

# GENDER & COLLECTIVELY HELD LAND

GOOD PRACTICES & LESSONS LEARNED FROM SIX GLOBAL CASE STUDIES



**Landesa**<sup>TM</sup>  
Rural Development Institute

Center for Women's  
Land Rights



resource  
equity

Advancing women's rights to land and natural resources

## **Gender & Collectively Held Land**

Good Practices & Lessons Learned From Six Global Case Studies

by Renée Giovarelli, Amanda Richardson, Elisa Scalise

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The case study authors were: Xiaobei Wang for China, Amanda Richardson and Reem Gaafar for Ghana, Amanda Richardson for India, Asyl Undeland and Elisa Scalise for The Kyrgyz Republic, Hirut Girma for Namibia, and Leslie Hannay for Peru. The case studies were peer reviewed by Xiaopeng Pang, Prisca Mamdimika, Madhu Sarin, Eric Yeboah, and Victor Endo.

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# EXECUTIVE SUMMARY

Many studies have shown the benefits to women of secure rights to land: when their rights are secure, their status in the community and within the household can increase, their income can increase, and they and their families are less likely to be underweight or malnourished. It is crucial, therefore, that women be consulted and empowered in order to ensure that they benefit from collective land tenure reforms.

While efforts to address gender in land tenure reforms are increasing, work to improve tenure security of collective land is relatively new. Largely understudied is the intersection between gender and collective tenure security reforms. Land is a critical asset for women and men, and land held in collective tenure can be particularly important for women because their livelihoods often depend upon it. In the rush to provide secure land tenure for communities there is a risk that women's rights will not be documented or secured, thus weakening their rights to the collective land.

Early lessons suggest that formalizing collective rights to land can lead to different outcomes for men and women, often with women the losers. Because men and women typically have different roles within the household and community, their interests in collective lands are often different, and women's interests may not be considered or protected in the implementation of state programs to strengthen collective tenure.

This report seeks to answer the question:

**Where collective tenure arrangements are either being formalized or supported for the sake of securing the community's rights to land, what steps are required to strengthen women's land rights in the process?**

This report synthesizes findings from six case studies – from China, Ghana, India, the Kyrgyz Republic, Namibia, and Peru – that assess interventions to strengthen collective tenure and ensure that both women and men benefit from the improved land tenure security. The purpose of the case studies was to understand how formalizing or securing rights to collectively held lands can affect women and men differently and how projects and interventions can best address gender differences. In every case the focus is on practice, not theory, with the goal of informing the implementation of other similar interventions.

A recurring threshold question in the communities studied is, "Who is a member of the community?" Rules regarding community membership determine access to resources and participation in decision making. Customs and rules related to marriage,

death, and family are often gendered and reflect a desire to protect inheritance rights, which often, though not always, favor male group members. If such rules treat women as strangers to the collective resources of the community, they will not share in the benefits that derive from strengthened collective tenure.

Since forestland and rangeland are typically managed and used collectively rather than by individual households, the interests of women in such land must be defined with respect to their role in the community. And since arable land is typically allocated by the community to be managed by individual households, the interests of women in arable land must be defined in relation to other members of the household.

The findings in this report suggest that there are at least seven queries that planners must ask with respect to any intervention focused on strengthening collective rights to understand whether the project will strengthen women's land rights:

1. Because women are socially and culturally considered unequal to men, does the intervention recognize and address the need for social change?
2. How does the intervention address the need to increase women's empowerment?
3. What legal rights and customary rights do women have within the collective tenure context?
4. What does it take for women to meaningfully participate in governance of common property?
5. Which elements of project design require specific attention to ensure women receive full benefit from the intervention?
6. What is required for women and men to have the same level of knowledge and training regarding collective tenure rights?
7. What role should data collection and use play in collective tenure interventions to best ensure that women's rights are monitored and evaluated?

Grounded in these queries, and based upon the case studies, the report recommends that projects take steps to ensure that women's rights are recognized and strengthened before and during any process to strengthen collective tenure. Many of these steps and lessons are not specific to collective tenure arrangements, but also apply to interventions addressing individual and household tenure. At its core, the report asks practitioners not to think only in terms of the collective as a unit, but also to pay attention to the men and women that make up the collective and recognize that gender differences will affect the success of the intervention for women and men.

The report recommends that project planners take the following seven measures while planning, implementing, and assessing interventions to strengthen collective tenure:

1. **Understand the existing customary system and address the probable need for social change.** This involves identifying local partners who have existing positive relationships with the community and have worked on land issues and gender differences, and gaining a realistic view of which positive local customs and norms the intervention can support and build on and which negative customs and norms the intervention can mitigate.
2. **Identify and address the necessary preconditions for women's empowerment.** This involves working with any existing women's groups (and establishing such groups where they do not yet exist), help women to understand the value of organizing around specific issues, and working with community leaders to ensure that women have "permission" to pursue action.
3. **Identify what formal legal rights women hold within the collective tenure context and what legal changes are necessary to improve women's land tenure security.** This involves understanding the rights and obligations of customary authorities under the national law as well as the community's own rules regarding membership (including membership of women who have married into the community), and advocating for legal and customary changes to ensure that all women are recognized as members of the community, with rights to vote and participate in management of land.
4. **Ascertain what will be required for women to meaningfully participate in governance of collective property.** In addition to any changes to policies, laws, and community rules, project planners should work with the community to develop accountability mechanisms that go beyond targets and quotas, identify appropriate mechanisms to ensure that women and men understand what rights women have and have space to discuss these rights, and ensure that women are trained and otherwise supported to participate in governance of collectively managed land rights.
5. **Determine how best to ensure that women receive the information they need to realize their rights to collective land and resources.** This involves addressing women's issues directly and clearly in all trainings, but also holding separate meetings for women and men (as well as meetings that include women and men together) and focusing project communications to influence the mindset of all community members, not just members targeted by the intervention.
6. **Pay attention to gender differences in every aspect of project design and staffing to ensure women receive full benefit from the intervention.** This involves setting and achieving hiring targets for female project staff, training all project staff so they understand why the project includes a focus on women, establishing clear project goals for addressing women's tenure interests, and working with both male and female community members to achieve those goals.
7. **Ensure that data collection and use for collective tenure interventions assist in monitoring and evaluating whether the outcomes for women and men are equitable.** This involves conducting a baseline study disaggregated by sex and marital status, updating the data during project implementation to understand how women and men are experiencing the project, and ensuring that project staff understand the methodology and purpose of collecting such data.

# I. INTRODUCTION

Global awareness and interest in two land tenure issues are increasing: addressing gender in land tenure reforms and in particular promoting and protecting land rights for women, and improving tenure security of collectively held land, which is as much as 65% of the world's land.<sup>1</sup>

However, broad efforts to improve tenure security of collective lands, generally through documenting and registering the rights of indigenous peoples or local communities, are still new.<sup>2</sup> Early lessons from these reforms suggest that formalizing or strengthening rights to property for the community can lead to a concentration of rights and benefits to some community members over others, which can threaten the welfare of those who are excluded.<sup>3</sup> Women are very often among those who are excluded.

This report seeks to answer the question: **Where collective tenure arrangements are either being formalized or supported for the sake of the community's rights to land, what steps are required to strengthen the rights of women as well as men within those communities?** This report strives to both broaden and deepen our understanding of how formalization and management of collective land tenure can affect women and men differently, with an aim to applying this knowledge in very practical ways to efforts moving forward. In the rush to provide secure land tenure for communities there is a risk that women's rights will not be documented or secured, and that this will weaken their rights to the collective land. Because women are often mobile when their marital status changes (e.g., moving from their parents' to their husbands' home) the issue of whether or not women are members of the community itself can be called into question during the process of formalization. Social norms can also limit women's ability to participate in management of or decision making concerning collective land. In the context of reforms, unless particular attention is given to their interests, women may be marginalized or disregarded because of entrenched gender norms and roles.

To answer the key question of this report, six collective tenure interventions from around the world that made an effort to strengthen women's rights in the context of strengthening community rights were assessed. These interventions presented

diverse issues and had different approaches, resources, and funding mechanisms. The six case studies include projects in China, Ghana, India, the Kyrgyz Republic, Namibia, and Peru. The case studies are illustrative; they are intended to show practical, real-world examples that will help guide practitioners who are facing similar challenges to those identified.

Summaries of the individual case studies are included as appendices to this main report. The full case studies are also available as separate documents. A brief summary of the projects is provided in the following table.

COUNTRY	LAND	IMPLEMENTER	PROJECT AIMS
China	Grassland	Local government	Ensuring compensation related to rights to collectively held grassland is shared by women
Ghana	Arable	Local NGO with funding from private foundation via AGRA (Bill and Melinda Gates Foundation)	Improving capacity of Customary Land Secretariats and improving role of women in land governance
India	Forest	Local NGO with funding from an INGO, Oxfam	Increasing forest dwellers' access to and control of forest resources under the Forest Rights Act
Kyrgyz Republic	Pastoral	International Fund for Agricultural Development	Increasing livestock productivity on community held pastures in context of pasture land reforms
Namibia	Arable and residential	Two communities	Implementing Communal Land Reform Act and operationalizing customary system governing communal land
Peru	Arable	Local NGO with funding from German religious organization	Increasing women's participation in community land governance

Following this introduction, section II provides key definitions and concepts, which are critical to laying the foundation to a shared understanding of the issues and approaches. Section III provides the global context and an overview of issues from literature on women and collective lands. Section IV describes the methodology, and section V analyzes the priority issues for women associated with collectively held land, including the need for social change, women's empowerment, legal rights, project design, inclusive governance, training and education, and data collection and use.

1 Alden Wily, Liz. 2011. The tragedy of public lands: The fate of the commons under global commercial pressure. Rome: International Land Coalition. <http://www.landcoalition.org/en/resources/tragedy-public-lands-fate-commons-under-global-commercial-pressure>.

2 Indigenous Peoples is a term of art used by the UN. Indigenous Peoples self-identify as underlined in a number of human rights documents, which provide for rights that apply only to those who identify as indigenous peoples. [http://www.un.org/esa/socdev/unpfi/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfi/documents/5session_factsheet1.pdf). Community, as used in this paper, includes all collective groups (tribes, villages, Indigenous Peoples, etc.).

3 See, e.g., Jhaveri, N., V. Litz, J. Girard, R. Oberndorf, and M. M. Stickler. 2016. Community Land and Resource Tenure Recognition: Review of Country Experiences. Washington, DC: USAID Tenure and Global Climate Change Program.

## II. KEY DEFINITIONS

4

Four central terms are used throughout this report: community, collective tenure, common property, and customary tenure. Although these terms are sometimes used interchangeably in the extant literature on collective tenure, they should be distinguished from one another to ensure a nuanced understanding of the findings and recommendations.

### Community

The general term used in this paper to refer to all collective groups, including indigenous peoples, local communities, pasture users' groups, collective farms, tribes, etc. However, the specific group that uses resources and receives rights needs to be identified in the context of each project or intervention.

### Collective tenure

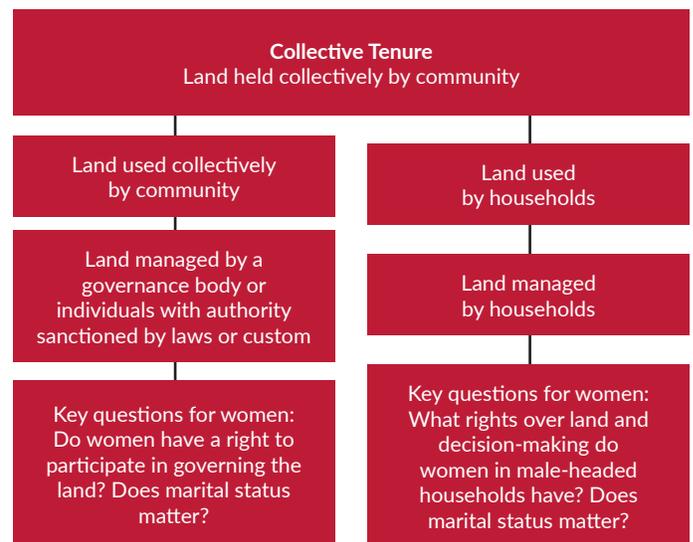
Collective tenure is the broadest term used in this paper. Under collective tenure, the community holds the rights to manage and control use of the land. In most cases, the community either owns the land or the state owns the land but devolves the power to manage and derive benefit from the land to the communities.<sup>4</sup>

Land held under collective tenure can be distributed to and used by households or used and governed by the collective as a whole (see "common property" below). Land held under collective tenure may be designated for different categories of use; for instance, some land under collective tenure may be designated for household use while other land may be designated as common grazing land. (See Figure 1.)

Membership in the community is the key feature of establishing a right to collectively held land, and membership can be defined by custom or law or both. In the case of women, it is often a relationship with a member of the community that establishes their rights to land held under collective tenure.

### Common property<sup>5</sup>

Common property is land or property held under collective tenure to which all members of the community have a legally or customarily guaranteed use right, provided they can establish membership in the community.<sup>6</sup> Common property is included in the broad term "collective tenure" but is only one of several use patterns covered by collective tenure.



### Customary tenure

Customary tenure can be defined as "a set of rules and norms that govern community allocation, use, access, and transfer of land and other natural resources."<sup>7</sup> Customary tenure systems are usually the legitimate tenure system in the contexts where they apply and can be unique to the localities in which they operate.<sup>8</sup> Customary tenure systems are part of the culture of those who are governed by them, and the systems reflect the social values and norms of that culture. For these reasons they tend to differentiate between the rights of members and those considered to be outsiders.<sup>9</sup> The systems exist on the basis of trust that those governed by them have in those who govern.<sup>10</sup> Customary tenure systems may or may not be collective tenure systems.

Customary tenure systems can be based in a customary legal system or a formal legal system, or both. Formal legal systems were generally developed during a colonial period<sup>11</sup> and consist of laws that are developed, enforced, and administered by state institutions. Often formal and customary legal systems are intertwined and are far from being clearly delimited,<sup>12</sup> which is referred to as legal pluralism.<sup>13</sup> Customary tenure may or may not be recognized in formal law.

7 Freudenberger, M. 2013. USAID ISSUE BRIEF THE FUTURE OF CUSTOMARY TENURE OPTIONS FOR POLICYMAKERS, [http://www.usaidtpr.com/sites/default/files/USAID\\_Land\\_Tenure\\_Customary\\_Tenure\\_Brief\\_0.pdf](http://www.usaidtpr.com/sites/default/files/USAID_Land_Tenure_Customary_Tenure_Brief_0.pdf)

8 *Ibid.*

9 *Ibid.*

10 *Ibid.*

11 Food and Agriculture Organization of the United Nations (FAO). 2002. Land tenure and rural development. FAO Land Tenure Studies No. 3. <ftp://ftp.fao.org/docrep/fao/005/y4307E/y4307E00.pdf>.

12 Cotula, L., C. Toulmin, and J. Quan. 2006. Better Land Access for the Rural Poor. Lessons from Experience and Challenges Ahead. London: IIED. [www.donorplatform.org/component/option,comdocman/task,doc\\_view/gid,1041](http://www.donorplatform.org/component/option,comdocman/task,doc_view/gid,1041).

13 Legal pluralism is when multiple legal systems exist in one geographic area.

4 Bruce, J.W. 1998, Review of Tenure Terminology, Tenure Brief No. 1, July 1998, University of Wisconsin – Madison.

5 In this paper *property* is used to denote land as well as what can otherwise be called "natural resources," including forests, grasslands, pastures, etc.

6 See note 4 above.

# III. GLOBAL CONTEXT

## Collective tenure and sustainable development

Collective tenure systems are locally legitimate and very common around the world. Some estimates indicate that collective tenure systems extend to over 8.54 billion hectares, an estimated 65% of the global land area, involving perhaps 1.5 billion people.<sup>14</sup> Some 18% of the world's land is formally recognized as either owned by or designated for indigenous peoples and communities.<sup>15</sup> However, studies estimate that while a significant portion of the world's land is held under collective tenure, large areas of that land are not formally or legally recognized. For instance, in Peru, indigenous people formally own or control more than one-third of the country's land area (44.55 million hectares), but an additional estimated 20 million hectares of indigenous land is eligible for formal recognition and is not yet recognized. In India, it is estimated that only 1.2% of customarily held forestland has been formally recorded and recognized. Moreover, while it has been estimated that up to 60% of sub-Saharan Africa's land is subject to customary tenure, according to a study of 19 countries in the region, only 13% of the land is designated for indigenous peoples and local communities and only 3% of the land is legally owned under community-based tenure regimes.<sup>16</sup>

There are a number of reasons why protecting collective tenure is important for sustainable development and why it is gaining traction in development practice. First, the understanding of local realities of land and resource use and management often embodied in collective tenure systems can result in efficient use of resources. Research provides evidence that where they are able to manage the land, indigenous peoples and local communities are good stewards of the land and natural resources.<sup>17</sup> However, these communities often lack the legal rights to their land, and can be dispossessed by the exploitive development of natural resources.<sup>18</sup> Moreover, protecting collective tenure can be important for addressing climate change and land degradation.<sup>19</sup> For example, community-managed forests may be

preferable because they store more carbon than non-community-managed forests.<sup>20</sup>

Similarly, formal recognition of collective tenure over land can help communities attain food security and increase their income. When rights are formalized and therefore perceived by the community as more secure, the community is encouraged to invest in the long-term sustainability of the land, thus increasing its productivity.<sup>21</sup>

Third, protecting collective tenure can decrease the state's administrative burden. States are increasingly recognizing the constraints formal state institutions face in managing areas where collective tenure dominates. Because land held in collective tenure is often remote and difficult to access, devolving authority to collective tenure institutions can substantially reduce administrative costs and avoid resource management oversight vacuums.<sup>22</sup>

Finally, as natural resources are being increasingly "commoditized,"<sup>23</sup> it becomes more important for communities to clarify existing property rights, especially where ownership rights are not easily identified. The growing demand for food and natural resources worldwide has led to increased commercial pressures on land, often resulting in negative impacts for all affected communities.<sup>24</sup> Expropriation by the state for commercial reasons and large-scale land acquisition can dispossess entire communities. The protection of collective rights has the potential to give communities a legal basis to defend their rights in the face of outside pressures.<sup>25</sup> Similarly, formally recognizing customary land rights provides a degree of legal protection for those who risk losing their rights in the transition to privatized rights.<sup>26</sup>

## Gender, land rights, and global standards

Most states have national, regional, and international obligations or commitments related to gender, women, and land rights.

14 Landmark: Global Platform of Indigenous and Community Lands. <http://www.landmarkmap.org/data/>. See also, <http://rightsandresources.org/en/publication/whoownstheand/>

15 *Ibid.*

16 RRI. 2015. Who Owns the World's Land? A Global Baseline of Formally Recognized Indigenous and Community Land Rights. Washington, D.C.: RRI.

17 *Ibid.*

18 *Ibid.*

19 In Brazil, for example, the deforestation rate is 11 times lower in community-managed forests than in surrounding areas, and in the above example community members found bringing back the acai palm brought back fish and other wildlife. See RRI 2015. IRF 2015: Securing Indigenous and Community Rights in the Future We Want. <http://www.rightsandresources.org/en/news/irf-2015-securing-indigenous-and-community-land-rights-in-the-future-we-want/> and Cultural Survival, Brazil: Indigenous reserves key to Amazon conservation study finds. <https://www.culturalsurvival.org/news/brazil-indigenous-reserves-key-amazon-conservation-study-finds>.

20 Chhatre, A., and A. Agrawal. 2009. Trade-offs and synergies between carbon storage and livelihood benefits from forest commons. *PNAS* 106 (42), 17667–17670.

21 IFAD. 2006. Community-based natural resource management How knowledge is managed, disseminated and used. <http://www.ifad.org/pub/other/cbnrm.pdf>. In Brazil, for example, a group which gained legal title to communal land invested in sustainably harvesting acai palm, which had almost disappeared from the region. See RRI 2015. IRF 2015: Securing Indigenous and Community Rights in the Future We Want. <http://www.iied.org/securing-indigenous-community-land-rights-future-we-want>.

22 See, e.g. the example of Bolivia in Pacheco, P. and J. H. Benatti. 2015. Tenure security and land appropriation under changing environmental governance in lowland Bolivia and Para. *Forests* 6: 464-491.

