and productive assets.³³²

6. Provide agricultural extension services and inputs

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure that agricultural extension services respond effectively to women's needs and reflect women's equal rights to land and productive resources.
- Ensure that extension workers are regularly trained in gender equality and gender mainstreaming and held accountable for the implementation of gender-responsive land policy and programming.
- Provide women with effective and gender-responsive access to agricultural inputs, including seeds, tools and equipment/resources for farming.
- Support women farmers to adapt to environmentally sustainable and climate-resilient agriculture,

taking into consideration gender-specific obstacles they may face.

- Increase women's representation among agricultural extension service providers.

Commentary and promising practices

Granting women access to land does not necessarily ensure the sustainability of such access. Women who are allocated farmland through agrarian reforms may end up selling it under economic pressure. Women farmers may be as hardworking and enterprising as their male counterparts but are even less able to access land, credit, agricultural inputs (such as seeds, technology, tools and equipment) and climate and weather information, compromising their productivity and incomes. Furthermore, women often face time constraints owing to their disproportionate unpaid care and domestic work responsibilities; gender-based violence against women can also deter their productivity. Policies and investments are needed to close such gender gaps in agriculture and the rural economy to end poverty and hunger and combat environmental degradation and climate change.³³³

Agricultural extension services that respond to women's needs are important to maintain and improve women's access to, use of and control over land. These services typically provide farmer education, sources of information and technology and resource transfer.

In Botswana, all agricultural extension regions have received assistance to establish regional gender committees to assist in gender mainstreaming and to facilitate information flow.³³⁴

In India, the National Policy for the Empowerment of Women of 2001 provides that efforts should be made to ensure that the benefits of training, extension and various other programmes reach women engaged in agriculture in proportion to their numbers. It also provides that the programmes

³³¹ World Bank et al. 2009; Benni and Barkataky 2018.

³³² Santos et al. 2013.

³³³ ECOSOC 2018.

³³⁴ FAO 2020a.

for training in soil conservation, forestry, dairy, horticulture, small animal husbandry, poultry and fisheries should be expanded to benefit women in the agriculture sector.³³⁵

In the Lao People's Democratic Republic, the 2004 National Growth and Poverty Eradication Strategy³³⁶ aims to address the concerns of rural women and apply gender equality in extension and training services as part of the effort to exit the group of least developed countries by 2020. The Strategy also calls for adopting measures to improve gender equality concerning provincial and district staff, including extension workers. It designates gender focal points in villages to promote improved agricultural practices.³³⁷

Azerbaijan is working closely with the FAO to support extension services to meet the needs of rural women farmers and producers by undertaking gender-sensitive needs assessments and designing and providing training that considers women's crops, needs and challenges to increase their roles in agricultural decision-making and farm management, improve their productivity, ensure food security and enhance their livelihoods.³³⁸

In Turkey, the Ministry of Family, Labour and Social Services Strategy Paper and Action Plan on Women's Empowerment (2018-2023) gives priority to the empowerment of rural women, particularly for women's enterprises and cooperatives and for women agricultural workers, by ensuring access to technology, training and social security.³³⁹

Mexico's Sowing Life Programme promotes the effective participation of women and men, particularly older persons living below the poverty line, in integrated rural development and supports them to establish agroforestry production systems that, combining traditional crops with fruit and timber trees (mahogany, cedar, cocoa, coffee, rubber, cinnamon and other products), will help achieve food self-sufficiency, improve incomes and restore the

forest cover of 1 million hectares, thereby reducing emissions. The programme is operational in 361 municipalities in 8 states, of which 113 are indigenous, and aims to reach 230,000 producers in 2019.³⁴⁰

The Government of Rwanda supported a "green village" project in Rubaya, a village in the north of the country. Under the leadership of a woman-led cooperative, a range of environmentally sustainable approaches and technologies were adopted, including terracing for soil and forest conservation, biogas for energy and rainwater harvesting for water. The time women spend on water and firewood collection was also reduced and the social and economic benefits from the sustainable use of natural resources increased. The Ministry of Local Government then facilitated the replication of "green villages" in other local districts.³⁴¹

Holistic approaches to agriculture that integrate gender equity considerations can produce good results. The Care Pathways project works with women in agriculture in six countries (Bangladesh, Ghana, India, Malawi, Mali and the United Republic of Tanzania) and uses five levers to help women achieve more successful agricultural livelihoods: capacity, access, productivity, household influence and the enabling environment. A key strategy was improving women's access to extension services by, for example, setting up farmers' field and business schools and promoting women's participation in them. Significant improvements in women's lives were seen. Women's decision-making power, measured by their ability to influence household decisions about assets, increased by an average of around 25 per cent. More women attained leadership positions in targeted communities; increases ranged from 20 to 60 per cent, depending on the country. In every country, at least 23 per cent more women felt more confident in their lives and about speaking out in public forums—in Mali, this was an 86 per cent increase. Additionally, women's income from farming went up between 40 and 165 per cent.³⁴²

³³⁵ Ibid.

³³⁶ Lao People's Democratic Republic 2013.

³³⁷ FAO 2020a.

³³⁸ UN General Assembly 2019.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ UN Women and UNDP-UNEP PEI Africa 2015.

³⁴² CARE 2017.

A programme implemented by the FAO, IFAD, UN Women and the World Food Programme (WFP), “Accelerating Progress towards the Economic Empowerment of Rural Women”, has advanced rural women’s resilient livelihoods in Ethiopia, Guatemala, Kyrgyzstan, Liberia, Nepal, Niger and Rwanda. With a dedicated focus on agriculture, food security and nutrition, the programme has worked with some 50,000 rural women to enhance their productivity under the threat of environmental degradation and climate change and the constraint of unequal access to, use of and control over land and productive resources. The programme has facilitated access to assets for rural women farmer cooperatives and self-help groups and the adoption of climate adaptive infrastructure and technology that boosted harvests in countries facing extreme cold (e.g., Kyrgyzstan) and heat (e.g., Nepal, Niger, Rwanda) but also safeguarded women farmers from post-harvest losses (e.g., Liberia) to ensure efficient resource use. These approaches have strengthened rural women’s participation in higher value chains and markets, helped diversify food production, improved nutrition outcomes for their families and communities and increased incomes and savings (e.g., raising revenues by 77 per cent), with benefits for over 315,000 people across participating countries.³⁴³

F. Promoting women’s voice, agency, and participation

1. Guarantee meaningful participation in decision-making

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure women’s equal rights to participate in political and public life and their participation in decision-making in all levels, including at community levels.

³⁴³ FAO et al. 2019.

- Provide for the full participation of women based on their informed, active, meaningful and effective engagement in the formulation of laws, policies and programmes, taking into account multiple and intersecting forms of discrimination faced by certain groups of women.
- Ensure that women and women’s rights groups/collectives are effectively represented on equal terms with men in all decision-making structures relevant to land, agriculture and other productive resources, including in mechanisms that have a voting function.
- Ensure that women and women’s rights groups/collectives have full and accurate information about decision-making processes relevant to land, agriculture and other productive resources and are able to benefit from capacity-building in this regard in order to ensure that their participation in decision-making is informed, active, meaningful and effective.
- Adopt temporary special measures where needed to ensure the meaningful participation of women in decision-making processes relevant to land and agriculture.
- Protect and promote women’s meaningful participation in decision-making in private spheres, including in the family, in relation to land and other productive resources.
- Protect women human rights defenders³⁴⁴ who are defending and claiming rights to land and other productive resources.

