



## LEARNING ABOUT **5a.2** INDICATOR

SDG Indicator 5.a.2 – Ensuring women’s legal rights to land ownership and/or control

### Lesson: Assessing Proxy A

#### Text-only version

The interactive version of this lesson is available free of charge at: [www.fao.org/elearning](http://www.fao.org/elearning)



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Food and Agriculture  
Organization of the  
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working for Zero Hunger

**In this lesson**

Learning objectives ..... 3

Rationale of Proxy A..... 3

Assessment for Proxy A..... 4

    The four scenarios..... 4

    Key requirements for the provisions ..... 6

    Assessment for Proxy A..... 6

Summary ..... 8

## Assessing Proxy A

This lesson describes the assessment process for Proxy A, focusing on the key requirements to be considered in analysing the provisions of a national legal and policy framework.

## Learning objectives

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

- ✓ explain why Proxy A is important in monitoring Indicator 5.a.2;
- ✓ describe the four scenarios in which Proxy A exists;
- ✓ understand the features that a provision must have to satisfy the threshold for Proxy A.

## Rationale of Proxy A

**Is the joint registration of land compulsory or encouraged through economic incentives?**

Proxy A is one of the six proxies identified to assess progress under Indicator 5.a.2 – Percentage of countries where **the legal framework** (including customary law) **guarantees women's equal rights to land** ownership and/or control.



Why is joint registration important to "guarantee women's equal rights to land ownership and/or control"?

### Story of Selina

Let's answer this question beginning, with the story of Selina.

*"My name is Selina, I live with my husband, Daniel, and my little daughter, Fenete. We own a plot of land, which is our main source of livelihood."* - Selina

Two years ago, the government carried out a land titling programme and issued Land Certificates, providing owners with documentary proof of their land rights, in order to increase security of land tenure.

*"The forms used to record land rights only allowed space for the name of the 'head of household', in this case Daniel. Officially, he is the sole owner of our plot of land. I am not considered as the owner of this land, even though I have also acquired it through my efforts and savings. I cannot make decisions about this land and may lose it if I separate from my husband, or become a widow. In that case, I would have nothing to sustain my daughter and myself."* - Selina

As in the case of Selina, many women throughout the world don't have rights to ownership and control of their family land. Without the inclusion of women's name and rights on the land registration document, **women's property rights** can be **insecure**. This is often **because of gender biased norms and practices**. Women's property rights are particularly at risk when women separate, divorce, are abandoned or become widows.

One measure that **states can adopt** to ensure the recognition and protection of women's land rights is to include in their legal and policy framework provisions that establish **mandatory joint registration** of land for married couples, or which encourage joint registration through **economic incentives**. More women are protected when countries also include unmarried couples in the provision on joint registration.

The assessment for Proxy A aims to identify provisions that:

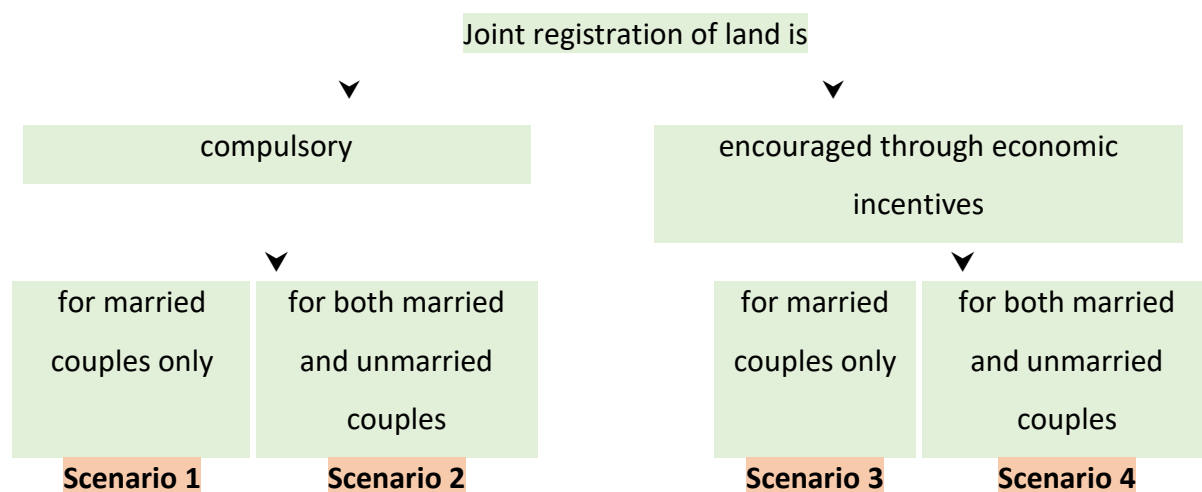
- make **joint registration** of **land** compulsory for **married** and/or **unmarried couples**;
- encourage joint registration of land for married and/or unmarried couples through economic incentives.

## Assessment for Proxy A

Let's go back to Abena's office, the national legal expert in charge of performing the Indicator 5.a.2 assessment. After collecting all the relevant policy and legal documents, Abena starts conducting the assessment for Proxy A.

### The four scenarios

Abena is going to analyse her country's legal and policy framework and check if there are provisions that establish compulsory joint registration of land or encourage it through economic incentives. To establish that Proxy A exists in her country, Abena needs to verify that **at least one of four possible scenarios** is present. Let's see what they are.



