

Gender and Land Governance



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Recognition and allocation of propriety and user rights over land in Burundi. ©SDC

This guidance sheet is one of a series written to support SDC staff in ensuring that gender is taken into account transversally in different thematic domains - in this case, land governance. The numbers are striking: there are major disparities between women and men in most parts of the world when it comes to land ownership and access to decision-making processes about land use. This guidance sheet outlines key issues regarding land governance, and how these can be integrated into the design, implementation, monitoring and evaluation of cooperation strategies and project interventions.

Key issues:

- A. Land tenure— who owns and can use the land?** What are the implications for women and men of different land tenure arrangements, such as private, community or state ownership? Do different ways of controlling the access, use, management and sale of land enable or constrain equitable and secure access to land for women and men smallholders and landless or land-poor women, men and households?
- B. Decision-making – who decides?** How do the decision-making processes around land deal with competing rights and interests of the range of actors from women and men smallholders, indigenous and community groups to states and national and international business interests? How and where do women and men participate in decision-making about the different priorities for land use (food, income, biodiversity, etc.)?

Women's land rights in international policy frameworks

Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forest (VGGT): Building on and supporting the Right to Food and endorsed by the Committee on World Food Security in 2012, the VGGT sets an international standard for securing tenure rights and equitable access to land, fisheries and forests as a means of eradicating poverty. They provide states and non-state actors with a reference in tenure-related policies, laws, regulations, strategies, and practices.

- Gender equality is one of the ten basis principles of the VGGT (3B, 4): [...] States should ensure that women and girls have equal tenure rights and access to land (...) independent of their civil and marital status.
- Gender equality is specifically addressed by the VGGT for instance under article 4.6; States should remove and prohibit all forms of discrimination related to tenure rights, including those resulting from change of marital status [...]. States should ensure equal tenure rights for women and men, including the right to inherit and bequeath these rights

Agenda 2030: Women's land rights and the principles of the VGGT also feature in two targets of the Agenda 2030:

- Target 1.4: By 2030, ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.
- Target 5a: Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

1 Definitions

Land governance comprises the decision-making institutions, processes and mechanisms through which different kinds of rights over different kinds of land are claimed, negotiated and regulated, through both statutory and customary systems. These institutions, processes and mechanisms range from national land policy-making processes to local land dispute resolution committees and influence how women and men access and control land, and how secure their access and control is. Such questions are particularly relevant in the current global context of increasing commercialisation of land. From a gender point of view, the key issue is the extent

to which women and men participate in and can influence land governance and, on the other hand, how gender responsive the particular land governance institutions, processes and mechanisms are. The land governance system is the framework within which different tenure arrangements are contested and defined.

Land tenure – refers to the relationships between people and land, defined in statutory or customary law. This includes the range of rules developed by societies to allocate property rights over land, grant access to the use and control of land, and define the associated responsibilities and

restraints. Land tenure systems determine who can use what resources for how long and under what conditions. Specific tenure arrangements in relation to particular parcels of land are defined through land governance processes. Different land tenure arrangements may be more or less favourable to women's access to and control over land, and the particular gender-specific land uses of women and men in different societies. For example, access to common or community land is often important for collecting fodder and fuel wood, often a responsibility of women and girls.

2 Analysing gender in land governance

Land governance¹ is a complex and multi-dimensional issue, often highly contested, and requires a holistic approach to analysis. Land is more than a simple economic asset; it also has social and cultural value and functions. Different contexts have different patterns of land use and land holding, which are influenced by the political system, as well as geographical, economic, social, cultural and historical dimensions. For example, in many contexts land governance is characterized by legal pluralism. Land may be governed by different and some-

times overlapping and contradictory laws and legal provisions. Discrimination on the basis of sex may be outlawed in a national constitution, but perpetuated in civil codes, family law and customary law, all of which affect land rights.