23 Cotula, L. 2015. Investment treaties, land rights and a shrinking planet.

24 Knapman, C., and P. Sutz. 2016. Reconsidering approaches to women's land rights in sub-Saharan Africa. IIED.

25 Brinkhurst, M. 2015. Using the Law for Resource Justice. IIED. <http://www.iied.org/using-law-for-resource-justice>.

26 See note 7 above.

In each of the countries studied as part of this report, there are constitutional commitments to gender equality, non-discrimination, and equality before the law. Each of the states studied has also ratified the Convention on Elimination of Discrimination Against Women (CEDAW), which mandates the state to uphold, protect, and realize women's equal rights in all spheres of life, including civil, political, economic, social, and cultural rights. In many countries there are also national gender policies and strategies, and in some cases the laws that govern collective lands make general statements related to gender equality.

Similarly, the Voluntary Guidelines on the Responsible Governance of Tenure, about which more below, have gender equality as a founding principle. Gender issues are addressed throughout, with the understanding that improving gender equality is important as women often have weaker tenure rights, and steps must be taken to ensure they are not marginalized.<sup>27</sup>

International agreements similarly recognize the importance of communal land tenure security.<sup>28</sup> While non-binding, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), for example, reflects global understanding about the protection of the rights of indigenous peoples, which are often exercised collectively. These include the rights to develop and control lands and resources they have traditionally owned, occupied, used, or acquired, and the agreement requires states to legally recognize and protect those rights while respecting traditional tenure systems.<sup>29</sup>

In the global development arena, securing tenure on collectively held land is increasingly recognized as important. A proposed indicator (ultimately not adopted) for Goal 1 (End poverty in all its forms) of the Sustainable Development Goals (SDGs), for example, was “[p]ercentage of women, men, indigenous peoples, and local communities (IPLCs) with secure rights to land, property, and natural resources.”<sup>30</sup> Increased recognition of the benefits associated with devolution of land rights to indigenous peoples and local communities has driven a “tenure transition” around the world over the last 20 years.<sup>31</sup> In the forest sector, about 15.5% of global forestland was legally recognized as owned or designated for forest communities as of 2013.<sup>32</sup>

The internationally negotiated Voluntary Guidelines on the Responsible Governance of Tenure (VGs), negotiated by 96

UN member countries and over 30 civil society organizations under the auspices of the Food and Agriculture Organization of the UN, recognize and instruct states to protect the customary tenure systems of communities. The VGs are the only global framework setting out internationally accepted principles on how land, fisheries, and forests should be governed.<sup>33</sup> They note that “States should protect indigenous peoples and other communities with customary tenure systems against the unauthorized use of their land, fisheries and forests by others. Where a community does not object, States should assist to formally document and publicize information on the nature and location of land, fisheries and forests used and controlled by the community. Where tenure rights of indigenous peoples and other communities with customary tenure systems are formally documented, they should be recorded with other public, private and communal tenure rights to prevent competing claims.”<sup>34</sup>

## Gender and collective tenure

In most rural communities, land is a critical asset for women and men, and land held in collective tenure can be particularly important for women, who are often less likely to be employed in income-generating labor; thus their livelihoods depend on land rights.<sup>35</sup> Women can benefit substantially from secure rights to land and property: their status in communities and in the household can increase, their income can increase, and they and their families are less likely to be underweight or malnourished.<sup>36</sup>

While studies focused on collective tenure security and women are scarce,<sup>37</sup> it has been noted often that gender plays a part in collective tenure systems.<sup>38</sup> The rights and obligations that women and men have to collectively held lands are different, and are linked to gender norms and rules related to kinship, marriage, children, inheritance, and gendered roles in the private and public spheres. In practice, women and men have different roles in accessing, using, managing, and governing collectively held land and resources.<sup>39</sup> Thus, men and women of the community will not necessarily benefit equally from efforts to secure collective tenure.<sup>40</sup> This is because the process of recognition can have the effect of cementing or increasing the rights of those more powerful in the group to the exclusion of those who are less powerful, and more often than not, women have less influence than men in the community.

27 UN Food and Agriculture Organization (FAO). 2012. Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. ISBN 978-92-5-107277-6, Article 9.8.

28 Silverman, A. 2015. Using International Law to Advance Women's Tenure Rights in REDD+. Washington, DC: Rights and Resources Initiative and Center for International Environmental Law. [http://www.ciel.org/wp-content/uploads/2015/06/WomensTenureRights\\_REDD\\_June2015.pdf](http://www.ciel.org/wp-content/uploads/2015/06/WomensTenureRights_REDD_June2015.pdf)

29 United Nations Declaration on the Rights of Indigenous Peoples. 2008. Article 26.1.

30 Land Rights: An Essential Global Indicator for the Post-2015 SDGs. 2015. <http://www.landesa.org/wp-content/uploads/Land-Rights-An-Essential-Global-Indicator-Sep-2-2015-Endorsed.pdf>. While “local communities” was later dropped from the indicator, other global movements have continued to focus on this issue of community land rights. One such example is the global call to action referred to as “Land Rights Now.” <http://www.landrightsnow.org/en/home/>.

31 RRI 2015. IRF 2015. Securing Indigenous and Community Land Rights in the Future We Want. <http://rightsandresources.org/en/news/irf-2015-securing-indigenous-and-community-land-rights-in-the-future-we-want/>.

32 *Ibid.*

33 Parmentier, S. 2014. Two years on: What became of ‘The Guidelines on the responsible governance of tenure of land, fisheries and forests?’ Accessed at: <https://blogs.oxfam.org/en/blogs/14-05-13-two-years-guidelines-responsible-governance-tenure-land-fisheries-and-forests>.

34 See note 27 above.

35 Cotula, L. 2007. Gender and Law: Women's Rights in Agriculture. 76 FAO Legislative Study (January 2007).

36 See, e.g., The Livelihoods and Development Bimonthly, 2015. Pradan. [http://www.pradan.net/images/Media/news\\_reach\\_may\\_june2015.pdf](http://www.pradan.net/images/Media/news_reach_may_june2015.pdf).

37 See note 3 above, which briefly mentions “gender equity,” but does not further explore the issue.

38 See Archambault, C. and A. Zoomers, eds. Global Trends in Land Tenure Reforms: Gender Impacts, Chapter: Resigning their Rights? Impediments to Women's Property Ownership in Kosovo. Routledge. p. 249.

39 See, e.g., Knight, Rachael, Marena Brinkhurst, and Jaron Vogelsang. 2016. Community Land Protection Facilitators Guide. Namati.

40 Aguilar, L. et al., eds. 2011. Forests and Gender. IUCN: Geneva and WEDO: NY.

The threshold question that must be answered when assessing a collective tenure arrangement is; Who is a member of the affected community? This is important because if a woman is not considered a member of the community, then her rights will depend on her relationship to a member (her husband or father, typically), and can be thought of as indirect, whereas a male member of the group has direct rights. This has significant implications because under this scenario a male member of the group will have rights for his lifetime while a woman non-member may not. For instance, a woman's right to use collectively held land might be lost if her marriage ended in the death of her spouse without children being born. Thus rules of membership are particularly critical for women, and because customs and rules of marriage, death, and family are often gendered and reflect a desire to protect men's inheritance rights, especially in patrilineal societies, women are often deemed outsiders.

## Gender and different categories of land held in collective tenure

This section provides a brief overview of the three types of land found in the six case studies and considers them in light of our main question: where collective tenure arrangements are either being formalized or supported for the sake of the community's rights to land, what steps are required to strengthen the rights of women as well as men within those communities?

### Forestland

In many countries, forests have a complicated history of tenure claims by states, local communities, and others. People may live in forests, or they may live adjacent to forests but use them for their livelihoods, including through collection of goods such as herbs, plants, and fuel, collectively called "non-timber forest products" (NTFPs). Forests are often held by the state, and concessions for forest management, including removal of timber, may be given to agencies or to private actors.<sup>41</sup>

Rights to and management of forests can be categorized as:

- Forests administered by governments (including land owned exclusively by the state and areas where community rights are limited to basic access or use rights (including rights to timber);
- Forests that are designated by governments for indigenous peoples and local communities (state owned but with local rights, ranging from use rights to management rights, recognized conditionally);
- Forests owned by indigenous peoples and local communities; and
- Forests owned by individuals and firms.<sup>42</sup>

41 IRF 2015: Securing Indigenous and Community Land Rights in the Future We Want. March 23, 2015 Accessed at: <http://rightsandresources.org/en/news/irf-2015-securing-indigenous-and-community-land-rights-in-the-future-we-want/#.V1H07ZODGko>

42 *Ibid.*

A study of 40 countries found that, globally, governments still "overwhelmingly claim control over forest land," but that local community control is increasing, corresponding with a worldwide increase in the number of legal frameworks that recognize the rights of indigenous peoples and local communities to forests.<sup>43</sup> However, implementation of these frameworks is still lagging.

While forestland can be individualized, natural forests are more often held as common property.<sup>44</sup> Issues for women on collectively held forests center around questions of how membership in the community governing the forest is determined, and who from among the community has the right to participate in decision making about the forest. Women who move to the forest at the time of marriage, for example, may have access to the forestland and the right to use it for specific purposes, but that right may depend on their marital relationship and may end when that relationship ends. Governance issues for women on forestland usually fall into the categories of: meaningful participation in decision making, having an equal voice in consultative processes, being empowered with agency to act on decisions, and having the time, interest, and capacity to participate in decision making in the face of other competing demands of time. Equal participation for women in community-based decision making is often difficult to achieve, so where legislation devolves management and control of forests to local communities, women may not be free to participate without an external intervention.<sup>45</sup>

### Pastureland / rangeland<sup>46</sup>

Pastureland is land that is suitable for raising livestock. Pastoralists may have individual title to some or all of the land they use. More often, pastoralists graze animals on common property that is held by their community. However, because grazing often requires seasonal movement, sometimes over large areas of land, many pastoralists have seasonal or temporary use rights to lands that are collectively held by other communities. In this case their rights are generally secondary to the rights of the community whose land they use. Thus, pastoralism can create complex tenure patterns. For instance, pastoralists may claim group grazing rights on another group's agricultural land for a specific season, or two separate pastoral groups may share rights to watering holes.<sup>47</sup> These webs of tenure rights have often been eroded over time because of pressures on the land.<sup>48</sup>

Very little research has been done on women and pastoralism.<sup>49</sup> In part, this is because men have traditionally been considered primary pastureland rights holders and users, with women

43 *Ibid.*

44 RRI. 2014. What Future for Reform? Progress and slowdown in forest tenure since 2002. Rights and Resources Initiative, Washington, D.C.

45 World Bank. 2009. Module 10: Gender and Natural Resources Management, From the Gender in Agriculture Sourcebook.

46 Pastureland is also called grassland or dryland.

47 Thornton, P. K., R. L. Kruska, N. Henninge, P. M. Kristjanson, R. S. Reid, F. Atieno, A. N. Odera, and T. Ndegwa. 2002. Mapping poverty and livestock in the developing world. ILRI: Nairobi.

48 Behnke, R., and M. S. Freudenberger. 2013. USAID Issue Brief: Pastoral land rights and resource governance.

49 Coppock, D. L., M. E. Fernandez-Gimenez, and J. Harvey. 2013 Women as Change Agents in the World's Rangelands: Synthesis and Way Forward. *Rangelands* Vol. 35 Iss. 6.

considered to be home-keepers, even though this may not be the case in reality. Women's pasture use may include, among other uses, water and fuel wood collection, collection of herbs and mushrooms, and grass cutting. Women may also travel to pastures with men and care and feed animals that are grazed, as was found in the Kyrgyz case study that is part of this report. Because of these differentiated uses, men and women are differently impacted when pasture resources become scarce or more difficult to access,<sup>50</sup> and women often lose out more than men.<sup>51</sup>

Because pastoralists often depend on movement from one place to another in different seasons, community boundaries as well as land boundaries can be fluid, and thus women's membership in the community may not be as much of an issue. Members of one pastoral community may join members of another for a specific season. In agro-pastoral communities, some family members may move, while others remain behind on the family's arable land. However, the China case study in this report contradicted this pattern. There, because pastureland is still held by the village collective, the collective decides who is a member of the community.

As with forests and other communally used land, governance issues for women usually fall into the categories of meaningful participation in decision making, having an equal voice in consultative processes, being empowered with agency to act on decisions, and having the time, interest, and capacity to participate in decision making in the face of other competing demands of time. In addition, women's use of the pastures may not necessarily be considered a "right" or may be considered a "secondary right" and are therefore not documented when community land rights are formalized.

## Arable land

Arable land generally refers to agricultural cropland. Collectively held arable land is most often allocated by customary authorities to be used and managed individually or by households. Some arable land may be used communally, though this is not common.<sup>52</sup>

Because collectively held arable land is usually allocated to households, many of the gender issues that arise in this context are similar to those that apply to privately held arable land. This similarity is not always recognized in law, thus creating a legal gap—family laws may exclude land held in collective tenure. In the Ghana study in this report, for example, rules of inheritance in formal law do not apply to stool (customary) lands. A further layer of complexity comes from the fact that very often these collectively held arable lands are governed by rules of customary tenure, which may or may not be recognized in formal law. On the other hand, while some legal systems might recognize

customary tenure as a legitimate form of tenure, women's rights within those customary tenure systems are not clearly understood, and are often not protected as equal to those of men. This uncertainty about women's rights in some customary landholding systems can contribute to exclusion of women.<sup>53</sup>

50 Ridgewell, A., G. Mamo, and F. Flintan, eds. 2007. *Gender and Pastoralism Vol. 1: Rangeland and Resource Management in Ethiopia*. SOS Sahel Ethiopia, Addis Ababa.

51 Forsythe, L., J. Morton, V. Nelson, J. Quan, A. Martin, and M. Hartog. 2015. *Strengthening dryland women's land rights: local contexts, global change*. Natural Resources Institute, University of Greenwich, Chatham, UK.

52 See note 11 above.

53 Peters, P. 2004. Inequality and Social Conflict over Land in Africa. *Journal of Agricultural Change* 4 (3): 269-314.

## IV. METHODOLOGY

The primary research question of this paper requires a pragmatic focus in the case studies: what steps are required to strengthen the land and property rights of women as well as men within collective tenure communities? What was done? Why? Did the intervention work or not? What can be learned from the experience?

To help identify appropriate projects to review, the editors and drafters of the case studies sought broad input from a range of practitioners, organizations, and agencies from around the world. The initial criteria were that the intervention was applied to collective lands, that it aimed to increase the land tenure security of the community, and in particular that it sought to address gender as part of the intervention. Projects also had to be willing to be part of the study and needed to have undertaken some or most of the planned project activities. Identifying projects that met these criteria proved to be more difficult than anticipated. This was partly because as a relatively new area of attention, few projects met the threshold criteria, and partly because many projects were at a stage that was too early to tell whether the interventions were meeting their objectives.

Final case studies were selected by the authors, in coordination with the editors, based on desk research and interviews with project implementers.

While not all findings are generalizable, in selecting the cases, we considered the entire portfolio of cases and did our best to include a range of projects that covered a diverse set of: types of land, locations (region of the world), types of implementer, and types of funder (government, INGO,<sup>54</sup> NGO<sup>55</sup>, international donor).

Each case study was drafted by a different author or authors, in coordination with a national expert and the team that implemented the project. Desk research was conducted first and covered project documents as well as a legal and contextual framework analysis. The desk research was followed by a field-based assessment of the intervention, conducted over 10-14 days. The case studies were drafted in consultation with local experts, and the findings were brought for validation to key stakeholders. The findings were reviewed by at least one national expert and one international peer reviewer.

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<sup>54</sup> International Nongovernmental Organization.

<sup>55</sup> Nongovernmental Organization.

# V. MAIN FINDINGS AND RECOMMENDATIONS

Increasingly, states are recognizing, formalizing, and sometimes documenting collective rights to land. Variations in how collective land rights are acquired, managed, governed, and allocated have different implications for women and men.

The findings in this report suggest that there are at least seven queries that any intervention focused on securing community rights must ask in order to design a project that will strengthen women's land rights as part of that effort.

They are:

1. Because women are socially and culturally considered unequal to men, does the intervention recognize and address the need for social change?
2. How does the intervention address the need to increase women's empowerment?
3. What legal rights exist related to women's rights within the collective tenure context? What customary rights to land exist for women?
4. What does it take for women to meaningfully participate in governance of common property?
5. Which elements of project design require specific attention to ensure women receive full benefit from the intervention?
6. What is required for women and men to have the same level of knowledge and training regarding collective tenure rights?
7. What role should data collection and use play in collective tenure interventions to best ensure that women's rights are monitored and evaluated?

For each of these questions in the collective tenure context, the paper considers:

- What risks and opportunities does this issue present for women's land rights?
- How can those risks be identified in any given intervention?
- What actions can limit these risks?
- Based on the findings from the case studies and the authors' broader experience with women's land rights, the issues identified in this section are focused on what happened in practice in order to allow others facing similar challenges to learn from these case studies.

This section is organized into the steps recommended that any project take before formalizing or supporting collective tenure arrangements to ensure that women's rights are recognized,

formalized, and supported. The order of these actions will depend on the specifics of the project.

## 1. Understand the existing customary system and address the probable need for social change

Land tenure systems are part of the cultural, social, political, and historical makeup of a community and are at the core of a rural society. For indigenous peoples and local communities, their land tenure system is core to their identity as well. Land tenure systems reflect the power structure in a society. Because land and other natural resources are central to social and cultural identity and economic wealth, tenure arrangements in a society develop in a manner that entrenches the power relations between and among individuals and social groups. Tenure thus has enormous political implications, and tenure issues are liable to be politicized.<sup>56</sup> Working to improve land tenure security for women, especially in communities whose identity is linked to the land, requires both working with (and sometimes within) these existing power structures, while also being keenly aware of the potential social and cultural change that land tenure reforms entail.

### Risks to women's land tenure security

Gender roles and norms governing women's and men's behavior, opportunities, and perspectives are also part of a socio-cultural context. Improving women's rights to land within a given tenure system, especially in rural areas where land rights are a key economic asset and the basis of social and cultural organization, usually requires social change because women generally have less social power than men and have weaker land and resource rights. The starting place is that women's decision-making rights to land are often not socially legitimate in the eyes of the community, even if some customary rights, like use rights, are recognized.<sup>57</sup> Therefore, social change that focuses on the recognition and acceptance of women's control of and ownership rights to land is a necessary step towards establishing legitimacy.

Projects that seek to support or formalize collective tenure must proceed with an awareness that both gender and land tenure are products of their contexts and that seeking to address gender issues will require some level of social change. Social change interventions are risky because they are complex and often

56 Daley, E. and C. M. Park. 2011. Governing Land for Women and Men. Gender and Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources. Land Tenure Paper 19. Rome: FAO.

57 In some cases, these use rights are exclusive to women--for example the right to collect medicinal herbs on pastureland may be customarily understood as the right of women.

require focus, time, effort, and community acceptance, and this is difficult to achieve within a project timeframe without pre-existing community relationships. In two of the six case studies included in this report, the social change that enabled women to gain secure land rights was built on the long-standing relationships of the implementing organization and the community on gender issues. The communities in the six case studies all contended with balancing respect for the community norms that are the basis of the collective tenure system with the need and desire for social change.

## Promising approaches

Case studies in India and Peru provide examples of projects where social change had occurred during the course of the project, thus guaranteeing women stronger rights to land. In both of those projects, the implementing organizations had a long history of working on social change in the community. In a third case, the Traditional Authority in one community in Namibia already had a governance structure that included women, but still needed to build on that structure to encourage social change that would strengthen women's land rights.

### Implementing organizations engaging with the community

When implementing organizations have a long, deep, and consistent engagement with the community they are more likely to be able to influence or initiate the social change that is needed to achieve stronger land rights for women.

Implementing organizations that want to improve the situation for women can benefit from working with grassroots organizations, as in the India example, and also from connecting to regional and national networks of women's organizations.

The case study from India illustrates this. In that case, a local NGO was funded to assist forest communities in exercising their rights under the Forest Rights Act 2006 (FRA) as part of a larger effort by Oxfam India to increase forest dwellers' access to and control over natural resources in three states. A core mission of the NGO, Naya Sawera Vikas Kendra (NSVK), is strengthening the rights of communities. The project objectives were to help individual households within the community acquire titles to forest land that they had been cultivating and to set up an administrative structure to manage forest land held as common property and used communally. Thus, strengthening women's land rights involved ensuring that women's names were documented on titles to household rights as well as ensuring that women participated in governance of the common property.