**Unmarried couples:** couples who live together (cohabit) in an intimate relationship, but who are **not married in accordance with the marriage law** of the country. Often this will refer to couples who were married under custom or religious laws, where such marriages are not recognized or do not comply with the requirements of the formal law. It may also refer to relationships that are recognized by the state, but are not considered a marriage, for instance a civil partnership and a *de facto* relationship that is registered with the state.

**Married couples:** couples **recognized as being validly married under the marriage law(s)** of the country being assessed. Couples married under religious or customary law may be considered "a married couple", if the formal marriage law recognizes such marriages.

**Land:** for the purposes of this assessment refers to **immovable property** – i.e. a house, the land upon which a house is built, and land that is used for other purposes, such as agricultural production. Legislation frequently refers to "immovable" or "real property" rather than land.

**Joint registration:** entails **the names of both spouses, or both partners** in an unmarried couple, being **entered in the land registry as the owners** or principal users of the land being registered. In legal systems that include a framework for private land ownership, joint registration is commonly referred to as joint titling. In legal systems where all land is owned by the state, joint registration can include the process for registering a property right that is most akin to private ownership (sometimes referred to as a "long-term lease", "occupancy", "tenancy" or "use" rights).

## Key requirements for the provisions

To determine if **Proxy A** is present, Abena should check that the provision(s) has the following features:

### 🔗 Explicit nature

The provision **must unambiguously refer**:

- ✓ to compulsory joint registration; or
- ✓ to the granting of economic benefits upon joint registration (e.g. reduction of registration fee, etc.).

Vague or generic provisions merely implying joint registration are not sufficient.

### 🔗 Mandatory character

This requirement is only necessary for Scenario 1 and 2 (compulsory joint registration). The mandatory character is expressed **by terms having an imperative character** e.g. "shall", "must", "need to" versus soft terms e.g. "should", "may"...

### 🔗 Recipients

The right of joint registration of land **must clearly refer** to:

- ✓ the husband and wife. They may be referred to as "spouses"; and/or
- ✓ partners of an unmarried couple;

The right should not refer to an undefined group of individuals (i.e. a business partnership).

### 🔗 Scope

The provision can **apply to** the registration of "**land**" in **general terms**, or of **certain types of land** (i.e. agricultural land). **Customary land** or ancestral land **must not be** explicitly **excluded**.

## Assessment for Proxy A

Abena is analysing the provisions

### FAMILY LAW 2005

**Art. 456:** "The rights of spouses in joint property **must** be registered in the register of immovable property and other appropriate registers under the names of **both spouses** [...]"

**Conclusion:** This provision falls under Scenario 1. It explicitly refers to the joint registration of a property, has a mandatory character and refers to married couples.

### Example

The following provisions fall within one of the four possible scenarios of Proxy A

#### Provision 1

**MARRIAGE LAW 1989, Art. 42:** "For a common property which is required by law to be registered for ownership or use, both spouses shall be named in the ownership or use right certificate, unless otherwise agreed by the couple [...]"

**Art. 49:** In *de facto* unions where parties are not legally married, the names of both parties shall likewise appear in the ownership or use right certificate".

**Scenario 2:** The provision explicitly refers to the joint registration of a property. It has a mandatory character and it specifically refers to married and unmarried couples.

#### Provision 2

**LAND ACT 1968, Art. 12:** "National individual and corporate persons may obtain the right of land use and benefit individually or jointly with other individual and corporate persons by way of joint title holding [...]"

**No scenario present:** The provision is not expressed in a mandatory manner, and does not specifically refer to spouses and/or partners in an unmarried couple.

#### Provision 3

**CIVIL CODE, Art. 608:** "Rights of spouses regarding joint property are registered in the register of immovables under the names of both spouses as their joint property without determining the ownership over the parts of it. [...] If only one spouse is entered in the register of immovables as the owner of the joint property, it shall be considered that the entry was made on behalf of both spouses, if the entry was not made on the basis of a written agreement made between spouses [...]"

**No scenario present:** The provision allows for property jointly owned to be registered in the name of only one of the spouses, with the presumption that the registration was made on behalf of both spouses. This means it is not compulsory, as required for Scenario 1.

#### Provision 4

**National Policy for Girls and Women 2000-2017, Para 5:** "Reduce stamp duty for registration of land and house purchased in a woman's name and gift deeds of immovable property executed in favour of women."

**No scenario present:** The provision of the policy prescribes a tax reduction for registration of land only in the women's name, and not jointly with her husband or partner.

**Provision "5**

**Finance Act, Art. 176:** "The registration fee is reduced by 30% in case husband and wife wish to jointly register any land or houses built on such land and owned by both husband and the wife."

**Scenario 3:** The provision provides for a reduction of the registration fee of 30% from the standard rate, in the event that the husband and wife opt for joint registration of land, or houses built on that land and owned by both.

## Summary

Proxy A verifies the existence of provisions on joint registration of land in a country's legal and policy framework.

To make the assessment for Proxy A, a national legal expert needs to analyse his/her country's legal and policy framework, and verify if at least one of the following four possible scenarios is present:

1. joint registration of land is compulsory for married couples only;
2. joint registration of land is compulsory for both married and unmarried couples;
3. joint registration of land is encouraged through economic incentives for married couples only;
4. joint registration of land is encouraged through economic incentives for both married and unmarried couples.

For the provision to satisfy the requirements of Proxy A, it must be explicit and mandatory, and target married or unmarried couples. It can target general lands or specific types of land.