



## Governing land for women and men

# Legal issues for gender-equitable governance of land tenure

### Text-only version

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## LEARNING OBJECTIVES

At the end of this lesson, you will be able to:

- ▶ describe a number of different ways to support gender equity within legal pluralism;
- ▶ illustrate some strategies to support gender-equitable land inheritance rights; and
- ▶ identify the main steps in the drafting of laws and regulations that promote a gender-equitable approach to land tenure governance.

## INTRODUCTION

The law provides the foundation for achieving responsible gender-equitable governance of land tenure.

**Gender-equitable laws and rules** provide an **enabling environment** in which women and men are more likely to be able to exercise and realize their rights to land in an equitable way.

In this lesson, we will explore key legal issues in relation to gender and land tenure governance, including:

- ✓ how to promote gender-equitable land tenure governance when there are **multiple legal systems**;
- ✓ how to ensure that the drafting of laws takes into account the **different needs of men and women**;
- ✓ how to enable women and men to **exercise equally their rights to land**.

Legal issues are critical in land tenure governance. They are linked to **two** of the ten **core principles of implementation** of the *Voluntary guidelines* :

**Rule of law** - "Adopting a rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments". Paragraph 3.B.7

**Accountability** "Holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law". Paragraph 3.B.9



## Refer to Voluntary Guidelines

### A) Law making

**3.B.7 Rule of Law:** adopting rules-based approach through laws that are widely publicized in applicable languages, applicable to all, equally enforced and independently adjudicated, and that are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments.

**3.B.9 Accountability:** holding individuals, public agencies and non-state actors responsible for their actions and decisions according to the principles of the rule of law.

### B) Gender-related content of laws and procedures

**4.4** Based on an examination of tenure rights in line with national law, States should provide legal recognition for legitimate tenure rights not currently protected by law. Policies and laws that ensure tenure rights should be non-discriminatory and gender sensitive. ... All forms of tenure should provide all persons with a degree of tenure security which guarantees legal protection against forced evictions that are inconsistent with States' existing obligations under national and international law, and against harassment and other threats.

**4.6** States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status, lack of legal capacity, and lack of access to economic resources. In particular, States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights.

**5.3** States should ensure that policy, legal and organizational frameworks for tenure governance recognize and respect, in accordance with national laws, legitimate tenure rights including legitimate customary tenure rights that are not currently protected by law; and facilitate, promote and protect the exercise of tenure rights. ... States should provide frameworks that are nondiscriminatory and promote social equity and gender equality.

**9.2** 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. Where necessary, communities should be assisted to increase the capacity of their members to participate fully in decision-making and governance of their tenure systems.

**10.1** Where informal tenure to land, fisheries and forests exists, States should acknowledge it in a manner that respects existing formal rights under national law and in ways that recognize the reality of the situation and promote social, economic and environmental well-being. States should promote policies and laws to provide recognition to such informal tenure. The process of establishing these policies and laws should be participatory, gender sensitive and strive to make provision for technical and legal support to affected communities and individuals.

## LEGAL PLURALISM FROM A GENDER PERSPECTIVE

When working to achieve gender-equitable governance of land tenure, understanding the **context and complexities of the legal framework** in the country is vital.

Customary laws and land tenure practices are not static. They evolve with changes in national law and with changing social and economic conditions.

One must consider not only national land laws, but also **customary and religious laws** and how they interact or overlap with national laws. This complex legal system - where several different types of often contradictory rights, authorities and rules apply in the same territory - is called "**legal pluralism**".



*"In some cases, especially when the formal system is ineffective or inaccessible, we can rely on legal pluralism to provide marginalized or vulnerable people with several options for securing their land rights, allowing them to fall back on customary systems."*

Legal pluralism can be very challenging, but it must be taken into account when promoting gender-equity in land tenure governance. Although this is not a long-term solution, it is important to facilitate all women and men - and not just the powerful - in realizing and exercising their land rights under whatever formal or customary system best accommodates their interests. This process requires actions such as public awareness-raising, gender sensitization within statutory and customary land tenure governance institutions, and the gradual establishment of participatory, transparent and accountable legal mechanisms and processes.

### Example

#### Kyrgyzstan

In Kyrgyzstan, although national laws recognize women's rights to land, housing and property, customary law and traditional patriarchal approaches often prevail. Although Islamic principles provide some degree of tenure security for women, these principles are not always applied. Many rural marriages are not formally registered, so do not fall under the protection of the formal law, and there are no tools for enforcing the Muslim Law. Women, therefore, cannot claim any property in cases of divorce or when their husbands die or abandon them.

#### Uganda

In Uganda, the Constitution provides for equality between women and men in all spheres, declares null and void those decisions that deny women rights to land, and upholds equality between spouses at all stages of marriage. However, although the 1998 Land Act requires spousal consent for transactions affecting joint matrimonial property, the marriage has to be formally registered, so people married under customary law are not protected.