This means that analysis of land governance should consider, amongst others, communal and customary tenure arrangements, the links between land tenure and the rules governing property rights within marriage and on inheritance, and the hierarchies of

power that affect decision-making regarding land. Amongst other issues, the notion of 'local community' that is central to safeguarding tenure rights of rural women and men is critical for analysing gender and has implications on broader governance issues. Furthermore, in many contexts there is a significant gap between land policies as formulated on paper and the actual practice of decisions about land use and land distribution in different localities. The following are questions to consider when analysing land governance:

Cross-cutting: gender analysis, power analysis

What is the bundle of rights?	Who are the rights holders?	Who recognises rights?	How are land rights governed?
<ul style="list-style-type: none"> › Access › Withdrawal › Management › Exclusion › Alienation 	<ul style="list-style-type: none"> › States › Communities or collectivities › Individual women and men › Private sector entities 	<ul style="list-style-type: none"> › Customary and religious authorities › States, including local governments › International institutions 	<ul style="list-style-type: none"> › Policy-making processes › Judicial systems › Administrative systems › Norms and customs

2.1 What is the bundle of rights?

The first issue to analyse is the different rights to use, control and own land. This approach differentiates land rights into various “bundles of rights”. The point is that there are different kinds of rights regarding a particular parcel of land, beyond simple ownership and sometimes these rights can be held or granted to different actors. There are many combinations of such rights, but they can be grouped into the following large categories, some of which are described and illustrated below.

1) Use rights, such as the right to:

- a) access the resource (for example, to walk across a field)
- b) withdraw from a resource (to pick some wild plants or remove firewood)
- c) exploit a resource for economic benefit

2) Control or decision making rights, such as the rights to

- a) manage (to plant a crop, decide what tree to cut, where to graze animals)
- b) exclude (to prevent others from accessing the field or forest)

3) Alienation, the right to

- a) rent out the land
- b) sell, or transfer the rights to others

The illustration at right shows some of the different things that can be done with land once rights are clarified with a title: growing crops, using the land as collateral for a loan, selling the land or giving it as an inheritance. Any assessment of land rights must therefore also analyse the gender and power dynamics that influence the distribution

of the bundle of rights in different contexts.

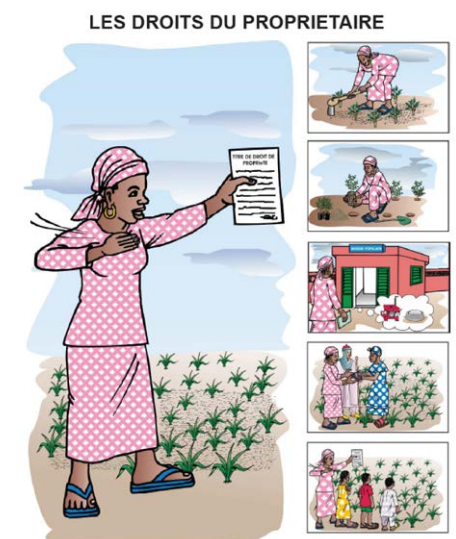


Illustration 1. Ownership rights (REFEPA, 2016)

2.2 Who are the rights holders?

The second issue to consider is who the rights holders are for each of the different rights in the “bundle”. This is important because control over a valuable asset, such as land, is an important source of power in communities and within households. Is the land owned and managed at the level of private individuals, communities, private sector entities or states? What are the power dynamics shaping the relationships between the different rights holders and rights claimants?

Many households depend on a mix of different kinds of land, i.e. growing crops on private land and collecting fuelwood and fodder from community or state land. Allocating rights to state land to communities or to private entities (in the form of concessions), or reserving it for conservation purposes can have significant and gendered effects on women and men’s livelihoods. For example, it is often women’s task to collect fuelwood and fodder. Thus having secure access to sustainably managed sources

of these resources is important. Furthermore, not all rights claims are equally documented – some may be “formalised” based on land titles issued by state authority, but many are based on longstanding patterns of use and are recognised locally but not necessarily by state authorities. These factors become particularly significant in contexts of increasing commercialisation of land and competing interests in land and land based resources, from smallholders to international agri-business.

A complex landscape of land rights in Myanmar

In Myanmar, the map of land rights holders is complex and while constitutionally the state is the ultimate owner of all land, rights holders have different claims according to different tenure practices. Rights holders include individual women and men, ethnic and indigenous groups, private sector actors, military, etc. While documentation and recognition of communal tenure is seen as one way to ensure tenure security, particularly for ethnic minority groups who practice shifting cultivation, this does not necessarily ensure a more gender equitable land governance. Customs governing communal tenure regimes do not necessarily give women a saying decision-making about land use, and indeed there can be conflict between recognising customary land use rights and recognising women’s land use rights. The extent of documented land holdings can also be gendered, such as when land titles are given to “household heads” and this is interpreted as being a male person. Myanmar’s new National Land Use Policy newly stipulates that land registration certificates may include two names.

