

THE LAND INEQUALITY INITIATIVE  
CONCEPTUAL PAPER

# THE GENDER GAP

## ASSESSING AND MEASURING GENDER RELATED LAND INEQUALITY

BY ELISA SCALISE

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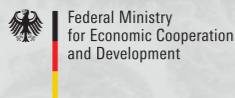
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# THE GENDER GAP

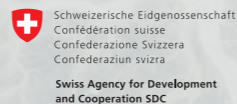
## ASSESSING AND MEASURING GENDER RELATED LAND INEQUALITY

BY ELISA SCALISE

### STRATEGIC PARTNERS & CORE DONORS



Government of the Netherlands



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## EXECUTIVE SUMMARY

Given the current global commitments to addressing gender inequality, it is both timely and necessary to assess and measure the gender gap in land rights. Gender inequality exists in land rights: different women experience it in different ways in different places, yet there are common patterns that emerge both from available quantitative data and from examples of laws, programmes, and practices in land relations in different contexts.

In general across these different data sources, the patterns suggest male preference in land relations: women own or have rights to less land than men and to land of lesser quality; women are not able to acquire the same rights as men in the same context, and the rights that they can acquire are less secure; women are less able to exercise the rights they have; and women are less able to protect rights when they are under threat. These patterns of inequality in turn relate to gender-unequal social and power relations that are evident more broadly in societies.

This paper proposes a definition of gender equality in land rights, with the view that it could help drive measurement of the gender gap in a way that reflects the nuances and complexity of different land tenure systems and also recognises the historical discrimination that many women have faced with regard to land rights:

**Gender equality in land rights exists when:** (i) women and men can acquire rights that are (ii) equally secure; (iii) women and men can equally enjoy and exercise their land rights; and (iv) women's and men's land rights are equally protected when they are threatened.

Assessing and measuring each of these dimensions for differently placed women and men requires dedicated resources and attention and can be the first step in designing appropriate interventions, policy, and research that can help to ameliorate gender inequality in land rights.



## GENDER INEQUALITY AND LAND RIGHTS

Measuring gender inequality in land rights is an important step along the pathway to achieving sustainable development, addressing historical discrimination against women, and realising women's human rights. It is also important because...

*...the history of reforms to land tenure has been characterised by gender-unequal outcomes and current debates in development are still grappling with the question of how to achieve gender equality in practice, particularly in (but not limited to) contexts where dual tenure systems operate.*

In the past, it has been difficult to know with certainty the extent of gender inequality in land rights. This has been because there are a lack of data or of nationally representative data and inconsistent use of and reporting across indicators. It can also be problematic to compare highly contextual land rights systems, and key terms or concepts can have different relevance and significance in different socio-legal contexts and for different categories of land. For instance, the concept of ownership might not fit well in places where rights to land are held collectively, and where cultural or sacred rights are valued as highly as the right to control how land is sold or bequeathed; or reforms such as those mandating joint titling may not make sense for lands that are held by a collective group rather than a married couple. Documenting the gender gap has also been complicated by past attempts to demonstrate the extent of inequality between women and men in land rights by reducing data to a neat global percentage such as in the common statement that “women own less than 2% of the world's land” – an assertion that has since been discredited because it is not backed by empirical evidence, does not reflect variation in ownership patterns across and within countries, does not show comparative ownership by men, does not recognise differences in defining land ownership across contexts, and does not show an understanding of the differences between ownership and control (Doss et al., 2013).

In recent years significant progress has been made towards a gender-responsive measurement of land rights that would address some of these issues.<sup>1</sup> For instance, under the 2030 Global Agenda for Sustainable Development (the Sustainable Development Goals, or SDGs), states should report sex-disaggregated progress on ownership or secure rights to agricultural land, as well as legal and customary guarantees

<sup>1</sup> See for example, SDG 5 “Gender Equality”, target 5.a, indicators 5.a.1 and 5.a.2, focusing on agricultural land; as well as indicator 1.4.2 under SDG 1, which calls for sex-disaggregated data on documented rights to land and perceptions of tenure security on all kinds of land. <https://sustainabledevelopment.un.org>

of women's equal rights to land.<sup>2</sup> To support this, the UN has issued Guidelines for Producing Statistics on Asset Ownership from a Gender Perspective (United Nations, 2019), so that states have guidance on how to measure gendered differences in land ownership; and there are other guides for collecting data on sex-disaggregated data on individual rights to land (FAO et al., 2019).

Measuring progress using the indicators in the 2030 Global Agenda is a critical step forward in understanding the global (and national) gender gap in land rights, especially for women who have historically been disadvantaged by land tenure systems and programmes to reform them. Yet, as is explored in more detail below, *achieving progress on these indicators may not on its own be sufficient to fully address gender inequality in land rights in practice.* To do so requires action on other systemic factors that work to perpetuate inequality between men and women in terms of land rights.

