

Women's Land Tenure Framework for Analysis: Land Rights

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I. How to Use This Framework

Who is This Framework Designed to Help?

This framework is designed to assist anyone who is interested in understanding the complex issues associated with women's land rights--officials, grassroots organizations, international technical advisers, policymakers, development practitioners, women's rights advocates, land rights advocates, people who are developing programs to assist women farmers, people who are concerned with food security, etc.

How to Use This Framework for Analysis

This framework is intended to help you assess the current situation for women's land rights in a specific country, state, or community. This framework looks at a single issue: **Women's rights to property**. Some of the questions in this document will overlap with questions in other single-issue frameworks posted on this site. Duplicate questions are marked with a red star (*), so you will know that you should look at this question in relation to more than one issue.

The framework is intended to help you think through *both* formal legal and **customary rights** to property and to help you identify the gaps between law and practice. For analysis it is helpful to think about formal law and customary law separately but it should be noted that they often overlap, particularly when the formal law codifies or otherwise recognizes **customary rights**.

This framework should be used as a checklist. The order in which you answer these questions is not important. One law may answer a multitude of questions scattered throughout this document. The purpose is to alert you to the issues that *may* be important in a *particular setting*, and this will vary in different jurisdictions.

The framework was not created with any one particular legal system in mind. Users are assumed to have a basic understanding of the hierarchy of laws for the jurisdiction in question and should note that answers to the questions in this framework may come from more than one law. For example, in some countries all laws relevant for women's land rights are national level laws and apply throughout the country, in other countries, the land law may be a national law but family law is a state-level law with local variances.

Users should identify whether the terms in the glossary and used in the framework have a different meaning or different use in the jurisdiction in question. The user should be able to analyze laws governing women's land rights, and apply the framework to any legal system, using any legal terminology, but different legal systems can use different terms.

Understanding the text of specific laws that govern property rights is important because the law is an expression of the will of the state, even if the law is not broadly known or followed. There are many reasons why a law may not be put into practice: it may not be known; the law may not be followed because it makes no sense in a specific situation; or perhaps the majority of people disagree with the law. Good laws can be used to help bring about change and policy recommendations cannot be made without understanding the legal framework first.

This framework also includes a section to help analyze customary law for women's land rights. This is because customs and practices can have a significant bearing on the effectiveness of a given law or policy. In addition to understand what customary laws are, to assist with advocacy on improving land rights for women, it is also helpful to know which customs are firmly entrenched, and which customs may be waning or changing. It can also be helpful to know if there is an underlying logic to the custom, a premise based on fairness, or maintaining peace for example. This type of analysis helps identify what kinds of adaptation may be feasible and possible and is an important first step in legal and policy reforms.

A guide on conducting legal and non-legal research is available [here](#).

Examples of How This Framework Can Be Used

Example 1: I work at a large international aid agency, and I have designed an agricultural extension program. No women attend the training sessions on crop management, although it is clear to me that women provide much of the agricultural labor. I want to know why women do not attend the sessions and how to get some women involved.

You will want to use this framework to consider what role women play in agricultural production: how they see their role and how their husband sees their role. You will want to review both the legal and customary sections to understand whether women have legal or social rights to the land they farm and whether they are able to make decisions or have control over decisions on crop management or spending resources if they are married or if they are head of their household. You will want to know who "owns" the land and how secure that right is.

Example 2: I am an academic in China and I am asked to help write regulations for land registration. I want to

know how to make sure women's names are documented.

You will want to review this framework and pay special attention to the legal section on individual and household rights to land. You may also want to look at the [research guide](#) to see whether there are readily available resources for you to find other countries' regulations.

II. Introduction to Women's Land Rights

Introduction to Women's Land Rights

Rights to land can be broadly categorized as public or private, **communal** or individual. A plot of land may have overlapping rights. For example, state owned pasture land may have a private well on it, or land that is owned by an individual may be subject to a public easement which allows the public access over that land. There are no examples of absolute private ownership, as states always reserve some rights to land or impose obligations on land rights holders, often to protect broader social interests. This framework looks at how to determine whether women, as well as men, have secure rights to the land they are using, and to determine whether and how women's rights are weaker than the rights of men. Secure rights are clear, long-term, well protected, and are both legally and socially legitimate.