In India, customary practices generally grant women fewer rights to land within the household than those granted to men, and women are not involved in community level decisions.<sup>58</sup> While the formal law protects women's rights to own and inherit

land, in practice when land rights are formalized, women are rarely named on titles, and inheritance is generally patrilineal.<sup>59</sup> Moreover, the women interviewed for the case study recognized their relatively limited power vis-à-vis men, stating that women in their communities have less economic power, less access to government schemes, and much lower rates of literacy than men. Interviewed officials stated that in the state of Jharkhand, where NSVK works, there is only 2% female literacy in tribal areas where most forest dwellers live. For these reasons, women are less likely to participate in public life, including community meetings.

Before the project started, NSVK had already been working in the targeted villages and had established issue-based committees<sup>60</sup> run by social workers employed by NSVK at the local level. The social workers were selected from among young, literate volunteers who were already working in the organization and receiving a small honorarium. They served as a bridge between the community and outsiders, including other NSVK staff and the government.

The social workers were trained on relevant issues in monthly meetings. In this case, they were trained on the Forest Rights Act (FRA) and on how to prepare individual and collective forest rights claims, as provided by the law. The trainings included how to lead an exercise for mapping the individual or collective forestland holdings.

The NSVK model involves deep involvement in each village, and they have been involved in these communities for five to six years. NSVK leaders believe that it usually takes about two years to establish enough trust with the community to begin the process of changing customs, especially those related to women's rights to participate and lead in community decision making. It is not customary in Jharkhand for women to be equal participants in male spaces, such as community meetings. NSVK worked with these already-established village groups to increase their awareness of both the FRA and the importance of women's involvement in governance. Ongoing discussions with both women and men on the importance of women's participation and on the economic and social benefits of their inclusion were identified as key to changing community norms and attitudes towards women's participation.

The case study from Peru provides a good example of how an approach that integrates the knowledge and reputation of local actors with the experience of regional actors can create the space for social change. In Peru, the project, "Indigenous Quechua and Aymara Peasant Women's Access to Land Governance in their Communities," is being implemented by Servicios Educativos Rurales (SER) as part of SER's ongoing efforts to promote the exercise of human rights through democratic participation and rural development. The project aims to increase women's use and control of common land and

58 Hanstad T., R. Nielsen, J. Brown. 2004. Lands and livelihoods: making land rights real for India's rural poor. FAO Livelihood Systems Programme Paper, RDI, Seattle/FAO Rome.

59 *Ibid.*

60 These are focused on issues the village identified as important, and always include a committee about women.

resources, increase rural women's involvement in land tenure governance in their communities, and support rural women's access to productive resources.

The concept for the project was developed by SER in collaboration with both a national organization of Andean and Amazonian indigenous women that advocates for indigenous women's individual and collective rights and with grassroots women's organizations at the local level. The project design emerged from these organizations' areas of expertise, which ranged from the hyper-local all the way to regional and national experience. In addition, leaders from earlier national campaigns to promote grassroots empowerment movements are the key personnel in the SER project, and community trust is built upon their reputation. The project's regional coordinators are also from the regions in which they are working. They are familiar with local customs and contexts and are able to build further trust with the communities.

Even though the implementing organizations were familiar with the local communities and the local context, among the first components and products of the project was a comprehensive analysis of women's land rights in the target area, which had not previously been done. The report analyzed the experiences of indigenous peasant women (*comuneras*) regarding land use, access to land, economic participation, and participation in land decisions within their communities. It also looked at barriers to women's full participation in land governance and, on the basis of this assessment, identified potential social issues that would need to be addressed if the project was to be successful.

One barrier identified in the analysis was the deeply rooted patriarchal traditions<sup>61</sup> in the target communities, and the potential risk of rejection of the project by male leaders who believed that the project wanted "to take men's land." Though the initial aim of the project was to work only with women, the project team adjusted its approach to mitigate the risk of rejection by male leaders and actively worked with men as well as women. This approach became a central part of the project, both in order to diminish risk of backlash for women participants (by convincing spouses and other community members that the project supports the community as a whole) and to ensure the success of the project's objectives (changing gender discriminatory norms within the community). This revised approach, based on this deep involvement with and understanding of the community, had a significant impact on the ultimate, greatly expanded scope of the project and helped the project gain the necessary support for the social changes it sought. For example, six communities successfully modified their statutes to guarantee women's rights of participation and decision making, and on average women make up 33% of leaders in communities participating in the project.

## Building on positive customary practices

While social change is generally required for women to have secure and equitable land rights, for the changes to be sustainable, it is critical to build on existing customary practices and social norms that positively affect women and help create space for necessary changes. Understanding positive practices requires collecting information about how women and men use and control land, how community decisions are made and what role women play in community governance, how wealth is distributed within the household through inheritance and dowry or bride price, what customs exist for caring for the elderly or widowed, etc.

For example, in a context where women are already in a leadership position for unrelated matters, it may be easier to make a case for women's inclusion in land governance bodies. In Namibia, for example, the decision-making structure of the Shambyu Traditional Authority is inclusive, with women well represented at all levels. At the time of the case study, the highest office of *homba* (title of a traditional leader) was held by a woman (the late Homba Angelina Matumbo Libebe), and women made up a majority of the Chief Council (eight of 12 members). Additionally, approximately 50% of the village headmen were women. Historically, both men and women have served in the capacity of *homba*. On the Community Land Boards, which are statutory structures that are intended to support the work of traditional authorities for land-related matters, women were also strongly represented. In addition, women in the community reported that they were able to access and present their own interests to the relevant traditional authority representatives.

However, more may be needed to ensure that the positive customary practice of including women in leadership positions strengthens the standing of women who come before these bodies to request land. In the Namibia case, women's representation in leadership itself was not sufficient to change deeply held customs related to women's rights to land. Upon receiving the request for land, the headman or headwoman inquires about intended use and ability to use the land requested. Women's limited productive and financial resources can deter them from requesting land and may negatively affect the probability of their securing an affirmative response. Also, women and men who are not native to the community experience more challenges securing customary rights to land, as the level of scrutiny and permission required for applicants from outside the specific community is higher. Women are more likely than men to fall into this category due to patrilocal residence patterns. Another barrier for women is that land acquired during marriage is likely to be considered ancestral land, and ancestral land cannot be allocated to outsiders.

The customary norms outlined in the Namibia case study help illustrate the level of analysis and understanding that is required when considering social change and positive adaptation of customs related to land rights. A contextual analysis must consider the customary tenure system in its entirety and must

61 For example, land is passed down to sons rather than daughters.

understand what is working for women, what is not working, what changes women themselves seek, where women believe there is realistic potential for change, and what will be lost if a customary norm is changed.

### Summary of lessons learned:

- Seek out and support local partners who have existing positive relationships with the community.
- If possible, choose local partners that have worked on land-related issues and have addressed gender differences prior to the intervention.
- Connect local issues and organizations to efforts at the regional and national level.
- Understand that women holding leadership positions, while positive, may not be sufficient to change social norms and customary rules to better protect women.
- Understand local customs and social norms to have a realistic view of what the project will need to address – what they are, why they exist, what benefit they provide, whether there is a desire for change by either men or women, what is the potential benefit or harm of change and to whom – and build on positive customs.

## 2. Identify and address the necessary preconditions for women's empowerment

For women to be empowered within their communities, certain enabling conditions must be in place to give women access, voice, and agency in community power structures. Globally, there is a gender gap in women's access to power, inclusion in decision making, and leadership at all levels, including in rural councils.<sup>62</sup>

### Risks to women's land tenure security

In most of the ongoing work around the world focused on women's land rights, programs that aim to ensure women have secure land tenure must also support women's empowerment. In each of the six case studies for this report, the implementing organization assessed the level of women's empowerment in the target communities, including their ability to make decisions and participate in governance at the start of the project. The implementing organization also determined whether the project was able to further empower women within their household or in collective land management and decision making.

Women generally have less social and political status in a community than men do, and their low status can impact their involvement in decision making and ability to claim their rights to use or "own" land. As with social change, discussed above, raising women's status can take a long time, and projects and interventions are generally short-term (one to five years).

The risk of only informing men of their rights and of only including men in decision making about common land is that women's needs will not be recognized or considered. Because women are frequently restricted to a realm which encompasses the homestead and the land surrounding the home and because men are typically the public face of the family, women do not usually engage in public activities. When they do, they may not speak up while men are in the room, or they may not feel that they can contest something said by a male, especially a relative. When collectively held land is managed by the community or a subset of the community, it is unlikely that women will automatically participate in its management. Only in one instance in the six case studies did women, by custom, participate in governance (Shambyu community in Namibia).

However, not all women experience exclusion to the same degree. Some women in the community may have better access, more information, or a greater say than others, based on such attributes as marital status, age, relative wealth, education level, or social relationships in the community.

Social constraints on women can also create conditions in which a project relies too heavily on women themselves to make change happen without also providing support or capacity development. Women often lack the confidence, knowledge, and skills to meaningfully participate in public settings. Women may not know how to mobilize change in the face of norms that encourage women to remain in or near their homes. Women may not know how to lead or participate in group meetings if they have not had the experience of doing so. Women may not understand the value of their contributions to decision making. For example, in the Kyrgyz Republic, women did not see the need to participate in the pasture management committees until they recognized that they used and depended on the pastures as much as their husbands did, and that their needs were different because their roles were different.

Sometimes it is difficult to increase women's power within the community because men may not allow for change if they do not understand the need and desire for change. As well, men may be suspicious of women's increasing power if they are left out of the process; this risk can be mitigated by including men as well as women in community meetings and trainings.

### Promising approaches

If one goal of a project is to include women as well as men in public information meetings, in decision-making bodies, in surveying and identifying boundaries, etc., then identifying women who are already organized or who already have a voice in the community is often an effective starting place. Several of the projects in our case studies had a goal of further empowering women so that they would be able to effectively participate in collective land management. In all cases, women's groups were supported, and in some cases men as well as women received training about women's land rights and the need for women's empowerment.

<sup>62</sup> United Nations Women Watch. 2012. Fact & Figures: Rural Women and the Millennium Development Goals.

## Working with women's groups

Women who are already organized in groups usually have some experience of identifying their needs and making decisions. This empowerment can build women's confidence to participate in local governance. In the India case, to reach the project's goals of increasing women's use and control of collective forestland and of increasing involvement in land tenure governance in their communities, the implementing organization built on the success of self-help groups devoted to savings and income-generating activities and on women's issue groups that the organization had established for women. These groups had the respect of the communities, and many groups had been established for five or six years. Groups of women in targeted villages had already self-organized to patrol the forest. The NSVK model of holding frequent meetings of these women's groups helped the women learn how to participate in community meetings related to land.

The Ghana project also drew upon established women's groups. The project, which sought to help smallholder farmers secure their rights to collectively held lands during the formalization process, had a quota for women's involvement in sensitization meetings. The project implementer met that quota by targeting women who were already part of women's groups. This allowed the women to be immediately trained to participate in community meetings without first having to build their confidence and understanding of the value of their voice.

Women's groups can also be organized for the specific purpose of raising a land rights-related concern. In China, in one particular community, referred to as *T Gacha*, over ten married-out women had not been allocated any grassland either in their birth *gacha* (village-level collective) or in their husbands' *gacha* during the grassland allocation under the Household Responsibility System. Since the women had not been allocated contract rights to grassland they were not eligible to receive any subsidies under the government program that paid subsidies to discourage use and promote conservation of the grasslands. Dissatisfied with this outcome and realizing that requests from individual women would be too weak to be noticed by the local authorities, the women formed a group to ask the *Gacha* committee and the township government for equal treatment with other herders under the program. Women in the self-organized group shared information, provided mutual support, and took collective action to defend their rights to the subsidies and rewards. This collective action put political pressure on the government and the *gacha* committee to take their problems seriously and to avoid escalation of the issue. With the strong intention of ensuring that everyone would benefit from the program, together with the pressure to curb social unrest and construct a harmonious society, the local government responded by working with the *gacha* leaders to explore solutions. Women's awareness of their rights and their ability and willingness to organize themselves to actively claim their rights was critical in their success in gaining grassland subsidies and rewards.

## Focusing on women's empowerment by working with the whole community

Working with men in the community can help create the enabling environment for women's empowerment. In the India case, it took between one and two years of engagement before the women's groups were accepted by men, and this happened before the forest rights project began. Men were targeted to be taught about the importance of women's empowerment and have since become truly supportive of women's rights. In part, this is because they had time to see the benefits of empowering women, both economically and socially.

Likewise, in Peru, the goal of the SER project was to empower women to better participate in community governance of land. As originally designed, the project set out to target and work primarily with women to increase their participation in General Assemblies, promote women leaders, and strengthen community governance structures to safeguard women's rights of participation and voice. Early on, the project found that women required community permission to participate in the project. Ensuring the receptiveness of local leaders to the project and, ultimately, to the ideas and values that the project promoted was centrally important to ensuring the success of the project and women's involvement.

## Summary of lessons learned:

- Where they exist, work with existing women's groups.
- Where they do not exist, or where some women are not already involved in women's groups, establish women's groups as part of the project design.
- Help women understand the value of mobilization and organization around specific issues.
- If necessary, work with community leaders and men to support women's action and endorse it.
- Provide women with training on group organizing, leadership, effective group participation, etc.

## 3. Identify what formal<sup>63</sup> legal rights women hold within the collective tenure context and what legal changes are necessary to improve women's land tenure security

In the six case studies, all communities operated simultaneously within formal law and customary law systems.

## Risks to women's land tenure security

While much collectively held land is under a customary system of rules, formal laws can impact how such land is distributed, used, and managed. Formal laws can create the space for

63 Informal rights are discussed in number one, above.

positive adaptation of customary tenure systems to the extent that they depart from universally or nationally recognized rights or public interest. For women's legal rights on customary land, a two-pronged strategy is required both to provide equal rights and to grant women preferential treatment to counter historical and social discrimination against women. Unless equality provisions are combined with differential treatment to level the playing field, the provisions are not likely to yield equitable outcomes for most women, especially in the short- and medium-term. For instance, in Namibia, even though the law provides for equal rights to marital property, women generally move to the husband's home after marriage, and husbands traditionally apply for customary rights for the marital residence and farmland from the traditional authorities before the marriage, with the result that it is men who are likely to be named on land certificates. This is difficult to remedy without affirmative measures to secure women's rights to land during marriage.

The legal risks to women's land tenure security on collectively held land include: laws that allow customary law to trump formal law in the case of a conflict of laws, laws that are poorly written or are too broad and inadvertently allow for customary rules that exclude women to prevail (such as laws that do not clearly state that all household members are considered members of a community), and laws that do not protect women's rights to collective land, even when that land is allocated to, and used and managed by individual households.

While none of the projects covered in the case studies focused on changing the formal law, most of them tried to use the formal law to the best advantage of the project. This section looks at how legal rights affect women's land tenure security and ability to manage community land.

## Promising approaches

In simple terms, the key risk in a collective land tenure setting is that customary laws that do not support women's secure rights to land they use will undermine formal laws that do provide such support. While this is also a consideration with individually held land, there are some issues that are unique to the collective land tenure context, such as rules regarding membership rights and the question of whether marital property laws apply.

### Understanding legal pluralism

The constitutions of countries included in these case studies all contain significant gender non-discrimination protections, including equal rights for women and men, equal rights to property, and prohibitions against discrimination based on sex. However, the constitutions differ in how they handle situations where customary law contradicts these protections.

A positive approach comes from Namibia, which expressly recognizes customary law but only if it aligns with the Constitution and other formal law. Customary law that is in conflict with the Constitution is not valid. The conflict can be explicitly resolved

by an act of Parliament, as when customary rules that permitted dispossession of the property of widows were changed to better reflect constitutional protections for women. The Communal Land Rights Act (CLRA) recognizes and consolidates the legal authority of Traditional Authorities to administer communal land while also reinforcing gender responsive customary laws and incorporating additional gender-responsive safeguards, including allowing women to have independent customary land rights, explicitly protecting widows, not requiring that spouses be formally married, and recognizing joint titling.

In contrast, Ghanaian formal law does not override customary law to nearly the same degree, allowing customary law to trump formal law regarding inheritance rights. While the Constitution guarantees that all persons are equal before the law and cannot be discriminated against based on sex,<sup>64</sup> its intestate succession law specifically exempts stool or skin land (types of customary land) from its purview. Since stool land makes up around 80% of Ghana's area, this exemption means that women are largely excluded from the opportunity to inherit land rights in most of Ghana.

In Peru, though it is not expressly stated, in practice constitutional protections for the autonomy of local communities trump constitutional protections for women. The Constitution of Peru provides for gender equality before the law, including equal rights to property and inheritance, while also allowing "peasant" and "native"<sup>65</sup> communities to self-govern, including on matters of land rights. The self-governance provision has meant that women are often excluded from inheriting and also from decision making related to property rights. The state program that was tasked with titling collective lands was aware of the contradiction but prioritized the constitutionally-protected autonomy of the community over the protection of women's rights. Similarly, China calls for gender equality in its laws,<sup>66</sup> but it also devolves authority over governance decisions to village collectives, which have the right to decide key matters in the village, including how collectively owned land and land-related benefits are allocated to collective members, and the discretion to determine who is a member of the collective.

However, formal law and customary law are not always in conflict, and statutory laws can both recognize customary authority and oblige it to protect women's rights in the same way that formal institutions must protect women's rights. In Namibia, statutory laws governing Traditional Authorities provide that Traditional Authorities are to administer customary law and are responsible for upholding, promoting, protecting, and preserving culture, language, tradition, and traditional values, including allocation of land rights and land governance. At the same time, the Traditional Authorities, by law, have the positive responsibility for affirmative action in the community to address the historical

<sup>64</sup> Constitution of Ghana, Article 17 (1) and (2).

<sup>65</sup> These are terms used in the Peruvian Constitution.

<sup>66</sup> The Rural Land Contracting Law (2002) provides that women enjoy equal rights to men in regard to rural land rights. China's Protection of Women's Rights Law (2005) reiterates the same mandate.

exclusion of women from decision making at the community level, particularly in respect to promoting gender equality in positions of leadership.<sup>67</sup>

In addition, formal law can recognize and allow for the diversity and complexities of customary tenure systems. For example, based on findings from the first phase of implementing the Community Land Rights Act, the Government of Namibia is incorporating recognition of rights of a group when collectively held land is also used communally in order to accommodate customary systems where this usage practice exists.

### Understanding the implications of membership

Rights to community land are based on membership in the community, and the way that membership is defined in law or the way that the law manages who defines membership can have gendered implications. Very often, collective tenure systems are based on customary law and practice.<sup>68</sup> In patrilineal and patrilocal systems, customary land rights tend to be most favorable to men in nature, scope, and security because men's rights are ancestral, established at birth, and defined according to which family or group they belong to, and generally women move to their husband's home at marriage.<sup>69</sup> Women's rights are more often based on their marital status, including which family or group they marry into.<sup>70</sup> Women who marry into and move into a community are very often considered "strangers" or outsiders because they are not members of the community by birth or bloodline. Men's rights are thus seen as the primary rights, with women's rights as secondary.<sup>71</sup> In some cases, women's use of land is not considered a right at all by either the men or women in the community.<sup>72</sup> In matrilineal and matrilocal systems, which are much less common, community membership may not create difficulties for women, although male authority may still be normative with brothers and uncles maintaining primary rights to land and property. Protecting customary systems and formalizing collective tenure rights can ossify these customary relationships, thus privileging men.<sup>73</sup>

Under current Chinese law, for example, membership in a collective is not defined or standardized among villages, leaving the question to the determination of each village committee. In rural

China, families overwhelmingly follow the tradition of patrilocal residence. Traditionally, once they marry, women are no longer seen as members of their birth village and are often viewed as outsiders in their new village. No matter where she resides or where she was born, a woman's "membership" is not set; depending on how each village defines membership she may be a member of both villages or neither. Women who are deprived of village membership are excluded from the allocation of collective land and from the benefits that accrue to those who are included, such as when compensation or subsidies are paid to the collective land rights holders.

Revealed in the case study from China, when land-related subsidies (for non-use of grasslands) are distributed to the village collective on a per hectare basis and then divided among members, it benefits the village collective to define membership narrowly so that each member will receive a greater portion of the overall subsidy. However, the village-level collective, the *gacha* covered in the case study decided to provide subsidies on a per person basis, in which case it was more lucrative to the village collective to define membership broadly, including all members of the families as members of the collective and thereby including women. The result was that women who married into the village were counted and received a government subsidy for a portion of the land. In other collectives that were eligible for these same subsidies, women who married into the collective were not considered members and did not receive any part of the subsidy, even if they had lived in the community most of their lives and even if they lost the benefit of the use of the grassland.