#### Mozambique

In Mozambique, statutory land law is gender-equitable and has clear provisions on equal rights for women and men. Decisions about land are generally based on customary law, as long as it is consistent with the Constitution and the 1997 Land Law. Under customary law, however, women obtain land rights through their husbands or fathers, and the State has not established yet a mechanism to ensure that women's statutory rights are upheld.

#### India

In India, the Hindu Succession (Amendment Act) of 2005 provides for equal inheritance regardless of gender, while other religious laws do not, so people of different religions are treated differently.

#### Bolivia

In Bolivia, the 2006 Constitution provides for a Ministry of Indigenous Justice Advice to connect statutory and customary justice systems. However, there is no specific legal protection for indigenous women's land rights, and little intersection between the protection of the two sets of rights.

Supporting gender equity within legal pluralism implies addressing underlying perceptions of gender relations and power structures. Some of the actions you can take:

- **Work constructively** with customary and religious institutions and their leaders, and involve the whole community in decision-making processes.
- **Raise awareness** on how things can change from the customary perspective. Support women's self-help groups to help support cultural change.
- **Establish two-directional training programmes**, with customary/religious leaders training formal judges on customary/religious law, and judges training them on statutory law.
- **Find out where women and men obtain assistance and legal protection.** Support these mechanisms and processes and facilitate people's ability to benefit from legal pluralism.

**Responsible governance of land tenure requires understanding of the complex links between land and family laws, and support to gender-equitable inheritance.**

### Success story

Thomas is a land lawyer who supports a local land rights NGO in his spare time, by volunteering as a trainer and educator on land laws:

*"I have visited many of the villages in which my NGO works, talking with leaders of customary and religious institutions. I have explained the key principles in the national land law and in our constitution that support gender equality and non-discrimination. I asked the leaders (mostly men) to talk about their customary and religious laws, and to reflect on the differences between these and the national law. I invited them to make suggestions for how they could align their own practices with national standards, to support all people in their community, including women.*

*In each village, I went back a month later to speak alongside the customary and religious leaders at whole community meetings organized by my NGO. Together with the leaders, we explained the principles of gender equality in the national land law and constitution. The leaders made suggestions for improving practices in the community to reflect these principles.*

*I invited people from the community to share their concerns and to give feedback on the suggestions. We discussed what needs to be changed in the local practices and rules governing land tenure so that*

*they are more in line with national law. I wrote a list of all the new rules agreed on by the community. We then agreed to come back every six months for the next two years to work with the village leaders to make those changes sustainable.” - Thomas*

Which strategies did Thomas use?

Thomas was able to collaborate in a constructive way with local leaders and raise their awareness on the value of aligning customary law with national law, to support all people in the community.

Through two-way training, he learned about the local customs. At the same time, he explained the gender equality principles in the national law and constitution, not only to the leaders, but also to all those participating in the community meetings. However, he did not specifically find out where women and men in the community obtain assistance and legal protection.

The family laws that relate to marriage and inheritance are of particular importance in relation to land tenure. For example, family law can have a significant impact on individual rights to land. In some countries, property rights within marriage may be determined according to whether the marriage ceremony was civil, customary or religious.



#### **Family law**

Responsible gender-equitable governance of land tenure requires **both** land and family law to support gender equality. **Consistency** between them is needed so that women and men can benefit equally from land tenure reforms. Consistency also helps to ensure that gender inequalities are not perpetuated across generations by discriminatory customary marriage and inheritance rules.

A recent successful example comes from Rwanda, where land tenure reforms followed reforms to the rules on inheritance and matrimonial property. There have been some successful gender outcomes, with women participating in local land committees and registering their land.

Women’s participation in the committees was also facilitated by the introduction of quotas for ensuring female participation throughout the political system.

### Story

Anna lives in a rural village in a country where national laws have endorsed gender equality in land, housing and property rights. However, traditional patriarchal attitudes tend to perpetuate gender inequalities in land relations.

 *“In my village, our religious principles provide some degree of tenure security for women. For example, we can inherit the land if our husband dies. And if the marriage is broken, we can keep the marital property.*

*But when my husband broke the marriage, he refused to follow the religious principles that would have given me a share of the land. Unfortunately, my husband had married me in a religious way, without formal civil registration of our marriage.*

*Even though our religion would protect my land rights, without having formally registered our marriage in the civil registry office, I found myself having no legal rights to property and I could not go to court.”-- Anna*

Power dynamics at the community level can enable some people to use multiple land tenure arrangements and customary law at the expense of vulnerable groups, such as widows. For example, in-laws and paternal relatives may be able to dispossess widows or sisters by claiming ownership of formal land titles in men’s names. They may also refer to customary practices that exclude women or rule against them. This tendency is aggravated by several other factors:

#### Land scarcity and increasing pressures on land

Land scarcity can be caused by factors like population pressures, social inequality and environmental issues. Moreover, issues such as commercial pressures on land, land restructuring programmes and urbanization have increased the individualization of land rights in many countries. They have also reduced the power of traditional obligations and responsibilities, while states often do not have enough capacity to enforce the laws.

