

THE SERIES' FOUR COMPONENTS

Background paper
Quick guides to what and how
Tools
Inspiring initiative



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FORMS OF RESOURCE TENURE:

Public/State property: rights are held by the state in which the public sector exercises rights over the resource

Private property: rights are held by an individual or legal entity such as corporations. Only 10 percent of land is privately owned globally.

Common property: rights are held by a group of people

Open access: no specific rights exercised by anybody but formal and normative laws regulate direct access, use and proceed-distribution.

A vacuum situation: for example found in conflict or post-conflict settings, no formal laws on land tenure in place or new laws contradicting previous systems.¹

¹ Nighisty Ghezae, Ed., "Natural Resource Tenure – a crucial aspect of poverty reduction and human rights", Sida Studies no. 23, 2009

This quick guide gives a brief overview of the challenges regarding women's access to land, outlines what needs to be done to increase women's access to land and provides Sida with some entry points for supporting processes where women gain access to land.

Women's economic empowerment is essential in promoting equality between women and men and a precondition for sustainable development and pro-poor growth. Women's economic empowerment can be achieved through equal access to and control over economic resources and opportunities and the elimination of structural gender inequalities. Women's unequal access to land and property is a key obstacle to women's economic empowerment and an area where Sida is stepping up efforts.

Access to land and tenure security is closely linked to other natural resources, such as water and forests, but the scope of this quick guide is restricted to women's access to land.

CHALLENGES FOR WOMEN'S ACCESS TO LAND

Women are responsible for between 60 and 80 percent of food production in developing countries.¹ Yet they rarely own the land they are working on, have tenure security or control over the land. They often have limited decision making power and control over how to use the land or its outputs.

Women and men's *de jure* access to land is regulated by the formal legal system, and in many developing countries similarly through customary law. There are many examples of how the two systems can both prevent and promote women's access to land. The *formal legal systems* in many countries have constitutions or land laws that grant gender equality in access to land but where laws for marriage, divorce and inheritance contradict these laws by discriminating against women and daughters. While systems of *customary law* regarding land tenure in pre-colonial Africa often granted women access to land, this right was lost in many cases with the introduction of the idea of individual ownership.² Customary systems today tend *not* to grant gender equality in access

¹ Action Aid "Securing women's rights to land and livelihoods: a key to ending hunger and fighting AIDS" Action Aid briefing paper, p.7

² Customary systems as well as more recent land reforms have had different effects for women in different countries. See the following for more detail: "Gender issues in land reforms: Africa" The centre for Land, Economy and Rights of Women, 2006 Paper commissioned by Sida.

GLOSSARY:

Tenure is the relationship among people as individuals or groups with respect to land. Rules of tenure define how property rights in land are to be allocated within societies. Land tenure systems determine who can use what resources for how long and under what conditions.²

Tenure security for women is a situation where, regardless of the particular tenure regime, women 'can use or manage land in a predictable fashion for a defined length of time'. Three components of tenure security are suggested as benchmarks for women: clarity in the duration of content of rights, independent control and ability to defend and enforce rights.³

2 Nighisty Ghezze, Ed., "Natural Resource Tenure – a crucial aspect of poverty reduction and human rights", Sida Studies no. 23, 2009

3 Action Aid, "Securing women's right to land and livelihoods a key to ending hunger and fighting AIDS" p. 13

to land. Customary systems of property tenure account for at least 75 per cent of the land in most African countries.³ Women's *de facto* access to land is restricted by lack of implementation of existing laws, by customary law, traditional and social practices, norms and power structures within communities and households, by lack of legal security systems to protect women against land grabbing, etc.

WHY IS INCREASING WOMEN'S ACCESS TO LAND IMPORTANT?

Women's access to land and property is central to women's economic empowerment, as land can serve as a base for food production and income generation, as collateral for credit and as a means of holding savings for the future. Land is also a social asset that is crucial for cultural identity, political power and participation in decision making. Women's equal access to land is a human rights issue. It also has other benefits. Evidence shows that women's land rights reduce domestic violence⁴, that women who own land are more capable of exiting violent relationships and negotiating safe sex.⁵ Agricultural production and food security also increase when women are granted tenure security.⁶

ENTRY POINTS FOR INCREASING WOMEN'S ACCESS TO LAND

Sida can promote women's access to land in Sida's partner countries in the processes of policy making, drafting of new legislation, implementation and enforcement. Below are some practical entry points for how to go about this.