*This paper proposes a way to think about land rights that takes account of the systemic factors that create and maintain gender inequality.* It first takes a snapshot of current concepts that are used to understand the gender gap from a quantitative perspective. It then uses examples from different contexts to illustrate gender inequality in land rights, through the prism of three intersecting functions: how rights are acquired, how they are enjoyed, and how they are protected. After using this background to propose a definition of gender equality in land rights, the paper concludes with some thoughts on how assessing for gender inequality can provide a basis for achieving gender-equal land rights.

## 2 WHAT DO WE KNOW ABOUT THE GENDER GAP IN LAND RIGHTS FROM QUANTITATIVE DATA?

*Despite historical challenges in the collection of nationally representative data, by any analysis there are consistent gender-unequal patterns in land that emerge globally.*

Across countries, the pattern is that women own or manage less land than men, and in some cases the gender gaps are quite large (Doss et al., 2013).

**Table 1** shows examples of the gender gap in land rights, from country data in the UN Food and Agriculture Organization (FAO)'s Gender and Land Rights Database, where data are available on both agricultural landowners<sup>3</sup> and landholders.<sup>4</sup> It illustrates both the range in ownership and management gaps across countries, and also shows the differences in data between female versus male ownership and female versus male landholdership, suggesting that data on either indicator alone will not show a complete picture of the gender gap.

Data on other aspects of land relations further elucidate the nuances of the gender gap beyond those evident in the FAO Gender and Land Rights Database. For instance, one study looking at nationally representative data from six African countries (Malawi, Uganda, Ethiopia, Niger, Nigeria, and Tanzania) shows gender differences in both the right to transfer land and the right to derive economic benefits from land (Slavchevska et al., 2017). This suggests that economic control may be another feature of the gender gap in land rights, distinct from either land ownership or landholdership.

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

3 Defined as the legal owner of agricultural land, not necessarily reflected in an ownership document. It includes ownership that is held solely and jointly. See: [http://www.fao.org/gender-landrights-database/data-map/statistics/en/?sta\\_id=1162](http://www.fao.org/gender-landrights-database/data-map/statistics/en/?sta_id=1162)

4 Defined as the person who makes major decisions regarding resource use and exercises management over the holding. It does not capture management within the holding, or reflect the fact that one holding may have several plots of land with different household members responsible for different plots. The landholder may be using land held under communal tenure, and may be renting or borrowing land. See: [http://www.fao.org/gender-landrights-database/data-map/statistics/en/?sta\\_id=1161](http://www.fao.org/gender-landrights-database/data-map/statistics/en/?sta_id=1161)

**TABLE 1: ILLUSTRATIVE DATA ON AGRICULTURAL LAND FROM THE FAO GENDER AND LAND RIGHTS DATABASE**

	DISTRIBUTION OF FEMALE AGRICULTURAL LANDOWNERS %	DISTRIBUTION OF MALE AGRICULTURAL LANDOWNERS %	DISTRIBUTION OF FEMALE AGRICULTURAL LANDHOLDERS %	DISTRIBUTION OF MALE AGRICULTURAL LANDHOLDERS %
Bangladesh	22.6	77.4	4.6	95.4
Ecuador	51	49	25.4	74.6
Haiti	23.5	76.5	25.3	74.7
Malawi	57.3	42.7	32.1	67.9
Mexico	32.2	67.8	15.7	84.3
Nicaragua	19.9	80.1	23.3	74.7
Nigeria	15.8	84.2	10	90
Peru	12.7	74.4	30.8	59.2
Tanzania	45.2	54.8	19.7	80.3
Vietnam	37.3	62.7	8.8	91.2

To illustrate this further, *Table 2* shows findings from the six-country study for Malawi, Tanzania, and Nigeria, which also feature in the FAO database. Considering these two tables together sheds some light on the layers that are evident in gender inequality with regard to land. Table 1 shows that in Tanzania, for example, women make up 45.2% of agricultural landowners and 19.7% of agricultural landholders; Table 2 suggests that even where women are the sole managers of agricultural land in Tanzania, 31% are not asserting economic control over the plot. The picture in Nigeria is rather different but shows the same pattern, with women making up a total of just 26% of agricultural landowners or landholders (Table 1) and where women as sole managers exert economic control over 47% of plots.

**TABLE 2: DATA FROM SIX COUNTRIES IN AFRICA ON LAND MANAGEMENT AND CONTROL**

	OF PLOTS WHERE MANAGEMENT IS SOLELY FEMALE, % SHOWING SOLE FEMALE ECONOMIC CONTROL	OF PLOTS WHERE MANAGEMENT IS SOLELY FEMALE, % SHOWING SOLE MALE ECONOMIC CONTROL	OF PLOTS WHERE MANAGEMENT IS JOINT, % SHOWING JOINT ECONOMIC CONTROL	OF PLOTS WHERE MANAGEMENT IS JOINT, % SHOWING SOLE FEMALE ECONOMIC CONTROL	OF PLOTS WHERE MANAGEMENT IS JOINT, % SHOWING SOLE MALE ECONOMIC CONTROL
Malawi	76	1.3	77.4	9.2	5.1
Nigeria	47	4.7	48	5.8	23.5
Tanzania	69	0.9	69.8	2.7	7.1

Source: Slavchevska et al. (2017).