Commentary and promising practices

The right of women to active, meaningful and effective participation in legal and policy development is not only crucial to ensure good policy; it is also an essential component of a human rights-based

³⁴⁴ This term refers to female human rights defenders and any other human rights defenders who work in the defence of women’s rights or on gender issues. See UN Human Rights Council 2010.

approach. In order for participation to be active, meaningful and effective, it should first and foremost be free and informed, and decision-making bodies need to be accessible to women, including those who face multiple and intersecting forms of discrimination. Participation also broadly entails both direct participation in decision-making as well as effective and fair representation of women's interests and rights in decision-making bodies and institutions. The right to participation applies to all stages of law, policy and programme development, including assessment and analysis, programme planning and design, budgeting and financing, implementation and monitoring and evaluation.

Guidelines for States on the Effective Implementation of the Right to Participate in Public Affairs (2018) provide guidance on participation in public affairs, including in all aspects of public administration, and the formulation and implementation of laws and policies.³⁴⁵

Women's participation has successfully influenced and benefited land policy processes in many contexts. In Botswana, for example, the Ministry of Agriculture initiated the development of the Agricultural Sector Gender Policy Framework in 2003 to address the needs of women so that they could more effectively participate in agriculture. The goal of the framework was to "promote gender equality and equity in all agricultural development processes to ensure the creation of employment, reduction of poverty and achievement of household and national food security".³⁴⁶ It was approved at the ministerial level in July 2007 as a guiding document for all processes and procedures in the agricultural sector. In 2015, the Ministry undertook a gender assessment for the agriculture and rural sector, with the support of FAO, to establish the status of women and men in agriculture and rural development with an eye to developing a gender strategy.³⁴⁷

³⁴⁵ OHCHR 2018a. See also UN CEDAW 1997, 2016a as well as UN Human Rights Council 2013b.

³⁴⁶ FAO 2020a.

³⁴⁷ United Nations Botswana 2016.

In Uganda, the process leading up to the adoption of the 2013 National Land Policy, was hailed as a benchmark for high levels of collaboration between the Government and civil society. From the start, the multi-sectoral and multidisciplinary National Land Policy Working Group included women's rights groups and activists. This greatly aided agenda-setting by clearly articulating the critical women's issues that needed to be dealt with at policy level. It also ensured consistent vetting of content to determine whether it was supportive of women's land rights. The Uganda National Land Policy Implementation Action Plan 2015/16-2018/19 calls for meaningfully mainstreaming gender in development planning to ensure that women are fully integrated in all decision-making structures and processes relating to access to and use of land.³⁴⁸

Temporary special measures can also be directed towards the achievement of de facto or substantive equality of women with men in the enjoyment of their land rights. Under the Ugandan *Land Act* of 1998, specific provisions ensure women's representation in the Uganda Land Commission, in district land boards and in parish-level land committees.³⁴⁹ In Namibia, the National Agricultural Policy of 1995 highlights the need to secure the participation of women in agricultural development and provides for women to be recognized as farmers in their own right.³⁵⁰ Its *Communal Land Reform Act* of 2002 also guarantees minimum representation for women on community land management bodies and is applicable to areas under customary law.³⁵¹

Mexico's 1992 *Agrarian Law* does not explicitly recognize women's equal land rights but does note that women and men hold *ejido* rights (that is,

³⁴⁸ Uganda 2015.

³⁴⁹ Amended in 2010, but the amendment has not affected these provisions.

³⁵⁰ However, the Namibia Agriculture Policy only mentions women in the context of training programmes on agribusiness skills and technology for women in agriculture (Republic of Namibia 2015).

³⁵¹ Amended in 2005 and 2013, but the amendments did not affect this provision.

CASE STUDY:

Participation in practice: Lessons learned from Ponte do Maduro (Recife, Brazil)

Recife, the capital of the state of Pernambuco, is the second largest city in northeastern Brazil and is characterized by vast informal settlements and widespread poverty. Afro-Brazilian women are among the poorest in the city.

Ponte do Maduro is an informal settlement in central Recife, situated in what was a mangrove swamp 50 years ago and now home to an estimated 55,000 people. Residents past and present have made the area habitable by building stilted wooden structures, called *paliphatas*, that float over the swamplands. Over the years, as the city grew, the area became vulnerable to real estate expansion. Ponte do Maduro thus represents a decades-long struggle of its residents for the right to remain in the community they had effectively built.

The majority of residents are women who live in vulnerable conditions, struggling with land tenure insecurity, poor sanitation and water infrastructure, unreliable health care, childcare and education services and ill-kept community and public spaces. The Pernambuco government's 2010 announcement to begin land regularization in Ponte do Maduro was thus a landmark development towards increasing land security. Land regularization would recognize the right of the Ponte do Maduro population, including its women, to remain securely on the land where they had built their homes and lived for generations. Yet the realization of this governmental announcement did not come easily.

With the support of Espaço Feminista and other partners, women and community leaders learned about their legal rights and strengthened their capacity, campaigning for and claiming space in the local government's land regularization process. Over a period of four years, women demanded

rights to tenure security for themselves and their families. In 2014, Eduardo Campos, the Governor of Pernambuco, signed the act of land regularization, demonstrating the great value of women's collective organizing. CEHAB (Companhia Estadual de Habitação e Obras) has estimated that a total of 3,000 land titles have been issued, 90 per cent of which were given to women as joint titles or as heads of households.

Land regularization has had added benefits on top of improved land rights. After the regularization, the area was officially recognized by the city administration and has received regular investments in, inter alia, sanitation, health care, recreation centres, pavements and street lighting. As a result of action by strengthened women's groups, Ponte do Maduro is going through a transformation that extends beyond land security.

More recently, Espaço Feminista has supported the collection and analysis of selected SDG indicators to further boost the movement for women's increased tenure security in Pernambuco. Starting in 2017, it used data produced by the Brazilian National Statistics Office to illuminate the situation of women's land rights in the area. This was supplemented by additional data that it collected in 2018 with local partners. The consolidated data gave policymakers better evidence that women were disproportionately affected by land tenure insecurity. Espaço Feminista and local women were thus able to demand governmental action directly based on these data, and the Government responded by agreeing to expand the coverage of land regularization legislation. By focusing on land rights, the women's movement has bolstered living standards and aided collective empowerment in Pernambuco.

Source: Patricia Chaves, Espaço Feminista.

under the communal land tenure system).³⁵² A 2016 amendment stipulated that no more than 60 per cent of the candidates to posts in the *ejido* commissariat and supervisory council may be of the same gender.³⁵³ The United Republic of Tanzania's Land Act of 1999 requires a "fair balance" of women and men to be ensured in the appointment of the National Land Advisory Council.³⁵⁴ In Zambia, the Draft National Land Policy (dated December 2017) would seek to implement at least 50 per cent landownership for women and mainstream gender in all institutions administering and managing land.³⁵⁵

Care should be taken to ensure that women's representation is meaningful. In addition to setting up avenues that encourage and ensure participation, it should also be borne in mind that women must benefit from the necessary support in order to engage effectively, including developing the technical and substantive expertise needed to shape policy. As IFAD has recognized "in all instances, training women on their rights has proved extremely useful as it increases their awareness of the claims they can make and provides opportunities for enhancing their political capital and their participation in the policy process".³⁵⁶

To make participation meaningful, women must have access to information and training so as to prepare them for engagement in participatory processes on land-related law, policy and programming. Effective engagement also implies that the participatory processes themselves must be accessible and gender sensitive. Quotas meant to support women's participation need to be adequately enforced.