#### HIV/AIDS

HIV and AIDS can lead to **increased tenure insecurity** for widows and orphans, who suffer more incidences of property grabbing when their husbands and fathers die of AIDS. Young widows are particularly at risk because they have not had time to develop strong social networks in the vicinity of

their marital homes, are less likely to count on the support of local leaders, and do not have children who are old enough to resist on their mothers' (and their own) behalfs.

### **Risk of eviction**

**Tenants and their families** have concerns over land inheritance and succession in situations of legal pluralism. In some countries, entire families may be evicted from the land they use or occupy when the formal tenant dies. Often, only male household heads are named on land leases. Surviving family members risk eviction **unless tenancy rights are protected by legislation** on inheritance.

### **Compulsory land acquisition**

Compulsory land acquisition can be problematic in a context of legal pluralism. Issues include: deciding who should receive the compensation for jointly-owned land, and resolving sibling or intergenerational conflict over who owns the land. Laws should:

- ▶ **require identification** of all the people and entities that suffer losses from compulsory land acquisition; and
- ▶ **create compensation mechanisms** that ensure joint family decision-making about using the compensation received.

The same applies in cases where lands, particularly in developing countries, are bought or leased by transnational, commercial actors.

We discussed how vulnerable and marginalized groups, especially widows, suffer more from tenure insecurity. We need specific strategies and mechanisms to support the land inheritance rights of widows, including practical support, legislative reviews and land registration. Some elements of the government's land administration system can help to mitigate the challenges to tenure insecurity.

Land boards can play a valuable role in preventing land sales that would be harmful to widows and orphans. It is important that women have equal representation and voice on these boards. Also, joint titles or titles in women's names, together with a registration system and well-designed registration forms that enable joint registration are critical. Registrars at civil and land registries should be trained in these issues. The two registries should be linked together, and consent requirements for registering land sales and transfers of ownership should be tightened. Finally, one of the greatest needs is for legal assistance and awareness-raising for vulnerable groups and individuals who often do not know their rights or how the land administration system functions.

We just considered some of the causes of tenure insecurity, especially due to non-gender sensitive customary inheritance rules. How can we deal with inheritance issues and **ensure gender-equitable inheritance of land**? Maxim, who works as a land lawyer for an NGO was able to help a young widow to regain rights over the land that was taken away by her husband's family when he died carrying out the following activities:

- He organized public sensitization and **awareness-raising sessions** on existing laws, so that people - especially women - were able to know about the laws that protect them when they are widowed.
- His NGO helped organize **community discussions** on marriage and inheritance practices, to see if there was any friction between these practices and statutory law, and what would be the possible solutions for aligning the two.
- They also reached out to organizations supporting women's rights with **capacity development** activities, so that they could recognize their role in raising awareness and undertaking strategic interventions to support widows.
- In collaboration with the Government, the NGO worked to support legal empowerment through better access to justice, dispute-resolution mechanisms and legal support, which enabled widows like Jane to claim their rights.

### *Good practices examples for dealing with inheritance issues*

In **Kenya**, the Young Widows Advancement Program carried out action research funded by the International Land Coalition to assist young widows to avoid dispossession of their property and to reclaim any land rights lost on widowhood. The Kenyan Succession Act of 1981 stipulates that women may inherit property as dependants of their deceased husbands. However, young widows frequently experience property grabbing because they do not have adult sons to defend them and are less established in their husbands' home communities and families. In the local Luo culture, the writing of a will is seen as a bad omen signaling death; the prevalence of HIV/AIDS therefore discourages husbands from writing wills protecting the rights of their widows. Cultural difficulties also make it difficult for young widows to assert their inheritance rights. Some male chiefs are wary of accusations of inappropriate relationships with the young widows if they help them to assert their land inheritance rights. Overall, however, the project has been successful in empowering young widows through easier access to justice and the information they need to take forward their claims.

In **Ghana** too, the law provides for equal ownership of property in civil marriage. When land is jointly registered, it can be harder for a deceased husband's family to chase his widow off her land or out of her matrimonial home; she already owns 50 percent of the property and, by law, inherits some of her deceased husband's 50 percent, making it easier for her to buy her in-laws' share. In recent years, men have supported joint registration to ensure this kind of tenure security for their wives.