2.3 Who recognises rights?

The third issue to consider is that land rights are governed by a variety of different authorities, with more or less power and with different sources of legitimacy. In many contexts, land governance is characterised by the co-existence of multiple legal systems within one society or geographic area. The diagram at right illustrates some of the overlapping sources of property rights (including land rights). These include sources from international conventions (i.e.

ILO 169, CEDAW) to local authorities like Land Chiefs. All of these sources have a certain authority to recognise different kinds of rights to land use and control. These different authorities may have different positions on recognising women or men as rights holders. There can be discrepancies and contradictions between international, national (constitutional, statutory) and customary law.



Illustration 2: The overlapping sources of property rights (Meinzen-Dick et al, 2004).

The Rural Code and traditional authorities: different sources of land rights in Niger

In many contexts customary authorities and religious authorities are considered to practice discrimination towards women as land rights holders. In Niger, for example, the Constitution guarantees equal rights between women and men. However, according to Islamic law (which is the principal reference on issues of inheritance) women inherit a share that is the half of what is inherited by men. Concerning land specifically, the Rural Code of Niger recognises the same rights for women as men. However, according to the most widespread customary practice, women inherit household goods while men inherit land. Working towards gender equitable land governance in such contexts implies interventions focussed on traditional and religious authorities to try to influence at the level of everyday norms and practices regarding inheritance.

2.4 How are land rights governed?

Land rights are governed through a) policy-making processes, b) judicial systems, c) administrative systems and d) norms and customs. In other words, beyond land rights being recognised by different actors and institutions, how secure are tenure rights in practice? How do women/men access the different local to international decision-making spaces, at the level of policy, law and administration and to what extent can they influence decisions and their implementation? Are women represented in and able to influence the different land-focused decision-making spaces?

There are a number of issues to consider here. The first is the question of how gender issues are addressed in **land laws and policies**, and the gap between these and their application. While in many contexts provisions are included in land laws or policies to improve women's access to land, these may have little effect for a number

of reasons, including a lack of measures to apply the law or policy, resistance by those who would lose out or who compete with the state for land governance authority and limited presence of state actors in remote areas, including limited outreach and law enforcement capacities.

Another issue to analyse is the range of different authorities who play a role in adjudicating and **enforcing land rights**, and whether gender plays a role in both who accesses these authorities and how. For example, in many contexts people would be reluctant to take a family-land dispute to a "formal" state court of law, rather preferring to solve the conflict and/or enforce a claim through "informal" local or traditional means. In a more recent development, the justice system at the international level (the International Criminal Court) has indicated that it could begin investigations into the illegal dispossession of land, including

human rights violations committed in the context of land seizures.

In addition to laws and policies, and the judicial system through which they are interpreted and enforced, a gender analysis of land governance should also examine the vast range of **land administration tools and mechanisms** from land surveying, titling and registration to land valuation and taxation, land use planning and compensation.

Finally, as noted in the text boxes above, land rights are in practice also governed by a series of **norms and customs**, established social rules and ways of doing things in particular social and cultural contexts. These norms and customs may or may not be aligned with land laws and policies, which sometimes also aim precisely to introduce changes in customary practices, particularly in regards to gender relations.

3 Gender-responsive interventions in land governance

In practical terms, women’s access to land rights are influenced by a number of inter-related factors, from the social and cultural, to the economic, legal and political, and from the household level to the

international level. These are illustrated in the diagram on the following page. Working towards gender-equitable land governance thus implies working in a holistic way within and between several of these

inter-connected fields. The following are a number of suggestions of different gender-responsive interventions in the field of land governance.²

3.1 Land tenure reforms, access to justice and legal empowerment

The most common way to achieve equal access for women and men to land, as well as control over it, are land tenure reforms. The gender dimensions should be considered from the early stages of such a reform program. This is an issue at both a political and a technical level. The latter would include ensuring that all land administration activities mainstream gender, including land surveys, titling and registration processes and technologies, fees and charges, compensation mechanisms and land use planning. While titling or formalising land rights does not always improve the security of tenure, initiatives such as the promotion of joint titling and even the registration of women as exclusive owners of land could be considered. On the political level land tenure reforms are highly politicised and high stakes processes in most contexts. Interventions in support of evidence-based advocacy for more gender equitable land tenure systems and the facilitation of multi-stakeholder dialogue could be considered here.