Land policy

Women's participation in the process of developing a land policy is fundamental to increasing women's access to land. Experience shows that women have been able to gain greater access to land through land reform in countries where the participation of rural women is a well-defined state policy.⁷ For a land policy to be able to ensure women's equal access to land, it needs to be based on the principle of gender equality in access to land, have clear objectives/goals on equal access to land, and indicators and base line data to enable follow-up. Sida can support the development of gender-responsive land policy through:

- Supporting women's organizations and groups of rural women to participate in the formulation of land policy and land reforms through financial support, dialogue with the government and providing a space for civil society to meet with government representatives;
- In dialogue, holding the partner government accountable to commitments made on gender equality or women's economic empower-

3 Sage, C., (2005) 'Breaking Inequality Traps'

4 Action Aid p. 19-20

5 COHRE, (2006) 'A Survey of Law and Practice related to women's inheritance rights in the MENA Region'

6 Action Aid p.7-8

7 Ibid

INTERNATIONAL CONVENTIONS RELATED TO GENDER AND ACCESS TO LAND

- Universal Declaration of Human Rights (1948)
- Beijing Platform for Action, paragraphs 165 (e), 166 (c)
- UN Convention on the Elimination of All Forms of Discrimination against Women, Article 16 (1) (h), 14 (2) (g)
- Economic and Social Council Commission on the Status of Women Resolution 42/1, Human Rights and land rights discrimination
- Commission on Human Rights Resolution 2003/22
- Universal Declaration of Human Rights. Art. 25
- Convention on Economic, Social and Cultural Rights Art.11
- Habitat II Conference, Istanbul 1996 Preamble
- Istanbul Declaration on Human Settlements (esp. Par.7)III Commitments D. Gender equality (1): : "providing legal security of tenure and equal access to land to all people, including women [...] and undertaking [...] reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land".

Rome Declaration on World Food Security (1996). World Food Summit. Specifically lists commitments in regard to land rights and equitable gender relations.

"African Charter on Human and Peoples' Rights" (1986). Commits to non-discrimination against women, while acknowledging the right of local communities to follow customary rules and norms.

The United Nations Commission on Human Rights Resolution 2002/49

ment and stress the importance of formulating objectives and targets for women's access to land.

- Supporting government or civil society research on the possible consequences of proposed agricultural and privatisation policies in terms of women's access to land.
- Facilitating informed policy making through supporting the production of sex-disaggregated data and statistics on land tenure in national statistical accounts and cadastre.

Land legislation

A number of different laws regulate women's access to land and ensuring equal access could begin with analysis of how existing land legislation, marital law and inheritance laws interact in terms of women's access to land and how statutory law can promote women's access irrespective of their marital status. The drafting of new laws on tenure, land redistribution, land reform (for example in post-conflict settings), divorce and inheritance laws, provides an opening toward a more gender equal legal framework. Sida can contribute to the preparatory work of the *formal legislative process* by:

- Supporting local analysis on the effects of current legislation on land, divorce and inheritance for women's access to land and the consequences of proposed legal change. Assisting in building knowledge and capacity on gender equality in access to land and the upcoming legislative process among actors such as legislators, civil society, and land users;
- Facilitating the participation of civil society, gender experts, and female local leaders in order to ensure a critical mass of women's representation throughout the process, through e.g. financial support to key actors, providing fora for discussion and exchange, and through dialogue on the importance of women's participation
- Raising in dialogue, when a country undertakes legal reform, the need to safeguard women's de jure rights according to signed international legal frameworks such as CEDAW and stay clear from contradictions in statutory laws. Laws granting equality in access need to do so irrespective of ownership form e.g. marketing associations, cooperatives, community land.

Customary law is not subject to a legislative process and efforts to improve women's land rights need to focus on the *interpretation* of customary law. Sida can promote women's access to land in customary law by:

- Supporting women's groups or organisations advocating gender equality within customary systems,
- Supporting change agents such as religious leaders, both men and women, who question discriminatory norms. This can be done through dialogue or by providing fora for these change agents to reach a larger audience.
- Promoting, through dialogue, women's participation in bodies responsible for interpreting customary law.