Comparing different datasets is problematic, but the point to be made here is that ownership status, landholdership status, and even management status do not necessarily equate with economic control of land.

Another interesting measure of the gender gap comes from the Global Property Rights Index (Prindex) and is related to the perceptions that women and men have of the security of their rights. Looking across 33 countries, it found that while there may not be significant differences in perceptions of tenure security among men and women who are married, there is a difference between men and women who have been divorced or widowed, with women feeling less secure than men in such situations (Prindex, 2019). Also, across the great majority of countries in the sample, women displayed significantly lower rates of knowledge than men about how to defend property rights if challenged (Ibid.).

Assessing the gender gap in land rights remains a complicated exercise. Looking at any one of the datasets mentioned above will not show a complete picture of gender inequality. Historical problems with sex-disaggregated data limit what can be said about how and whether gender inequality in land rights is shifting over time. It is clear that looking solely at ownership (however defined) or even just at management will show only part of the story of gendered land inequalities. Nevertheless, across available data and across contexts, there are patterns of gender inequality in land relations that typically favour males over females to a greater or a lesser degree.

*Beyond quantitative data, other aspects of gender inequality in land rights can be seen through the experiences of land systems that women and men have in practice.*

This is explored in more detail in the next section.

# 3 WHAT DO WE KNOW ABOUT GENDER INEQUALITY IN LAND RIGHTS BEYOND WHAT THE DATA TELL US?

The previous section raised the question: even if quantitative data showed equality for men and women across all indicators currently in use, would it be the case that we would see gender-equal land rights in practice? A deeper look at land rights and gender dynamics may help to answer that question.

Before proceeding to an illustration of gender inequality in land relations, a few points are helpful to consider. Implicit in the examples provided below is the reality that women and men can have unequal starting places which influence their uses of land, and this can affect their ability to assert and protect their rights and interests. Women and men may have unequal capacity to convert the benefits of land into improved economic and social well-being because of their unequal ability to influence decision-making in the major sites of power in society (household, kin group, community, state). Gender inequality can also be perpetuated through norms, expectations, and attributes of gender (i.e. being female or male in a given society) that work to reinforce existing relationships in ways that lead to further gender inequality.

Looking at gender inequality implies a consideration of the different experiences of men and women. However, this paper acknowledges that *women in different situations experience inequality in different ways (and men can experience inequality as well). Inequalities exist within the categories of “women” and “men”*. For example, in a customary land tenure setting, unmarried women with children may have different rights from married women who have children, and widows may have different rights again. This is exemplified in a case study from Uganda in this series which shows that *the experience of women with regard to land can be influenced by their particular status – as a widow with children, a widow without children, a divorcee, an existing wife, a new wife, an elder woman* (Lakidi Achan, 2020 LI). Likewise, in northern Uganda, a man from a household of a lower social status may have less power to assert and to protect his rights to land than a man from the same community who has higher social status (Hannay & Scalise, 2015).

*Despite different experiences of inequality within the category of “women”, there are important differences in the ways that men and women experience inequality, and there are patterns of exclusion that are relevant for all women but do not apply to men.*

For instance, women’s rights to land are often weaker than those of similarly situated men. They are less likely to be protected under formal or customary law, and are vulnerable to changes in their family situation in ways that are not the same for similarly placed men.

Moreover, women’s rights to land are often gained through their relationships, such as when they access land through marriage, while men tend to have rights to land by birthright. Women’s rights to land are often for a duration that is not certain, and are dependent on other factors; women may only have a right to use household land for the duration of their marriage, where men often hold rights to land for life. Finally, women often have more difficulty than men in enforcing and exercising their rights. They may be less likely to know what rights they have or where and how to enforce them because they are less likely to be given information, and they may be less likely to achieve justice when needed because they may be unable to access forums of redress.

These traits of gender inequality in land are illustrated through the examples below.

The remainder of this section explores how gender inequality plays out in land relations, through gender differences in (a) the means of acquiring land rights; (b) the ability to enjoy land rights that have been acquired; and (c) the protection of land rights when they are under threat.

## Women are less able to acquire rights through formal or customary mechanisms

*Formal laws can directly discriminate against women’s rights to land and can result in women acquiring fewer rights to land than men.* For example, inheritance is one of the most common ways for land rights to be acquired in places where a land market is not active (especially in lower-income economies). An analysis conducted in 2014 shows that in 55 of 160 countries laws discriminated against women’s inheritance (OECD, 2014).

Formal laws can also result in gender inequality in land rights indirectly. A common way for women to acquire land rights in the formal legal system is through marital property laws. Where such laws exist, they have generally been created to address a historical preference for male ownership of household property that did not consider women’s role in contributing to the household through cash, labour, caring for children, etc. This male preference had the effect of leaving women destitute if the marriage ended in their husband’s death or in their abandonment. Thus marital property laws are often intended to address gender inequality in household property rights. However, the gender equality that is sought by such laws can have a limited impact in reality when coupled with other laws or practices. For example, many jurisdictions allow for a “limited community of property” (Lastarria-Cornhiel & Giovarelli, 2006) whereby each spouse jointly owns property acquired during the marriage but gifts or inheritances given to one spouse remain that spouse’s separate property. In places where inheritance is the main vehicle for acquiring land rights, and there is male preference in inheritance, the limitation on the community of property can have the effect of locking women out of having rights to land. In addition, marital property rules might apply only to couples who are legally married; in jurisdictions where legal marriage is not common, women in consensual unions will not benefit from marital property laws.

