

ENHANCING POOR RURAL WOMEN'S LAND RIGHTS IN THE DEVELOPING WORLD

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Nearly half the world's population remains rural, and women in rural households do a large share of the agricultural work in nearly all developing countries. However, only a small fraction of the farmland on which they depend is held by those women under any form of secure, long-term tenure. The issue of how to assure that rural women in the developing world have adequate rights to the land on which they rely for nutrition, income, status, and security is a fundamental one. Securing land rights for women is indeed fundamental to the achievement of a whole series of desired outcomes: improved income; better nutrition and education for children; giving women a voice within the family; more general empowerment within the community; and assurance of livelihood in widowhood or divorce. They are important even for such goals as protection against spousal abuse and unsafe sex. Many past reforms bearing on land tenure have ignored the issue of women's land rights or have taken legal and policy approaches that seemed aspirational, at best, or doomed to failure. But an increasingly large fund of experience with specific reforms supportive of rural women's security of land tenure shows that in a wide range of settings, many of which might appear initially discouraging, women's land property rights can be greatly enhanced. This article explores some of the legal and policy reforms that hold out increasing hope for giving rural women in the developing world secure, long-term land rights, which serve as a gateway to a large complex of social and economic rights and benefits.

The Food and Agriculture Organization of the United Nations (FAO) estimates that women, “comprise, on average, 43 percent of the agricultural labor force in developing countries.”¹ The proportion of women in the agricultural sector increases to 50 percent in Eastern Asia and Sub-Saharan Africa.² But women are estimated to own only a small fraction of the land on which such food is produced.³ Given that 40 percent of the total population of the developing world still depends on agriculture for its livelihood, and that land is the most important rural asset—since it is the chief source of nutrition, income, security, and status—the question of women’s stake in such land and how their land rights may be protected

and enhanced looms as a large one.⁴

When land rights have been on the legal and policy reform agenda, great benefits for the poor have been achieved.⁵ However, until quite recently, most of the opportunities to use the reform to focus on women and *differentially* improve *their* rights, status, and security as land-rights holders have been lost or ignored.⁶ More generally, the need to protect what few rights to land rural women in developing countries do have, and how that goal may be advanced through the legal system,

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has not been a prominent subject of discussion for policymakers or legal reformers. Reformers dealing with land-rights issues have considered benefits or protections for land rights of the “family” or the “household,” often documented in the sole name of the adult male “head of household,” if documented at all. The household itself was viewed through the metaphor of a featureless black box, without differentiation or discussion of its individual constituents or interior workings.

THE BENEFITS

However, an increasingly large body of research now calls attention to the multiple benefits that can arise from assuring secure land rights for wives or other women who live within the household. Thus, it is important to implement measures that will provide such land rights where they are absent, or enhance such land rights where they are weak or partial, for poor rural women in developing countries.

Secure land rights for both women and men are critically important to creating an “investment horizon” that allows the making of medium- to long-term investments in a particular piece of land such as irrigation; land leveling; land terracing; establishing greenhouses, trellises, fishponds, and facilities for animal husbandry; carrying out intensive soil improvements; and tree planting. Such investments are, in turn, the chief means of increasing and diversifying the production from that piece of land.⁷ Thus, one or more members of the household having investment decision-making power over that land must perceive themselves to have secure rights to that land to trigger investment and increased production in the first place.

Farm production, or income from that farm production, is more likely to be subject to the disposition of women to the extent that they have secure rights to

the land on which it is produced, at least jointly, if not individually.⁸ A given part of production, or income from production, that is subject to disposition by a woman is more likely to be used for basic needs of the family, such as nutrition, education, and health needs of the children, than that same amount of production or income when subject to disposition by a man. That is not to say that production or income subject to disposition by a man will not be used for basic needs, but only that, in a man's hands, it is more likely to be shared with expenditures for cigarettes, hard or soft drinks, gambling, entertainment, and other non-necessities.⁹

When a woman's name is on the document of land rights, jointly or individually, it tends to be broadly empowering for her both within the household and the community. This can be reflected in the making of farming decisions, on matters such as decisions on child-bearing and school attendance, in the incidence of spousal abuse or unsafe sex, and in the extent of women's community engagement, such as participation in self-help groups.¹⁰

Women's perception of secure rights to land that they farm can enhance their stewardship of that land. For example, they may engage in optimum fallowing practices instead of farming continuously because they fear being deprived of longer-term access if the land is even temporarily unused.¹¹ Documentation of a woman's land rights also reduces, although in practice it may not eliminate, the man's ability to sell or mortgage the affected land or dispose of the proceeds of such sale or mortgage.¹² To the same effect, such documentation helps forestall—though it may not eliminate—illegal attempts by male relatives to claim the land rights where a husband predeceases his wife.¹³ Women's secure land rights can be critical not only in case the husband dies, but in other cases—such as divorce, abandonment, or male migration—where women wish to form a viable female-headed household over the objection of male relatives.¹⁴ Documentation may also enhance the wife's ability to pass land rights by inheritance in a manner that gives greater recognition to daughters, even if that recognition may not be preferential or equal, nor in accordance with the formal legal system.¹⁵

The last point is one that must always be borne in mind: questions of women's rights to land tend to be governed by customary practices of “family law,” rather than by formal laws on the books.¹⁶ Various combinations of approaches may augur considerable progress in many settings, but full implementation of favorable formal law—or making formal law more favorable *and* implementing it—is often likely to be a long-term and step-by-step process. It is essential to recognize the importance of small steps toward progress as appropriate interventions are identified and supported.