On the other hand, if the legal definition of membership in the collective group is inclusive, women and men can both benefit. In the Kyrgyz Republic, membership is defined by formal law according to residency and thereby includes all women who live in the area, no matter their marital status. By recognizing that all *residents* of a community, no matter where they were born, are members of a Pasture Users Union (the community body), the law is positive for women; as long as a woman is a resident she will have rights to be a member of a Pasture Users Union.

### Understanding implications of household headship

While collective tenure is distinct from individual-based tenure systems, some lessons can be learned from early land titling projects of privately held lands. Many early land tenure reform projects that sought to formalize privately held land focused on household-level documentation, with the assumption that households function as a unit.<sup>74</sup> Generally this meant that only the head of the household, usually a man, was named on the documents that were given as evidence of the right, and in consequence only the head of the household had control over

67 Republic of Namibia Ministry of Gender Equality and Child Welfare Report on the proceedings of the National Conference on Women's Land and Property Rights and Livelihood in Namibia, with a Special Focus on HIV/AIDS, held from 6 to 8 July 2005 in Windhoek, Namibia. (The role of the traditional authorities and their mandate in protecting women and children's property and inheritance rights in Namibia by Hon. John A. Pandeni, Minister of Regional and Local Government, Housing and Rural Development.)

68 See note 16 above.

69 World Bank. 2009. Module 4: Gender Issues in Land Policy and Administration. From the Gender in Agriculture Sourcebook, 2009.

70 *Ibid.*

71 Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). 2013. Gender and Access to Land.

72 Giovarelli, R., Hannay, L., Scalise, E., Richardson, A., Seitz, V. and Gaynor, R. (2015). "Gender and Land: Good Practices and Lessons Learned from Four Millennium Challenge Corporation Compact Funded Land Projects." Landesa Center for Women's Land Rights.

73 An argument can be made that communities need to determine their own rules for defining who is a member of the community and how their traditional lands are managed; that securing indigenous or community rights should not be conditional on normative change; and that documentation of rights should not be the process to legally create rights. These are the exact arguments made for formalizing household rights to the head of the household only, and the outcome was that women often lost rights that they held under an informal system.

74 See Giovarelli, Renée, "Gender and Land Tenure Reform," in Roy Prosterman et al., *One Billion Rising: Law, Land and the Alleviation of Global Poverty*; Adoko, Judy, and Simon Levine. 2005. "A land market for poverty eradication? A case study of the impact of Uganda's Land Acts on policy hopes for development and poverty eradication." Land and Equity Movement in Uganda; <http://ageconsearch.umn.edu/bitstream/14649/1/ip03wi01.pdf>

use and transfer of the land. More recent research has shown that the results of these interventions were not neutral and that, in fact, being named on land rights documents confers benefits that do not accrue to those who are not named on those documents.<sup>75</sup> Just as privately held land titling efforts disenfranchise women when the household is viewed as a unit, collectively held land titling efforts disenfranchise women when the community is viewed as a unit.

The case study from Peru illustrates how rules and perceptions about the household head can impact women's ability to benefit fully from collectively held lands. Peruvian law conveys rights of ownership over community land to peasant and native communities and assigns responsibility for regulating access to and use of land and other resources to community members. The law recognizes these communities as autonomous institutions, and thereby grants legal personality to rural communities. From its status as a legal entity, its members derive their right to use land and to self-govern concerning matters of communal labor, economic administration, and land use.

Both the law and the regulations espouse a basic principle of equality in terms of rights and obligations of community members. The law defines community members as those born in the community, the children of community members, and persons integrated into the community. Membership thus includes women as well as men.

However, membership in the community does not grant the right to vote and participate in community decisions; to vote and participate in decisions one must be a qualified community member (*comunero calificado*). The general practice is one person per household, generally the male head of household, may hold the status of *comunero calificado*, though the law does not require such a restriction. Because men are traditionally seen as the head of the household, women usually do not to speak or vote in the assemblies. Thus, although the formal laws affirm principles of gender equality and are gender neutral, there is no explicit requirement that internal governance includes women, and protections for women's rights are not mandated. Women are often excluded from the male-dominated community assemblies, which tend to favor inheritance of parcels within community land to sons rather than to widows of the deceased.

Where the formal law is silent on membership, customary rules can work to fill the gap to the disadvantage of women. In Ghana, a woman's membership in a community is generally associated with her marital status, although this can vary among communities. The likelihood of a widow retaining rights to property after her husband dies is often dependent on her age, the number of children, and her relationship with her in-laws. Generally, according to custom, a widow who remarries loses rights to the land she shared with the deceased.

## Protecting marital and inheritance rights on collective land

Where land is held, used, and managed collectively, formal laws dealing with intra-household matters, such as laws related to marital property or inheritance, do not apply. For collectively held and collectively used land, the issue is one of membership, as discussed above. Whether women are considered members of the community determines their land rights, although those rights can be temporary depending on marital status. Marital property laws and inheritance laws apply only to land that is used by the household, because the household, not the community, has daily use of and control over the land.

For arable land that is held collectively but allocated for use to individuals and their households, a strong case can be made that formal intra-household laws related to marital property and inheritance should apply. In those situations, although the community may have the superior right, land is treated more like private property rights; often the individuals who have been allocated rights can transfer, bequeath, and transact (short of alienation) the land rights, and inheritance rules governing private property should therefore apply.

In the India case study, for instance, individual households were using some areas of land – designated by law as protected or reserved forests – as household farms. The Forest Rights Act provided that where land that was designated forestland was under cultivation by a household for a certain period of time, marital property laws would apply and joint titling would be required. In this way, the law allowed for the forestland rights documentation process to reflect the realities on the ground and provided positive protections for women.

Where collective tenure is formalized but land is used and managed by individual households, joint titling laws can be incorporated into project design. For example, in Namibia during formalization, joint titling for spouses was a possibility for collectively held land that was managed by the household, but many women and men were unaware of the laws requiring joint titling under a community property regime for formally registered spouses and also unaware of the benefits of registering rights in that way. Also, the application forms did not permit or require that both spouses be named in a way that accorded them joint and equal rights<sup>76</sup>

Moreover, Namibia's Community Land Rights Act (CLRA) permits joint titling of the property of spouses, and "spouses" is defined more broadly than it is in the marital property laws to include customary or unregistered marriages. Thus, many more women have the legal right to collectively held arable land than to arable land that is privately held.<sup>77</sup> However, note that in most cases it is best for collective tenure rules to work in tandem with existing laws. For example, in this case the CLRA's impact on this matter

75 See, e.g., World Bank. 2009. *Gender in Agriculture Sourcebook*. Washington, DC. <http://www.fao.org/docrep/005/y4308e/y4308e05.htm>; Lastarria-Cornhiel, Susana, and Renee Giovarelli. 2005. "Shared Tenure Options for Women: A Global Overview" United Nations Human Settlements Program, Nairobi, Kenya.

76 Unfortunately, this oversight is not uncommon, and a question that should always be posed in the formalization process is: Do the forms encourage or at least allow for joint owners to document their rights (are there two signature lines, for example)?

77 Regulations Made in Terms of the Communal Land Reform Act of 2002, sec. 8 (Namibia).

is limited, because while it requires all applicants to name their spouse (broadly defined), non-applicant spouses are not considered joint rights-holders, and the forms used to register rights to collective lands only allow space for one applicant.

### Summary of lessons learned:

- In formal law, consider traditional authorities' rights and obligations, as was done in Namibia, but simultaneously consider providing that traditional authorities also have a positive responsibility to take affirmative measures in the community to address the historical exclusion of women.
- Before any formalization of land rights, understand existing community membership rules, and determine how best to ensure that women who have married into the community are considered full members and receive the benefit of the formalization.
- Ensure that membership also gives the right to vote and to manage land.
- Where land is used on a household basis, even if it is collectively held, apply the marriage, family, and inheritance laws that give women equal rights within the household, and ensure that formalization rules encompass the same considerations.

## 4. Ascertain what will be required for women to meaningfully participate in governance of collective property

Governance is a key issue which distinguishes collective property from individual property. Governance is decision making by stakeholders, including both ordinary citizens and those holding formal and informal positions.<sup>78</sup> Good governance may include efficiency of processes and resource management, attention to social justice and rights, equitable decision making and accountability, and citizen involvement.<sup>79</sup> However, community governance and collective property governance do not necessarily involve women.

### Risks to women's land tenure security

Customary practice and socially defined gender roles usually dictate that collectively held land is governed through traditional decision-making systems and structures, which are most often male-dominated. When women are not meaningfully involved in governance, their interests are often ignored, and their rights to the land and resources can be weakened or lost. Meaningful participation goes beyond mere presence at a meeting; it must include the space and knowledge to speak safely, the opportunity to have their voices heard and also respected equally with others, and the confidence to speak their own thoughts that are free from social or familial influence or pressure. The

timing, place, and style of conducting meetings can also exclude women, who might not have the same availability or engagement style as men.

In all six case studies, the leaders, managers, decision makers, and adjudicators in the community were predominantly male. For most of the interventions, the implementers wanted to ensure that women were included in land management and governance. However, mandating women's inclusion is never sufficient, because for women to play a role in the governance structure, they have to have the social status that allows them to be heard and the confidence to speak on their own behalf. Quotas for women can create space for change but are not sufficient alone to ensure that the participation is meaningful.

There are several reasons why women may not be involved in governance, including: women are not present because it is not customary for women to be involved in community governance; women are too busy with other activities to be available when meetings take place; women do not consider the issues discussed relevant to their lives and priorities; women are present but are unable to participate meaningfully because of lack of experience or knowledge of the issues or because their opinions are not valued equally with those of men; or women are present but lack the skills, confidence, and experience of speaking in governing forums and are unaware of the rules and procedures of governing bodies. Governing bodies are also often unaware of the reasons for and benefit of including women's interests in their decision making, and women may also be unwilling to attend or uninterested in participating in governing bodies.

Moreover, community-level policies, rules, by-laws, and statutes commonly fail to challenge gender inequalities and to take the different needs and interests of women and men into account, and community-level institutions and national-level institutions that oversee them are not accountable on gender equality and women's rights.

### Promising approaches

Women's rights to use and benefit from collective property will not be secure if women do not participate in its governance. Likewise, women are very often among the users of collectively held lands, and, given culturally defined gender roles and division of labor, women's uses, interests, priorities, and perspectives will be different from those of men. Governance bodies that do not include women's interests will ultimately be ineffective because they will not take into account the interests of all users. There are several means of ensuring women are meaningfully engaged in governance.

### Providing training

Quotas for women's participation in decision making and governance of land rights are often the only way that women's interests are protected in laws that govern collective tenure, yet

<sup>78</sup> Brody, A. 2009. Gender and Governance: Overview Report. [http://www.bridge.ids.ac.uk/sites/bridge.ids.ac.uk/files/reports/Governance\\_OR\\_final.pdf](http://www.bridge.ids.ac.uk/sites/bridge.ids.ac.uk/files/reports/Governance_OR_final.pdf)

<sup>79</sup> *Ibid.*

quotas alone are not sufficient. For a quota to help ensure meaningful participation of women in decisions that affect their interests, systems should be in place to ensure that women know and understand the governance processes, their rights, and the value of their participation.

Principles of good governance include accountability, transparency, responsiveness, equity, inclusiveness, upholding rights, and following the rule of law.<sup>80</sup> However, upholding rights may be the most undeveloped element of collective land governance, partly because the process for claiming rights is often weak and partly because there may not be a shared consensus as to who has what rights in practice.

Training can help create such a shared consensus. In four of the case studies (Ghana, Peru, the Kyrgyz Republic, and India) training related to governance was a key feature of the design of the intervention, although the substance of the trainings varied by project.

The case study from Peru shows innovative training approaches to establish the importance of good governance. The SER project focused on empowering women to increase their participation in General Assemblies and also on strengthening community governance structures so that they were able to safeguard women's rights of participation and voice. To this end, when working with the community to update the Community Statutes, among the steps taken was to engage the whole community in understanding the value of men and women to the community and the differences in their perspectives. SER developed community theater plays that were based on themes of "imagine a world of only men" and "imagine a world of only women." These helped the whole community understand the importance of inclusiveness in governance and decision making, and helped create the foundation for longer term support for an improved role for women. One example of this is that two communities presented budget proposals (still pending at the time of this study) to local government that included women's ideas and considerations for community development.

The project in India illustrates the importance of repeat trainings. In that case, state actors needed to know how to implement the Forest Rights Act as it relates to governance, and NSVK trained them as part of the project. Without guidance, before the trainings, the state agency issued documents in the name of men only and created sham Forest Rights Committees. The project found that the high turnover rate of government officials meant that trainings had to be repeated every time a new person was hired, causing the project to spend much more than it had anticipated on training. However, without training the state agency about what the governance committee was required by law to do, the FRA could not be carried out as intended.

At a minimum, governance training should cover what is required by law to recognize the rights of women within collective tenure

systems. Beyond that, there is much that can be gained by training governing bodies on how to ensure good governance. If the principles of good governance are upheld by those governing and if procedures are in place to ensure they are implemented, then this can lay the groundwork for better results for women.

## Summary of lessons learned:

- Ensure that policies, laws, by-laws, and rules are informed by an understanding of the different needs and interests of women and men and the need for gender balance in decision-making bodies.
- Develop accountability mechanisms at the community level that go beyond targets and quotas; for example, provide trainings that help communities come to a shared understanding of the importance of women's involvement in decision-making bodies.
- Find appropriate means for communicating protocols, decisions, and information on governance to ensure that women and men both receive the messages.
- Create the space for women's and men's interests across ages and social status to be voiced and heard.
- Ensure that the whole community knows what rights women have to collectively held land, and that they understand and appreciate those rights even if they are not considered "primary" rights.
- Incentives to engage women in governance (such as quotas) can be helpful but for sustainability they should be supplemented with other activities such as training, outreach, and capacity development.
- Training on good governance can benefit from using alternate and creative means for getting the message across.
- Community leadership and the community as a whole should be engaged in efforts to update rules, by-laws, and statutes for governance to ensure they are gender inclusive.

## 5. Determine how best to ensure that women receive the information they need to realize their rights to collective land and resources

While being informed is a basic requirement for benefitting from any intervention, community social norms play a role in whether or not women have full and complete access to information.

### Risks to women's land tenure security

In most cultures, men represent families publicly; this is another element of the existing gender-based power dynamic described in the sections above. Men usually attend public meetings, visit public places, speak to officials and authorities, and are regularly targeted as the head of the household for government programs and support. Officials and others expect that men will share

<sup>80</sup> *Ibid.*

what they learn with their spouses. In practical terms, women collect and receive far less and different information than men do, often because they have limited time and are responsible for the home and children.

One characteristic of collective tenure is the important role of community-level information sharing and decision making, and because of culturally and socially prescribed gender roles and division of labor, women are often excluded. Thus, unless an intervention explicitly targets women for receiving information, it is likely that women will not be informed. This is especially important for interventions that involve collective land and resource rights, because women who lack information and understanding may lose their rights to land when land rights are documented; moreover, they will not be able to follow established rules if they are not aware of those rules. Gender sensitivity should thus be at the core of information outreach efforts.

### Engaging men

Engaging men in efforts to better inform women may require identifying what resistance from men there might be and providing gender sensitivity training as a first step. For instance, in the Ghana project, potential resistance to the project was avoided by focusing messaging on securing future rights for children rather than for wives.

There are costs in time and resources to truly engaging men in a project that is focused on women, and these costs must be built into projects from the beginning. In Peru, engaging men had a significant impact on the ultimate scope of the project. During outreach and sensitization (in soliciting interest on the part of communities to participate in the project), many communities demanded that all community members – men, women, board members, leaders, and youth – receive the trainings. SER, the project implementer, saw this as a critical need to ensure that communities accepted the project and to support broader awareness and acceptance of women's rights within communities. This adjustment was made in all communities, with significant implications for the project budget and implementation plan. Overall, this was an important step to engage with men in the communities and to improve the receptivity of communities to the project and its intended changes, but the costs were not accounted for in design and had to be recouped by cutting other activities later.

### Engaging women

To effectively engage women, there are some accommodations that should be made, such as allowing them to bring children to meetings, ensuring that meetings are held close to their homes, and holding meetings at times of day that are convenient to women. In Ghana, due to project resource constraints, some trainings were held in the Northern Region capital of Tamale rather than in each location separately. Women were less able than men to travel long distances or to stay away from their families for several days because of social constraints and family

responsibilities and therefore were less likely to attend those trainings.

Working through existing social groups helps to ensure that women are not doubly burdened by project activities. In Ghana, the project reached a large number of women by holding sensitization meetings with existing women's groups. In India, training and discussions were facilitated through the pre-established issue committees and run by the local social worker. Likewise, in the Kyrgyz Republic, working through the pre-established health committees became the best way to share information and engage women in pasture management which they had otherwise not been interested in participating in.

In Ghana, community sensitization activities and women's group meetings were held in local languages, enabling a significant number of women to engage with the project and gain knowledge that may have helped them strengthen their rights to land. However, fewer women attended the more technical subjects (e.g., alternative dispute resolution), which were conducted in English. For example, a queen mother who was engaged in alternative dispute resolution and was a very important woman in the community, was unable to attend the training because she wasn't able to speak English.

For message retention, a number of approaches may be necessary, and budgets and resources should support repeated trainings. In Ghana, holding frequent trainings and meetings, including follow-up trainings, helped ensure that messages were being retained by participants. Even so, trainees wanted more time spent on trainings to give them more exposure to detailed, specific information, and they wanted additional follow-up trainings to address issues as they arise in practice. In one project area, widows wanted additional trainings on supporting widows, on building on acquired land, and on support for farming. Chiefs asked for refresher trainings and trainings on alternative dispute resolution approaches specifically for women.

### Summary of lessons learned:

- Address women's issues directly and clearly in all trainings, but also find ways for the message to resonate with the particular audience.
- Hold separate meetings for women and men and use means and messages that are appropriate for each. Hold meetings that include both women and men. Ensure meetings are held in a time and place that is appropriate for both women and men.
- Work with existing groups to reach women, men, and leadership.
- Hold frequent meetings, and include follow-up trainings.
- Use radio, theater, and other means to work on changing mindsets of everyone in the community, not just those people targeted by the project.
- Train in local languages.

- Develop participatory and interactive trainings to allow participants to engage more fully by asking questions and sharing their specific concerns.

## 6. Pay attention to gender differences in every aspect of project design and staffing to ensure women receive full benefit from the intervention

Designing a project which fully takes into account the social, legal, and customary variables that affect men and women differently is critical to successfully reaching women as well as men.

The interventions in the six case studies viewed communities as collections of women and men and not as monolithic groups, which was crucial to women being served by the interventions.

### Risks to women's land tenure security

The risk of not considering gender differences in designing and implementing projects or laws is that women's land rights will be weakened rather than strengthened. Starting with the pre-project assessment of the community, the design must consider the situation of women as distinct from that of men. Projects must also consider the experience of different "categories" of women, such as women of different age groups, social status, marital status, and education levels. Design that is gender sensitive is aided by the current trend for international donors to require inclusion of a gender strategy (or indicators) in all projects; however, addressing gender issues requires social and cultural change, which is often outside the expertise and experience of land practitioners. The result is that gender strategies may not be fully or meaningfully implemented.

The reasons for the lack of meaningful gender integration in land reform interventions include:

- Women beneficiaries are not included or given a voice in project design.
- The design of the project does not include gender from the beginning, and instead relies on experts to retrofit it in at a later date.
- The design of the project is fixed at the beginning and cannot be adjusted based on lessons learned throughout the project.
- Project designs do not incorporate monitoring of their effect on women.
- Design does not account for the fact that the project implementation team might need specialized training to understand the value of women's land rights and how they can be realized.
- The design allows for a gender expert on staff but does not recognize that such experts may need training and may be subject to being sidelined as a subordinate team member.

- The design does not begin with an understanding of which women in the community are most vulnerable or how to reach them.
- The design does not take into account the nuances surrounding women's land rights, especially as relates to women's marital status.