Furthermore, laws may appear to be gender-neutral but can have a discriminatory effect in their application. For example, in Ghana the law on intestate succession provides for surviving spouses to inherit up to half of the deceased’s estate (depending on other conditions<sup>5</sup>). However, the law expressly does not apply to “skin and stool” lands

5 Intestate Succession Law of 1985, sections 1, 3–6, 12, 16a, and 17.



(sub-categories of customary land in Ghana that have special treatment) or to family property<sup>6</sup>, which together make up the majority of lands in Ghana. These tenure systems are structured in a way that means women use rights based on their relationship to a male member of the family or customary group; thus the limited applicability of the inheritance law to only non-stool/skin lands results in women being excluded from rights to a majority of the land in the country (Richardson & Gaafar, 2016).

In many contexts, women's and men's land relations are governed more strongly by customary land tenure systems than by formal laws, and these can also be characterised by gender inequality in land relations. In many (though not all) customary tenure systems, women's rights to land are gained through a relationship with a man who is a member of the lineage of a customary group (husband, father) rather than directly, and land transfers (inheritances, gifts) within families happen between male family members (Quisumbing et al., 2014). This is often the case, whether the customary land is held and used collectively, on a household basis, or individually. Coupled with other customs around marriage (such as residency, payment of bride price or dowry, polygamy), the male preference in customary tenure systems can impose limitations on some of the rights that women can acquire, especially in the face of land pressures. This is illustrated in a study looking at the Pokot ethnic group of the Karomojong in Uganda included in this series. In this ethnic group, when male warriors conquer a land area and settle in it, each male as head of his household allocates land for cultivation to his wives (polygamy is the norm). A wife uses the land for feeding herself and her children. In the event that her husband dies, a male relative of the deceased will usually inherit the woman (meaning he will take the widow as a wife). Although the land is not taken away from her, this inheritance is intended to keep the land and livestock in her husband's lineage.

### Women are less able to enjoy their rights once acquired

*Once rights to land have been acquired or recognised, women and men have different experiences of being able to exercise and enjoy them.*

In places where lands are held and managed collectively, rules of "membership" of the collective group can exclude women from important decision-making or governance forums on land. For example, in China all agricultural land is owned by the village collective (established by law), and long-term use rights are granted by the collective to individual households by contract (Wang, 2012). Regulations governing village administration permit the village committee a good deal of discretion to determine village membership (Ibid.). Traditionally in China, women who marry outside of their village are no longer considered part of their natal family because they have moved away; however, they are also not regarded as part of the family in their husband's household because they do not share a blood relationship. When village committees determine membership rules, they typically revert to these traditional views of married women, with the result that most village committee membership rules exclude married-out and married-in women (Ibid.). The effect of this exclusion is that, even though in many cases women are left alone to work on household agricultural land as men migrate to the cities for income work, they are excluded from decision-making on that land at

the village level; also, in places where agricultural land is converted to a different use by the state via eminent domain and compensation is owed, non-members of the village (i.e. women) do not receive a share (Ibid.).

Women's enjoyment of rights can also be limited by other constraints. Very often women are time-poor, given their load of reproductive tasks, and they might not want to engage in processes that would enable their enjoyment of land rights. This is evident in research on community pasture management committees in parts of Kyrgyzstan, where families graze animals seasonally on pasturelands surrounding their villages (Scalise & Undeland, 2016). Men are responsible for moving animals and for related matters such as roads and bridges, while women are responsible for caring for the livestock, feeding and milking them, and making food products from them for consumption and sale (Ibid.). Kyrgyz pasture management laws underwent a series of reforms in the 2000s which devolved pasture management to communities via local committees; the law had a quota for women's representation, but women did not want to attend meetings. They were reluctant to engage in pasture management committees because they believed that the committees discussed things that were of concern only to men, and that they were too busy with caring for animals and households to sit in a meeting while the men talked. When they were informed that the committees also made decisions on matters that affected their interests in the pastures, such as the choice and location of fodder for the animals and defining residential areas, the women began to attend and participate in pasture committee meetings (Ibid.).

*Where women participate in the governance of collectively held and managed lands, their influence on the activities, decisions, and outcomes of the governance body can be different from those of similarly placed men.*

Even when quotas are used, and when women are present in governance forums, their participation can be limited because there are social norms against women speaking publicly, or because they lack the experience or confidence to do so, or because men's interests dominate the agenda. This can be shown by an example from Cameroon relating to community forestry. In a study, women showed high levels of participation in governance meetings. However, they reported that while they felt heard and could raise issues, they self-censored themselves and only spoke up on issues that they knew would be of interest to men; they did not raise issues that would be of interest only to women (the example provided concerned the location of a water pump used by women) (Scalise, 2020).