Beginning in the 1990s, against the background of the accumulating body of evidence as to the vital importance of women's land rights, serious attention began

to be paid to these rights in policymaking, lawmaking, and aid-donor circles.¹⁷ The black-box approach to the benefits of tenure reform has not disappeared, but it has receded. The issue of what measures might be taken under the legal systems of various countries to enhance, in particular, the land rights of poor rural women, usually among the poorest of the poor, is now widely in play. And while this is true to varying degrees, it can be said that in the research and policy-advisory experience of my own organization, Landesa, including its Center for Women's Land Rights (LCWLR), it is almost certainly seriously in play for countries having a substantial majority of the world's poor rural women within their borders, such as Kenya, India, and China.

WHAT CAN BE DONE?

The following is a non-exhaustive summary with brief commentary of some of the measures within the legal system that may contribute to providing or enhancing effective land rights and tenure security for poor rural women in the developing world. Landesa has encountered all of these best practices and recommendations in its research and advisory work in the field in the past two decades in Angola, Bulgaria, China, Ethiopia, India, Kenya, Kyrgyzstan, Liberia, Rwanda, Tajikistan, Uganda, and Uzbekistan. Accompanying these brief summaries are boxed descriptions of experiences with some of these measures as seen in recent years by Landesa and the LCWLR in specific country contexts. Related citations are provided where they may be useful in understanding the recommendations. These include the following:

1. *Constitutional or equivalent provision for equal rights for women that encompass land rights.*¹⁸ Depending on the circumstances in which they were adopted, these may create space for important further and specific progress, as was the case in Kenya in 2010, where they were part of the process of adopting a widely heralded and broadly supported reformed constitution.¹⁹
2. *Constitutional or equivalent provision for women's representation on dispute-hearing or dispute-resolving, fact-finding, and policymaking bodies.* This is an approach to women's land and other rights via process, and in many settings, may be vital to improved implementation of pro-equality substantive rules on the legislative books or rules that are recognizable by custom, which was also utilized in Kenya.²⁰
3. *Programs for publicizing and teaching about women's land rights to men, as well as women.* A right that is not known to its supposed beneficiaries is not really a right at all.²¹ Men—who also stand to benefit in a variety of ways, but whose opposition can block implementation of reforms—must emphati-

cally also be included, although perhaps in separate settings, as recipients of publicity and education if women's theoretical land rights are to be realized in practice.

4. *Rules that allow women to represent themselves.* If women are to have a voice in claiming their land rights, it is important to adopt rules that allow women to appear before relevant hearing, decision-making, or alternate dispute resolution (ADR) bodies themselves and not through or accompanied by a male relative.²²
5. *Rules that allow women to be appointed or elected to such bodies.* This effectuates and gives life to the general type of provision under Recommendation 2, but can be done even in the absence of constitutional changes and may be related to specific bodies, such as a council of elders, in specific local settings.
6. *Mandatory quotas for women serving on ADR bodies.* Rules can go further and require a certain number of positions on such bodies to be reserved for women, mandating rather than simply allowing women's inclusion in these bodies.²³ See Box 1, which describes a series of recent pilot measures in Kenya that bring to bear Recommendations 1 to 6, and 9.

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Box 1

A very successful pilot program in Kenya has focused on enhancing village women's access to justice related to land rights by improving their access to the informal or customary justice system, including measures that make that system more inclusive of women and non-discriminatory. The Justice Project used technical assistance from Landesa, building upon provisions in the widely popular new constitution from 2010, which guarantees equal rights for women and specifically requires the promotion of "traditional dispute resolution mechanisms" to the extent that such mechanisms are consistent with the constitution.

The project is quite unusual in that the vast majority of legal empowerment programs focus on access to the formal court system and do not deal with access to the informal justice system, even though there are an estimated 24,000 local customary justice institutions spread throughout sub-Saharan Africa.

Rural women often face obstacles to accessing the formal system—such as distance, costs, delays, and language barriers—that are very hard to remove; yet customary institutions located within the community, which may remove all those obstacles, may seem daunting because they are all-male and riven with prejudice. Can they be made more accessible, welcoming, and consistent with the constitution’s mandate of equal rights for women, with a focus on women’s ability to pursue before them the highly important issues around land? It turns out that they can, and that the pilot project was so successful that there is substantial interest in the Kenyan government for a broad-scale rollout.

The basic approach was to build the capacity of actors in the customary justice system, particularly traditional elders, to understand, support, and enforce women’s land rights. The project used a variety of applied learning techniques to carry out legal literacy trainings and facilitated dialogues, such as community conversations, appropriate for the target populations: elders and chiefs, women, teachers, and youth between the ages of eighteen and thirty-five.