Some laws and institutions create quotas for women's participation, but steps should be taken to ensure that women's representation is meaningful. In addition to establishing forums that encourage and ensure participation, women may also need support

in gaining the technical and personal skills that would allow them to participate equally with men. For example, a project in Uganda worked on helping women develop negotiation and public speaking skills so that they could confidently make a case to customary authorities about their land rights.³⁵⁷

Scarcity of time available to women is also a consideration given their disproportionate burden of unpaid care and domestic work. Women may need to understand how their involvement will be of direct benefit before they decide to engage. In parts of Kyrgyzstan, families seasonally graze animals in pasturelands surrounding their villages. Men are responsible for moving animals and related matters such as maintaining roads and bridges. Women are responsible for caring for, feeding and milking livestock and making food products for consumption and sale. Kyrgyz pasture management laws underwent a reform, devolving pasture management to local community committees with a quota for women's representation, but women did not want to attend. They were reluctant to engage because they believed the pasture management committees discussed topics that were of concern to men and, moreover, they were too busy with other activities to merely sit in meetings while the men talked. When women were informed that the committees also made decisions on matters that affected their interests, such as choice and location of fodder and defining residential areas, they realized their participation would be beneficial and began to attend meetings.³⁵⁸

In addition to participation in public decision-making, women's participation in decision-making in the private sphere, including in the family, should be protected and promoted. Women may hold land title under their names, jointly with their spouses or be recognized as heads of household, but may still be excluded from decision-making on land by male members of the family, including those in the extended family.

³⁵² USAID 2016b.

³⁵³ Mexico 2016.

³⁵⁴ Amended in 2004, 2005, 2009 and 2017, but the amendments did not affect this provision.

³⁵⁵ Zambia 2017.

³⁵⁶ IFAD 2004.

³⁵⁷ Hannay and Scalise 2014.

³⁵⁸ Scalise 2016.

Women defending their lands, territories and rights related to the environment are often at a disadvantage. They are typically excluded from community negotiations and decisions about land and resources. When they engage in activism, they frequently face criticism for neglecting their domestic duties and endangering their families. Their activities put them at particular risk in the context of armed conflict, foreign occupation, militarization and abusive use of measures to prevent and counter violent extremism and terrorism. In some cases, those who aim to suppress community land rights deliberately target women as a strategy of intimidation and fear. Women who face multiple and intersecting forms of discrimination risk even greater exclusion and intimidation.³⁵⁹

Patriarchal gender relations that marginalize women can also exclude and marginalize LGBTI persons, who are often left out of decision-making processes as well as activism to claim land rights. While many civil society or women's organizations and movements pursuing land rights are not yet fully open to LGBTI activists, some have initiated more inclusive agendas and membership.³⁶⁰

Ensuring the active voice, autonomy and participation of women and LGBTI persons in decision-making is essential to achieve gender equality in the governance of land and other productive resources. To this end, it is critical to protect women and LGBTI human rights defenders in line with the Declaration on Human Rights Defenders.³⁶¹

2. Raise awareness and promote legal literacy of women and the community

RECOMMENDATIONS:

Laws, policies and programmes should:

- Provide for awareness campaigns through all available and accessible media to inform the public

³⁵⁹ UN Human Rights Council 2019d.

³⁶⁰ Lusaka Times 2018.

³⁶¹ UN General Assembly 1999.

about women's rights to land and other productive resources, distributing such information in local languages.

- Engage in awareness-raising campaigns for gender equality and women's rights to land and natural resources through school and university curricula, the media and other means.
- Ensure that such awareness campaigns effectively involve and reach marginalized and illiterate women as well as women with disabilities.
- Support community awareness-raising by civil society, including women's groups and non-governmental organizations (NGOs).
- Ensure that women benefit from targeted and accessible legal literacy campaigns and programmes in local languages to help them understand their rights to land and productive resources and how to claim them.
- Ensure that legal literacy programmes in general include a women's land rights component.

Commentary and promising practices

Broad awareness campaigns are necessary to inform the public about women's land rights and to rally support for changes needed to realize those rights. Women should know and understand their rights for these to be effective in practice. This step is crucial even in countries where formal legislation protects women's rights. Lack of knowledge of legal protection is a formidable barrier to claiming rights, and discriminatory social norms may hinder the realization of women's rights.

Good practices in increasing legal literacy include partnerships between government and civil society organizations, understanding the different information needs of women and men and overcoming the barriers that may prevent women from participating in events or processes that provide information. For example, women might not have the time or resources – such as childcare and transport – to attend an awareness-raising event.

CASE STUDY:

Raising awareness about women's land rights in Ecuador

During the past decade, rural women in Ecuador have been organizing to achieve equal rights to land and to work towards public policies that integrate a gender perspective. Throughout the country, thousands of diverse rural women have played active roles in key political spaces, promoting women's empowerment and making their voices heard.

Women took parallel actions in both political and technical spheres. Rural women held awareness-raising and consultation workshops, many focusing specifically on issues related to land. Women have come together to reflect on their lives and their political demands as well as their individual and collective aspirations. Training on rights and duties, gender mainstreaming, demand mechanisms and political lobbying were also extremely useful. Rural women are now much more aware of their rights and opportunities.

Political encounters and dialogues with authorities from different government departments were held. Rural women presented legal and policy proposals, not only addressing their social reality but also seeking to enhance the space given to their organizations and networks and thereby improve their role in governance and their political participation. Rural women are now organized into teams, and follow-up agreements have been made with the authorities to ensure that the final legislation responds to their demands.

New outcomes in the land sector have been promising. A nationwide campaign organized by rural women to promote their equal rights to

land resulted in the passage of the Ley Orgánica de Tierras Rurales y Territorios Ancestrales in 2016. This land law proclaims that it is the state's duty to guarantee equality between gender and age groups in access to rural land (art. 7. l). Women who are primary caregivers are priority beneficiaries of programmes that distribute rural land (art. 15. b), and the law additionally prescribes that financial assistance be given to women working in agriculture.

While the law offers welcome benefits to rural women, its real-life application is unknown; official data are not available to track progress since the Agricultural Secretariat no longer disaggregates data by sex. National statistics, meanwhile, still reflect inequality in land tenure security. The National Institute of Statistics and Census (INEC) found that of the 31.2 per cent of women who live in rural areas, 62 per cent are family farmers who only have access to very small land areas. In fact, men remain the predominant agricultural holders in rural Ecuador at 74.6 per cent, compared to just 25.4 per cent of women.

To have a better idea of whether the 2016 land law is having an effect on rural women, the Agricultural Secretariat needs to recommence collection of sex-disaggregated data. This would better arm rural women's groups to fight for their rights by advocating for evidence-based policies and calling for greater follow-through of existing laws and policies where necessary.