In several of the projects reviewed (China, Namibia, Ghana, and India) government interventions did not consider women when community land management was first considered. In Namibia, when the state began documenting community rights, no specific rules were devised to ensure that women as well as men had their land rights documented. This was in part for political reasons and in part an issue of public relations. There had been significant sensitivities around the issue of documenting rights to community land, so tactically it seemed better to focus on the community first and women's rights within the community at a later stage. This had the practical effect of excluding systematic consideration of gender issues in the early design, despite a positive legal framework.

### Promising approaches

In all six case studies, the key to successfully strengthening women's land rights in the collective tenure context was that those designing and implementing the intervention understood why focusing on women as well as men was important, how to effectively reach and involve women, and the need to monitor whether the intervention was working for women as well as men.

### Paying attention to gender in project staffing

Women are not uniquely qualified to ensure that women's interests are considered alongside those of men in land rights interventions. However, staffing a project is an opportunity to effect long-term changes, to provide role models for both men and women, and to show a commitment to gender inclusiveness. For these reasons, female staff members are important to projects that want to reach women.

Hiring female staff may mean that women in the community have approachable authority figures in the community. In Ghana, for instance, the project was able to reach its goals of sensitizing women by engaging women as trainers. Women were more comfortable attending meetings facilitated by women, and were more likely to participate in those meetings. On the other hand, the project only trained male local authorities on dispute resolution, which had a negative effect on women's willingness and ability to bring disputes. Women in the communities said that they would be more comfortable approaching other women with disputes, and often did not bring disputes to male dispute resolvers without the help of male family members.

Often an affirmative effort is required to include women staff because women may face obstacles that men do not face in being involved in land sector projects. For example, certain

resources, like pastures and forests, may cover large areas of land; women may not be able to travel long distances from home or to travel without a male companion, and both of these issues may affect the ability to hire female staff. For instance, in the Kyrgyz Republic, the LDMP project had difficulty hiring women local staff because the work required travel by bikes, motorbikes, or horses to get to remote areas, which was not comfortable for most women. Also, many women consider pasture management men's work and did not think it appropriate to be involved in the project.

Similarly, in India, while the NSVK project strived for 50% female social workers, they were only able to reach 37% women staff. Moreover, men hold all senior roles. One challenge NSVK identified is that it is difficult for female social workers to work in heavily forested areas because they need motorbikes to get around, and again, women are not comfortable with this mode of transportation.

Identifying challenges and barriers to employing women is a critical first step in an affirmative effort to hire women. Even though projects in both the Kyrgyz Republic and India had difficulty hiring female staff, their efforts to find women who were willing to take on the transportation challenge did pay off to some extent, and without affirmative efforts, it is possible far fewer women would have been hired.

### **Providing support for technical capacity and staff training**

The limited technical capacity of project staff to carry out the tasks set out in a gendered project design is also at issue. The LDMP project in the Kyrgyz Republic paid significant attention to gender in design. The design includes detailed elements specifying how the project will mainstream gender in every aspect of its implementation, including management, programming, and monitoring and evaluation. It also assigned specific responsibility for gender to one core staff member, and there is a monitoring and evaluation specialist with a gender focus in the project implementation unit who oversees consideration of gender issues in all implementation activities and conducts knowledge-sharing events. However, there is a gap between the gender-related activities envisioned in the design and the capacity of these implementers to address the identified needs.

Very often, donor projects require a gender expert on staff, or at least they require that someone be identified as a gender expert or focal point. In most instances this staff person will not have expertise in both gender and land tenure because few such experts exist. The requirement for gender expertise is welcome, but it is also new, in many cases less than five years old. Consequently, gender experts cannot be solely responsible for all things related to women, and they may need training and support to meet the expectations of the project.

All project implementers need gender sensitivity training at the beginning of the project. This training should include information concerning gender issues in the country and project area,

awareness-raising about why gender is a focus of the project, and concrete tools or a plan for learning what is necessary to fulfill the project design.

The best example of the effectiveness of this early training is from the India project. Gender is a cross-cutting theme for NSVK and is intended to permeate all of its work, yet project implementers had little training or experience before their involvement in the Forest Rights Act (FRA) project. According to Oxfam, the funder, the staff at NSVK were not focused on gender or on the FRA when they first began the project. Oxfam worked closely with NSVK at the beginning of the project to impress the importance of the FRA and of gender issues. This included exposure visits to the other projects in other states working on the same issues and education on why particular attention to women's involvement is important.

This exposure meant that by the time the case study was conducted, NSVK had an organizational commitment to implementing the project in a gender-sensitive way. All interviewed staff members were committed to paying attention to the different experiences and interests of men and women. They were able to identify the issues that tribal women in Jharkhand were most concerned about in the forest area, and they believed that women have a deep knowledge of the forest and a commitment to managing it well. The NSVK staff believe the commitment of the staff to gender sensitivity played a major role in the project's success.

### **Targeting beneficiaries**

Reaching women requires targeting them as intended beneficiaries of the project. Because rights to land are most often assumed to be men's rights, including women in a land project requires a directed effort. The first question is: which women should be targeted? The more specific the target group, the more likely the women in that group will benefit. For example, often when projects speak of targeting women, they are speaking about female heads of household only, but the issues facing female heads of household and the issues facing women within male-headed households are very different and need to be addressed differently in the project design.

In the Kyrgyz case study, although the project conducted a baseline survey that indicated that the number of women-headed households in the two provinces where they would be working was rather low, the initial idea of the project was to focus on female heads of household. While targeting women-headed households had less potential value than targeting women more generally, in the design phase women-headed households were given more attention than women in male-headed households. Because the project found that reaching these two different groups of women required a different design, design adjustments had to be made to the second phase, and in the initial phase the target population was shifted to women engaged in livestock-based livelihoods, no matter their status within their households. This meant more women, including women who

were not initially target beneficiaries, were reached by the project.

The Communal Land Reform Act (CLRA) example from Namibia provides widows with specific protections, as land grabbing of widows' land had been a problem in the collective land areas. The CLRA's targeting of widows had a substantial impact in the areas visited, but only if the widows did not remarry. Traditional Authorities are legally obligated to honor the widow's (or widow's) rights to reallocation of customary land on the death of her or his spouse, but they are also authorized to cancel existing rights in accordance with customary law, which they usually do if a remarried widow moves to her new husband's land.

In the example from China, two categories of women were left out of receiving grassland when it was distributed from the collective: women who married into the community and daughters who married out of the community. Women who divorced also lost their rights to land, because only men's names were on the contracts with the collectives. To remedy this, in one region the local government distributed land from the collective's "reserve" of land to women in these groups and then, on the basis of this allocation, paid the government subsidy attached to allocated grasslands. The local government even provided mediation for couples who were divorcing to address these issues and also allowed divorced men and women to split their bank accounts when receiving subsidy payments (otherwise splitting is not permissible).

Another way to target women in the project design is to support activities that are customarily carried out by women and to allocate a portion of the budget to addressing women's interests. The LMDP project in the Kyrgyz Republic sought to target women through a value chain activity (milk products) and also through a seed bank program. Both programs were established specifically for women. Because each of those activities has only just begun, it is too early to tell how successful they will be at reaching women. Whatever the future results, it is notable that these activities, largely seen as benefiting women, make up around just 5% of the total project cost. While women may also gain indirectly from other investments that are not targeted at women, LMDP is intended specifically to target women, so a greater portion of its overall investment may be required for women-specific activities.

### Designing projects to be flexible

Because women's rights to land have to be considered both socially and legally legitimate to be realized, understanding local context is critical to a good design. Even with a fairly small project area, there can be multiple groups and customs at play. Thus, pre-project research is important, and the design has to be flexible enough to allow for changes as the project is monitored throughout its lifetime. Project adjustments can make the difference between the women's situation being improved and being harmed.

As illustrated in the case study from Ghana, the location of the four areas where the project worked made a difference in how women responded to the project. One area, Tamale, encompassed a city and its environs. Land prices were high and women were priced out of obtaining rights to the land. Because they did not see the possibility of gaining rights to land, they were not interested in gender sensitization related to land rights. In the other three communities, to varying degrees, gender sensitization had an impact on women's land rights going forward. Because the Tamale area is urban and peri-urban, many NGOs had worked there, and there was a good deal of message confusion regarding which NGO said what. Tamale would have benefited from a re-evaluation of the project design once it was clear that the issues facing women in Tamale were dissimilar to the other communities.

The case study from the Kyrgyz Republic illustrates how women's engagement in developing the Community Pasture Management Plan depended on the importance of the pasture resource to their livelihoods, the commitment of the local implementer to mobilizing them, and the openness of the Pasture Committee to meaningfully engaging women. After implementation began, and these three factors came into focus, new activities were introduced to address the impact of these factors on women's participation. Thus, where women were not engaged and not requesting investment grants, the project developed tools to help prioritize women for investment grants. To ensure women were part of the Pasture Committee, the project created a seat on the PC for the village health committees, which were made up of women. From an institutional perspective, these changes were possible because the project implementation plan had built in flexibility and could adapt as things were learned along the way. The attention, leadership, and motivation of the technical leads on the project also helped ensure consistent consideration of gender.

While the Namibia case study was not a project per se, it is equally important, and in many cases much more difficult, that government programs and laws be flexible to accommodate new learning and understanding. In Namibia, the government made changes to both the CLRA itself and the communication strategy for the law to better accommodate diverse cultural practices. For example, at the time of the study, the registration mechanism did not account for the group rights-oriented customs of the Kavango people.<sup>81</sup> Registration would deny the land rights of multiple right holders to the same parcel of land, which is a feature of Kavango customary tenure. This issue was addressed recently by an amendment to the Land Bill.

Moreover, in Namibia, when rolling out the Communal Land Reform Act, initially the Ministry of Land Reform focused on the procedures using multiple channels, including booklets on the registration process in vernacular languages, a video spelling out

81 Thiem, Maarit. 2014. A Decade of Communal Land Reform in Namibia: Review and Lessons Learnt, with a Focus on Communal Land Rights Registration. Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH.

the actual process, registration team visits, etc.<sup>82</sup> These efforts had limited success in improving knowledge of women's rights under the law due to the limited scope of content and limited geographical reach of the materials. Cognizant of the shortcomings of the awareness-raising efforts, the Ministry, in collaboration with other stakeholders, amended the approach and developed a communication strategy that attempted to find a balance between communicating the CLRA content (aims and benefits) and communicating procedures. The initial approach was adjusted to incorporate the content of the CLRA and highlight benefits of registration for inhabitants of communal land. These efforts also highlighted some key issues related to women's land rights, which the Ministry then began tackling.<sup>83</sup>

### Summary of lessons learned:

- Set targets for hiring of female staff and strive to understand what is necessary to meet those targets.
- Identify challenges and barriers to employing women and mitigate them to the extent possible.
- Train all project implementers (both men and women) at the beginning of the project, including on gender issues in the country and project area, why gender is a focus of the project, and concrete tools or a plan for learning what is necessary to fulfill the project design.
- Hire short-term technical assistance to work with project gender experts who lack experience on land issues.
- Specifically target women as intended beneficiaries of the project and identify the avenues for meeting their needs in the project.
- Conduct a pre-design assessment to identify which groups of women to target and develop a plan on reaching that group based on the learning from the assessment.
- Work with both men and women. Ensure that all beneficiaries understand the value of women's secure land tenure.
- Build flexibility into the design and monitor the effectiveness of the project for women throughout implementation. Make changes as necessary.
- Advocate for legal changes that would provide a framework for gender equality in collective land tenure holdings.

## 7. Ensure that data collection and use for collective tenure interventions assist in monitoring and evaluating whether the outcomes for women and men are equitable

Because there is limited research on effective interventions for women as well as men when collective tenure arrangements are either being formalized or supported, data collection and monitoring what works are essential.

### Risks to women's land tenure security

There is a movement among the land sector actors to "secure all indigenous and community land rights everywhere," with a target of "doubling the global area of land legally recognized as owned or controlled by indigenous peoples and local communities by 2020."<sup>84</sup> While securing indigenous and community land rights is imperative, what we know from earlier efforts to ensure that arable land was legally recognized is that a lack of sex disaggregated information can lead to projects or efforts that either limit or reduce women's land tenure security. Not understanding women's and men's rights as separate from the community's rights risks disempowering women, who, while often socially and legally vulnerable, are economically active members of the community.

### Promising approaches

#### Conduct a baseline study

To ensure that women, as well as men, benefit from community titling or support, baseline data must be collected and disaggregated, at a minimum, by sex and marital status. Ideally, the baseline would include: household composition (including age and sex), occupation, education, existing land rights and perceived tenure security, and marital status, for each member of the household. It is vital that women within male-headed households, as well as women-household heads are included among respondents. Since the rights a woman has to community land often depend on her marital status, understanding the baseline situation is imperative.

Baseline information is essential for project design and for midstream adjustments to correct flaws in design. Of the six projects reviewed, none was able to collect the information necessary to fully understand and monitor whether the outcomes for women and men were equitable. Without understanding which interventions work and which do not, we cannot expect to improve women's land tenure.

<sup>82</sup> *Ibid.*

<sup>83</sup> Kasita, Maria. 2011. Establishing Communal Land Registration in Namibia: The Process, Benefits and Challenges. In Annual World Bank Conference on Land and Poverty. Washington D.C.: World Bank. <http://siteresources.worldbank.org/INT/IE/Resources/475495-1302790806106/EstablishingKasitaPres4.pdf>

<sup>84</sup> International Land Coalition. 2015. What is the Global Call to Action on Indigenous and Community Land Rights and How to Get Involved.

## Going beyond sex disaggregation of data

A key value to sex-disaggregated data is that it leads to an awareness of the differences between women's and men's respective experiences of the intervention. Particularly for collective tenure arrangements where the focus is on the community's rights, it is easy for the rights of women to be undervalued.

In Oshana, Namibia, the Community Land Board (CLB) data was very useful in seeing patterns of applications based on gender and marital status. The CLB received a total of 17,028 applications for customary land rights as of June 2015. They received more applications from men (58.2%) than women (41.8%) with more applications received from married men than their unmarried counterparts. Of the total applications received from married couples, only 3.78% listed married women as applicants. Of the total applications received from unmarried persons, women accounted for 72% of that group.

While the disparity across marital status is significant for both sexes, the disparity between married and unmarried females is considerably higher, with very few married female applicants and a considerable number of unmarried female applicants applying for community land rights.

This finding could be further disaggregated by marital status to better understand the community norms. For example, applications from unmarried women include applications from widows as well as other unmarried women. In addition, the application form indicates whether the application is for an existing or a new customary land right, yet this information is not shown alongside the data on the status of applicants. Disaggregating information by the nature of rights (existing and new rights) and the specific marital status of applicants (married, single, widowed, etc.) could help uncover important differences between female applicants, would more accurately capture the circumstances on the ground, and would expose the distinct experiences of various categories of women.

Similarly, it is difficult to interpret the results for married applicants. The current application form simply states applicant and applicant's spouse, making it difficult to ascertain which of the applicants intended to apply as joint applicants and which were merely disclosing the name of a spouse as a family member. At the time of the research, the registration form required applicants to list the name of any spouse but did not assign the spouse applicant status, and a non-applicant spouse was not legally considered a joint rights holder. Fortunately, after the case study field work and prior to the in-country validation of the study, the Ministry of Land Reform amended the application form to provide for joint titling, making it easier to collect data for married women.<sup>85</sup>

The baseline report for the LDMP project in the Kyrgyz Republic was based on interviews with both women and men. Of all

respondents, 42.4% were women. However, it is not clear from the baseline report whether the female respondents were made up only of female heads of households or also included women in male-headed households. Moreover, while sex-disaggregated data was collected, it was not required in the report and was not published.

In India, the NVSK project did not disaggregate most of its data, making it difficult to understand the impact of the project on women and men. For this information, the project was over-reliant on qualitative information, which is important but not sufficient.

COLANDEF, in Ghana, conducted trainings to increase the capacity of Customary Land Secretariat (CLS) staff and other leaders to record land rights and resolve land-related disputes. The training highlighted the importance of securing land rights for women and focused in part on the special challenges facing women in the acquisition of land. Although the attendees were primarily male, following the trainings the CLS in one region said that they now disaggregate data by gender in their quarterly reports to the Office of the Administrator of Stool Lands (OASL).

## Monitoring data

Ongoing monitoring is necessary to ensure that projects are being implemented as envisioned and to ensure that projects can be adjusted as needed. For instance, although the CLRA is favorable to women in Namibia, limited monitoring mechanisms and inadequate institutional capacity appear to have resulted in insufficient monitoring of its enforcement. To the extent that the CLRA provides opportunities for women to gain rights to communal land, limited monitoring means that it is difficult to know how effective those provisions are and makes it more difficult to understand how they might be amended or improved to best serve women's and men's different needs.

## Summary of lessons learned

- Conduct a baseline study that is disaggregated by sex and marital status and use the results to design and monitor the project.
- Report on all baseline findings, including different starting points and impacts on women and men.
- Monitor the data throughout the project and make changes as necessary.
- Conduct trainings of all staff who can or should collect data as part of their job to explain the value of collecting and monitoring sex-disaggregated data.

<sup>85</sup> Republic of Namibia Ministry of Land Reform, Application for registration of a Customary Land Right Form A, MRL, Windhoek, 2015.

# VI. CONCLUSION

In all communities, women and men have different roles, different responsibilities, and different statuses. Because land that is collectively held belongs to the community, the differences between how men and women function in the community will matter when the land is formalized or when rights to that land are strengthened. Without a specific focus on the differences between men's and women's gender roles, an intervention to strengthen a community's rights to land will not equally strengthen the rights of women and men and will risk disadvantaging women disproportionately.

To identify the risks to women inherent in these types of interventions and to address them, the following is a list of questions to ask before an intervention is designed. These questions can serve as a guide for designing a gender-aware and gender-responsive intervention.

## Social change

Questions that need to be asked of both the implementing organization and the community prior to designing an intervention:

- Does the implementing organization already have a relationship with the community?
- Does the implementing organization understand the cultural context of the project area?
- What fundamental norms in the community might delegitimize women's rights to secure land tenure?
- What fundamental norms in the community support women's rights to secure land tenure?
- Does the implementing organization have the will and capacity to advocate for social change in the community if necessary?
- What sort of external pressure exists to conform to traditional practices?
- What sort of internal community pressure exists to conform to traditional practices?
- If needed, what type of social change is possible within the timeframe of the project?
- Is there political (used broadly) will? Who has the political will?
- At what level is social change possible—household, community, government?
- Collective tenure requires community governance. What is required for women to be involved in governance in the project community?

## Empowering women

To identify the specific issues related to women's empowerment within the household or community, the following questions may be useful in project design:

- Do women have agency in the household? Community? If yes, in what circumstances?
- What differentiates women who have a voice from women who do not—both in the beginning of the project and in the end?
- How is membership in community related to marital patterns?
- Do women know and understand their land rights and how to enforce them?
- Do women have access to dispute resolution bodies? If not, why not?
- Is there harm in working with women only? Will men be more suspicious and resistant to women's engagement?
- Are there existing organized women's groups? What issues are these groups organized around?
- Who participates in women's groups and who does not? Why? Age? Marital status? Religion? Household responsibilities? Number of children? Education?

## Legal change

To identify the specific issues that may exist related to women's legal rights to manage or control land, the following questions may be useful:

- Does the constitution or formal law exempt customary law from certain equality provisions, and what is the hierarchy between formal law and customary law?
- If customary law is codified, are there any affirmative actions required regarding gender equality?
- Is there a legal definition for community membership that includes women who marry into the community?
- Do family laws, marital property laws, or inheritance laws apply to land held by the community but managed by individuals or households, and do these protect the rights of women?
- How much discretion is given to local communities to determine rules for governing land and property rights? Is it absolute?

## Governance

To identify the specific issues related to women's engagement in collective property governance, the following questions may be useful:

- What is required to ensure that women are able to fully participate in decision making?
- Do women have the training and confidence to participate fully? If not, what is required to improve their participation?
- Are there incentives (including quotas) for women and men to participate in governance activities?
- Do women and men understand the benefit of women participating in decision making?
- Would bylaws be useful for the governing bodies? What is required to ensure that women's interests are protected in the bylaws?
- Does the leadership need training on the elements of good governance?
- Does the leadership or community need to better understand the value of women's involvement in decision making and the value of women having secure rights to land?
- Are there methods aside from training that might help get these messages across?