Despite ambitious, even transformative, objectives in what had been a highly unwelcoming environment for women’s land claims and despite the short time frame of twelve months working with the pilot community, the outcomes were striking. These included the elders discussing and adopting a “constitution” that included women’s land rights, gender equality, and the adoption of a code of conduct for conducting proceedings. Elders and chiefs now require spousal consent before approving land sale or lease. Previously, husbands routinely sold family land without consulting their wives and pocketed the proceeds. Furthermore, in July 2012, fourteen women were elected as elders and now resolve disputes alongside men, where thirty-six male elders were elected. Women no longer need a male relative to represent them before the elder, and the elders are now referring accusations of rape to police and the formal criminal justice system instead of pursuing a mild negotiated settlement with the accused’s family. Lastly, separated and divorced women are going to the elders for assistance in claiming a portion of the family land.

There are other striking results in terms of women’s empowerment within the community, such as a 1:1 ratio of girls to boys attending secondary school, which was previously a 1:3 ratio, and girls increasingly challenging boys for leadership roles within the school.

Source: “Enhancing Customary Justice Systems in the Mau Forest, Kenya” (final report prepared by Landesa and Tetra Tech ARD for USAID, January 2013).

7. *Provision of free legal aid for poor women who have land rights claims, uncertainties, or disputes.* This is an important part of having an effective legal process and should be broadened to include the use of paralegals as well, i.e., non-

lawyers who are often motivated local youth trained for the purpose, who can help affirm and memorialize land rights short of formal litigation.²⁴

8. *Rules requiring women's names to appear on titles or other land documentation received for certain categories of land, including but not limited to all land newly allocated from government.* This could be done either jointly with the husband, jointly and have the woman's name appear first—legally irrelevant but potentially psychologically important—or on its own. The impact of including women's names on land documents is discussed above. It is most likely to be achievable when land parcels, such as micro-plots in India, are newly allocated and such name inclusion is made a requirement in the program, or when a plot of land is very tenuously held, as in some cases where government land is being used without consent, and is to be made secure. Joint inclusion of the wife, as well as the husband, is most likely to be acceptable and can also be specified to provide the further psychological boost of putting the woman's name first. In some settings, it may be possible—and this should be verified by prior fieldwork—to require that only the wife's name be on the new title or equivalent document. Constant field monitoring is important as documents are prepared and handed out to ensure that local officials do not ignore this requirement.²⁵
9. *Rules requiring wives or other female rights holders to join in execution of titles or other land documentation purporting to transfer land to others from a husband, or from other men, who claim to hold rights.* Such execution would take place before a notary or independent functionary—unless it can be shown that she holds no interest in the land. This rule may be cast in broad terms that reach all attempted land transfers by the husband—not just for land allocated through government programs—since it does allow a showing that the wife holds no interest. Note that a woman may hold a secondary interest that needs to be protected, such as a life estate after the death of her husband, with the putative transferor being a male relative who now claims ownership, or an equivalent interest.
10. *Transaction forms consistent with Recommendations 8 and 9.* For example, the form would contain a line or blank space where an additional name and/or photograph, perhaps a woman's, may be entered. It is easy to overlook a seemingly “minor” point like this, which may be essential for actual effectuation of women's land rights.²⁶
11. *Rules giving priority in new allocations of land to impoverished single women.* Such women are likely to be among the poorest of the poor and largely invisible to program administrators, unless special efforts are made to include them as priority beneficiaries, for example, in the distribution

of house-and-garden plots going forward in several Indian states. They include poor landless women who have never married or who are widowed, divorced, or abandoned. They may be living alone, in a female-headed household, or with impoverished relatives. Theirs should be the sole name on the title or equivalent document. See Box 2, which describes provisions in a *National Right to Homestead Bill, 2013*, now pending full cabinet approval in India, which has substantial drafting input from Landesa and Indian civil society organizations. It contains provisions paralleling those seen in state-level homestead land-distribution programs, and those reflected in Recommendations 8, 10, 11, and others listed here.

Box 2

A Gandhian “peaceful march on Delhi” by representatives of the landless poor was called off when the organizers and the Union government signed the Agra Agreement on 11 October 2012. This set a timetable for major new land tenure reform, including measures that recognize women’s land rights and universal distribution of one-tenth acre house-and-garden or homestead plots to the landless rural poor on a gender-sensitive basis.

To meet one of the undertakings in the Agreement, Landesa joined Indian civil society organizations under the guidance of the Ministry of Rural Development to create a draft National Right to Homestead Bill, which now awaits full cabinet approval and submission to the legislature. The bill draws upon extensive experience with state-level homestead-allocation programs over the past ten years, in which women’s land rights figure prominently, and which addresses the need for many of the measures outlined in the text, including:

Signaling their eligibility for a separate ten decimal (1/10 acre) homestead plot, the definition (Section 2) of “Family,” states that, “widows, divorcees and women deserted by families [sic: husbands] shall be considered separate families.” Further, “Single Women” means “widows, divorced women, separated women, women whose husbands are missing and unmarried women aged 30 years or more.”

It is expressly provided that “The title to the homestead shall be granted in the name of adult women member/s of the eligible family, except in cases, where there is no adult woman member in the family.” (Existing state-level homestead programs have included title [patta] solely to the wife in Karnataka, and jointly to wife and husband in West Bengal.)