Source: Elizabeth García, Corporación de Estudios DECIDE, Ecuador

CASE STUDY:

Participatory video interrogates landlessness and discrimination faced by widows in Ghana

Audiences across Ghana and around the world have seen *Pakorpa Susangho* (Widow's Cry), a video produced by widows in the Upper West Region of Ghana. In 2016, Transparency International gave 10 widows the opportunity to tell their land rights stories. Widowhood in the Upper East Region means the loss of land, which is either sold or given to the husband's family by the traditional land administrator. Women who lose their husbands are typically accused of "witchcraft" and having killed their husbands. The stigma of widowhood and the ostracism from broader community life allow for corrupt practices that leave widows landless and unable to support their children. Many are forced to migrate in search of work or struggle for survival on the margins of their communities. Bribing traditional leaders or marrying a relative of her deceased husband are often the only means for a widow to continue providing food for her children. But even women who retain some access to land face other challenges; they know they can be chased off at any time, and the size of the plots allocated to them are insufficient to support their needs.

Participatory video facilitates communication between people who might otherwise never engage with one another. The women learned to produce videos through experiential games and exercises that demystified the technology and made it accessible to anyone regardless of literacy or experience. Having obtained the necessary skills, the participants set about collaboratively authoring a short documentary about their experiences of discrimination and landlessness as a result of widespread corruption by traditional

land custodians. They interviewed local chiefs and customary land administrators from their communities, using video production as a mechanism through which to interrogate those in power with uncomfortable questions. They screened their video for local and national audiences, encouraging public discussion of hidden issues.

Since its production, community members, local decision-makers, civil society organizations and national duty-bearers have attended screenings and dialogues. In response, government officials and customary leaders, including Ghana's House of Chiefs, have pledged to protect widows' land rights. Seven community members have subsequently been trained as paralegals. The participants themselves have seen a remarkable change in their social standing within the community. They have earned respect from their peers and the support of their chiefs to overcome the land disputes they once faced alone.

The novel approach helped to create a platform for women to share experiences of land corruption without intermediaries, which convinced decision-makers of the honesty and integrity of the video and its message. It also established a forum for audiences to discuss difficult issues faced by women who are often ignored. And, while it was participant led, experts representing a variety of fields, including local leaders and activists, helped by providing specialized support to the widows who were engaged in the process.

Sources: Elisa Scalise, Resource Equity; Transparency International 2018

Women may be reluctant to speak out and ask questions in a public meeting where men are present. Good practices also take into account other factors, such as age, language, literacy, economic status, disability and marital status, among others, that might affect women's participation in an event even with other women.

Awareness-raising and legal literacy campaigns can take various forms. These include, for example, street theatre, radio and television programmes, Internet and mobile phone communications, as well as disseminating easy-to-understand written materials (leaflets, booklets, brochures, posters, postcards, etc.) that explain key aspects of women's rights in simple terms. In addition, it is important to translate laws or pertinent sections/summaries into local languages as well as to publish information in local newsletters, magazines and newspapers so as to increase awareness about women's rights to land and other productive resources. Proactive measures may be needed to make information accessible to women with disabilities.

In Rwanda, the National Land Centre has undertaken widespread training of local land committees across the country, including making a video showing how women's rights should be recorded, to ensure women are included in the land registration process. NGOs disseminated illustrated information booklets on the *Organic Land Law* of 2005 and the *Matrimonial Regimes, Liberties and Succession Law* of 2000, explaining their content in simple terms for everyone to understand. NGOs also monitored land registration trials and provided additional support and awareness-raising for land authorities.³⁶²

Agrarian reform processes usually require raising public awareness of new or proposed legislation, policies or procedures. In Kyrgyzstan, the Ministry of Agriculture's Centre for Agrarian Land Reform provided training sessions on the reform for rural residents, including women, and published and

disseminated information through newspapers, radio and television.³⁶³

Many civil society organizations intervene proactively with traditional leaders within their communities to push for progressive change in discriminatory customs. In Zambia, for example, the Justice for Widows and Orphans Project has conducted mock land trials on inheritance rights in order to raise awareness within communities and among local leaders.³⁶⁴

Awareness-raising through theatre and street drama is also an effective, enjoyable way of promoting women's land rights. In Vanuatu, community theatre was used to communicate the land lease research findings of the World Bank's Jastis Blong Ewriwan programme on Epi Island, which visually demonstrated the consequences of the absence of women in decision-making about land.³⁶⁵

In Kenya, radio programmes featuring the testimonies of disinherited women who successfully fought their inheritance cases have been particularly effective.³⁶⁶ Such steps are also important in situations where people use informal justice systems to claim their rights. Legal literacy campaigns may make women more aware of how they can resolve land rights challenges, causing more women to seek legal aid or support. In Viet Nam, community volunteers are trained to both raise awareness of legal rights and obligations and to support women with specific legal services to gain the legal documentation that they need to be able to claim land rights.³⁶⁷

UN Women has supported raising the knowledge and awareness of women living with or affected by HIV regarding their formal and informal property and inheritance rights and the available legal services in the community.³⁶⁸ Such increased awareness, coupled with more available and accessible

³⁶² UN Women 2011.

³⁶³ FAO 2020d.

³⁶⁴ Huairou Commission 2013; Lusaka Times 2018.

³⁶⁵ Naupa 2017.

³⁶⁶ Khalif 2018.

³⁶⁷ ICRW 2016.

³⁶⁸ UN Women 2016a.

legal aid in the community, has facilitated women's ability to report property- and inheritance-related violations and to seek legal redress. Similar efforts have been taken by development organizations such as ActionAid, which helped widows to learn about and claim their rights.³⁶⁹

Awareness-raising measures can effectively address social norms that prevent women from fully exercising their land rights. In the United Republic of Tanzania, a daily television programme, first aired in 2011, raised the profile of women farmers under the theme of finding a *Mama Shujaa wa Chakula* (Female Food Hero). The public voted by text message, and votes were combined with feedback from facilitators who had worked with the women. Finalists were trained on issues ranging from land rights and marketing to HIV and AIDS. This approach allowed viewers to explore the unique challenges that women face in becoming farmers and, by 2015, 14 million viewers – or a quarter of the country's population – watched as the winner of the competition challenged the image of farming as a male role and was crowned *Mama Shujaa wa Chakula*.³⁷⁰ The Female Food Hero programme has also spread to Ethiopia and Nigeria.

G. Women facing multiple and intersecting forms of discrimination

Land laws, policies and programmes should ensure that attention is given to the needs and priorities of particular groups of women. Some of these groups are highlighted below.

1. Indigenous women

RECOMMENDATIONS:

Laws, policies and programmes should:

- Recognize the rights of ownership and possession of indigenous peoples over the lands that they traditionally occupy.
- Uphold the principle of free, prior and informed consent.
- Ensure that indigenous women and men have equal, secure and sustainable rights to land and other productive resources, regardless of their marital or other status.
- Recognize the cultural and spiritual significance of the land for indigenous peoples.
- Promote the effective participation of women in decisions regarding their tenure systems through their local or traditional institutions, including in collective tenure systems.
- Implement, where necessary, temporary special measures to increase the capacity of women to participate fully in decision-making and governance of their tenure systems.
- Ensure an integrated approach to advancing the rights of indigenous women to land and other productive resources, taking into consideration the unique relationship to land of indigenous women, including their indigenous knowledge and practices.

Commentary and promising practices

Indigenous peoples generally face violations of their right to self-determination, and their unique relationship to their lands, territories and natural resources is not always recognized. They frequently lack security of tenure and legal recognition of their rights to land and productive resources. Indigenous women are often barred from exercising their land rights simply because they are indigenous.