Of course, attempts to change women’s land rights through land registration and

changes to policies and laws will only be effective if accompanied by means to implement and enforce them. This would imply interventions in support of the various tools

of law implementation and the institutions both implementing policy and monitoring its implementation.

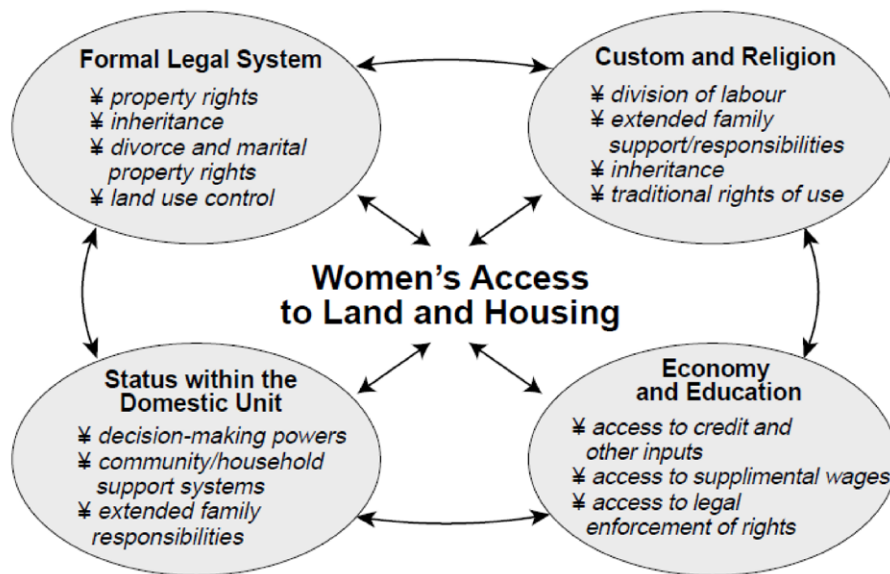


Illustration 3: Institutions that affect women's access to land rights (FAO 2002)

Working with Regulatory Bodies at Community Level: Experience from Niger and Myanmar

In a number of countries SDC works with community level regulatory bodies to support the implementation of land policies. In Niger, SDC has supported strengthening the capacities of Communal Tenure Commissions. These Commissions are mandated to recognise tenure rights and certify customary claims, as well as contracts of sales and loans. In Myanmar, SDC takes a broad approach, strengthening the capacities of a wide range of partners involved in implementing land policy. SDC works with civil society organizations, smallholder farmers, ethnic nationalities as well as relevant governments at different levels, which would help to improve policy in land governance and to legally recognize and protect land tenure rights. In both cases, gender dimensions are considered, sensitising members of the regulatory bodies about gender issues and developing the capacities of women members.

On the other hand, interventions in the field of access to justice and conflict transformation could be considered. In the case of justice and conflict transformation, both state and “informal” or “traditional” systems should be supported in becoming more gender-sensitive. Furthermore, legal support through legal aid and practical legal assistance (in addressing different legal systems) could be supported, for example through community paralegals.



Woman working in a field in Myanmar. © Tom Kramer, TIN

3.1 Equal participation of women and men in decision-making over land

In order to promote equal rights to land, women and women’s rights groups should participate in the formulation of laws, policies and programmes – from the household level to the local, national and international levels. Women and men should be represented in the various institutions and processes that make decisions about land tenure governance, from the local to international level.

Interventions in this field could include: empowering women and women’s groups to claim spaces in land governance decision-making and raise their voices therein and sensitising and supporting land governance institutions, including customary institutions, to be more inclusive and to invite more women’s participation. This could start, for example, from working to achieve a better gender balance in community de-

cision-making bodies for land use planning and natural resource management. Also, where discriminatory customary practices are deeply embedded, a strategy could be to work with the least discriminatory institutions to at least try to change the status quo and to generate evidence and experience, and raise voices and confidence, for tackling or addressing other institutions.