## Informing women

Questions that need to be asked of both the implementing organization and the community prior to designing an intervention include:

- What is the level of education of community members and leaders? Men and women? Are women and men equally literate?
- What methods of training and knowledge dissemination have worked in this community before?
- Has there been any gender training in the community?
- Have men or women or both engaged in trainings before?
- How/where do women receive their information that they trust? Men?
- What are the social or time-related barriers to women attending trainings/information meetings?
- What is required to have information available when the community needs to use it?
- What incentives might influence men to allow women in their families to be better informed?

## Project staffing

To identify the specific issues related to designing a project in the context of collective tenure that supports the interests of both men and women, the following questions may be useful:

- What are the barriers to hiring female staff? For what positions is female staff necessary and not just desirable?
- Are there recruiting techniques or forums that are more likely to attract women staff?
- Are there special accommodations necessary to ensure that women staff can fully participate in the project?
- Should the project have a target for the number of female staff?
- Is there a gender expert on the staff? If not, is there a staff person interested in focusing on issues of gender difference and willing to be trained?
- Does any of the staff designing the project have the expertise necessary to ensure that the design benefits women and men equally? If not, is that expertise available?
- Is there resistance to considering gender as part of the project design? If so, what is necessary to overcome this resistance?
- What training will the staff need to ensure the project is gender-sensitive? When should this training occur and what should it include?
- Which women (e.g., heads of household, widows, women generally) is the project targeting?
- Are there specific activities that women are more likely to engage in that can be supported to ensure women are included in the project benefits?
- How much funding is dedicated to including women? Is it enough? What more can be accomplished with more funding?
- Where can the design be flexible?
- What does the project need to monitor and respond to so that women are reached throughout the project?

## Data collection

To identify the specific issues that may exist related to data collection, the following questions may be useful:

- What data is necessary to design the project?
- What data is necessary to monitor women's participation in governance, women's ability to gain or keep their rights to use and control land, and women's understanding of project processes and issues involving the legislative framework for the project?

# APPENDIX ONE: CASE STUDY SUMMARIES

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## China

### ENSURING WOMEN'S RIGHTS TO GRASSLAND AND GRASSLAND RELATED SUBSIDIES AND REWARDS

#### Background

##### Country Background

China has about 400 million hectares of natural grassland, accounting for over two fifths of China's total land coverage.<sup>86</sup>

China distributed collectively owned arable land to households in a program called the Household Responsibility System (HRS). Encouraged by the success of the HRS, the government extended the program to grasslands in the late 1980s with the aim to increase land use efficiency and develop the live-stock industry. Grassland use rights were contracted to herders' households based on the number of family members and the quality of the land, and the use rights were granted for a period of between 30 and 50 years.<sup>87</sup>

Although the reform stimulated herders' production and had a positive impact on pastoral incomes, the reform did not prevent desertification of the grasslands. The HRS for grassland restricted herders' grazing to a relatively small area, which made it difficult to rotate their grazing areas. By 2011, 90% of China's usable natural grasslands were to some degree degraded due to climate change, excessive grazing, and rural development.<sup>88</sup>

##### Status of Women

Women in the case study area are often at a disadvantage. Although laws and policies broadly grant equal land and property rights for men and women in China, thousands of years of agricultural and patriarchal traditions still prevail in rural communities where women are in a vulnerable position and do not enjoy equal land rights. According to the *Third Survey on the Status of Chinese Women*, land rights issues are one of four key issues faced by rural women in the past ten years in China.<sup>89</sup>

Recognizing the importance and multiple functions of grassland, the Chinese government established a program to protect grassland from degradation and to raise the living standards

for herders. The Grassland Ecology Conservation Subsidy and Reward Mechanism (GECSR), aims to provide financial incentives for grassland protection.

Although the local policy stresses that everyone benefits equally from the GECSR, women are often at a disadvantage. The GECSR program is based on the HRS which provides that women are only eligible for the benefits if they have been allocated grassland within the household under the HRS.

Under the prevailing patrilocal traditions, women move their place of residence from their parents' village to their husband's village when they marry. While men's land rights are secured as soon as they are allocated grassland from the *gacha* (village-level collective), women's land rights and related benefits may be lost depending on their marital status and the rules determining membership in a particular *gacha*.

The grassland contracted to the household is usually contracted in the name of the husband, while the bank account where the GECSR's benefits are deposited is also usually in the name of the husband. Therefore, it is very unlikely that a woman will get the grassland and financial benefits in the case of divorce.

Since the GECSR offers an annual subsidy of 500 yuan to each household in pastoral areas for the purchase of diesel oil and other supporting products, the local government strictly controls the division of households and the related division of household bank accounts.

#### Legal Framework

The current legal framework does not define the land rights of each family member within a household, but rather sees the household as a unit. For a woman, when a change in marital status occurs, it is almost impossible for her to claim and partition her share of grassland from either her birth family upon marriage or her ex-husband's family upon divorce. In case of marriage, the women's land and land-related benefits from her birth *gacha* will usually be under the control of either her parents or brothers, while in the case of divorce the women's rights will be transferred to her ex-husband's family. This becomes a barrier for women who were allocated grassland to benefit from the grassland when their marital status changes.

Under the Organic Law of the Villagers' Committees, *gachas* are authorized to decide key matters in the village, including how collectively owned land and land-related benefits are allocated, which is typically based on membership in the collective.<sup>90</sup>

86 Ministry of Agriculture. 2015. 2014 National Grassland Monitoring Report.

87 As stipulated in the Rural Land Contracting Law that was implemented in 2002, see Article 20, Rural Land Contracting Law.

88 Ho, P. (1995). *Ownership and Control in Chinese Rangeland Management Since Mao: The Case of Free-Riding in Ningxia*; Ao, R. (2003). *The Change and Innovation of Grassland Property Rights System*. Inner Mongolia Social Sciences.

89 All China Women's Federation, 2011.

90 Article 24 of the Organic Law of the Villagers' Committees (2010).

As long as a herder is defined as a member of the *gacha*, the person has the right to receive allocated grassland from the *gacha*. However, a precise definition of membership is absent in national policies, legislation, and regulations, and is therefore left to the discretion of the collective leadership.

## Project Interventions

The subsidies and rewards under the GECSRM that are distributed to the herders' households are based on the amount of grassland contracted to the households; other factors such as the size of the household are not taken into account.

Authorities in Left Banner of X League, Inner Mongolia Autonomous Region, have introduced a policy change that alters the method of the distribution of subsidies and rewards based on the number of family members in the household. The interviews with the local policy makers show that the majority of the local policy makers strongly prioritized a fair distribution to make sure that every herder in the Left Banner benefits from the subsidies and rewards equally.

Various *gacha* leaders and local authorities in the Left Banner have made special efforts to help women with grassland rights issues or related problems so that they could benefit from the benefits provided by the GECSRM. These efforts apply to married-out women, married-in women and divorced women.

### Small plot allocation to married-out women

Usually each *gacha* has some reserved grassland that is not allocated to herders' households. The first initiative that *gacha* leaders undertook was to allocate a small plot of reserved collective grassland to married-out women. Although this land was very small and not very suitable for grazing, it made the women eligible for the GECSRM's benefits.

### Grassland division for divorced women

Since the implementation of the GECSRM, divorced women have approached *gacha* leaders and relevant government sectors to ask for help on the division of grassland as well as the subsidies and rewards from their ex-husbands' households. *Gacha* leaders and local authorities have helped women by conducting mediation sessions with the divorced couples and in most cases also with the extended family of the husband to ensure that the woman can have a plot of grassland contracted to her. This makes her eligible for the GECSRM's benefits as well.

### Division of register residence and independent bank account to benefit women

Taking into consideration the vulnerable situation of married-out and divorced women, the local government not only makes extra efforts to secure a piece of grassland for these women, but also allows an exception for married out women and divorced women to permit them to divide their registered residence either from their parents' household or from their ex-husbands' household in the case of divorce. Consequently, these women can be treated

as an independent household and can therefore apply for a bank account of their own where the GECSRM benefits are annually deposited.

## Findings

(1) Unlike other parts of China, the GECSRM policy and its distribution in this area is based on individuals rather than the size of the contracted grassland. This ensures individuals rights to subsidies and rewards that can be clearly defined. This is important as it strengthens women's position within the household and reduces the risk of losing their grassland and related benefits when their marital status changes.

(2) Social stability is always one of the top concerns of local governments in China. Women's awareness of their rights and their ability and willingness to organize themselves to actively claim their rights was critical in pressing the local government officials to take effective actions to address women's problems under the GECSRM so as to avoid the possible negative impacts on social stability.

(3) Given the strong intention to make sure that everyone can benefit from the GECSRM, the local government officials make great efforts to explore solutions to women's problems. A focus on local leaders' attitudes and perceptions on addressing women's land rights issues may be worth pursuing in other parts of China.

## Recommendations

- Base policy and distribution of community land rights on individuals rather than the household as a unit. This strengthens the women's position within the household and reduces the risk of losing their grassland and related benefits when their marital status changes.
- Where possible, encourage women to organize themselves to actively claim their rights. Group action was instrumental in pressing the *gacha* leaders and the local government to pay attention to their problems under the GECSRM and to take effective actions to help them.

# WOMEN AND COMMUNITY PASTURE MANAGEMENT

## Background

### Country Background

In the Kyrgyz Republic, agricultural land is comprised of about 7% arable land and 43% grassland. Traditionally, Kyrgyz people, especially in the central and eastern parts of the country, have been engaged in transhumant livestock grazing, i.e., migrating with herds following the natural grass vegetation cycle. They move from villages in the lowlands to spring pastures in April and May, then to high altitude summer pastures in June and slowly back to the villages after harvesting cereals in September.

The majority of households in the Kyrgyz Republic have a small number of livestock which they use for their own consumption. Livestock is extremely important for ceremonial traditions and for a household's status in a community. Livestock is also insurance for rural families, used in times of urgent financial need. Thus, almost every rural household has livestock, varying from five to twenty heads of sheep and from two to five heads of cattle, especially dairy cows.

### Status of Women

Women in the Kyrgyz Republic experience limited access to economic opportunities. Women's independent economic activity has decreased almost two times, and even more in certain regions (to 30.6 % in Naryn *oblast*) within the two decades since the country's independence.

Traditionally, women's rights to pastures are secured through their male relatives – fathers, brothers, husbands, or, in the husband's absence, his male family members. Under customary rules, men are the head of the household; therefore, property rights, including rights to livestock and pasture land-use rights, are attributed to men. Women enjoy access to pastureland insofar as they are a member of a pasture-using household, and the household is a member of an associated clan living in the particular pasture-using area. In traditional times, there were rare cases where married women would have rights to use their father's pastures, and usually only if the family owned a lot of livestock and herded the animals themselves.

Livestock-raising is traditionally considered a male activity; however, women play an important role in animal husbandry and care. Women-headed households, or households where men are absent, rely on male relatives or on relatives of their husbands to gain access to pastures for their livestock. If they apply for pasture use rights on their own, they might get poor quality pasture or pasture areas far from water or roads.

Marriage customs are patrilocal, and both dowry and bride-price, known as *kalym*, are commonly practiced in rural the Kyrgyz Republic. Women can sometimes bring family livestock into the marriage as a part of the dowry. When they do, this livestock is seen as a household asset to be merged with the livestock that the husband brought to the marriage.

Women are traditionally excluded from decision making about allocation of pasture resources, and in general their interests are not taken into account in pasture management and governance. Women, who are responsible for the care of the grazing household, report that summer pastures lack reliable electricity and communication, clean drinking water, certain foodstuffs, household goods such as soap and candles, child care support, health care, and veterinary and medical services. Because men are responsible for overseeing grazing animals, their interests tend to be related to pasture management and infrastructure improvement, such as repairing roads and bridges.

## Legal Framework

In general, statutory law provides a foundation for equal rights and protections for women and men and for women's rights to land and property.

Today, the state owns all pastureland, and state ownership of pastureland is protected by the Constitution; yet the effect of the Pasture Law (2009) has been to devolve pasture management and authority to the rural populations. All residents of a rural municipality are also members of the Pasture Users' Union (PUU) for that area. So far, about 454 PUUs (out of a possible 472) have been voluntarily formed with significant livestock and pasture areas.

Under the Pasture Law, the PUU represents the interests of the livestock owners and other pasture users with respect to pasture use and improvement. Its representative executive body is the Jayit Committee (JC), which has authority to develop the Community Pasture Management Plan (CPMP) and the Annual Pasture Use Plan, approved by the PUU Assembly and then by the *aiyl kenesh* (local governing body). The JC is also responsible for implementing these plans, monitoring pasture conditions, issuing pasture use tickets, fixing fees and collecting payment for pasture use, resolving pasture-related disputes, and managing pasture revenue. Fees for tickets are calculated based on the Community Pasture Management Plan budget divided by the number of livestock units.

In practice, women's use of pastures and their role in pasture management are governed by customs. The Family Code and the inheritance law apply to private land, not to pastureland which is categorized as state land.

## Project Interventions

The Livestock and Market Development Program (LMDP), which ran from 2007 to 2013, was funded by the International Fund

for Agricultural Development (IFAD). The Agency for Community Investment and Development (ARIS) was the local implementing agency.

The LMDP development objective was to increase livestock productivity, to be reflected in improved and equitable returns to livestock farmers. There were three expected project outcomes:

**Outcome 1:** More productive and accessible pasture areas and increased supplementary feed available to community livestock.

**Outcome 2:** Healthier livestock with lower levels of mortality.

**Outcome 3:** Market partnerships in the milk value chain providing incentives for productivity increases.

The LMDP targeted the following groups: (1) vulnerable households among small producers of livestock products; (2) woman-headed households and (single?) women; (3) other households of livestock product producers; and (4) private veterinarians (PV).

In response to the evaluation of earlier projects, in addition to specific targeting of woman-headed households, the LMDP project design anticipated several other entry points for women to participate actively in management of pasture resources at the community level. These included greater participation in the Jayit Committee and active engagement as PUU members in elaboration and implementation of the Community Pasture Management Plan, including in defining priorities for project investments. Women also participated as members of Village Health Committees (VHS), a separately organized, voluntary body (that pre-existed pasture reforms), which has a permanent seat on the JC's veterinary subcommittee.

After the project team noticed that women were not playing an increased role in the JC, there was a concern that women's interests would not be equally represented in the Community Pasture Management Plans and would therefore not be supported by these investments. To address this concern, the team developed other mechanisms to ensure women's interests were among those that were prioritized to receive grants.

In addition, to help ensure that women's interests were considered in the Community Pasture Management Plan when the JC was developing its investment proposals, ARIS facilitated targeted focus groups to help define priority investments.

Finally, because women's participation in the JC continued to remain low, representatives of the Village Health Committees (VHC), which were all women, were added as a permanent member of the JC as a subcommittee.

## Findings

By recognizing that all *residents* of a community, no matter where they were born, are members of a Pasture Users Union, the law is positive for women; as long as a woman is a resident, she will have rights to be a member of a Pasture Users Union, no matter her marital status, where she was born, or her ancestry.

The LMDP project paid significant attention to gender in design, largely guided by the experience of the World Bank-funded Agricultural Investment Support Project (AISP) project, requirements of the IFAD Gender Policy, and, more broadly, IFAD's institutional commitment to gender mainstreaming. The critical attention, leadership, and motivation of the IFAD technical leads on the project helped ensure consistent attention to gender. The design included detailed elements specifying how the project would mainstream gender in every aspect of its implementation, including management, programming, and monitoring and evaluation. It also assigned specific responsibility for gender to one core staff member (a woman). At the same time, there was a gap between the gender-related activities envisioned in the design and the capacity of these implementers to specifically address the identified needs.

Imposing quotas for participation of women in the JC had mixed results, and reaching the target alone did not ensure that women's interests were more likely to be addressed by the JC or that women were meaningfully participating. On the positive side, the targets may be the main link between the gender policy and the project implementation; they were a key performance metric for the project and motivated implementing staff and JCs to pay attention to women in some way. In practice, whether women were meaningfully included on the JC depended on other factors, as well as the target. For instance, where women were meaningfully included, it very much reflected the commitment, knowledge, and skill of the ARIS field staff persons, specifically their abilities in social mobilization and in using participatory methods to engage the community.

## Recommendations

- A consideration for future programming may be to budget and provide for highly targeted, context-specific capacity development of project staff on the importance of paying attention to gender, the specific constraints that women face with regard to pasture-based livelihoods, and how they can be addressed.
- It is important to supplement the incentives for women's engagement in pasture management with other approaches to ensuring women's interests are represented – including outreach and mobilization, support for women's capacity development, and quotas for women in decision making roles (as the LMDP has done).
- One consideration for future reference would be to better understand the dynamic between gender, pasture (or other resources) livelihoods, and pasture governance early on, and link those findings to an integrated social and behavioral change communications and outreach strategy that is launched at project's beginning, and is run systematically through the project's life.

## Background

## Country Background

Ghana is a lower-middle-income country; however, poverty rates and food insecurity are significantly higher in the northern areas of the country. As part of its efforts to close the south-north gap, the government of Ghana passed the Savannah Accelerated Development Authority Act in 2010 to encourage sustainable agricultural development to improve the livelihoods of local farmers, particularly women, and combat climate change.

Ghana became independent in 1957. Its law is based on English common law<sup>91</sup> and on customary law. The Constitution vests all public land with the President, and all customary holdings in stools, skins, or families or clans. Stools and skins refer to traditional chieftaincies; in the Northern Region “skin” is the common term, however the laws frequently use the term “stool land”<sup>92</sup> to refer to all forms of customary land. There is also a small percentage of private freehold land, located in urban areas. Foreigners are constitutionally prohibited from owning land in Ghana, but foreigners may lease land for terms of up to 50 years.

## Status of Women

The Akan people of Ghana are a matrilineal society, primarily living in southern Ghana. Northern Ghana is home to patrilineal tribes, but in either case, women’s land rights are more insecure than men’s. In the Northern Region, women generally access land through their fathers or brothers until they get married, at which point they access land through their husbands. Upon marrying, women traditionally live in their husband’s house (acquired either from his family or the chief), and they access land for farming through their husband or by making a request to the chief.

The head of the household is almost always a man unless a widow’s sons are too young to assume the role. Family heads are always the oldest man.<sup>93</sup> While men and women can both acquire land individually, in general men get land and then give some to their wives. In some areas, women may intercrop or farm on their own land, but generally they farm groundnuts, yams, and cassava on smaller lots, primarily to feed their immediate families. Men are more likely to cultivate maize and other cash crops. This is in part because women generally cannot afford more expensive crops.

91 The part of English law that is derived from custom and judicial precedent rather than statutes.

92 Nearly all customary land in Ghana is classified as ‘stool’ or ‘skin’ land, a reference to the traditional seat of the Chief. Legislation often uses the terms interchangeably (e.g., Art. 267 of the Constitution is titled “Stool and Skin Lands Property,” but only uses the term “stool” in the text, although the provisions apply to both stool and skin land).

93 Families are an extended group, while households are just immediate family members.

While widows are sometimes able to retain rights to their marital homes and farms, this varies by ethnic group (for instance, Ewe widows stay in their marital homes and Mo widows return to their natal homes when their husbands die). The widespread practice of polygamy<sup>94</sup> can complicate the division of the deceased husband’s property. Further, the likelihood of a widow retaining rights to the marital property is often dependent on her age, the number of children, and her relationship with her in-laws. A widow who remarries loses access to the land she shared with the deceased. Inheritance practices vary across the Northern Region; in some areas daughters inherit equally to sons, in others they are entitled to half-shares (as prescribed by Islamic law), and in some areas, daughters do not inherit land at all due in part to a perception that they are “temporary” family members who will eventually get married and become part of their husband’s family. Even when married daughters do inherit land, they rarely use the land themselves, instead leaving it to their brothers to farm and sometimes collecting a portion of proceeds after the harvest.

## Legal Framework

A complex mix of formal and customary laws, which vary among ethnic groups and communities, governs Ghana’s land tenure system. Customary authorities in Ghana retain a significant amount of power over the management and administration of customary lands, which comprise approximately 80% of land in the country. The Constitution vests title to customary land, referred to as either “stool” or “skin” land, depending on the region and ethnic group, in the chiefs to hold in trust on behalf of their subjects.<sup>95</sup>

Customary land secretariats (CLSs) are land administration offices which support traditional authorities in the management of customary lands but which lack a legal or institutional framework to regulate their activities and establish their link to existing government institutions. They remain under the nominal authority of the Office of the Administrator of Stool Lands but are in reality under the authority of customary authorities.