Land rights are more than just black and white, existent or non-existent, insecure or secure. It is useful to think of the level of security of land rights in terms of a continuum moving from weak/insecure to strong/secure. What makes land rights more strong/secure varies from setting to setting. We define secure land rights for women as:

- *Legitimate (legally and socially recognized)*
- *Able to withstand changes in their families and their communities*
- *Long-term*
- *Enforceable*
- *Exercising them does not require consultation or approval beyond what is asked of men*

This framework is looking specifically at women's secure land rights (this is also referred to as "land tenure security." See the [Glossary](#) for a more complete definition of land tenure security).

Common Issues of Note

- [Understanding that land rights in customary law can change when a woman's status changes](#)

Legal rules, which on their face are not discriminatory, can be discriminatory in practice because of the specific customs of a country or area of a country. For example, many laws presume that married couples jointly hold rights to land, except in the case of inheritance or gifts to one of the spouses. However, many women in rural areas are not legally married, although they are married under customary or religious rules, and the law does not, therefore, apply to them. Also, in a **patrilineal** system, men, not women, inherit land, and inheritance is the main way land is transferred. Women may have fewer or greater rights to land depending on which religion they practice or what customs have been formalized in the law. For example, if polygamy is illegal for a specific religious group, subsequent wives in that religious group will not have the right to the land or house they share with their husband.

- [Understanding how other seemingly unrelated rules can impact land rights for women](#)

Other legal rules that can influence women's rights to land include: the legal age of marriage (underage girls do not fall under the **presumption of joint ownership** for married couples); women may be considered minors (because they are women, not because they are of minority age) under the law and therefore not eligible to own land; or law that provides for equality between men and women *except* where the formal law conflicts with customary law, which often does not treat women equally.

- [Uncovering structural impediments to enforcement of rights that exist in law](#)

Even when women have legal rights to land under the law, if their names are not on land documents or are not registered, they may have difficulty enforcing their right to land because to do so would require making a claim in a court of law. Women may not have access to dispute resolution bodies due to lack of funds, time, knowledge, or ability to travel, or if there are different courts (civil, religious, or traditional) one or more may be more favorable to women than the other(s).

- [Understanding that land rights in customary law can change when a woman's status changes](#)

Customs, which may have at one time protected women, may no longer do so. Under customary law women may not be able to own land and only have rights to access land through their husband or father. In such cases, women usually do not have a right to control the income from that land but rather work as laborers on their husbands' or fathers' land. Polygamy may cause first wives to lose a portion of their land.

If land is held by a tribe or clan, women from outside the tribe or clan may have no rights to the land unless they are with their husbands, thus divorce, abandonment, and death can affect women's rights to land.

If **dowry** or **brideprice** was exchanged for the woman at the time of her marriage, she may be considered to have received her share of family wealth even though she may not have control over it. A woman's rights to land may depend on whether or not she has sons, whether or not she has children, or whether she is young or old.

- [Identifying how gendered social roles may impact women's ability to exercise their rights](#)

Under custom, decision-makers are usually men, and men are the face of the family. Therefore women may not be informed of their rights, may not participate in mapping or identifying their rights, and may not have their rights documented or registered. Women often have overlapping rights to land that are not obvious, for example, the right to gather wood or herbs.

Traditional dispute resolution bodies may favor men over women in terms of land rights because men traditionally have greater rights to land than women do. Thus, women may begin with a disadvantage because it is generally understood that land rights are the unique province of men rather than women despite legal or customary protections for women.

III. Analyzing the Formal Legal Structure

Broad Principles of Land Rights

Note: The below information may be found in a country's constitution.

- What rights to land does the State retain? (State owns all land; State owns natural resources but not urban or agricultural land; State has the right to take private land for public purpose, etc.)
- Does the law recognize private property rights?