Access to land through women’s economic empowerment

In Burundi, the certification of land rights for women helped women to get small loans and credits for economic investments, the land certificates serving as a guarantee for the microcredit institutions. With the profits from their business, many women have purchased land and thus became land owner, although some do register the land under their husbands name due to tradition and customary rules. With continuous sensitization, in particular through women’s groups, women get more and more confident and aware about their rights and some of them began to manage and exploit their land by themselves. Also, it was observed, both in Burundi and Niger, that SDC contributions and projects supporting women’s economic empowerment had positive impact on women’s access to land since women had more means to negotiate, or were able to buy land with the profits of their businesses. In Niger, some of these women possess now more land than the average of what men have.

3.2 Awareness raising and changing gender roles

In the end the most sustainable way to achieve gender equality in general and to promote equal access to and control over land for women and men in particular, is working towards changing gender roles and stereotypes. Practices and perceptions of women’s status in the household, family and community affect the extent to which women can exercise their rights in general,

and rights to land in particular. This can be addressed through raising awareness at all levels - from members of a household to traditional leaders in the community, from officials in the regional administration to policy-makers. Gender sensitization on land tenure can take various forms: programmes for raising public and community consciousness about women’s tenure rights;

basic educational measures for informing women and men of their rights; actions that support legal literacy and protect land rights; and programmes that encourage the active participation of women and women’s groups in the governance and management of resources.

Empowering women and showing by example: experience from Benin on changing gender roles and challenging cultural norms

In Benin, SDC supports projects aimed at empowering women in agricultural and pastoral production through increased economic self-reliance, training, research on the socio-cultural environment and leadership. The community gradually becomes accustomed to seeing women in positions of responsibility, and seeing husbands sharing the decision-making and even household duties. The experience of Benin also shows that successful examples are the best way to encourage men to share power. "The patriarchal system of transferring land is not as rigid as we always say. We had a court case in Benin where a woman fought for her right to inherit land against her cousin. She obtained her right by the customary court – even against cultural norms" (Codjia Agossou 2014).

4 Important aspects for monitoring, evaluation and learning

Awareness raising and sensitization interventions aimed at changing gender roles should be developed within and carefully adapted to particular local contexts. Changing gender roles implies a change in power relations and thus carries high stakes. Careful gender-sensitive power analysis is an important preparation for work in this field, as is relationship and trust-building with local authorities. For example, before starting its work in the field of land governance, SDC Niger invested in a systematic and comprehensive analysis of the context, in order to identify possible "change agents" at the local level, including amongst customary authorities.

On the basis of the gender and power analysis of a) the bundle of land rights, b) who the land rights holders are, c) who recognises the land rights and d) how land

rights are governed (policy-processes, judicial and administrative systems, norms and customs), define:

- Envisaged changes in women and men's access to and control over land.
- A theory of change that explicitly maps out how these changes will come about, taking gender and power inequalities into consideration.
- A sex-disaggregated baseline, along with gender-specific indicators for changes in land use and control
- Targets of numbers of women and men engaged in and benefiting from activities

Allow for the monitoring of not only intended results, but also possible unintended results – for example, that women's work burden will be increased as a result of a particular intervention. Ensure that findings

– positive and negative – are fed back into intervention design through gender-sensitive processes.

In the frame of monitoring results achieved towards the objectives of the Federal Dispatch 2017-2020, SDC proposes the following reference indicator regarding gender and land:

- Indicator 8: Number of producers (M / F) having benefited during the year from a new land code or new land use or property title (by type of tenure such as private, collective, lease).

The indicators for monitoring progress towards the Agenda 2030 should also be considered (indicators for target 1.4 and 5a).



Women of Mouléré (Niger) working on land acquired through a project. ©SDC

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Endnotes:

- 1 See also the recent FAO technical guide "Governing land for women and men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure".
- 2 This section is based on the recommendations provided in the report "Gender & Land – Implications for Sustainable Development" (2014), complemented by additional sources. See in particular the checklists in the FAO Technical Guide to support the achievement of responsible gender-equitable governance of land tenure (2013).