The list of those with “priority in allocation of homestead” parcels (Section 8) begins with “woman headed families” and “single women” (note definitions above).

Also of great potential importance to poor women who are priority beneficiaries are the multiple “measures and modes of identifying beneficiary homesteadless poor families” (Schedule I on MINIMUM FEATURES OF THE IMPLEMENTATION PLAN ON RIGHT TO HOMESTEADS, subparagraph (1)(a)), accompanied by the requirement of assuring “that there is no exclusion of any genuine and eligible landless poor and homesteadless family” (subparagraph (1)(c)) also provides that all homestead allotment shall be “free of any charge” (paragraph (5)). These provisions should help, respectively, with the problems of “invisibility” and of destitution that are likely to characterize many members of this beneficiary group.

Source: India, Ministry of Rural Development, 2013 Draft National Right to Homestead Bill, unpublished.

12. *Inheritance rules giving a widow a mandatory minimum share of her deceased husband's land, preferably at least one-half.* A direct approach such as this may not be presently realizable, if it appears that the wife did not previously have right to the share under the governing system of law, which may be the formal system embodied in legislation, customary rules of law locally in force, or applicable religious laws. Fieldwork in a particular country setting may show that even wives are generally opposed, fearing it would cause strife and disrupt family relationships.²⁷ But in other settings, and in the context of rights-education programs reaching men as well as women, actual implementation may be possible.
13. *Rules giving widows required minimum rights in deceased husband's land, e.g., an estate for life, absent Recommendation 12.* This may be more feasible in many settings than requiring a mandatory minimum share to be given in full ownership, and indeed may serve to confirm and protect a right already present under local customary rules. This may also be combined with a minimum-share approach for a lesser interest to the widow—such as a life estate in one-half of the deceased husband's land—if more cannot presently be achieved.
14. *Rules giving daughters the same share as sons in deceased parents' land.* This may be parallel to attempting to mandate a minimum share for the widow when a husband dies, as in Recommendation 12. Here, fieldwork in particular country settings, such as large parts of India, may show it is even opposed by daughters, who fear disruption of their relationship with their brothers.²⁸ On the other hand, a well-designed rights-education program targeted to adolescent girls also reaching boys may make implementation possible in some settings.²⁹

15. *Rules giving the wife joint title, community property, or an equivalent interest in land acquired by the husband during the marriage, either by purchase, inheritance or gift.* This may be acceptable in some settings—and perhaps especially for acquisitions by purchase, where the wife’s labor has contributed to the accumulation of the funds needed to make the purchase—certainly more so than rules that would attempt to give the wife a joint or community interest in land held by the husband in his sole name before the marriage.³⁰
16. *Rules for formal titling programs that do not assume a single rights holder and that preserve and protect customary or other “secondary” or “minor” land rights that are often held by the wife.* For example, post-independence registration and formalization programs in Kenya, Uganda, and Zimbabwe have been found to have weakened women’s land rights.³¹ This is an important application of the principle of “do no harm,” which may usefully be borrowed in this context from the Hippocratic Oath applied in the field of medicine. It is theoretically possible to identify and include lesser, non-ownership rights with respect to land in a formal documentation program, but it has rarely been done. Either formal documentation of such rights, including spousal rights, should be consciously built into the formalization process from the beginning or, at least, they should be expressly stated to be preserved even if not documented.³²
17. *Rules outlawing polygamy and dowry.* There are a number of traditional customs that if abolished, would help women’s land rights, at least in many settings. These customs, including polygamy and dowry, are often resistant to formal legal prohibitions and are often practiced despite formal laws to the contrary.³³ It may be well to conduct research, focused on the intended beneficiary group, to see if this is a setting where a flat prohibition is desirable. One qualification (in the case of polygamy), for example, is to stipulate that a new wife may only receive land from land that is used by the husband, and not from land he has given for use and control by his first wife or prior wives.
18. *Rules recognizing the existence of a possibly monogamous marriage, and hence a woman’s status as wife, that is recognized under customary or religious law.* The formal court system and other authorities may not recognize marriages and rights, including land rights, associated with marriage following from unions that have been solemnized only under customary or religious law. It is important in various settings that the existence of a marriage recognized under customary or religious law be recognized under the formal legal system as well.³⁴
19. *Rules assuring that women do not end up bereft of land rights in both birth village*

and marital village where there is patrilocal marriage, i.e., marrying “into” the husband’s village. Daughters’ land rights—including any prospective rights upon inheritance—are often absent in both the birth village and the marital village after marriage, sometimes because the dowry is paid and is regarded as advance payment of their “portion” even where daughters may not control or gain benefit from the dowry paid.³⁵ China is one country that has sought to assure continuing land rights to married-out daughters. See Box 3, which describes past and prospective developments as to rural women’s land rights in China’s setting of patrilocal marriage, drawing again upon Landesa’s field research and advisory work in that country.

Box 3

China broke up its collective farms between 1979 and 1984, generally distributing the land in equal “shares” to every member of the household. This devolution of farming activity to the individual household level led to large initial increases in productivity through short-term improvements, such as timing of operations, seed selection, careful application of fertilizer, hand-weeding, etc. However, individual shares were not delineated on the ground, and generally only the name of the “head of household,” usually male, appeared on documentation. He also made the decisions as to use for all the household’s land.