#### Supporting gender-equitable inheritance printable checklist

- ▶ Make sure that the policy and legal framework explicitly recognizes the inheritance rights of widows (and widowers) and that effective enforcement and monitoring mechanisms are in place.
- ▶ Organize public sensitization and awareness-raising sessions on existing laws, so that people - especially women - know about the laws that protect them. Specifically train customary authorities on statutory inheritance laws, and ensure that professionals in the land, family and justice sectors are aware of how land laws intersect with family laws.
- ▶ Promote community discussions on: marriage and inheritance practices, friction between these practices and statutory law, and possible solutions for aligning the two.
- ▶ Where statutory protection is inadequate or inaccessible, help women to use customary laws to negotiate their land rights, for example by asserting the rights of widows to secure land because of the bride-wealth their families paid.
- ▶ When legal protection applies only to civil marriages, sensitize youth on the value of marrying legally and ensuring that all children are born in wedlock.
- ▶ Encourage will-writing where local culture supports this.

Responsible governance of land tenure - governing land for women and men - requires understanding of the complex links between land and family laws and support to gender-equitable inheritance.

## DRAFTING OF LAWS, REGULATIONS AND PROCEDURES

We mentioned that the law provides the foundation for achieving responsible gender-equitable governance of land tenure. But even good land laws can remain unapplied, if there are no **clear and gender-sensitive regulations and procedures for implementation**, or if these are not enforced.

Let's now consider ways to draft laws for gender-equitable governance of tenure, and the related regulations, procedures and strategies for implementation.

The main types of legal instruments that have **to be drafted and enforced** as part of an implementation strategy for gender-equitable governance of land tenure:

	Type of Legal instrument	Definition
	<b>International Conventions</b>	Treaties, conventions or other forms of legally binding international instruments which confer legal obligations on countries that have ratified them.
	<b>Constitution</b>	A "law of laws", legally establishing the basic principles by which a country is to be governed. Many are written, some are unwritten but nonetheless established over time through precedent and case law.
Must comply with the constitution →	<b>Primary Legislation</b>	Legislation made by the legislature (legislative branch of state power). In common law traditions, primary laws can be very lengthy and detailed. In civil law traditions, primary laws are generally less detailed and may need supporting secondary legislation.
Must comply with both primary law and the constitution →	<b>Secondary Legislation</b>	Subordinate rules, orders and decrees required to set out the detail of primary legislation in civil law traditions, to ensure that it is applied objectively and fairly.
	<b>Regulations and Procedures</b>	The regulations, manuals and procedures detailing how laws should be implemented that are issued to guide officials and administrators.

All programmes working on land law reform (including those funded by donors) should support the drafting of **both the primary and the subordinate laws**. These supporting instruments can make or break a law, so designing and disseminating subordinate laws that promote gender-equitable implementation is key to ensuring responsible tenure governance.

**Example: Lack of secondary legislation can have a negative impact**

Jacques is the eldest son in his family and, traditionally, would have inherited all his father's land.

However, Jacques got a job in the capital city, and he has no interest in becoming a farmer.

His younger sister lives in the village looking after their mother and father, and helping them to farm their land. The national land law has recently changed to allow sons and daughters to inherit equally, but people in the village have very patriarchal attitudes and do not think it is socially acceptable for a daughter to inherit land. When their father dies, the elders summon Jacques home and tell him he must transfer the registration of his father's land to his name, even if he then lets his sister continue to farm it. Jacques has to work hard to explain to the elders, and to his brother-in-law, about the national land law and policy on gender equality. He has to convince them that he really does not want the land and wants his sister to have secure tenure to it, as she is the one farming and looking after their mother.

Eventually they agree, but when they go to the district land office to make and witness the transfer of registration to Rose, the land officer tells them there are **no forms to enable** this, and **no procedures** that instruct them how to do it. These things do not exist because the new regulations that are needed to implement the new land law have not been drafted. So, the only option for keeping his father's land within the family is for Jacques to complete the form and register the land to himself.

We mentioned the importance of secondary legislation that promotes a gender-equitable approach to law design and implementation. Here are other important considerations:

**Institutions** involved in land tenure governance must ensure proper regulations. → For example, the documentation and procedures required to support land registration claims **must be available and accessible to women** as well as men; this may **require revising the relevant regulations**.

Regulations about **leasing** arrangements should also take gender into account. → **Leasing arrangements** are the only or **main source of access to land** for many farming families across the world, and are, therefore, an important part of land tenure.

 **Good practices in support of gender-equitable leasing arrangements include:**

- ▶ allowing **both women and men** to be named as leaseholders; allowing family members to lease land **independently of the household head**; and including the names of **all the family members** who use or occupy the land on formal leases, along with the name of the leaseholder - the use of model leases can be particularly beneficial here;
- ▶ ensuring that the landowner named on a lease has the **legal capacity to lease the land**; for example, the landowner may have customary law obligations to seek the consent of other family members;
- ▶ on the death of a tenant, enabling **the surviving spouse and family to remain on the land** until the end of the tenancy or until more permanent arrangements can be made, retaining all the rights available to the tenant named on the lease.

A **higher body** for monitoring gender equity should be established.