- Does the law recognize customary rights to property?
- Does the law recognize women's rights to property?
- What categories of land does the law recognize? (Public, private, customary, church, communal, tribal, etc.)?
- Does the law recognize the equal rights of men and women generally?
- Does the law make it illegal to discriminate based on a person's gender?
- If the law recognizes custom as a source of law, how does it handle conflicts between the statutory law and customs, particularly when it comes to land rights for women? Which law is dispositive?

Individual/Household Rights to Land

Legitimacy

- Does the law limit the category of land women can own (vs. men)? For example, there are often restrictions on women owning ancestral land.
- Does a woman's marital status have an impact on her right to own land?
 - If yes, which land? In what way?
- Are there court cases that interpret the law on women's land ownership?
- Is there more than one **personal law** regime (family law) that applies to different people?
 - Is there civil, religious, and/or codified customary law?
 - If yes, who decides which law is applied? At what point?
 - If yes, an analysis of each of these laws will be required, and you will need to consider each of the questions in this section for each law.

Marital Status

- What types of marriages are legal (customary, religious, civil, etc.)?
- What is the legal age of marriage for boys? What is the legal age of marriage for girls?
- Does the law recognize **consensual unions**/cohabitation/de facto marriages/presumption of marriage?
 - If so, what property rights may arise from those relationships? Are they treated the same as a "marriage" by law?
- *Is polygamy legal?

- **TIP:** If the law does not state that polygamy is legal it may be presumed or interpreted by reference to the context. For example, if the law recognizes customary marriages as legitimate, and everyone knows that polygamy is permitted under customary law, then it can be said that polygamy is “legal” for customary marriages, noting that this may not mean that it is also legal for formal marriages
- *If yes, is it legal under all **personal laws** or only certain laws (e.g. for Muslims or customary marriages, etc.)?
- *Is there a limit to the number of wives a husband can have? Are there any other limitations?
- *Are there provisions regarding land for more than one wife? Is land referred to specifically?
- *Are there provisions related to the children of more than one wife? If yes, how is land (or other property) divided between the children? Is land referred to specifically?
- Does the law require that a marriage is documented?
 - If yes, what is required? Does this vary based on of the type of marriage?
- Is **dowry** or **brideprice** prohibited or regulated by law?

Shared Tenure

- Does the law permit common ownership (co-ownership) of land between individuals? (This may be in the law on property rights, land laws, or **personal laws** or elsewhere.)
- Does the law restrict who may be a common owner? Does the law restrict what category of land can be co-owned?
- Does the law presume joint property rights for married couples? (Do married couples by law have joint property rights unless they contract out of their rights?)
 - If yes, is it compulsory or voluntary? Is there a way to opt out of it?
 - What is the nature and scope of the joint property rights that arise in marriage?
 - Which property is presumed to be **jointly owned**?
 - Which property is not presumed to be **jointly owned** (often inherited or gifted property)?
 - Is there a right of survivorship for the spouse? (Does the living spouse have an automatic right to all of the jointly held property at the time of his/her spouse’s death?)
 - How can those rights be terminated?
 - When are the rights terminated? (At the time of death, divorce, partition, etc.?)

- Does the law presume separate property for married couples?
 - What is the nature and scope of the separate property in a marriage? Can it apply to all property?
 - If the law provides for separate property, will the income from that property be owned by the individual or by both spouses?
 - Does a spouse have the automatic (intestate) right to inherit all or part of the separate property?
- If the law permits or requires joint property between spouses, are the rights to land of both spouses equal?
- If the law provides for joint property, when does the property become joint property (marriage, divorce, death)?
- Does the law designate who manages joint property?
- When it comes to joint property rights between spouses, does the law consider **consensual unions** in the same way it does legally married persons?
 - If so, when does the right to joint property in a consensual union arise?
 - Are they treated the same as relationships which is considered “marriage” by law?
- Does the law require mandatory joint documentation and/or registration for marital property held jointly between spouses?
- Does the state/national government provide any incentives for registering land in women's names?
- What documents are required to register land jointly?
- What documents are required to prove eligibility for **presumed joint ownership** or **compulsory joint ownership**?
- In the context of documentation of land rights, what are the rules around polygamy and co-owned land?