Importantly, most villages adopted a process for continuing equalization, called “readjustment,” under which village cadres periodically took back land and reallocated it in new configurations, to take account of both overall population change and changes in the population of each household due to daughters-in-law marrying “in” to the village, daughters marrying “out” to their husband’s village, births, and deaths. This preserved absolutely equal land shares for everyone in the village, but came at a heavy and unanticipated cost: the “investment horizon” for making medium- to long-term investments in any specific piece of land was nearly zero (a single season, or at most one year), since no one knew when the cadres, who gained in various ways from their power to “readjust,” might take back that piece of land in a readjustment.

To encourage investment, the 1998 Law of Land Administration of the People’s Republic of China provided that farmers should have thirty-year use rights to their allocated land, and made adjustments of that land very difficult. Following this, the Law of the People’s Republic of China on Land Contract in Rural Areas, adopted in 2002, virtually ended readjustments and, in so doing, offered several provisions of special interest for women’s land rights:

Article 6 strongly affirms rural women’s equal land rights. However, Article 21(1) requires

that each thirty-year contract include only the representative of the contracting household. Subsequent research has shown that only 17 percent of issued contracts contained wives' names, with a moderately higher 38 percent in a second document, a certificate, which is also issued.

Article 30, importantly, provides that a woman who marries out to her husband's village keeps her original land share unless and until she receives a land share in her husband's village, and that likewise holds if she becomes widowed or divorced. And, since readjustment is now disallowed, she is unlikely to receive a land share in her husband's village. This raises a difficulty that is reflected in field research that found that: "[F]ew women would exercise the right to continue farming their portion of the land after they are married. One reason for this is that women who leave their village to marry are not able to travel back and forth to the land. Also, exercising the right to a portion of the family's land is shameful for many women. On the other hand, families that are able to keep their daughter's land are more likely to allow a divorced or abandoned daughter to return home and assert her right to that land."

The problem cannot be resolved by restoring old-style readjustments, since this would make every Chinese farmer—both women and men—unsure of their tenure and generally unable to invest. One possibility that is gaining support is to keep landholdings as they presently are, household by household, but to readjust the notional number of shares among which they are divided accordingly as household population changes, or at least as daughters marry out of the family and daughters-in-law marry into the family. It should be noted that the individual shares of household members are not physically delineated; one knows, for example, that if a particular household contracts five mu, or one-third of a hectare, and if it has four members, each member therefore has a share equal to one-fourth of that one-third hectare, but not presently located on any specific part of that one-third hectare. The law could also be clarified to provide that any shareholder could ask to partition their share in-kind and have it demarcated on the ground, so that if occasion arose, they could farm it separately, lease it out, sell it, or assign it.

Sources: Law of Land Administration of the People's Republic of China (1998); Law of the People's Republic of China on the Contracting of Rural Land (2002); Law of the People's Republic of China on Property [Real Rights] (2007); Li Ping and Roy L. Prosterman, "From collective to household tenure: China and elsewhere," in *One Billion Rising: Law, Land and the Alleviation of Global Poverty*, ed. Roy L. Prosterman, Robert Mitchell, and Timothy Hanstad (Leiden, Netherlands: Leiden University Press, 2009), 277-331; "Summary of 2011 17-Province Survey's Findings," (report, Landesa Rural Development Institute, Beijing, China: 2012); Roy Prosterman, Tim Hanstad, and Li Ping, "Can China Feed Itself?" *Scientific American* 275, no. 5 (November 1996), 275; Roy Prosterman, Keliang Zhu, Jianping Ye, Jeffrey Riedinger, Ping Li, and Vandana Yadav, "Secure Land Rights as a Foundation for

Broad-Based Rural Development in China: Results and Recommendations from a Seventeen-Province Survey" (NBR Special Report #18, National Bureau of Asian Research, Seattle: November 2009), 7; Renée Giovarelli, "Gender and Land Tenure Reform," in Roy Prosterman, et al., 195-233, 200.

20. *Rules ensuring that women's exercise of their land rights do not require consultation, approval, or generally "transaction costs" beyond what is required of men.* Rules that treat women of all ages as minors, such as in Zimbabwe, are one example of those needing to be eliminated; another would be rules giving the husband control over the disposition of the wife's land and other property.³⁶ In general, it is probably the case that proposals for legal rule changes that would be made in order to protect women's existing and pre-marital land rights would command greater support than changes that would take away—for example, in order to confer them upon the wife as joint holder—rights or powers to land that are perceived as belonging to the husband.
21. *Rules ensuring that the sale or renting out of land rights, for both men and women rightholders, requires their free and informed consent in order to be valid.* This is especially important where the would-be buyer or lessee is relatively more powerful. This establishes important protection against what is sometimes called "land grabbing" or the "land rush" and in cases of coerced "reverse tenancy."³⁷

CONCLUSION

Only in the last two decades have the land rights of impoverished women in the rural sectors of the developing world received specific and serious attention.³⁸ The longstanding approach to assessing land rights and benefits only at the household level, and the inattention to intra-household relationships and dynamics, has receded to the background. These ideas have been largely replaced—in government, aid-donor, civil-society, and scholarly circles—with a recognition that strong land rights for women produce major benefits not only for women themselves, but for the whole household and for the society at large. As already discussed, there is now an impressive body of research findings concerning the multiple benefits that can be achieved through the conferral of secure land rights on women.