Within formal tenure systems too, women may not be able to enjoy rights equally. For instance, even where gender equality is the intent in marital property regimes, laws governing household headship or the right to control household property can undermine this. For example, Chile, Cameroon, Congo, the Democratic Republic of the Congo (DRC), and Côte d'Ivoire all have community property as their default marital property regime (World Bank, 2014). This would normally signal rights that are shared jointly by spouses, meaning that each can act as an owner would. Yet in each of these jurisdictions laws also state that the husband alone administers marital property (Ibid.), leaving wives without legal authority to control, make decisions on, sell, mortgage, or otherwise use the property in a way that an owner could.



6 Ibid.

In addition, gendered social pressures or norms may put pressure on women, causing them to forego enjoyment of the rights that they have acquired and leaving them to weigh up the costs and benefits of retaining the right versus harming important social relationships. For example in Kosovo, despite a legal and religious right to inherit from their fathers, it is common for women to relinquish their rights in favour of a brother or male relative, as this is the tradition, and to do otherwise would come at the cost of risking important familial relationships (Limani, Cuizon & Zeqiri, 2018). The cost-benefit analysis that women engage in can be unresolvable, and is one that men in a similar position do not have to face. In Gaza, for instance, a woman might on the one hand be pressured by her husband to assert her right to inherit from her father, as her husband knows that he will be able to control the land when it comes to his household, given the male dominance in household matters (NRC, 2016). On the other hand, she might not want to upset her brothers by asserting this right in case it harms important relationships with them, relationships that she might need to rely on if her marriage ends and she needs to return to her natal family for help (given the unusually high divorce rates in Gaza, this is not just a theoretical risk that needs to be weighed up) (Ibid.).

Gender inequality in the enjoyment of land rights is also apparent when rights need to be asserted in administrative processes or in programming that is intended to increase the value or benefit of the land right. This can be seen in the experience of land titling and registration programmes. These are typically guided by detailed regulations and procedures that govern how land will be demarcated, how rights holders will be determined, how claims of rights will be verified, how land institutions and professions will function, how disputes will be adjudicated in the process, how information will be shared, and what steps must be taken to file an appeal (World Bank, 2005). Gender-unequal experiences may be evident in all of these steps. For instance, obtaining a land title might require evidence to establish the right (such as an identity document) that is available only to men. Or it might require a public act, such as visiting the land registry office and completing paperwork, which is something that is only acceptable for men to do (Ibid.).

### Unequal protection of rights when they are under threat

*Land rights can be – and often are – subject to threats, both external (outsider) and internal (community, household, family). The ability to protect and enforce rights in the face of such threats requires a knowledge of rights and forums for protecting them, physical, financial, and social access to those forums, a reasonable expectation that there is a chance of a positive outcome in a given forum, some kind of cost-benefit analysis to determine whether pursuing a right is worthwhile, and the time to make a case. All of these factors have gender dimensions, and in some contexts they can disadvantage women.*

Seeking redress through formal courts can pose specific problems for women. Both women and men can lack access to formal courts because of financial cost, distance, lack of education, or lack of time; however, women may be doubly disadvantaged due to other social norms and cultural pressures. For example, because inheritance is a common way of acquiring land rights in places where there is not a strong land market, a woman seeking redress related to land rights is likely to be taking action against a family member (who could have a counter-claim to the inheritance). If a woman takes formal action, outside of the family, against a family member, it can result in her facing social stigma at home, which

can also lead to isolation or physical abuse. In areas without a social safety net, this may mean that she will forego the social protections that her family would otherwise afford her in times of trouble. Research in Kenya has shown that when women go to court, they are considered to be undermining the role of the husband in the household, and this is seen as an insult to both the husband and the community. Taking further steps within the justice system can result in verbal and even physical abuse (IDLO, 2013).

In addition, it can be more difficult to reach women with important information about how to protect and enforce their rights, and very often women do not have this information. When it comes to community- and family-level outreach on matters of rights and process, women are frequently left out (Kumar & Quisumbing, 2012). This may be because they are not able or willing to attend at times when they have household responsibilities, or it could be related to information being shared with men as heads of households with an assumption that it will be shared with other family members, or because it costs time and money to include women separately (Ibid.). Thus, women may lack information, skills, or familiarity with the justice system and, without further assistance, they may not know that it is an option for them. In addition, a woman may go to two or three other people in her community before she seeks redress in local forums, especially if to seek such redress would require confidence that she will not suffer social stigma (USAID, 2008).

*Informal justice systems may be more accessible and legitimate in a given context, but on the other hand decisions made in those forums might be influenced by more than just the question of “rights” – such as ensuring peace, good relations in the community, upholding tradition and culture, or personal gain – and decisions made based on these factors can have gender-differentiated outcomes.*

Thus, women may not prefer informal justice if they feel that results in their favour are unlikely (IDLO, 2013). Also, while decisions by local dispute resolution actors may be seen as being more locally legitimate, they can tap into existing social norms around gender roles. For example, research from Vietnam found that village mediation committees at grassroots level, which have responsibility for making decisions on village-level disputes and can involve matters related to land, had a tendency to resolve disputes according to custom and “sentiment” rather than to “law or reason” (Căm et al., 2012). Thus, these mediation committees reinforced customs and practices that discriminated against women, especially when disputes arose between family members and within the village, placing the responsibility on women to act in a way that maintained peaceful relations within the family (Ibid.).

