



**Commission on the Status of Women  
Sixty-second Session**

**Challenges and opportunities in achieving gender equality and the  
empowerment of rural women and girls**

**INTERACTIVE EXPERT PANEL**

**The role of rural women's land rights and land tenure  
security in reaching the SDGs**

**Women and Land: Rule of Law  
Challenges and Approaches**

by

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\* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

Women's land rights are central to women's economic empowerment. Land, most especially for rural women, is a source of food production, income, collateral for credit, and a savings for the future<sup>i,ii</sup>. Land is not only an economic asset but also a social one. It is crucial for political influence, cultural identity and group inclusion; it also offers social protection against risks and vulnerabilities, including against gender-based violence and extreme poverty<sup>iii</sup>.

Beyond women's empowerment, women's land rights have broader development impacts. The State of the Food and Agriculture Report has already emphasized that if women had the same access to land and resources as men, overall food production could increase up to 30 percent—enough to feed 150 million of the estimated 815 million people who are suffering from hunger in the world<sup>iv</sup>. Data collected by the OECD Development Centre also show health impacts, for example, countries where women lack rights or opportunities to own land have, on average, 60 percent more malnourished children than those who guarantee equal land rights<sup>v</sup>.

The 2030 Agenda for Sustainable Development is committed to leaving no one behind, unfortunately, with women's land rights, rule of law challenges continue to persist.

I would like to highlight three of them: (a) discriminatory laws and policies; (b) implementation gaps; and (c) problems arising from the interaction between formal and customary land tenure systems.

**Challenge 1: Discriminatory laws and policies.** Laws, such as land and property laws, as well as legal frameworks on dispute resolution and personal status, continue to either constrain directly or indirectly rural women's rights to land. Based on data from 161 countries, only 37 percent have equal rights for women and men to own, use and control land.<sup>vi</sup>

Family laws, in particular, especially those relating to marital property, divorce and inheritance, explicitly constrain women from the ownership, control, and access to land rights, in favour of male relatives. In fact, 30 countries still have laws that place men as heads of household; and 19 legally require wives to obey their husbands<sup>vii</sup>. There are also legal provisions, whether in family or business laws, that constrain women from entering or signing a contract in her own name or to full and equal legal capacity.

Land and other relevant laws are sometimes drafted **without the knowledge and participation of women**, and in most cases, rural women. Rural women can be particularly side-lined, as they have less access to information, technology, political and social networks, and decision-making structures compared to rural men or urban women.

**Challenge 2: Implementation Gaps.** Implementation challenges often result from failure to consider the interaction between different laws as well as the failure to analyze how they collectively impact on women's land rights.

For example, land rights are often implemented through laws that entail titling and registration, but such titling and registration programs often require that a national identity card, marriage or birth certificate, or deeds from a land registry office or court, be provided. These processes are often inaccessible to rural and poor women who have limited time, money, networks to engage with administrative bodies<sup>viii</sup>. Land or commercial legislation, when applied alongside laws that recognize males as household heads or those requiring male spousal consent, may also deprive women of their rights to transfer or use land on an equal basis as men.

There are also laws that fail to address the fact that women's rights to land may be contingent on their personal status, as in the case of the marriage, the death of a husband, or when the husband takes a second wife.

In other cases, laws fail to anticipate that in some societies divorced or widowed women are not regarded as members of the husband's household nor members of their natal household, which results in the disenfranchisement of these women. For example, where land compensation schemes are paid to heads of household or village members (who are mainly men), losing relationships with male relatives can result in losing land rights as well<sup>ix</sup>.

Technical and financial resources are often inadequate to guarantee effective implementation of laws, policies, and programs relating to land rights. The establishment, implementation, and monitoring of effective land administration systems alongside institutional arrangements to protect rural women's rights require technical knowledge and capacities often beyond local and in some cases even national capacities. It entails the development of methodologies, inter-disciplinary work, setting up systems and protocols, which unfortunately despite the emphasis on partnerships at local and global levels are resource dry<sup>x</sup>.

**Challenge 3: Problems arising from interactions between formal and informal legal systems.** In almost every country of the world, a number of legal systems – statutory, religious, customary, regional and international – coexist within the same jurisdiction, often resulting in overlapping rights, contradictory rules, and competing authorities. Legal pluralism creates complexities. A failure to anticipate, analyze and address the gendered impacts of different normative systems may result in poorly-conceived laws and ultimately, unequal outcomes for rural women.

Customary land tenure systems in many regions are founded upon patrilineal patterns of transmission that exclude women and girls from owning or accessing individual and clan lands<sup>xi</sup>. Though formal law may similarly be patriarchal, the sources of formal law are easier to trace and they are often documented and by comparison easily accessible. Customary systems, on the other hand, may not be written, may only be divulged by particular community members, may be safeguarded from “outsiders”, or may simply be based on different value systems than formal laws that may not be easily discernible at first glance. Hence, in the few cases where there have been efforts to analyze its impact on rural women, these efforts may not have been always successful and may often revert to simplifying the complex web of customary rights.