There is likewise a large and growing body of practical experience as to the combinations and permutations of law and policy measures through which great progress in securing land rights for women can be achieved. However, depending greatly on the specific setting—which may be at the national level, sub-national, tribal, or local level—the most effective approaches might not involve a frontal attack on the problem of gender equality in land rights. Indeed, as discussed, rural

women themselves may resist measures that they perceive to be counterproductive, too abrupt, or socially divisive.

However, in almost every setting, no matter how unpromising it may seem at the outset, there are measures that can substantially increase women's effective


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power over land and achieve a range of associated benefits. Many important provisions already exist in formal legal documents, such as constitutions, statutes, and regulations. Some may have been initially only aspirational, but now seem ripe for application; others may have been intended to be enforced from the outset. For example, the notion of young Chinese women having a realizable right to a specific share of household land after "marrying out" to their husband's village—as discussed in Box 3 above—may have been initially largely aspirational; but the notion of having Kenyan women fully participate, including as tribunal members, in the processes for hearing and resolving disputes over

land rights—as discussed in Box 1—seems to have been intended to be operational from the beginning. However, in both contexts there may still be a critical need for communication, to those who are intended to benefit directly from the rule, their spouses and children, to those who are meant to apply the rule, and to the community at large. The effects of multiple modes of communication about rights that already exist can be further amplified through the availability of legal aid and paralegals. It is constantly surprising to see how often officials—including judges—charged with application of a rule, fail to apply it or fail to apply it correctly, and do so not because they are ideologically opposed, but simply because they are unaware of its very existence or have misunderstood its meaning. The mileage to be had from programs of communication and education around women's existing land rights under the law is undoubtedly extraordinary and constitutes one great arena for action on rural women's land rights.

A second great arena for action on behalf of rural women's land rights is government-sponsored programs that are intended to allocate new land or land rights. There, in contrast to perceived existing land rights, the leverage generally exists to insist upon equal—or sometimes even superior—land rights for women members of the beneficiary households. New approaches, such as government programs to allocate homestead plots to the previously landless presently going forward in the Indian states of Karnataka, Odisha, and West Bengal will enlarge the scope for

programs of this kind, and hopefully aid donors will recognize such programs as deserving of priority.

A third arena, of course, is the fashioning of new laws and regulations that will bring to bear both the national and comparative experience with what has already worked in order to inform the legislative and rule-making processes. This third arena for action should also incorporate measures from the first two: communicating about new and existing rules and leveraging by using land allocations under newly legislated programs, as well as existing ones. The discussion could be expanded within and beyond these three arenas, but what has been said should be sufficient to demonstrate that the goal of dramatically improved land rights for poor rural women around our planet is both eminently desirable and practically realizable. 

NOTES

¹ Food and Agriculture Organization of the United Nations, "FAO Statistical Yearbook 2012: World Food and Agriculture" (FAO, Rome: 2012), 12.

² Ibid.

³ Women's land ownership can range from 5 percent to less than 20 percent. See FAO, "The State of Food and Agriculture 2010–2011: Women in Agriculture – Closing the Gender Gap for Development" (Rome, FAO: 2011), 23. But this appears palpably overstated, since it conflates land women own with land they rent in (including sharecropped land), much or most of which is highly insecure and typically held only from year to year.

⁴ FAO (2012), Table 1; FAO (2011), 23.

⁵ Roy L. Prosterman, Robert Mitchell, and Tim Hanstad, eds., *One Billion Rising: Law, Land and the Alleviation of Global Poverty* (Leiden, Netherlands: Leiden University Press, 2009); Ronald P. Dore, *Land Reform in Japan* (Oxford, England: Oxford University Press, 1959); Jeon Yoong-Deok and Young-Yong Kim, "Land Reform, Income Redistribution, and Agricultural Production in Korea," *Economic Development and Cultural Change* 48, no. 2 (2000), 253–268; Cheng Chen, *Land Reform in Taiwan* (Taiwan: China Publishing Company, 1961); Shirley W. Y. Koo, Gustav Ranis, and John C. H. Fei, *The Taiwan Success Story: Rapid Growth With Improved Distribution in the Republic of China, 1952–1979* (Berkeley, California: Westview Press, 1981); China Institute of Reform and Development, *History of Changes and Innovations of China's Rural Land System* (Nanhai, China: Nanhai Publishing, 1999), 32; Zhang Gensheng, *Rural Reform in China* (Shenzhen, China: Haitian Publishing House, 2001), 3–4; W. Hunter Colby, Frederick W. Crook, and Shwu-Eng H. Webb, *Agricultural Statistics of the People's Republic of China, 1949–1990* (Statistical Bulletin 84, U.S. Department of Agriculture, Washington, DC: 1992), 14.