These illustrative examples of gender inequality in acquiring, enjoying, and protecting land rights suggest that gender-unequal land relations are part of gendered legal, social, cultural, and power dynamics in a given context that have historically worked to disadvantage women. **Aspiring to gender equality in land relations, then, must actively seek to transform these dynamics, as well as address the outcomes of historical discrimination against women.** The next section proposes a way to conceptualize transformative action on gender inequality in land relations that can be used in research, policy, and programming.

# 4 DEFINING THE END POINT: WHAT DO GENDER-EQUAL LAND RIGHTS LOOK LIKE?

One starting point for understanding and addressing gender inequality is to define the end point: what might gender-equal land rights look like? This paper proposes the following definition for gender equality in land rights:

**Gender equality in land rights exists when:** (i) women and men can acquire rights that are (ii) equally secure; (iii) women and men can equally enjoy and exercise their land rights; and (iv) women's and men's land rights are equally protected when threatened.

This definition contains some concepts that benefit from further explanation: which “rights” matter for women and for men? And how to understand “security” of rights?

The rights that attach to a particular parcel of land in a given tenure system can be arranged under five broad categories:

- **Rights of use.** These rights include the rights to access, pass through (e.g. a pathway or road), or withdraw products from land (e.g. non-timber forest products).
- **Rights to change.** These include rights over making decisions on how land is used, or managing how land is used, and also the right to change from one use to another (e.g. building a homestead on land formerly used for cultivation).
- **Rights to profit.** These are the rights of economic ownership – for example, either to take a profit from or determine how profits from land are used. These rights include an element of authority and control.
- **Rights to transfer and transact.** Transfers might be temporary or permanent. Temporary transfer might include a tenancy or using land rights as collateral for a loan. Permanent transfers are sales, gifts, and bequests.
- **Future rights.** Future rights can include the right to inherit and are also rights that are conditioned on a future event that may or may not be certain (e.g. the right to an gift of a house from parents upon marriage).

Rights can be overlapping, meaning that multiple rights can attach to the same property, and those rights might be held by the same or different people or groups of people.

Gender considerations apply to the analysis of rights. In a given tenure system there may be a distinction in the rights that women and men can acquire.

Also, the combination of different rights to immovable property (land, houses) that are available for women and for men are also influenced by individual status, age, residence, and the like; and the influence of these factors on property rights is different for women and for men. For example, a married man might have the right to control and manage the property that his wife has brought to the marriage (as part of a bride price), but if the marriage ends he is expected to return the property to his wife's family.

Analysis of the security of rights considers whether rights are complete, robust, and durable (Doss & Meinzen-Dick, 2018):

- **Complete:** In general, the more rights one has available in a tenure context, the more secure they are. This is evident in the concept of “ownership”. Ownership typically means having many different rights, including the right to transfer and transact, profit, use, and change. These rights combined are more secure than any one of them on their own, such as just the right to use.
- **Robust:** Robustness involves the relational aspects of security in a given context and considers subjective perceptions as well as objective measures. Analysis of robustness might consider whether rights are socially legitimate and also legally legitimate; legitimacy then raises the question of who subscribes to this legitimacy, and the relative power and authority of that person vis-à-vis another in the same tenure setting. It also raises the question of legal pluralism and the legitimacy and relevance of formal law versus informal laws, for example. Robustness also includes analysis of whether rights are enforceable when under threat from internal or external actors. The question of enforceability has relational and subjective and objective elements: it touches on the information and knowledge of the rights holder and the arbiter, institutional capacity, access to justice, and the role of duty bearers, but also on the emotional and psychological capacity of the right holder to pursue a claim of right against another. Finally, robustness also puts under scrutiny how rights are enjoyed and whether they can be exercised freely and to support self-directed decision-making.
- **Durable:** The duration of rights has significant bearing on security. Rights that last for a short term, or for an uncertain length of time, are less secure than those that last longer-term. Duration has relational elements in that rights might last for as long as certain relationships are maintained. It also has a subjective dimension in that the right holder's perception of security might be influenced by whether he/she has control over the termination of the right.

*There are significant gender dimensions to the security of rights since women's and men's experiences of and perceptions of the completeness, robustness, and duration of rights can differ significantly, and historically and systematically have discriminated in favour of males and male preference. These gender dimensions are particularly pronounced in settings where rights are shared between spouses, family members, or part of a large collective group, related in part to concepts of masculinity and femininity, gendered division of labour inside and outside of the home, concepts of household headship and authority, and spiritual or cultural functions of women and men.*

Box 1 explains the dimensions of the proposed definition.