Even in areas where there is matrilineal inheritance, it cannot be assumed that women are able to assert their land rights. In some cases, women may not be able to speak on their own behalf, relying on male relatives to represent them<sup>xii</sup>. This, in turn, can also lead to fraud and misrepresentation, and absence of control of their own properties.

One often neglected area of inquiry is the interaction of customary law with statutory law. This interaction can sometimes create a situation where women ended up being deprived of their rights as landholders. Simply put, sometimes the complete marginalization of customary law has worked against women, not for them<sup>xiii</sup>.

For example, where formalization programs do not recognize the nuances of various tenure systems and only document rights that most resemble private ownership, which is likely held by men, women (especially rural and indigenous women) can find themselves without any access to collectively held land, such as forests, pasture lands, farms, among others. Also, customary law sometimes have protections for women, based on traditional notions of fairness or justice that formalization or commercialization processes ignore, resulting in rural women losing these safety nets provided under customary law<sup>xiv</sup>.

Within the context of these grave and persistent challenges, how can the rule of law bring about equal land rights for rural women?

First, by **ensuring the centrality of rural women's participation** in the development, adoption, implementation, monitoring, and evaluation of any law, policy or program. Enabling equal decision-

making roles in land and natural resource governance institutions is just as important. Engaging diverse groups of women (and rural women) can help identify their priorities and needs, as well as assess the impact of existing legal and policy frameworks on their rights.

However, the participation of rural women can only be fully realized if the women themselves are legally empowered to do so. Legal empowerment approaches – including legal education, legal aid services, rights awareness, training of paralegals – can enable women to understand their rights, how to claim them, and build a more supportive and transformative environment for making change happen.

Second, **collect and analyze gender-relevant data and learn from it.** Many of the implementation challenges highlighted above can be addressed by, among others, through gender impact assessments to inform every stage of law or policy development and implementation. These assessments should occur at the conceptualization stages, as well as at regular intervals during implementation. It is important to ensure that lived experiences of the diverse range of stakeholders, rural women included, be taken into account. Although supporting the development of national-level statistical and disaggregated data collection should be a priority, learning from community dialogues and other means that amplify rural women voices, are good sources for learning.

Gender assessments are important in also ensuring legal coherence across various types of legislation. In the area of land rights, for example, it has been shown that land programs for women are more successful in achieving their goals and sustainably transforming gender relations when they are implemented as part of a coordinated holistic and multi-disciplinary, multi-sectoral approach<sup>xv</sup>. Whether they are labour laws and policies, social protection programs, agricultural and administration systems, family laws, land laws, it is important to coordinate legal, policy and budgetary responses<sup>xvi</sup>.

In addition to gender impact assessments, research and similar tools are important in understanding the interplay between formal and informal systems – and in choosing better approaches to secure women’s land rights in communities where the legal pluralism exists or where the reach of formal law and systems are weak.

IDLO is working in Burundi, where land tenure registration is one of the key government strategies to deal with the large number of land disputes across the country. A series of pilot programs aimed at resolving land rights issues have been initiated in recent years. While these programs are often credited for their contribution to tenure security and conflict resolution, there were concerns that women’s rights under customary law are not being recognized within the land certification process. At the mid-way point (spring 2016), a project registered only 4.18% of the parcels in the name of a woman, where the baseline population survey had shown that women were the principal rights holders to 24.94% of the parcels. Another problem is that even though the community of property constitutes the matrimonial regime of default, none of the plots were registered in joint ownership between man and woman. In an effort to find solutions to these problem, IDLO proposed to launch a pilot project to gain a better understanding of the obstacles standing in the way of registration of women’s customary rights, to identify strategies to overcome these obstacles, and to test the effectiveness of these strategies in practice. IDLO, together with other stakeholders, engaged in an intensive awareness campaign, a series of dialogues with the population in two municipalities, and raising capacity of actors involved in registration, in order to generate consensus around strategies to protect and reinforce women’s customary land rights. The community dialogues led to the development of gender-sensitive tools and reference materials for land titling offices to use in land tenure registration processes. The project resulted in considerable increase in the level of protection of women's land rights, either in the form of registration of the right in the woman’s own name or through recognition of a derived right. Overall, the level of protection increased to **38.17%** in Mabanda and Vugizo and **46.74%** in Rurambira.<sup>xvii</sup>

Third, **improve women’s access to justice.** “Access to justice is important for gender equality because it enables equitable enjoyment of a whole range of rights and resources. Law and justice institutions play a key role in the distribution of rights and resources among women and men across all sectors...”<sup>xviii</sup> Access

to justice, therefore, is not just a right by itself, it is also a means to ensure women's other rights, including land rights. Without access to justice, rural women may have rights but no pathways to enforce them in cases of violations. Access to justice, however, is not just about courts or legal aid. It involves various ways and means to claim rights, settle disputes, and achieve justice and redress.

There are many barriers to accessing justice. In some cases, whether by intent or default, laws may not provide for accountability mechanisms. In other cases, justice institutions themselves may be unable or unwilling to fight for women's rights. Women often lack legal literacy, confidence and social networks to access information concerning their rights. They often face stigma, marginalization and even violence when speaking out against discriminatory practices on land rights.