The Constitution prohibits discrimination based on gender and guarantees a woman’s right to own and inherit property. The Intestate Succession Law of 1985<sup>96</sup> establishes specific protections for the rights of surviving spouses to marital property,<sup>97</sup> but expressly exempts skin, stool, and family property<sup>98</sup> and therefore does not apply to the majority of land in Ghana.

94 An estimated 22% of Ghanaian women are in polygamous marriages. See [https://books.google.com/books?id=wzJdSlfeeTQC&pg=PA501&lpg=PA501&dq=22+percent+women+polygamy+ghana&source=bl&ots=qAVVDs7\\_wV&sig=URp9Fv8XVn1\\_j9U6dwWFvEG8Q&hl=en&sa=X&ved=0ahUKewjNz\\_igkLrOAhWlQyYKH-foHCZwQ6AEILDAC#v=onepage&q=22%20percent%20women%20polygamy%20ghana&f=false](https://books.google.com/books?id=wzJdSlfeeTQC&pg=PA501&lpg=PA501&dq=22+percent+women+polygamy+ghana&source=bl&ots=qAVVDs7_wV&sig=URp9Fv8XVn1_j9U6dwWFvEG8Q&hl=en&sa=X&ved=0ahUKewjNz_igkLrOAhWlQyYKH-foHCZwQ6AEILDAC#v=onepage&q=22%20percent%20women%20polygamy%20ghana&f=false)

95 Article 267.

96 Only applies when there is no will; however, wills in rural areas are uncommon.

97 Sections 3, 4, 5, 6, 12, 16a, and 17.

98 Section 1.

## Project Interventions

The Alliance for a Green Revolution in Africa (AGRA) was created through a joint partnership between the Bill and Melinda Gates Foundation and the Rockefeller Foundation in 2006, with the aim of improving agriculture on the continent and catalyzing a “green revolution” in Africa. In support of those goals, AGRA has created a number of policy hubs, or “nodes,” in different countries, each concentrating on a different policy area, such as land, seeds, soil health, and markets.

The Ghana Land Policy Action Node was formed in 2012 to implement the three-year Land Access and Tenure Security Project (LATSIP) in the Northern Region of Ghana, identified as a breadbasket area by the Ministry of Food and Agriculture. LATSIP is being implemented in the Northern Region by a consortium of Ghanaian and international organizations, including COLANDEF. COLANDEF’s activities were the focus of this assessment.

COLANDEF’s activities were focused in the Northern Region, and were:

1. Community sensitization around the importance of securing land rights.
2. Capacity building of the customary land secretariats.
3. Alternative dispute resolution (ADR) training aimed at traditional authorities:

Community sensitizations involved general sensitization and separate women’s sensitizations. Women’s sensitizations aimed:

1. To highlight peculiar land rights issues of women in the project area.
2. To sensitize women in the project area on women’s land rights and the national and international instruments that underpin the protection of these rights and how women can take advantage of them.
3. To create awareness on proper procedures for land acquisition, land documentation, and means of securing land tenure.

Ensuring that women attended sensitization meetings around the importance of securing land rights was a focus of the project. Of the 1,600 who attended sensitizations, approximately 51% were women, although this percentage varied by project area. Meetings were held with just women, using women trainers to increase the participants’ comfort in speaking. In mixed groups, women tended not to speak up. There were varying levels of retention of information. In general, many men and women believed, because of the sensitizations, that it is important for women to document their rights. In fact, the main lesson people learned from the sensitization is that it is important for women to document land in their own names in order to avoid disputes or displacement in the future. Also, women’s access to the CLS and other government bodies increased due to the project interventions.

The CLS capacity building component focused on CLS procedures and resources and staff, including gender-inclusivity. However, while COLANDEF helped develop CLS guidelines to direct their work, these make no mention of gender-related issues, other than to note that part of the mandate of the CLS is to develop mechanisms to improve the tenure security of women and vulnerable groups.

Trainings for the CLS staff highlighted the importance of securing land rights for women and focused in part on the special challenges facing women in the acquisition of land. Following the trainings, some CLS said they now disaggregate data by gender in their quarterly reports to the Office of the Administrator of Stool Lands (OASL). Others said that they now feel that women should be empowered to make more decisions at the household and community level. Women are now invited to more community meetings and play a more active role in community decision making.

Finally, in part because ADR trainings were held in the Northern Region capital of Tamale and conducted entirely in English, few women attended the trainings. The training did not focus on gender, and interviewees said that women generally need a male relative to accompany them when they bring disputes.

## Findings

1. One of the issues COLANDEF faced in their sensitization efforts was that there was a large number of projects working in the same four target areas, thus interviewees had a hard time remembering messages and did not seem to clearly connect sensitization efforts to specific projects.
2. COLANDEF was able to serve many women by holding sensitization meetings with existing women’s groups, which allowed women in those groups to discuss the issue at hand in a comfortable setting. In addition, the sensitization meetings were held in local languages. They found when the meetings were held in English, women were less likely to engage or even attend. Women’s attendance did depend on their level of interest. For example, in Tamale, where women saw no chance of exercising land rights, they were much less interested in going to sensitization meetings related to women’s land rights. COLANDEF did not hold follow-up meetings to the sensitization meeting, which could have been useful in addressing issues and challenges that come up as more women attempt to document their land rights.

While community sensitizations and many training sessions included a clear focus on gender, interviewees noted that some trainings did not address women’s issues at all. For example, the ADR trainings did not address gender differences.

## Recommendations

- Ensure gender sensitization messages are distinct and clear.

- Projects might consider targeting areas where there are fewer projects, coordinating with existing projects, and/or distinguishing the message in a tangible way by supporting local needs as part of the project.
- Support women's groups to strengthen women's confidence in the public arena.
- Consider both working through existing women's groups and creating support groups. Where women's groups do not already exist, an organization might create groups that support women but also contribute to the family as a whole.
- Hold frequent meetings and trainings that are responsive to ongoing questions. For women especially, follow-up meetings after the sensitization meeting could be helpful.
- Address women's issues directly in all trainings.
- Train in local languages.
- Hold trainings at the local level instead of bringing people to central, urban areas. Women are often less able than men to travel long distances or to stay away from their families for several days because of cultural constraints and family responsibilities. Therefore, ideally trainings should be held in multiple locations closer to trainees' homes, so that more people can be trained and so that women do not have to leave their families for several days.

## Namibia

# IMPLEMENTATION OF THE COMMUNAL LAND REFORM ACT AND OPERATIONALIZATION OF COMMUNAL TENURE

## Background

### Country Background

In Namibia, land is a contentious issue rooted in the legacy of a dual land tenure system dating back to colonial and apartheid rule. During colonial rule, indigenous Namibians were systematically dispossessed of land and confined to underdeveloped communal lands in the northern regions, while European settlers were granted freehold rights to commercial areas in the central and southern parts of the country. Traditional Authorities retained control over communal lands in the northern region and the state assumed governance of privatized land. At independence in 1990, 6% of the national population owned 44% of the commercial land, and 70% resided on communal land.

Regardless of race, women were precluded from owning property during colonial rule. Gender inequality was institutionalized through discriminatory colonial policies and laws.

In addition to the state sanctioned gender discrimination, customary systems governing land rights of indigenous women generally favored men due to gendered power dynamics that underpin many land governance systems and practices. While gender relations are culture specific, Namibian women are generally assigned fewer and weaker land rights than men. More often than not, these rights are temporary and secondary to the land rights of men. Prior to the enactment of the Communal Land Reform Act (CLRA), 2002 (Act No. 5 of 2002), as amended, women primarily accessed land through their husbands, uncles, fathers, or other male relatives. This is in part due to patrilocal residence patterns where wives move to the husband's village at the time of marriage.

### Status of Women

As in other traditional communities, customs and practices surrounding marriage and inheritance have considerable impact on women's de facto right to land. Paying bride price, or *lobola*, to the bride's family is common practice in most of Namibia and often considered a pre-condition of customary marriages. Approximately 11% of marriages in Namibia are customary.

While polygamy appears to be on the decline, the Demographic and Health Survey of 2000 indicates that 12% of married women are in polygamous unions. Polygamy is not recognized (neither protected nor abolished) under Namibian civil law, although polygamous relationships are arguably recognized by the CLRA as customary unions. Communities of Kavango and Owambo are matrilineal (trace their descent through the female blood line)

with patrilocal residence. The matrilineal descent system and nature of relationship often determine who has rights to which category of property when death or divorce occurs. Matrilineal nephews, uncles, and brothers have significant control over land as key decision makers and usually approach traditional leaders to be allocated parcels of land. In Kavango and Ovambo tradition, the patrilineage gets marital property and matrilineage gets the children upon divorce. Increasing land scarcity and shifting residence pattern result in geographic dispersal of members of matrilineages and patrilineages and appear to undermine descent systems.

Additionally, Kavango tradition dictates that the person found to be at fault or responsible for the divorce has to pay a fine to the other. Women are not likely to receive a fair hearing as the customary courts are often dominated by male relatives of the husband and because of the prevailing social perceptions about gender roles.

## Legal Framework

Women are granted the same status as men before the law. The Constitution explicitly prohibits discrimination on the basis of sex and obligates the state to adopt policies aimed at "the enactment of legislation to ensure equality of opportunity for women." Article 16 of the Constitution provides for the universal right to acquire, own, and dispose of all forms of moveable and immovable property. Moreover, women are granted equal rights during marriage and at the dissolution of marriage as noted in Article 14. Finally, Article 66 recognizes customary law in force at the date of independence subject to its compatibility with the Constitution and statutory law. Article 66 also states that customary law may be repealed or modified by parliament if a court has declared it unconstitutional.

The Communal Land Rights Act (CLRA) recognizes and consolidates the legal authority of traditional authorities to administer communal land while reinforcing gender-responsive customary laws and incorporating additional gender-responsive safeguards. It codifies the gender-equitable aspects of customary laws such as the protections provided to widows in the revised Laws of Ondonga. While not a codification of customary law per se, the Laws of Ondonga is a "self-stated" written account of customary law (without legislative intervention) pertaining to particular matters governing the Oshiwambo-speaking communities in northern Namibia. Traditionally, women were not eligible to inherit communal land rights. Through an amendment to the Laws of Ondonga, customary law was revised to grant women the right to occupy the land they shared with their husbands provided they paid a fee (maximum of N\$ 600). All Traditional Authorities in the north subsequently officially abolished the fee for widows wishing to remain on the land.

The Traditional Authority Act accords legal recognition to Traditional Authorities and defines their powers, duties, and functions. However, not all Traditional Authorities are formally recognized under the Act. Recognized Traditional Authorities

are responsible for the administration of customary laws in their respective communities and must “uphold, promote, protect and preserve the culture, language, tradition, and traditional values.” Traditional Authorities’ responsibilities also include their role as arbitrators of disputes between community members. As noted, gender-based discrimination in customary law is impermissible under the constitutional principle of non-discrimination. In addition to their obligation to abolish customs and traditions that contradict the Constitution, Traditional Authorities have a duty to ensure “Affirmative Action is implemented in the community, particularly in respect to promoting gender equality in positions of leadership.” A Council of Traditional Leaders assists the President with the administration and control of communal land.

## Project Interventions

Land in post-independent Namibia is classified into three often overlapping categories: communal, state, and freehold. It is divided into 44% freehold, (commercial land), 36% communal and 20% state land (e.g. game parks etc.). All communal land vests in the state in trust for the benefit of traditional communities residing in those areas; hence, customary rights cannot be alienated.

The Oshana region leads the implementation of the nationwide Communal Land Reform Act, (2002) which introduced the registration of customary land rights in communal areas, while the Kavango region declined to participate in the registration process. Instead, the Kavango region continues to independently administer customary land rights in accordance with its established customary system. This case study predominantly focuses on select communities in Kavango East and the Oshana region and compares the two interventions--the CLRA in Oshana and the traditional land governance system in Kavango.

The CLRA seeks to improve tenure security on communal land and adopts a strategy of incorporating gender-responsive safeguards to facilitate equitable governance and deliver benefits to all stakeholders. The CLRA has procedural and substantive safeguards that are gender-sensitive.

### Substantive Safeguards

- Codifies the land policy provision of independent customary land rights for women.
- Includes explicit protection for widows.
- Contains a broad definition of the term spouse and does not require proof or documentation.
- Recognizes joint titling (CLRA regulation).
- *Procedural Safeguards.*
- Mandates the representation of 4 women on the Community Land Board (CLB) - 2 engaged in farming activities within the Board’s area and 2 with expert knowledge relevant to the functions of the Board.

- Engages women in pre- and post-registration meetings as members of affected communities.
- Accords women the right to appeal decisions of the traditional authority and the CLB.
- When formulating the CLRA, the government employed a few strategies to integrate gender issues into its provisions. Shortly after independence, widow eviction and women’s lack of independent rights to communal land received much attention. The former was prioritized in discussions with Traditional Authorities. Gender issues were also signaled as a key communal land issue during the 1991 National Conference on Land Reform and the Land Question; however, gender issues did not feature prominently in subsequent conferences on the matter.

## Findings

The CLRA deals head-on with the issues related to statutory and customary law. Where there have been problems with the law, changes have been made. Initially, the CLRA did not accommodate cultural specificities across traditional systems of Namibia, but the government responded by incorporating group rights in the CLRA to accommodate the diversity and complexities of customary tenure systems.

While the CLRA builds on the gender equitable aspects of customary law, it does not reinforce some aspects.

Neither a permanent nor an ad hoc technical committee reviewed the potential implications of existing property-related statutory laws on the proposed CLRA provisions. These inconsistencies and gaps in land-related statutory provisions resulted in inadequate legal protection for some women.

The CLRA codifies the land policy provision of independent customary land rights for women, and the CLRA regulation theoretically allows for joint titling. However, enforcing the regulation that implements the CLRA provisions may be insufficient to ensure married women’s rights are registered with men’s. The registration form requires applicants to list the name of a spouse. It does not indicate, however, that the listed spouse is a co-applicant, and the non-applicant spouse is not legally considered to be a joint rights holder. A recent amendment, to take effect soon, provides a husband and wife the option of applying jointly and includes two signature lines. However, it provides a single signature line for an applicant and another for a spouse, which suggests that the effect of this change will not necessarily protect the rights of each spouse as an equal joint rights holder. In addition, the recent amendment allows for group rights. However, the new form only requires the signature of a representative of the group. To the extent that the named representative is accorded any special treatment, or decision-making power with regard to the rights documented on the certificate, this could disadvantage other adult group members not listed on the title, including subsequent wives in polygamous households.

On the positive side, the CLRA employs a broad definition of spouse and does not require registration of conjugal unions. Spouse “includes the spouse or partner in a customary union,” whether or not such customary union has been registered. However, the CLRA definition of spouse may not include women in polygamous relationships.

The Ministry of Land Rights collects sex-disaggregated data on applicants. Still, it is difficult to interpret the results of the CLRA implementation for different categories of women without further disaggregation and aggregation. Available data suggests inequitable distribution of customary land right between women and men and among categories of women; there are very few married female applicants and a considerable number of unmarried female applicants.

The initial communication strategy did not sufficiently inform communities about the content of the CLRA, including its gender responsive provisions. However, the revised communication strategy and associated efforts evolved to respond to identified needs. The MLR revision of the communication strategy took place within the context of reviewing the budgetary, human resource, and technical challenges related to enforcement of the CLRA. One potential issue is that the gender dimensions of communal land governance are not fully understood by key stakeholders, including some tasked with enforcing the CLRA.

The CLRA requires that applications be displayed on a notice board for 7 days in order to solicit objections by persons with adverse claims against the application for customary land rights. While constituency offices, one of the main venues for displaying maps, are socially and physically accessible to male and female respondents, it is not necessarily frequented by either.

The Government assumed that information shared with senior Traditional Authorities would be disseminated to local communities through traditional structures and that communities would be represented through the same. This strategy did not always result in ample transmission of information or adequate consultation with communities.

The CLRA facilitates representation and participation of women in communal land governance by providing them opportunities to engage at the institutional and community level. The quota for female representation on the CLB assumes 12 members. While there are a minimum of 12 CLB members, the total number of members varies depending on the number of recognized Traditional Authorities and Regional Councils in the Board’s area. The Ministry of Gender Equality and Child Welfare is not represented on the CLB.

The CLRA is not strategically linked to broader poverty alleviation efforts. This has considerable implications for women’s land rights. For instance, single women reported lack of livelihood options as their greatest obstacle to claiming and exercising new customary land rights under the CLRA.

## Recommendations

- Employ an iterative process to respond to needs and new information as it arises.
- Capitalize on the relevant experiences of other countries in the region.
- Review the statutory provisions of the relevant communal land act to ensure compliance with gender-specific constitutional safeguards.
- Integrate gender-equitable provisions in other land-related laws.
- Exploit the flexibility of customary systems and build on the gender responsive aspects of customary tenure systems and practices to strengthen women’s rights to land.
- Use gender-equitable practices to illuminate interpretations of customary law that are more favorable to women’s land rights.
- Incorporate gender-responsive provisions in the statutory framework recognizing customary law.
- Employ an inclusive definition of spouse and do not require registration of unions.
- Grant women independent rights to communal land regardless of their marital status.
- Allow for joint titling, particularly where men traditionally are the applicants for customary land rights for marital residence/farmland and are regarded as rights holders.
- Accord explicit protection for vulnerable women. Better understand the distinct experiences and land-related needs of other groups of unmarried women.
- Mandate inclusion of women and require a minimum quota for their representation in communal land governance structures.
- Facilitate procedural fairness for men and women by requiring notice for demarcation, registration, and meetings of decision-making bodies.
- Minimize administrative costs for applying for customary land rights to strengthen women’s land rights.
- Collect sex-disaggregated data.
- Continually disseminate information about the land intervention at all levels and through context-appropriate mediums highlighting gender-responsive provisions.
- Ensure communication efforts are part of a broader strategy that includes addressing budgetary, human resource, and technical challenges associated with enforcing the law.

## GENDER IN A FOREST RIGHTS PROJECT IN JHARKHAND

### Background

#### State Background

Jharkhand, a new state in eastern India, was carved out of the state of Bihar in 2000. The state has 5 divisions and 24 districts. Approximately 28 percent of the population of Jharkhand is “tribal,”<sup>99</sup> i.e., members of scheduled tribes which are among the poorest people in the country.<sup>100</sup> In India as a whole, there are 645 scheduled tribes, and 30 of those are in Jharkhand. The tribal population in Jharkhand is one of the highest in India by percentage. Sixty percent of the tribal population of Jharkhand lives below the poverty line.<sup>101</sup>

Another 12 percent of the population of Jharkhand is “scheduled caste.” As with scheduled tribes, these are specific peoples whose status is acknowledged under the Indian Constitution in articles 341 and 342. Scheduled castes are historically disadvantaged, and along with scheduled tribes, they are beneficiaries of favorable policies and schemes, such as guaranteed political representation and reservations of government jobs.

In Jharkhand, forests are critical to tribal people’s lives and livelihoods. About 30 percent of Jharkhand is forested.<sup>102</sup> Forests provide homes, jobs, and income through the collection of fodder, fuel wood, and non-timber forest products (NTFPs), like herbs, fruit, and leaves, which people consume or sell. The forest is also a cultural space and a place for traditional worship.

Throughout India, and especially in Jharkhand and other heavily forested states, use of forestland has been a source of conflict between the government, especially the Forest Department, and tribal and other forest-dependent peoples. The legal rights of forest dwellers<sup>103</sup> are frequently ignored.

#### Status of Women

In general, in India customary practices grant women fewer rights to control or access land than men. While the formal law protects women’s rights to own and inherit land, in practice women are rarely named on titles, and inheritance is generally patrilineal.<sup>104</sup> Even though interviewees believed that tribal

communities’ customs were often more egalitarian than those of the population at large, they stated that women had less economic power, less access to government schemes, and much less literacy than men.

In focus group discussions, men and women said that women are especially dependent on the forest, in part because they tend not to migrate for jobs and in part because their traditional tasks include many that rely on forest products. In Jharkhand, women use the forest both for collecting NTFPs and for fuel wood, while men use the forest primarily for tools and building houses. Because women often depend on forest resources like NTFPs for their family’s livelihood, they have become more economically, socially, and politically marginalized as their traditional rights to the forest have diminished.

### Legal Framework

The “Scheduled Tribes and Other Traditional Forest Dwellers’ (Recognition of Forest Rights) Act of 2006” (FRA), is an effort to correct historical injustice against forest dwellers due to non-recognition of their customary forest rights after their ancestral lands became state forests. The FRA increases the authority of local communities over forest resources.