Implementation of land laws

Laws alone are not enough to secure women's access to land. The effectiveness of laws depends on awareness about them, the abilities to invoke them, and to what extent cultural norms and traditions are practiced and followed instead of formal laws. Sida can contribute to implementing legislation on women's access to land by:

- Advocating the representation of women in land boards or other bodies responsible for distributing or overseeing land rights.
- Supporting capacity building of state institutions responsible for land surveying, distribution and land management, in order to raise awareness among civil servants of existing laws and policies. This can increase the understanding of the importance of equality of access to land and the knowledge of what tools can be used to promote women's access to land. The knowledge must be institutionalised by installing persons or departments responsible for monitoring and evaluation, development of methods and training.
- Supporting efforts to sensitise local and traditional leaders, officials and others with decision making power over land distribution/management and to equip them with tools to protect women's rights to land.
- Supporting assessments of how customary complaint system can be made gender-sensitive.
- Supporting efforts to ensure that politicians, executive officers and technicians working with land laws and regulations, national land policies, land surveys and land cadastres are updated on new policies, laws or practices regarding equality in access to land.
- Supporting awareness-raising and access to information for women, men and communities about existing legislation and policies. Informing them about where to turn to get assistance to claim land or protection against land grabbing. Explore new, effective communication channels in order to prevent dependency on traditional ways of spreading information that tend to leave out women.

Enforcement

When a dispute arises, enforcement requires that the disputing parties are familiar with the law. It assumes the parties to have equal access to institutions and actors such as lawyers, legal aids, etc. as well as the ability to make a claim. A good level of enforcement is further jeopardised by: weakness in the institutional capacity of the judicial system to implement laws or handle all incoming cases; corruption, biased courts and legal officers (who adhere to discriminating norms); and conflict situations in which the legal system and law enforcement tend to be run by the army or rebel groups. Sida can facilitate good law enforcement by:

- Supporting capacity building of law enforcement institutions such as courts, local councils, and police through sensitisation, raising awareness of existing laws and tools to support women's access to land.
- Supporting the creation of support mechanisms that assist women who claim their legal rights and thereby go against societal norms. Such support could be formal institutions for settling disputes and handling complaints, paralegals, and NGOs assisting women specifically. This is particularly important in rural areas where access to information and official outreach is scarce.
- Supporting initiatives that address power relations in the household through e.g. ensuring that rural development programmes have a methodology for addressing intra household power relations, and supporting civil society organizations working to change attitudes.
- Advocating the creation of national or regional mechanisms to monitor the enforcement of policies, targets and laws on women's access to land.

ILLUSTRATIONS:

Land certification scheme example from Ethiopia: land administration committees required to have at least one female member, the land certificates included maps and pictures of husband and wife

In a pilot initiative with the UN Food and Agricultural Organization in **Tajikistan**, UNIFEM supported the establishment of 16 District Task Forces (DTFs) on land-related issues in three provinces. The task forces provided legal advice on land rights, and rural women could also attend classes on leadership skills, cooperative formation, farm management and community activism.

From 2003 to 2008, the staff of the DTFs provided legal advice and practical assistance to approximately 14,000 rural women and men and conducted around 500 meetings and consultations in villages. As a result, the proportion of farms registered to women rose from 2 percent in 2002 to 14 percent in 2008. District-level governments are now funding the work of the DTFs through their own budgets.

- Promoting adult education and literacy courses for women and men. Knowing how to read and write is a prerequisite for access to justice and makes law enforcement easier.

Land Administration

The technical systems of land administration dealing with land delimitation, titling and registration of land or user rights play an important part in creating equal access to land in different systems of land tenure. It provides opportunities for ensuring that laws and policies on equality in access are implemented or that informal agreements on access to land are formalised and thereby improve tenure security. In systems of private tenure rights, land titling and registration is a prerequisite for land owners to use their land as collateral. Processes of land delimitation, titling and registration of tenure have to be carried out in an open manner which does not discriminate against women in any way and which encourages an increase in women's access to land. Sida can support this by:

- Ensuring through analysis or dialogue that individual land titling and registration processes do not take away rights that women have had in a community tenure system.
- Supporting the creation of a systematic registration system which is accessible to illiterate women and men where legal tenure documents only are valid if photographs or fingerprints are used in registration processes, instead of signatures.
- Encouraging efforts to make joint titling of private property or user rights mandatory in the registration process i.e. husband and wife/wives are registered as joint owners.
- Exploring how land administration authorities, when registering community/village lands with joint user rights, can promote gender equality in access within communities, as the communal user right is often distributed to individuals through customary practices.
- Ensuring that the registration fee does not double for registering two title holders in a household and thereby become a disincentive. Instead, increase the possibility of providing financial incentives for registration of both spouses, e.g. waiving the fee in the case of registration of both spouses.
- Ensuring that both women and men affected by land certification and registration programmes can participate in the planning and design of such programmes, as experience shows that there is a risk of women's tenure security being lost in the process.
- Supporting the development of handbooks or guidelines for lawyers and personnel of cadastral offices to assure that correct information about marital status and joint ownership rights are known and upheld as well as notices of security for debt, sale of property or transfer of title.