➔ It is also important to **establish a higher body** with responsibility for **monitoring gender equity** in the implementation of land laws and regulations. For example, In Rwanda, the Gender Monitoring Office monitors compliance with the indicators of its gender equality programme. Such an office is likely to be more effective in supporting compliance - particularly with rules such as quotas for women's participation in governance institutions, committee meetings etc. - than appeal mechanisms involving courts, special land courts or tribunals. These tend to be reactive, slow, expensive to appellants and uncertain of success.

**TIPS: Monitoring indicators for legal issues**

- ▶ Existence of laws and policies supporting gender-equitable governance of land tenure.
- ▶ % of women and men members of land law reform commissions.
- ▶ % of women and men members of legal drafting teams working on land-related subsidiary laws, regulations and procedures.
- ▶ Presence of participatory and consultative legal drafting processes involving women and men from the grassroots.
- ▶ % of women's groups' proposals taken into account and integrated in the adopted legal instruments.
- ▶ Existence of inheritance laws coherent with and supportive of tenure reforms and gender-equitable governance of land tenure.

- ▶ Number of enforcement and monitoring mechanisms for land laws.
- ▶ % of women and men receiving training in access to land justice.
- ▶ % of women and men members of land dispute resolution institutions and mechanisms, including local watchdog groups.
- ▶ % of women and men members of customary authorities dealing with land.
- ▶ Number of initiatives for removing barriers to land justice for women.
- ▶ % of women and men receiving legal support in land cases in the formal justice system.

% of disputes regarding women's land and property rights before the courts and alternative dispute resolution mechanisms.

**Piloting** of regulations or laws should be carried out in the field. → Piloting tests how well the procedures work in the field, in order to **make amendments and improvements**. Piloting can be most useful for testing the gender equity of operational and procedures manuals, and for fine-tuning the details of existing laws.

What are the most important **steps in drafting laws and regulations**?

We should ensure that legal drafting processes are **participatory, consultative and inclusive** for both women and men. This is more likely to result in land laws and subordinate laws that respond to the different needs of women and men from different social groups, enabling gender-equitable implementation. Establishing standardized legal drafting procedures helps to ensure that details - such as the design of forms and appeal mechanisms - protect the rights of both women and men.

#### **Drafting the law**

- ➔ Adopt a standardized legal drafting process that includes gender-equitable, participatory and inclusive consultation
- ➔ Draft the law and circulate the draft to different stakeholders for wide consultation
- ➔ Organize public debate and awareness-raising through the media
- ➔ Hold a second round of consultations with the public
- ➔ Organize public debate and awareness-raising through the media

Draft final text for approval by the statutory organ with responsibility for passing legislation

#### **Drafting the regulation**

- ➔ Adopt a standardized regulation drafting process that includes gender-equitable, participatory and inclusive consultation
- ➔ Design pilot regulations for testing on gender equity in the field and fine-tune regulations based on the pilots
- ➔ Design and disseminate full implementation package of manuals, procedures and regulations to ensure gender-equitable outcomes
- ➔ Organize public awareness campaign and education about the regulations
- ➔ Build buy-in land administration institutions throughout to ensure gender-equitable implementation



#### Supporting gender-equitable legal drafting printable checklist

What are the actions to take when drafting gender-equitable land laws, rules and procedures?

- ▶ Make sure that all land legislation and regulations are **consistent with the overarching constitutional framework and international human rights law**, and that this framework is **supportive of gender equity**.
- ▶ Define processes for legal drafting that **include gender-equitable consultations and participation**, such as setting **gender quotas for legal drafting committees** and ensuring women's groups are involved.
- ▶ Hold **women-only, men-only and joint consultations**, allowing diverse views and needs to emerge. **Women and men from all social groups** should be represented, and constraints to participation taken into account.
- ▶ Adopt measures to ensure that laws and regulations cannot be passed **without women being consulted**.
- ▶ **Design operational and procedural manuals** for land administration that describe how to implement the law in a gender-equitable way. Pilot the regulations and adjust them accordingly.

## EXERCISING RIGHTS TO LAND

Drafting gender-equitable land laws and regulations is not enough by itself. To establish a solid legal foundation for responsible gender-equitable governance of land tenure, we also have to pay attention to the different elements that enable women and men to **exercise their rights to land**. These include:

➔ **Access to justice** - the ability to pursue land claims with recourse to relevant legal and judicial systems, and customary or statutory dispute resolution mechanisms. Under international human rights law, access to justice also includes the right to an effective remedy for anyone whose right has been proven to be violated.

➔ **Legal support** - the practical support needed to pursue individual land claims, including: information on procedures, financial assistance for related costs (legal aid), and professional support from paralegals or lawyers (legal assistance).

➔ **Dispute resolution mechanisms** - the statutory or customary processes and institutions used to resolve land disputes within the overall justice system.

➔ **Legal literacy** - knowledge of the law and how to implement or enforce it. It involves an understanding of the relationship between law and practice.