### Box 1: Unpacking the proposed definition of gender equality in land rights

*Gender equality in land rights exists:*

- *When women and men can acquire legally and socially legitimate rights*
  - Either individually and/or as part of a group
  - Under customary, religious, and/or statutory laws
  - And when those rights are equally secure. Land rights are secure when they are:
    - **Complete**—all of the available rights in the bundle of rights for that tenure system
    - **Durable**—for a certain period of time; termination is within the control of the right holder and
    - **Robust**—recognized by family, community, society and resilient in the face of changes to personal status, family, or community (Doss & Meinzen-Dick, 2018).
- *When women and men can enjoy and exercise their rights*
  - Deriving maximum benefit from land
  - Exercising land rights to support self-directed decision-making
  - Equal weight is given to women's and men's interests in land
- *When women's and men's rights are equally protected and enforced if under threat* (threats from those who are outside or within the household or community)
  - Requires knowledge of rights and forums where they are protected
  - Requires physical, social, financial access to forums
  - Includes access to justice and support
  - Implies a responsibility on duty bearers.

This proposed definition provides a framework both for understanding the nature of gender inequality in land rights systems and for framing action to address it. The definition facilitates a nuanced understanding of the land tenure system in a given context, and of the gender dynamics in that system.

Assessing and measuring each of these dimensions for differently placed women and men requires dedicated resources and attention, and can be the first step in designing appropriate interventions, policy, and research that can help to ameliorate gender inequality in land rights. For the proposed definition to be helpful in unpacking gender inequality and how it can be addressed, the approach to collecting information should also be considered. Some recommendations for this are as follows:

- *Consult with members of the same household*, and not just the head of the household or a single household representative.
- *Consult with various members of the community*, not just the community leadership or those who have the authority to speak for the community (as this can exclude some men and women).
- *Consult with different categories of women and men* (e.g. younger, elder, never married, widows/widowers, married, polygamous wives, with children, without children, educated, uneducated, outsiders or migrants, insiders who have emigrated, and so on).
- If conducting group consultations, aim to *understand family, social, or power dynamics in group settings*, which may prevent some people from speaking in front of others, beyond just the need for women and men to be separate (e.g. younger women may not be able to speak when elder women are present; junior wives might not speak in front of senior wives; women in the families of powerful men may feel more empowered to speak than women from less powerful households).
- *Understand how land rights intersect with other social and cultural roles* (e.g. sacred duties might be limited to certain people and attached to certain lands).
- *Understand incentives or disincentives to changing land relations* (e.g. land rights can be a prerequisite for other benefits (or for rent-seeking or other bad behaviour); information can be skewed if some people have more to lose than others).
- *Understand the intersection of prescribed cultural land uses and rights* (e.g. certain uses of land, such as planting trees or clearing unused land, might be available only to men because of taboos or social norms).
- *Understand culturally defined attributes of "maleness" and "femaleness"* and how those definitions align with or compete with inequality in land relations.

# 5 CONCLUSION

Gender inequality exists in land rights. Different women experience it in different ways in different places, yet there are common patterns that emerge from both available quantitative data and from examples of land relations in different contexts. In general, these patterns suggest male preference in land relations: women own or have rights to less land than men and to land of lesser quality; women are not able to acquire the same rights as men in the same context, and the rights that they can acquire are less secure; women are less able to exercise the rights they have; and women are less able to protect rights when they are under threat. These patterns of inequality in turn relate to gender-unequal social and power relations that are evident more broadly in societies.

Gender equality is a critical aspiration, yet in land rights the concept of equality might appear to be poorly aligned with certain land tenure regimes, especially those that are built on culturally defined roles and relationships between men and women (or within groups of men and women) that are not equal (i.e. not the same) but instead are based on tenets of fairness, communal well-being, or on spirituality. Such tenure regimes can be the bedrock of indigenous self-determination, are locally legitimate, are culturally appropriate and relevant, and often are under threat from outside interests or from reforms that seek to replace them, and there is – rightfully – significant momentum towards protecting them.

*Relationships between people that underlie tenure regimes are the relationships that provide support and a social safety net in times of need, but they can also be the source of gender discrimination. Seeking gender equality in land, then, should be understood not as seeking to replace one tenure regime with another nor to destroy important social relationships, but instead to seek an outcome where women and men have equal access to the opportunities that land rights confer, and that women's and men's land rights have equal protections and treatment so that both women and men can realise their full potential.*

The definition of gender equality proposed by this paper attempts to **recognise the diversity, complexity, and cultural importance of land rights systems, while also recognising the disadvantages that women face simply because they are women.**

Achieving gender equality in land rights must entail addressing other underlying causes of inequality between women and men, such as those that arise from socially and culturally defined norms, attitudes, and behaviours, and gendered roles and stereotypes that typically favour males over females.

There is consensus in the global development community that in order to make progress on gender equality broadly, inequality in land rights must be addressed, which begs the question: what would it take to address gender inequality in land rights and make a real difference for women? The answer, while it depends on the context, can also be informed by the definition of gender equality proposed in this paper.