Indigenous women also face challenges as women and may suffer some of the same kinds of discriminatory practices as other women living under customary systems. This is the essential challenge: to realize their land rights both as women and as

³⁶⁹ DFAT undated.

³⁷⁰ Kidder et al. 2014.

CASE STUDY:

Realizing indigenous women's rights in Peru through meaningful participation in community land governance

In Peru, the legal framework for community lands clearly establishes the right of indigenous communities to self-govern. Thus, when an indigenous group gains legal personhood it has the right and responsibility to define its own rules of land governance (usually through by-laws or governing statutes).

While women and men have equal rights to be members of indigenous communities under law, indigenous community statutes define who is a member of the community and therefore who has the right to attend and speak in meetings, run for and hold leadership positions and make decisions on the local governance of indigenous lands. In drafting statutes, many indigenous communities tend to build on existing norms and traditions that favour men, resulting in the exclusion of women and women's interests. This exclusion was compounded and complicated by the fact that male labour out migration is common and many women are left working the land and caring for families.

The project called "Indigenous Quechua and Aymara Peasant Women's Access to Land Governance in their Communities", run by Asociación Servicios Educativos Rurales (SER), worked with indigenous communities to address barriers to women's land rights by building capacity and awareness among community leaders and community members to (a) safeguard and promote women's rights of voice and participation in community decision-making; (b) increase the participation of women in local and regional organizations; and (c) provide support and guidance to indigenous community assemblies in developing or amending their internal statutes for governance.

The project conducted a participatory analysis of women's rights and relationships with land in the

target areas and shared the results with the indigenous communities. This had the effect of showing men in the community how women used and relied on land. The project then worked on training women to help build their capacity for meaningful participation in meetings. Recognizing that indigenous leaders wanted to have a reputation as good leaders, the project trained them on the human rights and constitutional bases for women's equal rights. Together the leaders, women and project team walked through each provision of the governing by-laws and debated whether the provision respected human and constitutional rights and recognized the needs of women. Through that process, the indigenous leaders were themselves refining their by-laws to be more inclusive and protective of women's rights.

As a result of this deeply engaged process, six indigenous communities modified their statutes to guarantee women's rights to participate in meetings and vote in decisions. Also, women have been elected to leadership positions on governing bodies in 75 per cent of communities, including one community in which the president is a woman and four communities in which the vice president is a woman. Overall, women make up an average of 33 per cent of leaders in indigenous communities participating in the project.

Some women reflected that the revised statutes ensuring their rights to participate confer on them a responsibility to learn about community matters and participate actively. Women in the target communities report that they are now seen as active participants in their communities and are able to make decisions even when their husbands are absent.

Sources: Elisa Scalise, Resource Equity; Asociación Servicios Educativos Rurales (SER) as reported in Hannay 2016.

indigenous women.³⁷¹ For example, in the battle for indigenous communities to assert their right to self-determination, women's rights have often been considered divisive and external to the indigenous struggle and connected to "external" or "Western" values that privilege individual over communal rights. This false dichotomy between collective and women's rights has, paradoxically, further entrenched the vulnerability of indigenous women to abuse and violence. They are stripped of their right to self-determination by both violations against their collective rights, as members of indigenous communities, and violations against their individual rights, as women within those communities.³⁷²

Gender-based discrimination in the indigenous communities can also move indigenous women out of the community. For example, the Maasai people, in Kenya, recognize the inheritance of land along patriarchal lines. As the removal of land devalues indigenous women's status, this custom has fuelled Maasai women's migration to the cities. Likewise, a trans indigenous woman from Nicaragua affirmed that she was displaced due to the discrimination against her by her tribal community.³⁷³

Land appropriation, occurring in the context of large-scale economic development and mass tourism, is not gender neutral, and indigenous women's rights interact with violations of collective land rights. Indigenous women are subject to losing their ancestral livelihoods, such as food gathering, agricultural production and herding, among others, while compensation and jobs following land seizure tend to benefit male members of their communities. The loss of land and exclusion of women can create vulnerability to abuse and violence, such as sexual violence, exploitation and trafficking. Additionally, the secondary effects of violations of land rights, such as loss of livelihood and ill health, often disproportionately impact women in their roles of caregivers and guardians of the local environment.³⁷⁴

³⁷¹ UN-Habitat 2011.

³⁷² UN Human Rights Council 2015b.

³⁷³ UN Human Rights Council 2019e.

³⁷⁴ UN Human Rights Council 2015b.

Some effective approaches have addressed the land rights of indigenous women. In India, for example, the Orissa Tribal Empowerment and Livelihoods Programme (2002-2016) supported the land rights and tenure security of indigenous communities with specific attention to indigenous women.³⁷⁵

In the Philippines, the *Indigenous Peoples' Rights Act* of 1997 recognizes indigenous people's ancestral rights over land by providing for the application of customary land tenure to ancestral domains. It also guarantees gender equality and the human rights of indigenous women and their participation in decision-making processes at all levels.³⁷⁶ Furthermore, it refers to the Convention on the Elimination of All Forms of Discrimination against Women and reserves at least two seats on the National Commission on Indigenous Peoples for women.

In the United Republic of Tanzania, Maasai women face discrimination – both from the majority society and through cultural practices within their own communities – that effectively restricts their enjoyment of land rights. Taking advantage of the *Village Land Act* (1999), women were able to work together as a group to gain secure rights to village land. Supported by an NGO, women formed committees to negotiate and dialogue with village officials and local leaders and take steps to formalize rights. Because the process was defined and led by Maasai women, the local community and its leadership supported the results.³⁷⁷

As of the time of writing, the Expert Mechanism on the Rights of Indigenous Peoples is preparing a study on the right to land under the United Nations Declaration on the Rights of Indigenous Peoples, to be presented at the forty-fifth session of the United Nations Human Rights Council (September 2020).³⁷⁸ The annual report of the Special Rapporteur on the rights of indigenous peoples in 2015 focused its analysis and recommendations on the rights of indigenous women and girls.³⁷⁹ Together with these

³⁷⁵ See IFAD undated.

³⁷⁶ See the Philippines 1997a and UN Human Rights Council 2011b.

³⁷⁷ Scalise 2012.

³⁷⁸ OHCHR 2020a.

³⁷⁹ Human Rights Council 2015b.

studies, a number of thematic studies and reports of the Expert Mechanism and reports of the Special Rapporteur provides guidance on how to protect and promote the rights of indigenous peoples in line with the United Nations Declaration on the Rights of Indigenous Peoples.³⁸⁰

2. Peasant women and women working in rural areas

RECOMMENDATIONS:

States should:

- Guarantee peasant women's equal access to, use of and management of land and natural resources and their equal or priority treatment in land and agrarian reform and in land resettlement schemes.
- Prior to adopting and implementing measures that may affect the rights of peasants, consult and cooperate in good faith with peasant women. In doing so, seek the support of peasant women before the decisions are made; respond to their contributions; take into consideration existing power imbalances between different parties; and ensure active, free, effective, meaningful and informed participation of peasant women in decision-making processes.
- Ensure that non-State actors, including business enterprises, respect the rights of peasant women.
- Ensure that international cooperation, including international development programmes, is inclusive, accessible and pertinent to peasant women.
- Ensure peasant women enjoy all human rights, without discrimination, including regarding multiple and intersecting forms of discrimination.
- In any exploitation affecting natural resources that peasants traditionally hold or use, ensure there is (a) a social and environmental impact assessment; (b) effective consultation and

BOX 8

Who are peasants?