Vulnerability

- Inheritance issues are covered [here](#).
- How does the law define divorce? Is it permitted by law?
- What does the law say about division of property upon divorce?
 - What does the division depend on? Is it linked to **marital property** regimes?
 - Do children from the marriage factor into the division of property?

- Who decides the division of property in divorce? (e.g. families, courts, community elders, etc.)
- Are there restrictions on division of property? Are there minimum size limits for land? Can land of a certain size be divided?
- Are all categories of land treated similarly?
- Does the law provide for division of property between spouses in the event of disappearance or abandonment?
- What does the law say about abandonment?
- What does the law say about out migration of husbands?
- What does the law say about compensation for **compulsory acquisition** and/or the state taking land?
 - How is compensation determined? Who is compensation paid to?
 - Who has the right to compensation for the loss of rights?

Enforcement

- What forums have statutory jurisdiction to hear property or land rights related cases? (e.g. formal courts, courts of special jurisdiction, traditional dispute resolution actors recognized for certain cases, etc.) Do those forums have female representation?
- Is this the same for division of **marital property** cases?
- For division of property upon divorce, are there any requirements for getting into court? Are there any up-front payments?
- If there are multiple legal systems that deal with **marital property**, what is the process for determining which law and adjudicative body applies?
- Do women and men have the same right to decide which law or adjudicative body applies?
- Are there barriers to accessing the formal system of adjudication? I.e. fees, assumption of literacy (does something need to be written), identification documents, etc.

Communal and/or Customary Rights to Land

Legitimacy

- Are **communal rights** to land recognized by law?
 - If so, what is the nature and scope of those rights?
- Are **customary rights** to land recognized by law?

- If so, what is the nature and scope of those rights?
- Are the communal/customary governance rules codified or otherwise written?
 - By law, who determines what these rights are? Are they subject to legal review?
 - Who (which body?) has authority to govern land held under communal/customary tenure?
- Are communal/customary land rights allocated to individuals or to members of the group?
- Who is responsible for the allocation of communal/customary land? What criteria are used for allocation? What are the terms of use for communal/customary land?
- Which individuals have rights to the communally/customarily held land?
 - Is the right based on membership in a household, village, clan, tribe, group?
 - How are those rights different for men and women? What is the nature and scope of rights for men and women who are members of or affiliated with the "group"?
- Does the formal law recognize any rights for women within that customary group?
 - If so, what rights do women have to communal/customary land?
 - Do women have the right to own land, use land, control land, use land for specific purpose, use land at a specific time?

Vulnerability

- Are there circumstances in which women lose their rights to communal/customary land?
 - If so, what are these circumstances (divorce, death of spouse, abandonment, etc.)?
 - Are the rules different for communal or customary land than they are for individual or household land?

Enforcement

- Which forums have statutory authority to hear property rights cases involving communal or customary land?
- Are these the same for cases of division of **marital property** for those married under customary rules?
- Does the law recognize or require any pre-steps before taking a case to court (e.g. compulsory mediation, alternative dispute resolution, traditional courts, etc.)?
 - If so, are the findings of those hearings used in the formal court?

- Are women represented among those who resolve disputes?
- Who is responsible for enforcing traditional court decisions?
- Can women access the dispute resolution body on their own, or is there a required intermediary?
- Is there any recourse to a higher authority/right to appeal?
 - If so, who?

State Distribution of Land

- If the Government has a land distribution program, who is eligible for land?
- Who is prioritized?
- What documents are required?
- Do both women and men have access to the documents required for eligibility?
 - Are both women and men's names on the documents required for eligibility?
- Are women and men treated equally in the program? If not, in what ways?
- If land is distributed (or formalized) to households, by law, whose name must be listed on the title?
- Whose name(s) has to be registered?
- What are the rules for transfer of state land once it has been distributed to households? Are there restrictions on sale, lease, or inheritance?
- Can the land be partitioned?
- What does the law say about household members who leave the household after distribution? (divorce, married out, etc.)