Gender equality in land rights can be achieved through interventions that:

- Reform laws (formal, religious, customary) so that women and men have equal opportunity to acquire rights;
- Encourage adaptation of social norms, attitudes, or behaviours that exclude women from acquiring land rights when men can;
- Help ensure that women's and men's rights to land are equally secure;
- Enable women's interests to be given equal weight to men's interests when rights to land are exercised or governed, or produce a benefit;
- Support women's optimal use and stewardship of land so that they have equal opportunity to maximise the benefit from land;
- Improve women's ability to generate value from land;
- Support women in self-directed decision-making on land;
- Enforce women's rights to land when they are under threat, from insiders or outsiders;
- Provide support to those who defend land rights.

While each of these categories of intervention can be observed in the literature and practice addressing women's land rights, investment in and rigorous research into the effectiveness of each differ widely. To date certain interventions – or sub-categories of interventions such as titling and registration of private property rights – have been more extensively studied than others (Scalise & Giovarelli, 2020). Thus, it is also crucial that more research is conducted on the effectiveness of different types of intervention to achieve gender equality.

*Assessing and measuring the gender gap could be helped by starting with a definition of gender equality that is built on an understanding of the gendered dynamics of how rights are acquired, enjoyed, and protected in different contexts.*

This paper proposes a definition that is intended to highlight the features of land systems that create and maintain gender inequality. If used in research, programming, and policy, an understanding of the gender gap in these terms could help to facilitate progress towards gender-equal land rights.

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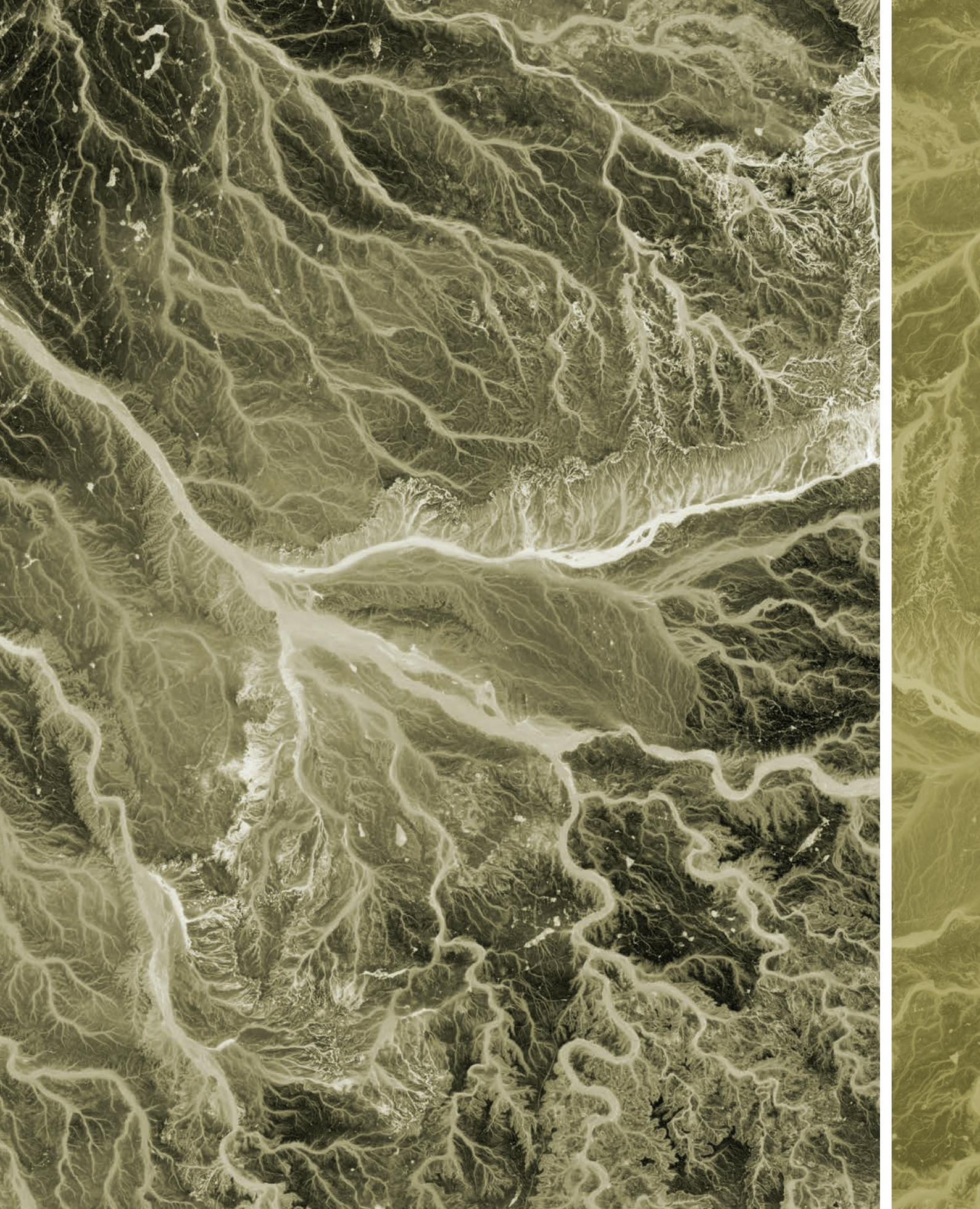
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Members of the reference group are meant to provide guidance and expertise throughout the process and include the following organisations:







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