⁶ See generally Renée Giovarelli, "Gender and Land Tenure Reform," in Roy Prosterman et al., 195–233.

⁷ See, e.g., Klaus Deininger, "Land Policies for Growth and Poverty Reduction" (policy research report, World Bank, Washington, DC: June 2003), 42–48.

⁸ "Secure rights" to land for women, in many settings and to be fully effective, must be found to include not only a legal right to ownership, or long-term rights substantially equivalent to ownership, but also (i.e., without simply assuming it from the presence of the right to ownership) at least equal control over use and decision-making as to that land. Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge, England: Cambridge University Press, 1994).

⁹ Lawrence Haddad, John Hoddinot, and Harold Alderman, eds., *Intrahousehold Resource Allocation in Developing Countries: Models, Methods and Policy* (Baltimore, Maryland: Johns Hopkins University

Press, 1997); “Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report” (report, World Bank, Washington, DC: June 2005), 3.

¹⁰ See, e.g., Keera Allendorf, “Do Women’s Land Rights Promote Empowerment and Child Health in Nepal?” *World Development* 35, no. 11 (2007), 1975–1988; World Bank (2005), 5; Pradeep Panda and Bina Agarwal, “Marital Violence, Human Development and Women’s Property Status in India,” *World Development* 33, no. 5 (2005), 823–850. On marital violence against women in India’s Kerala state, Panda and Agarwal found: Among the property-less (owning neither land nor house), 49 percent experienced physical violence and 84 percent experienced psychological violence. In contrast, those who owned both land and house reported dramatically less physical as well as psychological violence (7 percent and 16 percent respectively), 836. “In addition, 71 percent of women who faced long-term physical violence and did own land or house or both, left home; only 19 percent of property-less women who faced such violence did so,” *Ibid.*, 838.

¹¹ Karen O. Mason and Helene M. Carlsson, “The Development Impact of Gender Equality in Land Rights,” in *Human Rights and Development: Towards Mutual Reinforcement*, ed. Philip Alston and Mary Robinson (New York: Oxford University Press, 2005).

¹² See “Gender in Agriculture Sourcebook” (report, World Bank, Washington, DC: 2009), 154; Susana Lastarria-Cornhiel and Renee Giovarelli, “Shared Tenure Options for Women: A Global Overview” (report, United Nations Human Settlements Program, Nairobi, Kenya: 2005), 20, 28.

¹³ Lastarria-Cornhiel and Giovarelli, 51.

¹⁴ See Giovarelli, 196; Marcel Fafchamps and Agnes R. Quisumbing, “Control and Ownership of Assets within Rural Ethiopian Households,” *Journal of Development Studies* 38, no. 2 (2002), 47–82.

¹⁵ Fafchamps & Quisumbing, 47–82.

¹⁶ “Women’s Secure Rights to Land Benefits, Barriers, and Best Practices” (issue brief, Landesa, Seattle: 2012), 3, <http://www.landesa.org/wp-content/uploads/Landesa-Women-and-Land-Issue-Brief.pdf>.

¹⁷ The literature began to develop significantly in the 1990s. See, for example: “Women’s Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview” (report, United Nations Centre for Human Settlements, Nairobi, Kenya: 1999); Ruth Meinzen-Dick, Lynn R. Brown, Hilary Sims Feldstein, and Agnes R. Quisumbing, “Gender, Property Rights, and Natural Resources,” *World Development* 25, no. 8 (August 1997), 1303–15; Susan Lastarria-Cornhiel and Rachel Wheeler, “Gender, Ethnicity, and Landed Property in Albania” (Albania Series, Working Paper No. 18, Land Tenure Center, University of Wisconsin, Madison), September 1998; Bina Agarwal, “Gender and Command Over Property: A Critical Gap in Economic Analysis and Policy in South Asia,” *World Development* 22, no. 10 (1994), 1455–1478; Bina Agarwal, “Who Sows? Who Reaps? Women and Land Rights in India,” *Journal of Peasant Studies* 15, no. 4 (1988), 531–81; Bina Agarwal, *A Field of One’s Own: Gender and Land Rights in South Asia* (Cambridge, England: Cambridge University Press, 1994); F. Mackenzie, “Gender and land rights in Murang’a District, Kenya,” *Journal of Peasant Studies*, 17 no. 4, (1990) 609–643; Agnes R. Quisumbing, Ellen Payongayong, J. B. Aidoo, and Keijiro Otsuka, “Women’s Land Rights in the Transition to Individualized Ownership: Implications for the Management of Tree Resources in Western Ghana” (FCND Discussion Paper 58, International Food Policy Research Institute, Washington, DC: February 1999).

¹⁸ Though further removed from affecting actual behavior out in the villages—but helping, over time, to create “space” for more concrete national initiatives—are provisions for equal rights for women in international instruments, sometimes as aspirational declarations, sometimes as (theoretically) binding undertakings. *The Universal Declaration of Human Rights* (1948), Articles 2, 7 and 16; *The International Covenant on Civil and Political Rights* (1966), Articles 2, 3, 23.4 and 27. Article 23.4 specifically refers to protecting women’s property rights in marriage and at the dissolution of marriage as well as the property rights of men.