Thus, there is a clear need to build the capacity of justice and other institutions that deliver justice - especially those that have jurisdiction over land rights, from the national to the village levels. There is also work to be done in sensitizing these bodies to the lived realities of rural women.

There is also a clear need to empower women to claim their rights through coordinated strategies – legal, social, political, economic, among others, to increase their voice, influence, and power, and protect them from stigma when seeking justice.

Fourth, it is critical to **strategically engage with customary justice systems**. In addition to building more-responsive formal sector institutions, such as the courts, administrative agencies, it is important to recognize that there are also opportunities existing outside the formal legal framework – such as the potential for informal legal norms, including their dispute resolution systems, to be applied in ways that respect and protect women's equal rights. 80% of cases are resolved at the informal justice systems, signifying that they are the closest, most accessible mechanisms to most women, especially rural women.

IDLO collected case studies from nine countries, Namibia, Papua New Guinea, Rwanda, Morocco, India, Afghanistan, Solomon Islands, Mozambique, and Tanzania, on how strategic engagement with customary justice systems can look like<sup>xix</sup>. Although small-scale and taking place in various contexts, the case studies showed that legal empowerment strategies can be successfully be used to improve women's access to justice, including to land rights, in both formal and informal justice systems as well as transform these systems into gender-responsive ones.

In Namibia for example, a range of activities has been undertaken by a traditional authority in Ukwambi to eliminate gender inequalities inherent in its customary justice and administration. This led to (a) the installation of a process to increase women traditional leaders, (b) opening up of traditional dispute settlement meetings to women and promoting their active participation, and (c) the modification of customary norms that are detrimental to the position of women, in particular against property grabbing (that widows should not be chased from their homes or lands and that they should not be asked to pay for their lands). *This simultaneous change in three domains – leadership, dispute resolution and normative content of customary laws - led to several other positive outcomes*, including increased participation of women in traditional courts as decision makers themselves, as well as certain positive changes in customary practices, including the near-complete eradication of property grabbing. The active promotion and support by village chiefs on new cultural norms were essential in increasing awareness of rights. By codifying developing customary norms, e.g. prohibition of property grabbing, they reflected the changes in the traditional views and raised awareness for these new cultural norms at the village level.<sup>xx</sup>

Lastly, more resource investment is needed –in terms of money, partnerships and political will. Unfortunately, **current efforts and allocations of resources for gender equality are falling behind the level needed to achieve the expected progress.**<sup>xxi</sup>

If we truly wish to see no one gets left behind, then the time is now to start making Agenda 2030's vision for rural women and girls a reality.

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<sup>i</sup> SIDA, Women and Land Rights, 2015 <https://www.sida.se/contentassets/1cc2e9756fd04d80bba64d0d635fe158/women-and-land-rights.pdf>

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<sup>iii</sup> Ibid.

<sup>iv</sup> FAO. The State of Food and Agriculture, 2011-2012.

<sup>v</sup> IDLO, Women, Food, Land: Exploring Rule of Law Linkages. Using Law to Strengthen Food Security and Land Rights for Women, 2016.

<sup>vi</sup> FAO Gender and Land Rights Database; OECD, Social Institutions and Gender Index. Data compiled for the SG's report Challenges and Opportunities for Achieving Gender Equality and the Empowerment of Rural Women and Girls.

<sup>vii</sup>. Women, Business and the Law, 2016.

<sup>viii</sup> IDLO, Women, Food, Land: Exploring Rule of Law Linkages. Using Law to Strengthen Food Security and Land Rights for Women, 2016.

<sup>ix</sup> Ibid.

<sup>x</sup> Ibid.

<sup>xi</sup> Ibid.

<sup>xii</sup> Ibid.

<sup>xiii</sup> IDLO, Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment, 2013.

<sup>xiv</sup> IDLO, Women, Food, Land: Exploring Rule of Law Linkages. Using Law to Strengthen Food Security and Land Rights for Women, 2016.

<sup>xv</sup> Ibid.

<sup>xvi</sup> Ibid.

<sup>xvii</sup> IDLO, Women, Food, Land: Exploring Rule of Law Linkages. Using Law to Strengthen Food Security and Land Rights for Women, 2016. More information also available with IDLO.

<sup>xviii</sup> Chiongson, et. al. The Role of Law and Justice in Achieving Gender Equality, World Bank

<sup>xix</sup> IDLO, Accessing Justice: Models, Strategies and Best Practices on Women's Empowerment, 2013.

<sup>xx</sup> Ibid.

<sup>xxi</sup> A recently released World Bank report on Global and Regional Trends in Women's Legal Protection Against Domestic Violence and Sexual Harassment (2018) found that Investments to end violence against women and girls are limited, and worldwide the prevalence of various forms of violence against women and girls remains too high to be able to achieve the SDG target under current trajectories. Similarly, the UN Women's recently released comprehensive monitoring report on the status of gender equality across all 17 SDGs shows that aid committed to gender equality, while important, is too limited (UN Women. *Turning Promises into Action: Gender Equality in the 2030 Agenda for Sustainable Development*, 2018, p. 129.)