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas defines a peasant as “any person who engages or who seeks to engage alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land”.

Peasants include any persons, including indigenous peoples, local communities and the landless engaged in:

- artisanal or small-scale agriculture
- crop planting
- livestock raising
- pastoralism
- fishing
- forestry
- hunting or gathering
- handicrafts related to agriculture or
- a related occupation in a rural area.

The rights of peasants are also applied to hired workers, including all migrant workers regardless of their migration status and seasonal workers, on plantations, agricultural farms, forests and farms in aquaculture and in agro-industrial enterprises.

Source: UN General Assembly 2018a, art. 1

participation; (c) fair and equitable sharing of the benefits with peasants; and (d) access to remedy.

- States shall, where required, take appropriate measures to cooperate with a view to addressing transboundary tenure issues affecting peasants and other people working in rural areas that cross international boundaries.

³⁸⁰ See OHCHR 2020b, 2020c.

Commentary and promising practices

Peasants and people working in rural areas often have a special relationship and interaction with the land, water and nature to which they are attached and on which they depend for their livelihood. Peasant women and other rural women play a significant role in the economic survival of their families and in contributing to the rural and national economy, including through their work in the non-monetized sectors of the economy. However, they are often denied tenure and ownership of land, equal access to land, productive resources, financial services, information, employment or social protection and are often victims of violence and discrimination in a variety of forms and manifestations.

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas³⁸¹ (see Box 8) includes the rights of women peasants. It articulates States' commitments on how to respect, protect and promote the rights of peasants, including their right to land and natural resources, in a comprehensive manner. It addresses States' obligation vis-à-vis business enterprises as well as their obligations in international cooperation, in the protection of sustainable environment and in the management of tenures that are exercised across international boundaries.

Likewise, general recommendation No. 34 on the rights of rural women of the United Nations Committee on the Elimination of Discrimination against Women³⁸² provides detailed guidance on the rights of peasant women and other women living in rural areas.

In Colombia, the National Human Rights Institution (La Defensoría del Pueblo de Colombia) has a mandate to protect and promote the rights of peasants, including to: disseminate information relevant to the rights of peasants; facilitate a comprehensive approach to rural areas in order to overcome the conditions of vulnerability of peasants; advocate for recognition and inclusion of people living in

rural areas in public policy; support collectives, groups and organizations of citizens whose rights are affected in agrarian or land issues; and monitor the fulfilment of the State's constitutional and legal obligations towards the rights of peasants.³⁸³

3. Women affected by HIV

RECOMMENDATION:

National HIV plans and programmes should:

- Incorporate gender equality provisions, including specific measures aimed at ensuring women's rights to land and other productive resources.
- Ensure the meaningful engagement of women living with or affected by HIV in the development of national strategic plans and programmes.
- Encourage customary and religious leaders to raise awareness within their own communities about women's rights, including the specific needs and rights of women living with or affected by HIV to land and other productive resources.

Commentary and promising practices

The impact of women's access to and control over land and productive resources within the context of HIV deserves special consideration. Increasingly, land is recognized as a key social determinant of health, and research evidence affirms the importance of women's land rights in preventing the transmission of HIV as well as in maintaining health and well-being. In particular, research demonstrates the linkage between the growing prevalence of HIV among women and "laws that inhibit the full enjoyment of women's rights to landownership and inheritance".³⁸⁴ In general terms, protecting women's land and property rights has both a preventive and a mitigating impact in the context of the HIV epidemic.

³⁸¹ UN General Assembly 2018a.

³⁸² UN CEDAW 2016a.

³⁸³ Defensoría del Pueblo de Colombia 2015.

³⁸⁴ UN Commission on Human Rights 2005.

On the preventive side, security of tenure over housing and land plays a crucial role in providing women with economic security, a livelihood and dignity. Numerous studies have demonstrated how the threat of poverty and insecurity drive women to remain in violent relationships or to engage in behaviours, such as unprotected sex, that put them at increased risk of contracting HIV. In fact, some have suggested that the way to make sex safer for women is by ensuring that they have access not only to condoms but to title deeds.³⁸⁵

In terms of mitigation, evidence shows that economic security, which can be achieved through protecting women's land rights, strengthens their ability to manage the impact of HIV. Seen in this light, land rights can help ease the impact of HIV on individuals and families and provide the basis for care and support for women living with HIV or those who are responsible for caring for family members living with HIV. Adequate food, access to shelter, clean water and access to health services, including HIV and sexual and reproductive health services, all help to keep those living with HIV healthy. For example, secure housing facilitates women's access to HIV-related treatment, care and support provided through formal health-care systems and informal community networks.

There can be no doubt that women affected by HIV face unique challenges when it comes to realizing their land rights. The stigma associated with HIV deters women from reporting property and inheritance rights violations or pursuing related claims. Moreover, the blame ascribed to women in the context of HIV remains a powerful force for discrimination and ill-treatment. According to UN Women, HIV often makes women's position even more precarious, with widows stigmatized as the carriers of the infection, shunned by their husband's family and thrown off their land.³⁸⁶ Moreover, women often lose control over assets on the dissolution of a marriage or death of a spouse.

Many national HIV plans and strategies do incorporate elements of gender equality. Some also include specific references to women's land, housing and property rights. In Rwanda, for example, one of the key recommendations of the National Accelerated Plan for Women, Girls, Gender Equality and HIV (2010-2014) was to raise awareness on women's and girls' property and inheritance rights among the community and law enforcement and to promote respect for and enforcement of women's and girls' rights. These issues have been incorporated into the Rwanda HIV and AIDS National Strategic Plan 2013-2018, Extension 2018-2020.³⁸⁷

To mitigate the impact of unequal property and inheritance rights, the United Nations Development Programme (UNDP) regional programme on HIV in Asia and the Pacific, in partnership with UN Women and UNAIDS, undertook an initiative to increase women's access to land and property in the context of HIV. The Asia Pacific Court of Women was organized in 2007 at the International Congress on AIDS in Asia and the Pacific. Two Supreme Court judges from Nepal and Sri Lanka and five expert witnesses heard testimony from 22 women representing 11 countries across the Asia-Pacific region. Those women shared their stories of disinheritance and property-grabbing owing to their HIV status. Ultimately, the Court called for a simultaneous process of legal reform and social transformation.³⁸⁸

Working with community leaders is especially important, and this also applies in relation to HIV. The Global Commission on HIV and the Law observed that "perhaps the most promising route to change is adaptation of traditional legal systems to promote equality for women and their children and recruitment of respected community members to mediate inheritance disputes between widows and their in-laws".³⁸⁹ The Kenya Legal and Ethical Issues Network on HIV/AIDS educated elders in alternative dispute resolution and trained them, as well as widows and local law enforcement officials, to

³⁸⁵ See Sweetman 2008.

³⁸⁶ UN Women 2011.

³⁸⁷ Government of Rwanda 2018.

³⁸⁸ COHRE et al. 2012.