✦ We will learn about legal literacy in **Lesson 6**, alongside the issues of communication and awareness-raising.



#### Refer to Voluntary Guidelines

**21.1** Dispute resolution services should be accessible to all women and men, in terms of location, language and procedures.

**25.3** Where appropriate, States may consider using customary and other local mechanisms that provide fair, reliable, gender-sensitive, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights to land, fisheries and forests.

Let's start by considering **access to justice**. In many countries, access to land justice for women is limited by cultural, social, economic and institutional barriers. These can include: high court fees and related costs, lack of knowledge about land rights and the formal justice system, physical distance, language barriers, under-representation in the judiciary, lack of confidence and autonomy to act independently in legal proceedings and socio-cultural norms that make women fearful of retribution or ostracism if they pursue land claims.

As a result, women tend to be denied access to justice more often than men, and are also more likely to be denied justice altogether.

Moreover, access to justice **varies among different groups of people in every country context**. For example, the legal support needs of literate and illiterate women might differ, in the same way as those required by urban or rural, or by married or single women. Likewise, the type of support needed by women reliant on customary law will be substantially different from that for those who have acquired or registered land formally in their own names.

Therefore, gender-equitable land tenure governance should involve **carefully targeted approaches**, which can ensure access to justice on land issues to **all groups of women and men**.

Another challenge is how people, and women in particular, access justice under **legal pluralism**, especially in rural areas of developing countries where state land justice institutions may be absent or inaccessible.

Customary law is often the primary means of resolving land disputes and enforcing community rules. Women may find it easier to approach; more local; closer to home; but at the same time more gender-biased and male-dominated. However, a gender-equitable formal justice system and relevant authorities may protect women's rights more than customary law. How can we address the challenges of women's access to justice and foster gender-equitable land justice services? We should ensure:



**Increasing gender equity in access to land justice printable checklist**

Clear **mandates** and **procedures** → standardized protocols, regulations for enforcing laws and coordination among different parts of the justice system, to ensure that public services are responsive to women;

**Integrated and specialized services** to help women overcome the barriers to land justice → services that are integrated such as at one-stop land offices where all land services are under one roof, reducing the number of steps needed to obtain access to justice;

**Support for women's participation** in the justice sector → gender-balanced representation across all aspects of governance to boost public confidence in the justice system as a whole;

**Sensitization and training** → awareness-raising in judges in terms of the barriers that women face in obtaining access to land justice, so that attitudes change. Effective solutions include waiving court fees, providing forms free of charge or prioritizing sensitive cases.

Ensuring **gender-equitable land dispute resolution mechanisms** is critical to responsible land tenure governance. Women often have difficulty in **ensuring recognition of their land claims**, and tend to have very little power and authority to take public action.

One of the recurring causes of disputes stems from inheritance-related and intrafamily disagreements. As a consequence, land disputes involving claims by women are often considered private, household matters requiring resolution at that level. Women - particularly those in rural areas - often find that neither the formal nor the customary tenure system recognizes their rights to land.

How can **land dispute resolution mechanisms** be made more gender-equitable and help protect women's rights to land?

#### **Increased representation and participation of women**

Supporting women's **increased representation and participation in formal and statutory land dispute resolution mechanisms at local level** is an acknowledged means of improving women's recourse to land dispute resolution and justice. For example, the importance of the abunzi (local mediators) in protecting women's land rights in Rwanda. Women with land cases to report are more likely to trust the abunzi, and at least 30 percent of the membership of local abunzi committees must be women. The abunzi themselves support broader gender sensitization and awareness-raising on land laws for the whole population, including, and especially, for men.

#### **Alternative dispute resolution**

**Alternative dispute resolution** is an increasingly popular solution. Alternatives include consideration of **court-based mediators** to help people who have lodged court proceedings to resolve their disputes without having to wait for the court process.

#### **Customary dispute resolution mechanism**

In many countries, **customary authorities and institutions** are still largely responsible for local land dispute resolution. Customary dispute resolution mechanisms may be speedier and more accessible and have greater social legitimacy than statutory ones, but they are often male-dominated and gender-biased. Without losing their positive aspects, reforming them to ensure gender equity may enable them to work more effectively. The challenge is to **work with customary institutions** to support gender-equitable governance of land tenure while seizing opportunities from decentralization processes to **make formal statutory dispute resolution mechanisms more accessible** to rural women and men.

*Example: Working with customary institutions in land dispute resolutions*

In **Kenya**, in Nyanza province, in-laws were routinely seizing lands from widows, while community elders proudly proclaimed that their culture protected women. A Kenya National Commission for Human Rights programme provided the space for widows to tell these elders their stories of being chased from their lands. The elders, caught between securing patrilineal land rights and protecting women, had to develop innovative means of resolving this dilemma. In many cases, they began to defend the widows and ensure that they received a life interest in their deceased husbands' land. This life interest was for the widows' own protection, but also to ensure that their sons would subsequently receive a portion, as dictated by patrilineal inheritance practice.