When supporting land administration programmes, ensuring that the partner authority is aware of the International Federation of Surveyors' Guidelines on Women's Access to Land (see further reading.)

NICARAGUA MADE SIGNIFICANT PROGRESS IN INCREASING THE NUMBER WOMEN LANDOWNERS

"This was achieved through legislation initiated in the 1980s establishing equal rights for women and men to benefit from land tenure programmes. A further boost came from a joint titling law in 1997 mandating that titles received by families through a land reform programme be issued in the names of both spouses. Vigorous dissemination, training and promotion of joint titling paid off. Whereas in the 1980s only 10 percent of land titles were issued to women, by 2000 that number had increased to 42 percent". Source: FAO "A gender perspective on land rights" <ftp://ftp.fao.org/docrep/fao/007/y3495e/y3495e00.pdf>

INDICATORS

Women's access to land (index) Measures women's right and de facto access to agricultural land Source: The OECD Gender, Institutions and Development database http://www.oecd.org/document/16/0,3343,en_2649_33731_39323280_1_1_1_1,00.html

The indicator "Using property" examines women's ability to access and use property based on their ability to own, manage, control, and inherit it. Source: World Bank database Women, Business and the Law (<http://wbl.worldbank.org/Explore-Topics/Using-Property>)



Ethiopian women holding her joint land certificate. The legal requirement of issuing jointly titled land certificates was most widely applied when there was space on the certificate for small photos of both husband and wife.

Photographer: Klaus Deininger (Lead Economist, DECAR, World Bank)

FURTHER READING:

FAO, 2005, Gender and land compendium of country studies. Total pages: 16

Content: A compendium put together by FAO to provide an improved understanding of the complex issues regarding gender and land. Practical examples from Sub Saharan Africa; Revisiting Customary Institutions; Senegal and Burkina Faso; Traditional Marriage Practices as determinants for women's land rights, Brazil; The legal status of women in the context of agrarian reform, and Nicaragua; Access to land. Web site: <ftp://ftp.fao.org/docrep/fao/008/a0297e/a0297e00.pdf>

FAO, 2002, Gender and Access to Land, FAO Land Tenure Studies 4. Total pages 44

Summary: This guide has been prepared to support land administrators in governments and their counterparts in civil society who are involved in land access and land administration questions in rural development. Web site: <ftp://ftp.fao.org/docrep/fao/005/y4308e/y4308e00.pdf>

International Federation of Surveyors' (FIG), 2001 Women's Access to Land – FIG Guidelines. Principles for Equitable Gender Inclusion in Land Administration: Background Report and Guidelines

FIG Publication No 24. Total pages: 22

Summary: The publication provides background information to surveyors and other land professionals on why gender issues matter in development projects; and provides draft guidelines to assist development project managers, surveyors, land administration agencies, and others in ensuring that land administration enhances and protects the rights of all stakeholders, including women.

Web site: <http://www.fig.net/pub/figpub/pub24/figpub24.htm>

USAID, 2006, Study on Women and Property Rights – Best Practices. Total pages: 121

Content: Examples on how gender has been dealt with in development projects in land tenure and property rights. Includes analyses of successful projects where women's access to and control over land have been strengthened. Presented within the context of a project cycle of preparation/design, implementation, and monitoring and evaluation.

Web site: http://pdf.usaid.gov/pdf_docs/PNADJ420.pdf

UN Habitat/Global Land Tool Network has a "gender mechanism" including several tools on gender and land, among them are

- 2008, Gendering Land Tools. Achieving secure tenure for women and men. Total pages: 44

Content: The GLTN gender mechanism is a framework of methodologies and strategies for systematically developing gender-responsive land tools that promote equal tenure security for women and men.

[<http://www.gltn.net/en/home/gender/gendering-land-tools-achieving-secure-tenure-for-women-and-men/details.html>]

- 2010, "Gender Evaluation Criteria", a tool to judge whether a large scale land intervention is responsive to both women and men's needs. Total pages: 2. <http://www.gltn.net/en/home/gender/gender-evaluation-brochure/details.html>

Action Aid 2008 Securing women's right to land and livelihoods a key to ending hunger and fighting AIDS Total pages: 28 Content: The document describes the links between land rights, food security and HIV/AIDS, provides statistics and evidence and some policy recommendations.

<http://www.actionaid.org/micrositeAssets/eu/assets/women's%20right%20to%20land%20hiv%20and%20hunger%20jun-08final.pdf>