The FRA recognizes forest dwellers’ rights to access, own, and sell NTFPs and to protect, conserve, and manage community forests for sustainable use. Individual rights to forestland (IFR), which were under occupation at the time of the law, are recognized for living and self-cultivation. Community rights (CFR) are recognized over larger areas of forest for cultural practices, bona fide livelihood needs, e.g., sale and collection of NTFPs, grazing, fishing, water use, and management of forest resources. Community rights are managed by Forest Rights Committees (FRC).

The FRA has a number of provisions intended to protect women’s rights. Section 4(4) states that IFRs must be held jointly in the names of both spouses in the case of a married applicant. The FRA rules require that women constitute at least one third of an FRC’s membership. The rules also require that the minimum quorum for a *Gram Sabha* (village administration) meeting be 50% of the village adults and that at least a third of those present must be women.<sup>105</sup> Interviewed project employees and focus group attendees, however, stated that state policies and actions, which are often in contradiction to the FRA, over the past 15 years have had a significant negative impact on women’s rights to forest resources.

### Project Interventions

The project was implemented by *Naya Sawera Vikas Kendra* (NSVK), a local NGO that strengthens the rights of communities. The NSVK project is part of a larger effort by Oxfam India, an international development organization, to increase forest dwellers’ access to and control over natural resources in

99 Referred to as “scheduled tribes” under national law, and referring to specific indigenous peoples whose status is formally acknowledged under the Indian Constitution

100 Das, M., G. Hall, S. Kapoor and D. Nikitin. 2010. “India: The Scheduled Tribes.” In *Indigenous Peoples: Poverty and Development*, Hall G. and H. Patrinos, eds. chapter 6. Washington, DC: World Bank.

101 Singh, Krishna M., R. K. P. Singh, M. S. Meena, A. Kumar, and A. K. Jha. 2013. *Rural Poverty in Jharkhand: An Empirical Exploration of Socio-Economic Determinants Using High Frequency Panel Data*; USAID (2011). *Property Rights and Resource Governance Country Profile: India*. <http://www.usaidlandtenure.net/india>.

102 Das, G. 2006. *Jharkhand: A Statistical Profile – 2006*. Jharkhand Directorate of Economics and Statistics.

103 People who primarily reside in and depend on forests or forestlands for livelihood needs (Forest Rights Act 2006 Article 2(c)).

104 USAID. 2011. *Property Rights and Resource Governance Country Profile: India*. <http://www.usaidlandtenure.net/india>.

105 Rules, 2008.

three states: Chhattisgarh, Odisha, and Jharkhand. The project in Jharkhand was chosen because its timeline most closely matched the needs of this case study. Gender is a cross-cutting theme for NSVK and is intended to permeate all of its work; it also has a clear commitment to gender diversity of staff.

The objective of the project was to increase forest dwellers' access to and control over forests under the Forest Rights Act, focusing on women and tribal and scheduled caste communities. The project lasted three years, from April 2012 to March 2015. NSVK engaged in: building community based institutions, carrying out mass awareness campaigns for empowering rural communities to understand their rights under the FRA, and advocating, networking, and building knowledge to link the community-level initiatives with macro-level policy initiatives identifying the FRA as a major piece of legislation. As of April 2014, the latest quarterly report with available data, the project had facilitated the filing of 4,025 individual forest right (IFR) claims (joint title) and 46 community forest right (CFR) claims.

The NSVK project used a four-pronged approach to institution building, advocacy, networking, and knowledge building to achieve its goals:

- Develop and strengthen community organizations to demand their statutory rights over forestland (both individual rights and community rights) and resources;
- Increase networking with existing groups working on FRA issues and with other networks to lobby and seek accountability from the government to effectively implement the FRA;
- Raise awareness and seek accountability from the government to implement the Tribal Sub Plan (TSP)106 and provisions; and
- Empower women in relation to their rights to natural resources.

The project can loosely be divided into three overlapping components, all of which worked within the framework of the FRA: 1) awareness raising, 2) community-level forest rights committee formation, and 3) support for individual and community forest rights applications.

At the local level, NSVK was committed to raising awareness about the importance of the FRA and about the importance of women's involvement, especially in communal forest management. However, gender concerns were not a major focus of sensitization for the government at the state level, as the project was primarily focused on raising awareness of the requirements of the FRA generally.

In forming FRCs, women were encouraged to become active participants, and NSVK worked to ensure that half of those present at FRA decision-making meetings were women. Finally, NSVK ensured that women's names were on IFR documents, as per regulations. They usually involved both men and women

in mapping the forest and supported women who were already active in managing the forest.

## Findings

Much of the success of the project can be attributed to NSVK. The NSVK model involves deep involvement in each village over a period of time. NSVK has been involved in these communities for five to six years and attributes a lot of its success to this ongoing engagement. NSVK leaders shared that it usually takes about two years to establish enough trust with the community to really begin the process of changing customs and practices, especially around women's rights.

In most cases, NSVK social workers live in the area they are targeting and then work with a number of nearby villages. Social workers are in the villages on a weekly basis, conducting meetings on topics that have been identified as of interest to the community. This leads to communities' and, specifically, women's empowerment. NSVK staff attribute much of their success to these young social workers, who often serve as a bridge between the community and outsiders, including other NSVK staff and the government. The social workers receive considerable training and generally stay in the area because they are from there. NSVK attempts to ensure that there is an equal number of male and female social workers. This is a clear commitment to gender diversity and ensures that local women are comfortable approaching the social workers. NSVK would benefit from including women in its leadership.

NSVK staff members were not always focused on gender or the FRA, but Oxfam worked closely with them as a partner to impress the importance of both issues.

It is not customary in Jharkhand for women to be equal participants in male spaces, such as community meetings. Women are also not customarily named on titles or considered co-owners of land. NSVK workers were able to use their pre-existing deep ties in the community to sensitize community members on the importance of including women in community life and on titles. Ongoing discussions with both women and men on the importance of women's participation and on the economic and social benefits of their inclusion were identified as key to changing community norms and attitudes towards women's participation.

NSVK was originally in favor of advocating exclusively for communal rights, but they have seen great benefits from individual rights, as individual titles lead to more than just ownership of land, but also access to other schemes such as those that provide farming inputs. In addition, because no one can sell an IFR, the land is protected from outsiders. Individual titles can confer different types of benefits than community titles, and both are important to women.

Trainings and sensitization for government officials has been important to the issuance of individual rights and was identified as the reason officials are hopeful community rights documents

106 Until recently, the Indian economy was planned using Five Year Plans implemented by the Planning Commission (which has now been replaced by the NITI Aayog). Each Five Year Plan includes a Tribal Sub Plan allocating funds to be used to benefit scheduled tribes.

will be issued soon. This kind of support is vital to ensuring that laws are implemented swiftly and well.

## Recommendations

- Promote deep involvement in target communities. Whenever possible, projects that aim to improve gender dynamics should leverage organizations which already have sustained and deep engagement with the community.
- Advocate for women's inclusion in trainings and governance.
- Weigh benefits of individual versus communal titling carefully before recommending one or the other.
- Hold frequent meetings of women's groups to help empower women.
- Use local staff as much as possible.
- Ensure gender is considered in staffing, including at the highest levels, both as a commitment to diversity and to ensure that a variety of perspectives are heard.
- Work closely to build capacity of and provide incentives to implementing partners.
- Support government agencies when possible.

## Peru

# SUPPORTING WOMEN'S PARTICIPATION IN COMMUNITY GOVERNANCE TO STRENGTHEN WOMEN'S RIGHTS TO COMMUNITY LAND IN THE SIERRA

## Background

### Country Background

In recent years, land sector reforms in Peru have prioritized formalizing individually and collectively held land and creating and consolidating the country's land markets. Nearly 70% of individual property in urban and rural areas has been granted titles to date. Formalization of community lands lags behind, with an estimated 46% of native communities and 33% of *campesino* (peasant farmer) communities lacking registered titles. Current efforts are underway to regularize rural property through the *Proyecto de Titulación y Registro de Tierras* (PTRT-3) program with a focus on native and peasant community titling.

Peruvian law recognizes both individual rights and group property rights. Peasant and indigenous community lands are usually held collectively and are known as *comunidades*. This tenure form is used by both indigenous and peasant communities. In the Sierra, community land is held and titled collectively but is organized largely on individualized family plots. The extent of communal land management varies significantly among *campesino* communities; according to one estimate, about 79% of the lands of the communities are for collective use, with only 21% individually parceled as family plots. However, the majority of arable lands are parcelized in family plots, with the remainder managed collectively as non-arable land and grazing areas. As a general matter, where individuals (families) use lands to which the community holds title, such use rights are not formally registered or titled.

### Status of Women

Few studies have examined women's rights to community land in Peru.<sup>107</sup> The few references that do exist indicate that women have limited access to land, which is conditioned upon their membership in a community and their relationship within a family,<sup>108</sup> including marital status and whether they have children.<sup>109</sup>

Women are often excluded from participating in the Board of the Community Assembly (Assembly), and barriers to women's decision making around rights to land and resources within

the community has been identified as a constraint to equitable development outcomes by both the World Bank and the Interamerican Development Bank (IDB).

Gender dynamics vary among communities, though in general women in the Sierra have limited opportunities to participate in decision making and leadership. Barriers to women's participation in governance structures commonly arise in communities due to long-accepted social norms and procedural barriers. In many communities, women may lack the right to vote or participate in community decisions because they are not considered 'qualified' community members. The rules around who is deemed 'qualified' vary from place to place; in many communities, only heads of household are considered to be qualified. Heads of household are generally men, though a widow or unmarried woman may be designated as household head upon the death of her spouse or parents. This designation of the household head as qualified has the effect of excluding women in male-headed households from voting on land issues or, in some communities, even participating in discussions about land.

Even in communities that expressly include women as qualified, their right to vote can be undermined through procedural rules, such as those allowing only one vote per family. And to the extent that women may be involved in the Board of the Community Assembly, their role is usually that of Treasurer or Secretary.

Limitations on women's participation in community land governance is complicated by widespread male labor out-migration from rural Sierra due to conditions of poverty and scarce economic opportunities. Migrants leave the communities to seek temporary or permanent employment elsewhere. Women whose husbands migrate are responsible for the well-being of the family as well as the farm work, including the tasks usually performed by men. However, in many communities the out-migrants retain the status of being qualified to vote and participate in community meetings. As a result, community governance has in some cases broken down or has been stalled, as absent men are not present to participate, and decisions are put on hold until men return to the community. Women, though often left with the responsibility for maintaining and caring for the land and household, are prevented from participating in decisions that impact their interests.

## Legal Framework

Peru's formal laws recognize the autonomy and rights of the country's indigenous and peasant communities, it recognizes and distinguishes between *campesino* (peasant farmer) communities and *nativa* (indigenous Amazonian) communities. The Agrarian Census 2012 reports that there are 6,115 *campesino* communities and 1,388 native communities in the country.

The legal framework for community land clearly establishes the rights of communities to self-govern and defines protocols and procedures for community governance, which include issues

107 Burneo de la Rocha, Z. (2005) La propiedad colectiva de la tierra y las comunidades campesinas del Peru, CEPES.

108 Alejandro Diez Hurtado. (2010). Informe de investigación, Derechos formales y derechos reales: Acceso de mueres campesinas a tierras de comunidades en el marco del proceso de formalización de la propiedad en comunidades de Huancavelica. International Land Coalition.

109 *Ibid.*

related to land rights. The designation of legal personhood of communities establishes their right and responsibility to define their own rules of internal governance. Importantly, though the laws and regulations provide guidance for the formal documents outlining community membership and governance rules (census and statutes, respectively), communities may establish their own norms, including interpretation and application of rules of membership, voice, participation, and decision making.

Membership in the community, rights of participation and voice in the Assembly, and the right to stand for election to the Board are outlined in the law. Article 5 establishes the right of community members born in the community, the children of community members, and persons integrated into the community to be community members. Membership thus includes women because women are either born into a community or marry into a community (integrate). All community members have the right to use community goods and services as established in the community statutes and the agreements of the Community Assembly.

However, membership in the community does not grant the right to vote and participate in community decisions; to vote and participate in decisions one must be a qualified community member (*comunero calificado*).

The Constitution stipulates equality before the law, including equal rights to contract and to exercise the right to property and inheritance, among other rights. The Civil Code provides that men and women have equal capacity to enjoy and exercise their civil rights.

Marital property is governed by Article 5 of the Constitution and the Civil Code. Women have the legal right to own land in Peru, and the default marital property regime is partial community of property (art. 295).

## Project Interventions

This case study focuses on a project initiated in 2014 to strengthen women's participation in community land governance in the rural Sierra of Peru. The project, called "Indigenous Quechua and Aymara Peasant Women's Access to Land Governance in their Communities" ("the project") is being implemented by *Servicios Educativos Rurales* (SER) as part of the organization's ongoing efforts to promote the exercise of human rights through democratic participation and rural development. SER is a Peruvian non-governmental organization (NGO) that has worked for over 35 years across Peru to promote human rights, democracy, and rural development, with a particular focus on women. The project aims to increase women's use and control of community land and resources, increase rural women's involvement in land tenure governance in their communities, and support rural women's access to productive resources.

The concept for the pilot project was developed by SER in collaboration with ONAMIAP, a national organization of Andean and Amazonian indigenous women that advocates for the full

exercise of indigenous women's individual and collective rights, and other grassroots women's organizations at the local level (FEDECMA and COMI in Ayacucho and Puno, respectively). The proposal emerged from these organizations' knowledge and experience working on policy and legal reforms related to women's rights to land and democratic participation. SER proposed the project concept to Brot für die Welt<sup>110</sup> as a pilot. SER is currently working to replicate the project model in additional areas where it has a presence.

The SER project objective is to increase indigenous peasant women's access to and effective use and control of resources on community lands so as to close the gender gap and to support men's and women's contribution to a sustainable rural economy.

The project worked with communities to address barriers to women's land rights in rural communities by building capacity and awareness among community leaders and community members to:

- (a) safeguard and promote women's rights of voice and participation in community decision making;
- (b) increase the participation of native and peasant women in local and regional organizations; and
- (c) to provide support and guidance to community assemblies in developing and/or amending their internal governance instruments.

Project goals and planned component activities included:

**Intended Outcome 1:** Indigenous peasant women exercise their collective rights, closing the gender gap in the land tenancy systems in their rural communities.

### Components:

- Develop and implement a training program to build capacity among indigenous and peasant women on gender equality, leadership, land rights, and prior consultation and negotiation.
- Facilitate an exchange of experiences among rural woman leaders from Ayacucho and Puno on land governance and gender equity.
- Support the participation of indigenous and peasant women in local and regional organizations, advising them as needed to improve the content and presentation (through training on public speaking) of their participation and to cultivate their leadership skills.

<sup>110</sup> Brot für die Welt is a development and poverty relief agency of the German Protestant church.

**Intended Outcome 2:** Indigenous and peasant women participate in land governance.

#### Components:

- Increase community awareness of the importance of the participation of women leaders and community leaders in community governance structures (General Assemblies and Executive Boards).
- Support rural communities in the development and modification of community governance instruments (particularly Community Statutes) to safeguard women's rights to participate in decisions and to own land.
- **Intended Outcome 3:** Communities have stronger collective rights, can access national and regional resources, and participate in national and international advocacy.

#### Components:

- Prepare and disseminate studies on women's and men's access to land in Ayacucho and Puno, to elucidate the formal aspects that enable or impede women's access to land.
- Support communities to develop proposals for funding support from local government.
- Support local and regional exposure visits, and share strategies for incorporating national, regional, and local public policies on land governance and women.
- Participate in meetings and regional and national forums on land.

Project design was informed by SER's previous work with communities, as well as its ongoing collaboration with and participation in regional and national networks of organizations working on rural community rights and women's empowerment. Among the first components and products of the project was a comprehensive analysis of women's land rights in the target area. The SER project aim was to empower women. As originally designed, the project set out to target and work primarily with women to increase their participation in General Assemblies, promote women leaders, and strengthen community governance structures to safeguard women's rights of participation and voice. Based on the preliminary assessment, as well as on SER's previous experience working with communities in the regions, the project developed key engagement strategies, including: (1) respecting and building on local institutions; (2) working with both men and women; (3) building flexibility into the project design and implementation; (4) linking to national networks; and (5) linking to and building upon international and domestic legal frameworks.

## Findings:

An important limitation of the SER project is that it works to address only the first step of securing women's rights to land by promoting women's participation in land governance; it does not directly work to change allocation of or access to land. The expectation is that mindset change will be supported through women's increased participation in community discussions and that this in turn will result in improvements in women's access to and control over community land. To defuse resistance to the project, project activities actively included men, and the project engaged in ongoing efforts to generate male community member support for the project and for women's rights. In some communities, overcoming suspicion and getting communities to be receptive to the project required more dialogue with community members than was originally anticipated. Framing the project aims carefully, by focusing on family well-being rather than focusing more narrowly on women, provided an environment that supports open discussion and receptiveness to women's issues.

Because the regional coordinators were also from the regions in which they were working, they were familiar with local customs and contexts and were able to build trust with the communities.

Six communities successfully modified their statutes to guarantee women's rights of participation and decision making. This is a significant achievement since prior to the intervention, only widows and single mothers were considered "qualified" community members and therefore entitled to full voting rights. Now, the statutes in the SER target communities affirm that both men and women are qualified members, and thus both able to participate in community governance.

Women have been elected to leadership positions on communities' boards in 75% of project target communities, including one community in which the president is a woman and four communities in which the vice president is a woman. On average, women make up 33% of leaders in communities participating in the project.

This project promoted changes in the way that women are viewed in the communities and, perhaps most importantly, the way women view themselves. Some women reflected that the revised statutes ensuring their rights to participate confer upon them a responsibility to learn about community matters and participate actively. Women are now seen as active participants in the communities and are able to make decisions even when their husbands are absent.

The project helped to encourage women to speak up in their community and household discussions by raising awareness within communities about the value of women's active participation and by providing training and mentoring support to women to speak up and take on leadership roles.

With the support of the SER project, two communities also presented budget proposals (still pending at the time of this

study) to local government that included women's ideas and considerations for community development. Because SER target communities are economically impoverished, the possibility of concrete material benefit helped create the incentive to engage in project activities.

Linking the project to national and regional networks and efforts ensured that local interventions receive technical support from national and regional advocates and that national efforts are in turn informed by local needs and contexts. The success of the SER project can be tied in large part to the active collaboration and ongoing connection between SER and national network organizations, which are engaged in broader advocacy efforts that derive both legitimacy and specificity from the specific, locally-sourced insights and experiences gained from the local intervention.

Limited awareness of women's rights among government actors at all levels is a significant barrier to protecting women's rights to community land in Peru.

## Recommendations

- Use methodologies that accommodate the customs of each community to ensure project effectiveness and the receptiveness of communities to the project, and carefully coordinate with local leaders at every stage of the community engagements.
- Diminish risk to woman participants by convincing their husbands and other community members that the project is supporting the community as a whole. Change patriarchal norms within the community by working with and engaging men on the importance of women's rights.
- Strengthening women's capacities to speak in public and actively participate in public is needed to ensure that women can play a stronger role in decision making at the household and community levels. These linkages are also important to ensuring the broader impact of the project beyond local-level implementation.
- Recognize that focusing on governance may not get to rights but can help lay the groundwork for social change.
- The laws and regulations that govern land titling and community land rights should be reviewed and, where appropriate, modified to ensure that gender issues are explicitly included and addressed. Ensuring that the enabling regulations that implement the laws lay out clear procedures and safeguards for women's rights is especially critical.



The Landesa Center for Women's Land Rights is an initiative of Landesa, an international non-governmental organization committed to the power of land rights as a pathway to eliminate extreme poverty, reduce conflict, and build more gender-equal and just societies. Given the centrality of women's land rights to a host of sustainable development and human rights outcomes, the Center partners with governments and global networks to champion women's land rights in high-level and strategic norms-setting fora, and by leveraging innovative solutions for stronger gender-responsive land rights on national and regional levels.



Resource Equity was founded in December 2014 as a women-run, women-first non-profit which focuses exclusively on gender issues related to land and resource rights. We work in concert with other organizations worldwide to advocate for social and policy change that will enable women to have secure rights to land, and develop the capacity of others to do this work around the world.





**Landesa**<sup>TM</sup>  
Rural Development Institute

Center for Women's  
Land Rights



resource  
equity

Advancing women's rights to land and natural resources