In war-torn northern and eastern **Uganda**, internally displaced persons have begun to return home and re-establish claims to their ancestral land. This return has caused many conflicts over competing claims. In 2009, the Uganda Land Alliance launched a pilot project aiming to improve access to land justice through the empowerment of traditional authorities and the integration of the customary and formal justice sectors. When they had land disputes, women and poorer people generally approached customary leaders first. Therefore, the project worked to improve the existing customary justice system by developing the technical capacity of traditional authorities to address land rights violations. This involved training for traditional authorities and sensitization for communities. Land rights centres were set up to train paralegals to work with local political leaders and traditional authorities in their use of the customary system.

#### Government justice institutions

Land disputes can also be resolved within the proceedings of **government justice institutions**. Such institutions can be important when existing inheritance laws are discriminatory, but new laws have not yet been put in place.

In Uganda, for example, the Department of the Administrator General is responsible for managing and distributing the property of deceased people in a number of different situations, including when they have died without making a will. Its efforts to ensure the participation of women, especially widows, have helped to ensure more gender-equitable outcomes in upholding the distribution of property to women while avoiding court action.

In order to increase gender equity in access to land justice, we need to ensure that both women and men can have access to the appropriate **legal support**.

👉 **Governments** should establish relevant measures, including legal aid and practical legal assistance.

👉 **Civil society** has a particularly important role in providing legal support for gender-equitable governance of land tenure.

Legal organizations can offer **practical legal assistance in individual cases**. They also have the capacity and mandate to pursue strategic litigation and take up important **test cases** in the courts. Test cases can help to enforce the implementation of gender-equitable provisions in land laws and land-related regulations, ensuring gender-equitable governance of land tenure. For instance, where customary law is widely applied, test cases can involve reform of the more discriminatory aspects of customary law, rather than its complete replacement. Legal support from civil society can, therefore, make courts a useful vehicle for enforcing gender equity. Civil society organizations are often most effective when they work in cooperation with governments:

A project in Pakistan - funded by the International Land Coalition in 2009 and 2010 - established legal aid committees (LACs), with subcommittees of lawyers, in five districts of Sindh Province. The LACs took up the cases of women facing appeals against their allotments of land under the Government of Sindh's Land Distribution Programme (LDP). They deterred the former landowners from appealing against the granting of their land to women beneficiaries. Women's organizations (WOs) were also formed in the five districts. The project trained WO members in organizational management and in providing assistance to women with problems in attaining their legal land entitlements under the LDP.

👉 **Land administration projects** should review their procedures for land dispute resolution and legal support to ensure equal access.

Reviewing procedures for land dispute resolution might include taking special measures to facilitate women's access to project staff and government offices, such as by bringing land dispute resolution mechanisms to the local level, or providing **legal support through the project**, as the case below shows:

The Legal Assistance to Rural Citizen's Project (LARC) in **Kyrgyzstan** taught rural people how to apply the law to resolve their land disputes. Women and men applied for project assistance and sought help with similar disputes. These typically involved village or local authorities attempting to take the land the claimant had received during national land reforms and assign it to other men in the village. In one intrafamily case, a disabled woman had been given the family house by her father, with the appropriate official documentation. However, the woman's uncle and cousins refused to leave the house and drew

up an alternative document, certifying their right to it. After the local authorities discouraged her from taking the case to court, and having failed to advance her case with the local courts, the woman approached LARC and eventually reached consensus with her extended family. This example suggests that strong legal support and assistance are needed to improve gender equity in land dispute resolution where cultural norms discourage women from pursuing cases against male relatives.

A very important element in achieving gender-equitable land tenure governance is making sure that men and women **are aware of their rights** in relation to land, and that **they know about the legal support available**. Providing legal education is an important part of this.

A particular aspect of legal literacy involves training of **community paralegals**. Civil society and international organizations can train community paralegals to work on gender issues at the community level. Community paralegals can provide relatively low-cost legal support as they require less training than fully qualified lawyers.

#### *Examples of gender issues at the community level*

##### ⇒ **India**

In India, the South Asia Rural Reconstruction Association (SARRA) provided a four-day paralegal training workshop for 63 tribal forest dwellers (mainly women and youth) in collaboration with senior government officials responsible for forests, environment and tribal issues in Andhra Pradesh State in 2010. This included direct interaction with senior officials and boosted the tribal peoples' confidence, enhanced dialogue and improved their knowledge of the legal and administrative procedures for obtaining land.

SARRA translated the 2006 Land Rights Act into the local language (Telugu) and printed 1000 copies, along with practical information for tribal people on how to apply for land assignments. Almost half the newly trained paralegals completed their own application forms, and assisted 45 other tribal families to do the same.