³⁸⁹ Global Commission on HIV and the Law 2012.

create awareness of women's human rights. Such an approach recognizes that customary law can and does evolve and that local mechanisms for enforcing customary law can be strengthened to promote and protect women's rights.³⁹⁰

4. Displaced women

RECOMMENDATIONS:

Laws, policies and programmes should:

- Ensure the equal right of displaced women and men to return voluntarily in safety and dignity to their former homes and lands as well as to legal security of tenure, property ownership and equal access to inheritance and to use, control and access land, housing and property.
- Ensure the equal right of men and women to land, housing and property restitution.

Commentary and promising practices

Conflict and disaster are frequent precursors of mass displacement and of loss of land and other productive resources, in particular for women whose tenure rights are often insecure to begin with. Such events also tend to alienate women from restitution processes, which often benefit men. UN-Habitat has observed that “if women's enjoyment of their rights to land, housing and property is obstructed during times of relative peace, their enjoyment of these rights during conflict situations is nearly prohibited”.³⁹¹

Post-conflict and post-disaster situations should rather be seen as crucial opportunities to assert women's rights. For example, in 1998, the Kigali Plan of Action, which emerged from the Inter-Regional Consultation on Women's Land and Property Rights in Situations of Conflict and Reconstruction, indicated that “women should have adequate and

secure rights to property. These rights must be equal to those of men, and a woman should not be dependent on a man in order to secure or enjoy those rights.”³⁹²

In Colombia, where displaced women have been more vulnerable to violent land seizures and face greater security risks than men when attempting to reclaim their land, the Constitutional Court has played an important role in guaranteeing women's land rights. For example, Court Order (*auto*) 092 of 2008 noted that displacement has had a disproportionate impact on women and recognized that “women often only had their land rights protected via their male partners. Informal marriages, lack of knowledge about how their partners acquired the land and the variety of types of land tenure mean that female heads of households are extremely vulnerable to losing their right to their land”.³⁹³

Order 092 also directed the Government to establish new programmes to assist displaced women, including a specific programme on access to land. Colombia's *Victims and Land Restitution Law* (2011) contains specific provisions addressing women's rights within the context of land restitution and provides for special protection of and attention to displaced women.³⁹⁴

In Sri Lanka, the North East Housing Reconstruction Programme gave financial aid to reconstruct houses damaged by the war. The houses were assessed to see if they were fully or partly damaged. Decisions to reconstruct were based on a marking scheme. The application form for financial aid needed to be signed by both spouses and the money was deposited to a joint account maintained by both the husband and the wife. Priority was also given to female heads of households in the application process.³⁹⁵

Similarly, the 2010 Action Plan for National Recovery and Development of Haiti, adopted in the

³⁹⁰ Ibid. See also KELIN 2017 and Maleche undated.

³⁹¹ UNCHS 1999.

³⁹² The Inter-regional Consultation was hosted by Rwanda and sponsored by UNCHS, UNDP, the United Nations Development Fund for Women (UNIFEM) and OHCHR.

³⁹³ ABColombia 2011.

³⁹⁴ See also OHCHR Colombia and CIDA 2012.

³⁹⁵ See IEG undated.

CASE STUDY:

Improving humanitarian shelter policies to help secure tenure for women in Gaza

The housing, land and property rights of women living in the Gaza Strip have been seriously affected by hostilities. Thousands of women have lost their houses, others have been divorced or widowed, and still others have returned to parental homes in overcrowded and unsuitable living conditions. Even though Islamic jurisprudence and the law in Palestine recognize women's rights to property and to inheritance, women are unable to realize those rights because of social norms, traditions and gendered household dynamics coupled with severe economic and political pressures.

In 2013, the Norwegian Refugee Council (NRC) produced a first-of-its-kind research on issues women in Gaza face with regard to their housing, land and property rights. The report was based on day-to-day interaction with women in Gazan communities. Through the Council's experience in legal counselling and research, a need for a change was identified in United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) procedures and policies related to documenting rights to housing provided to families who were displaced because of the conflict.

This came after NRC's Information Counselling and Legal Advice (ICLA) programme had already established itself as a trusted source of legal information among the other humanitarian actors in Gaza. The report highlighted the importance of respecting, protecting and fulfilling the rights of women within the context of humanitarian aid and advised that any property rights-related documents created as part of humanitarian aid (e.g., contracts for pre-fabricated housing, rental agreements, registration documentation) should be signed by both female and male household members.

In particular, the report noted that UNRWA was inadvertently weakening women's security of tenure when it provided housing to families whose homes were destroyed by bombings. This is because the contracts that documented the right to use the provided housing (known as an "undertaking") were issued in the name of the head of the household (predominately male). The report showed how this had the effect of securing the head of household's tenure while weakening the tenure of women in the household. Given the high rates of divorce and separation in Gaza,^a this had the potential of leaving many women destitute.

Following that report, UNRWA and NRC drafted an amended joint undertaking form that ensures that the housing unit provided is for the benefit of the whole family and required that both the female and male recipients sign the form.

By May 2015, the NRC Gaza team had conducted information sessions for 449 families to ensure that they understood the changes that had been made to the joint undertaking form and how it would protect the rights of all members of the family to adequate housing. In total, NRC Gaza conducted 18 such information sessions to over 850 persons. The programme was able to provide the legal technical assistance needed to turn the recommendation into a shift in policy and practice at UNRWA, with immediate impact. NRC ICLA was influential because it is a trusted source and had conducted credible research.

^a There were 43,732 marriages in the State of Palestine in 2014, and 7,603 divorces that same year. See Palestinian Central Bureau of Statistics undated.

Sources: Elisa Scalise, Resource Equity; Rought-Brooks 2013; NRC 2016.

aftermath of the devastating earthquake of January 2010, contains specific language around secure land tenure and embraces gender equality as a cross-cutting theme.³⁹⁶

In Iraq, UN-Habitat and UNDP supported local municipalities to address historical discrimination related to the housing, land and property rights of the Yazidi community in the Sinjar district. The Yazidi had been displaced for many years and were in the process of return. Informal documents were collected, consolidated and analysed to prove occupancy and ensure that planned construction did not have overlapping claims. Community-led verification of claims was designed to be gender sensitive and included widows, female-headed households and young pregnant women who were typically excluded from public meetings. This approach helped to prevent future land-grabbing and forced evictions by ensuring that returnees had proper documentation to claim their rights.³⁹⁷

The Guiding Principles on Internal Displacement³⁹⁸ and the Pinheiro Principles³⁹⁹ provide further specific provisions related to the rights of displaced women.

5. Women in informal settlements

RECOMMENDATIONS:

Laws, policies and programmes should:

- Commit to gender-responsive policies and laws addressing informal settlements, following the gender commitments in the “New Urban Agenda”.
- Build understanding of gendered experiences of land rights in informal settlements through gathering sex-disaggregated data and making evidence-based policies.

- Eliminate discriminatory gender norms in governance and decision-making on informal settlements at every level.
- Ensure that urban governance processes are both inclusive and participatory and actively encourage meaningful participation of women and men. Governance processes should also seek participation from a diverse range of women – for example, young women, women with disabilities, female-headed households and older women, as well as LGBTI persons.
- Ensure that women have the personal and financial resources to meaningfully participate in land tenure and property rights processes in informal settlements.