IV. Analyzing the Customary Law Framework

Legitimacy

- Does the customary land governance system recognize women's rights to **own** land?
 - Under what circumstances? (What if a woman is married, single, divorced, widowed, remarried, has children out of wedlock or children from a former marriage?)

- What is the nature and scope of this right? Is it different from the rights of similarly situated men?
- Does the customary land governance system recognize women's rights to **control** land?
 - Under what circumstances? (What if a woman is married, single, divorced, widowed, remarried, has children out of wedlock or children from a former marriage?)
 - What is the nature and scope of this right? Is it different from the rights of similarly situated men?
- Does the customary land governance system recognize women's rights to **use** land?
 - Under what circumstances? (What if a woman is married, single, divorced, widowed, remarried, has children out of wedlock or children from a former marriage?)
 - What is the nature and scope of this right? Is it different from the rights of similarly situated men?
- Does the customary land governance system recognize women's rights to **exercise decisions over** land and income from the land?
 - Under what circumstances? (What if a woman is married, single, divorced, widowed, remarried, has children out of wedlock or children from a former marriage?)
 - What is the nature and scope of this right? Is it different from the rights of similarly situated men?
- Is the ethnic or tribal group **matrilineal** or **patrilineal**?
- Is the ethnic or tribal group **matrilocal** or **patrilocal**?
- *Is polygamy practiced?
 - *If yes, do wives live separately or together with their husbands? Does each wife live in her own house, or is there another arrangement?
 - *Does each wife have her own piece of land allocated for her use?
 - *Are there any restrictions on polygamy (e.g. number of wives, etc.)?
- Who decides when and whom a person should marry?
- Is there **dowry** or **brideprice**?
 - Who receives it?
 - Does it ever include land?
 - Who determines the amount?

- Do men bring land and/or housing to a new marriage?
 - Are men allocated land by their families upon marriage?
- How are land rights allocated within marriage?
 - When a couple marries, do they keep separate control over the land they brought to the marriage?
 - If new land is purchased during marriage, who does it belong to?

Vulnerability

- At what age do girls customarily marry?
 - Does it make a difference whether they are rich or poor?
 - Does the age of marriage influence the **dowry** or **brideprice** amount?
- What must occur for a marriage to be considered finalized under customary law? (i.e. **brideprice** must be paid, **dowry** must be given, etc.)
- What happens when a woman separates from or divorces her husband?
 - Can she return to her parents' home?
 - Does it matter whether or not she has children?
 - Does it matter whether the children are girls or boys?
 - If she has to return home, is land allocated to her? By whom?
- Do women who leave their husbands receive any land from his family?
- Do they receive any other property or assets?
 - Who decides this (e.g. husband, judge, tribal leader, etc.)?
- Is this decision appealable?
- What is the process a woman has to go through to receive land if she leaves her husband? What about with other property/assets?
- Does her family have to return the **brideprice**?

- Does this differ if she is the first wife, the second wife, or a later wife?
- Does it change if she has children? Sons? Daughters only?

Enforcement

- Do women know their rights?
- Who do women go to first when they have a land related dispute?
- What is the basic system for resolving disputes?
 - Formal court?
 - Tribal or customary court?
 - Elders?
- Are women able to access all enforcement institutions?
- What are the barriers women face in resolving disputes?
 - Possible barriers include: costs associated with dispute resolution, location and hours of dispute resolution or enforcement bodies, comfort dealing with these systems, social barriers, complexity of paperwork requirements, etc.
- Where do women usually go when they have a land dispute? Why?
- Which dispute resolution actors know women's rights? Support women's rights?

V. Glossary

Glossary

BRIDEPRICE: Money, property, or services paid by a groom or his family to the family of the bride.

COMMON OWNERSHIP: A form of shared tenure (defined below). More than one person or organization owns land or other property—each person owns a portion of the whole, divided equally unless otherwise stated.

COMMUNAL TENURE: A form of shared tenure (defined below). A group holds secure and exclusive collective rights to own, manage and/or use land and natural resources.