##### ⇒ **Mozambique**

FAO's three-year Gender and Land Rights project in Mozambique carried out paralegal training courses and field support on gender for civil society, the public sector and community leaders. The project worked on gender issues with men and women, through paralegal courses, district seminars for judges, prosecutors and police chiefs, a field technical support programme, and community sessions. The

project also raised awareness on women's land rights and gender equality through a national advocacy campaign. Messages were disseminated widely in all four main national languages, including on T-shirts, banners and calendars, in comic books and videos, and through community theatre, radio and other media. The project produced a gender textbook for incorporation into the course materials of a broader government paralegal and justice sector training programme for judges, lawyers and police officers.

### ⇒ Liberia, Mozambique and Uganda

In an International Development Law Organization (IDLO) project on community land titling in Liberia, Mozambique and Uganda, groups of communities were provided with **different levels of legal assistance** while they followed their nations' legally mandated processes of community land titling.

The progress of the groups was monitored, and the results were compared and analysed to identify how international organizations, governments and national NGOs might best support the implementation of community land titling legislation.

#### *Example*

Imagine you are a lawyer in a rural district, and want to ensure that **land disputes** can be solved in a way that protects women's rights to land. In the area where you work, you must refer to customary dispute resolution mechanisms, because these are socially accepted and because state institutions do not exist at the grassroots.

The most effective approach to take is to work with customary institutions to support gender-equitable governance of land tenure while seizing opportunities to make formal statutory dispute resolution mechanisms more accessible for rural women and men. It is better to work to improve the existing dispute resolution mechanisms in the short term, while also trying to extend the accessibility of state institutions that might be more gender-equitable.

A final important issue is the need to **consider innovative solutions**, particularly at the local level. For example, **watchdog groups** can relieve the pressure on formal justice systems and serve as a vehicle for providing legal assistance to local people in local court proceedings and dispute resolution mechanisms. They can also double as a broader mechanism for participatory governance at the grassroots.

### Community watchdog groups in Kenya

The civil society organization, GROOTS Kenya, assisted grassroots communities in Gatundu District in forming community land and property **watchdog groups** (WDGs) to protect widows and orphans from losing their land and property. The WDGs are based on the idea that **community members - women and men - should work together** to prevent property rights' violations within their community. Each WDG has 15 to 25 men and women members, who volunteer after a participatory community process involving: a **community needs assessment**; the **mobilization of key stakeholders** - such as village elders, human rights organizations and provincial authorities - through sharing assessment results and **explaining the impact of land rights violations**; and **community dialogue**. When a land rights violation involves vulnerable community members, the WDG determines the facts of the case, alerts other members of the community and mediates to ensure that the violator returns the property to the rightful owner. If necessary, the WDG arranges for the case to be filed in court and ensures that the court's ruling is implemented. WDGs receive referrals from people or institutions such as police, judiciary, and district and provincial land authorities. Communities provide feedback through WDG-led evaluations and reviews. Successful WDGs are encouraged to share their practices through peer exchanges with other communities.



#### Ensure gender-equitable legal support printable checklist

- ▶ Assess the **type and level of legal support** that communities require, including how best to facilitate protection of the land rights of women and vulnerable groups.
- ▶ **Train community paralegals** to work with both women and men, and provide them with financial, logistics and other support.
- ▶ **Set up community watchdog groups** and connect them to legal aid centres for support.
- ▶ Set up **mobile local courts and marriage, birth and death registration offices**, to make it easier for people to obtain basic legal documents and to lodge cases in the formal court system when customary or local dispute resolution institutions cannot resolve them.
- ▶ Develop a **database of court cases** and legal precedents that uphold and support gender equitable governance of land tenure at the national level, and develop awareness-raising campaigns to inform community watchdogs and paralegals about these examples.

## CONCLUSIONS

In this lesson, we have learned about some of the different ways to support gender equity within legal pluralism, and some strategies to support gender-equitable land inheritance rights.

We have identified the main steps in the drafting of laws and regulations that promote a gender-equitable approach to land tenure governance and support implementation of gender-equitable laws. We have also become aware of some important issues for enabling women and men to exercise their rights to land.

## SUMMARY

It is important to have the right legal foundations for the legislative and policy framework to support gender-equitable governance of land tenure and for effective implementation and monitoring mechanisms.

Plural legal systems and customary law provide spaces for women and men to realize their land rights. Although they are not a long-term solution, efforts should be made to find these spaces and make them accessible to all.

Participatory and consultative drafting of laws, regulations and procedures, involving both women and men from different social groups, provides essential support to gender-equitable governance of land tenure.

Access to justice is not always gender-equitable. It is necessary to work with both formal and customary justice systems, and both local and customary dispute resolution mechanisms, to achieve gender equity.

Innovative approaches to legal support should be used, such as community watchdog groups and community paralegals. The level and type of support needed in each context should be carefully assessed.