Commentary and promising practices

For women, urbanization has the potential to provide greater access to employment opportunities, education and health services and a relaxation of gendered social restrictions that might exist in rural settings. However, women and girls are disproportionately affected by the lack of infrastructure, public services, transport and other resources typical of urban and peri-urban slums and informal settlements. They face higher barriers accessing livelihoods and educational opportunities, spend more time and energy accessing basic services, amenities and resources – and therefore have an increased burden of unpaid care and domestic work. Formal laws and programmes for land tenure and housing may favour men, while gender-biased informal and customary political systems, norms and rules can still operate in informal settlements, preventing women from accessing improvements in or rights to housing. Living in informal housing can also increase the risk of personal insecurity and sexual violence for women.⁴⁰⁰ Lack of land rights and other features of living in informal settlements can work together to create a vicious cycle: For example, living in informal housing may mean that women

³⁹⁶ See Government of Haiti 2010.

³⁹⁷ Tempra 2018.

³⁹⁸ ECOSOC 1998.

³⁹⁹ ECOSOC 2005.

⁴⁰⁰ GSDRC Applied Knowledge Services 2016.

CASE STUDY:

Ensuring women's access to land after violence in Colombia

Land has been central to Colombia's internal armed conflict. In fact, unequal distribution of land has been considered one of the root causes of clashes between the Colombian Government and FARC (*Fuerzas Armadas Revolucionarias de Colombia*) and was thus a central component of the Peace Accord signed in 2016 between the two parties. Over the past 25 years, upwards of 6 million hectares of agricultural land is estimated to have been violently seized by armed actors or forcibly abandoned by the displaced population, of which women constitute a particularly vulnerable group.

The Government recognized the need for restitution of land to the displaced as an essential step towards peace even before peace negotiations began. In June 2011, Congress approved Law 1448, known as the *Law on Victims and Land Restitution*, which adopted a gender-responsive approach and recognized the particular disadvantages women face when claiming their land, such as the risk of gender-based violence, the lack of formal land deeds and the weak social recognition of women's land rights independent from their position in the family. The gender-responsive regulations referred to two basic concepts: titling and prioritization of women heads of household in the legal and administrative process. Formal titling became mandatory for all women claimants whose cases had been accredited. Land deeds were issued and registered either as joint titles for spouses or permanent partners or as independent titles for women heads of household. Formal titling was seen as an effective approach in a country where over 40 per cent of the landed possessions – and even more in the cases of women's land – were untitled.

However, implementation of this gender approach in land restitution met with several challenges and generated only limited results. Women constituted about 40 per cent of the claimants under the law, but no information became available about how many of them received a deed due to lack of gender-disaggregated data for title holders of returned land. Additionally, no clear vision for the transformation of gender relations was developed beyond the formalization of property titles for women. Complementary measures were weak, fell outside the scope of the judicial process and became under-enforced. In fact, persistence of patriarchal attitudes interfered with judges' decisions and hampered family and community support for returning women. The case-by-case nature of the judicial process made it difficult for returning women to organize collectively. Moreover, single women were sometimes reluctant to go back to their isolated life on their *fincas*, which were imbued with memories of violence, and preferred instead to sell their land and rebuild their lives in nearby towns. Those who returned to the countryside remained socially and economically vulnerable and still faced powerful companies pressing them to sell their plots. These obstacles to the realization of women's access to land in the restitution process are part of a more general lack of the programme's effective implementation; in 2018, three years before the programme's planned closure in 2021, only 317,000 hectares of the six million hectares of abandoned land had been returned.

Sources: Donny Meertens, Pontificia Universidad Javeriana, Colombia; Meertens 2019.

are not able to engage in formal employment and therefore depend on informal and unstable sources of income. This in turn means women cannot access credit that would allow them to improve their houses or working conditions.⁴⁰¹

Many urban areas suffer from an imbalance of political power and insufficient inclusiveness and participation, felt most strongly by women, youth, the disabled and minorities.⁴⁰² Women in informal settlements tend to be under-represented in processes creating and implementing policies and programmes in their communities.⁴⁰³ In addition, women are excluded from urban planning functions that are often viewed as gender neutral.⁴⁰⁴ Addressing these challenges requires (a) acknowledgement of the normalized exclusion of women's voices, and (b) substantive and meaningful representation of women and women's interests in urban planning and decision-making. It also requires identifying the gendered ways that power is exercised over land rights, where power may mean access to information, the opportunity to speak on behalf of others or access to technology, institutions, influence or services.

⁴⁰¹ UN DESA, Population Division 2014.

⁴⁰² UN-Habitat 2016.

⁴⁰³ COHRE 2013.

⁴⁰⁴ UN-Habitat 2012.

Effective strategies to address the multiple and intersecting forms of discrimination women face in relation to their land rights in informal settlements can focus on the institutional level. For example, to operationalize its commitment to gender equality in urban development, UN-Habitat uses a Gender Equality Marker, setting targets and measuring the effectiveness of gender mainstreaming in its programmes. The marker ranges from gender negative/blind to gender transformative.⁴⁰⁵ UN-Habitat has also established a gender hub that documents, analyses, sets and promotes a global agenda on gender equality and women's rights to the city.

Strategies can also focus on women and women's organizations directly, building their capacity to meaningfully engage in processes. For instance, ActionAid has used a human rights-based approach to work with young women in urban slums that focuses on skills training, learning how to campaign and advocate for rights and building solidarity among women whose voices may be amplified as a group.⁴⁰⁶

⁴⁰⁵ UN-Habitat undated.

⁴⁰⁶ ActionAid 2012.

CONCLUSION

Rights to land and other productive resources are essential elements for the enjoyment of various human rights. Women and girls, especially those who face multiple and intersecting forms of discrimination – such as indigenous, peasant, and rural women, women affected by HIV, displaced women, women in informal settlements and LGBTI persons – should be guaranteed equal enjoyment of their land rights under formal laws as well as plural and customary legal systems.

Since the publication of the first edition of *Realizing Women's Rights to Land and Other Productive Resources*, international normative, legal and policy frameworks to protect and promote women's land rights have further evolved. The adoption of the 2030 Agenda for Sustainable Development has opened up promising pathways to advance women's land rights in a comprehensive and integrated manner, in line with international human rights standards. Additional national experiences and promising practices to realize women's land rights in diverse contexts have accumulated, many in response to challenging global trends characterized

by accelerated commodification and financialization of land, climate change, biodiversity loss, land degradation and urbanization.

As such, all efforts to improve land and resource governance in the interest of sustainable development, gender equality and the empowerment of women and girls should apply gender-responsive and human rights-based approaches, many of which have been presented here. We hope this publication will help all relevant stakeholders to apply such approaches in the particular contexts in which they live and work.

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Women's rights to land and other productive resources are essential to realizing their rights to equality and to an adequate standard of living, among many other human rights. Women's secure access to land and resources supports their independence and autonomy, provides for their day-to-day needs and those of their families and allows them to weather some of life's most difficult challenges. Realizing women's land rights is an integral part of the gender-responsive implementation of the 2030 Agenda for Sustainable Development. This second edition, co-published by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), aims to provide guidance to lawmakers and policymakers, as well as civil society organizations and other stakeholders, on supporting the adoption and effective implementation of laws, policies and programmes to respect, protect and fulfil women's rights to land and other productive resources. The publication also provides recommendations for realizing women's rights to land and other productive resources based on promising practices and lessons learned from around the world, which have been supplemented by explanatory comments. OHCHR and UN Women hope that relevant stakeholders will apply the approaches outlined in this revised edition in the contexts in which they live and work, in their efforts towards the fulfilment of women's rights to land and other productive resources.



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