COMPULSORY ACQUISITION: The power a government holds to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society.

CONSENSUAL UNION: Two people who choose to live together as if they were married, but their relationship is not recognized legally.

CUSTOMARY RIGHTS: Rights acquired by custom and recognized by all inhabitants of a particular place.

DOWRY: Money, goods, land or other possessions that a woman brings into a marriage with her; very often paid by her family and sometimes paid to the groom's family.

JOINT OWNERSHIP: A form of shared tenure (defined below). More than one person or legal entity owns land or other property – each person owns the whole of the property, undivided.

LAND TENURE SECURITY: Land tenure is defined as the legal or customary institutional relationships among people with respect to land. These relationships define how rights to own, use, access, control, and transfer land are governed. Though the term is often assumed to be synonymous with ownership, land tenure is more properly understood as a bundle of different property rights in land which can include the right to own, use, sell, gift, bequeath, mortgage, and transfer land. Land tenure – the bundle of rights to land – is often described as being secure or insecure, though in practice, land tenure security is more accurately understood as existing along a continuum, where factors influencing security include the breadth, scope, and duration of rights; the social, legal, and cultural legitimacy of rights; and the adequacy and enforceability of rights. Understanding land tenure security in this more robust way is important because it creates conceptual space for the complexity of land tenure systems that exist around the world, especially in places where individual private ownership is neither the norm, nor the preference. Relationships that underlie land governance are tethered to social relationships and reflect power structures, economics, social norms, symbolic or cultural meaning, and sometimes systemic inequities. This means that, within the same society, the factors making land tenure insecure for some groups may not be the same for others and the factors that make land tenure insecure for men may be different for women.

For land tenure to be secure for women, their rights to land:

1. Must be legally and socially legitimate;
2. Must withstand changes in the family and in the community;
3. Should be long term or at least for a known duration; and
4. Should be exercisable by women in the same way that they are for men.

MARITAL PROPERTY: All property or other assets belonging to both spouses.

MATRILINEAL: Tracing descent through the maternal line.

MATRILOCAL: Located at or centered around the residence of the wife's family or people.

PATRILINEAL: Tracing descent through the paternal line.

PATRILOCAL: Located at or centered around the residence of the husband's family or people.

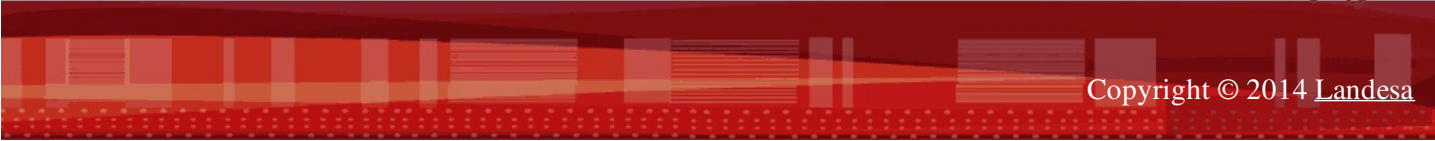
PERSONAL LAW: A body or collection of laws dealing with an individual and his or her family.

PRESUMED COMMON OR JOINT OWNERSHIP: Common or joint ownership (defined above) is, by law, the default property regime for marital couples unless otherwise stated in law. That is, all property acquired after marriage is presumed to be the common or joint ownership of the married couple unless it fits into a legal exception.

SHARED TENURE: The broad category of rights to land and housing shared by two or more people. Shared tenure can be formal or informal. Formal shared tenure conventionally refers to co-ownership or co-lease rights. Shared tenure also includes land and/or housing which is owned, leased or occupied in shares by larger groups, such as through family tenure, community titling, women's groups and co-operatives, or by couples who each hold a portion of property together, but which do not necessarily constitute equal shares to this property.

UNIVERSAL COMMON OR JOINT OWNERSHIP: All property brought into a marriage or acquired during a marriage is considered held in common or joint ownership (defined above), no matter when or how it

was acquired.



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