¹⁹ Constitution of Kenya, Articles 27, 60(1)(f) and 159.

²⁰ *Ibid.*, Article 27(8), which states that “not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.”

²¹ See emphasis on this factor in Mark David Agrast, Juan Carlos Botero, Alejandro Ponce, Joel Martinez, and Christine S. Pratt, “WJP Rule of Law Index 2012-2013” (report, World Justice Project, Washington, DC: 2013), 14-15: “The law must be comprehensible and its meaning sufficiently *clear, publicized, and explained* to the general public in plain language for them to be able to abide by it. This is one of the most basic preconditions for maintaining a rule of law society capable of guaranteeing public order, personal security, and fundamental rights,” (emphasis added).

- ²² “Gender in Agriculture Sourcebook” (Module 4 report, reprint, World Bank, Food and Agriculture Organization of the United Nations and International Fund for Agricultural Development, Washington, DC: February 2010) 23-28; Renee Giovarelli and Elisa Scalise, “Women’s Land Tenure Frameworks for Analysis: Land Rights” (report, Landesa, Seattle, WA: 2013).
- ²³ Constitution of Kenya, Articles 27, 60(1)(f), and 159.
- ²⁴ Robert Mitchell, “Land Rights Legal Aid,” in Prosterman, Mitchell, and Hanstad, 403-406; Tim Hanstad and Robin Nielsen, “Land Tenure Reform in India,” in *Ibid.*, 258-259; Robert Mitchell and Tim Hanstad, “Innovative Approaches to Rural Landlessness in Andhra Pradesh: A Report on the Experience of the IKP Land Activities” (report prepared for the Andhra Pradesh Department of Rural Development and the Society for Eradication of Rural Poverty, January 2008); “Paralegals Bringing Legal Aid to Women in India” (news release, Landesa, Seattle: 2011), <http://www.landesa.org/news/legal-aid-program-india/>.
- ²⁵ See Giovarelli, 204-207, 225-226; Jennifer Brown, Kripa Ananthpur, and Renée Giovarelli, “Women’s Access and Rights to Land in Karnataka,” *RDI Reports on Foreign Aid and Development* (Seattle: Rural Development Institute, 2002), 9-11.
- ²⁶ See Marjolein Benschop, “Women’s Rights to Land and Property” (UN-Habitat, Commission on Sustainable Development, 2004), 4-5; Giovarelli, 204-207. (Nor is the matter in any sense a “minor” one: Giovarelli points out that it is common for documents not to provide for the listing of more than one rightholder, and for the associated training and procedures to point to that as the intended result.) In Ethiopia, photographs of both spouses have been used on joint titles to help secure women’s right to land. See Renée Giovarelli, Beatrice Wamalwa, and Leslie Hannay, “Land Tenure, Property Rights, and Gender” (Property Rights and Resource Governance Briefing Paper #7, USAID, Washington, DC: January 2011).
- ²⁷ See “Gender in Agriculture Sourcebook” (Module 4 reprint, International Land Coalition, Rome: 2010), 23.
- ²⁸ Debarati Halder and K. Jaishankar, “Property Rights of Hindu Women: A Feminist Review of Succession Laws of Ancient, Medieval, and Modern India,” *Journal of Law and Religion* 663 (2008-09), 24.
- ²⁹ See “Security for Girls Through Land Project” (Final Report to Open Road, Landesa: 2013), on file.
- ³⁰ See Giovarelli and Lastarria-Cornhiel, “Shared Tenure Options for Women.”
- ³¹ Chingarande Sunungurai et al., “Agrarian land reforms in Zimbabwe: are women beneficiaries or mere agents?” *International Development Research Centre* (21 September 2010); Lynn S. Khadiagala, “Negotiating Law and Custom: Judicial Doctrine and Women’s Property Rights in Uganda,” *Journal of African Law* 46, no. 1 (2002), 1-13; Paul Syagga, “Land Ownership and Use in Kenya: Policy Prescriptions from an Inequality Perspective” in *Readings on Inequality in Kenya: Sectoral Dynamics and Perspectives* (Nairobi: Society for International Development, Eastern Africa Regional Office, 2006), 293, 295; Judy Adoko and Simon Levine, “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” (report, Land and Equity Movement in Uganda, Kampala: June 2005).
- ³² Lesser rights under the common-law system (with parallels in other legal systems) might include not only life estates, but also interests such as servitudes, easements, profits a prendre and, of course, leases. Illustrations might include picking mushrooms, inter-planting between trees, grazing animals in the off-season, gathering fallen branches, and various time-period restrictions, such as children becoming of legal age. See Mitchell, 358.
- ³³ “Gender in Agriculture Sourcebook” (reprint, International Land Coalition, Rome: 2010), 32-33, http://www.landcoalition.org/sites/default/files/legacy/uploads1/ILCGender_web.pdf?q=wp-content/uploads/ILCGender_web.pdf.
- ³⁴ *Ibid.*, 18.
- ³⁵ Giovarelli, 215-216, 221-222.
- ³⁶ For example, in Zimbabwe, the Supreme Court in *Magaya v. Magaya* held women to be juveniles under customary law, therefore preventing a woman from inheriting property from her father even if named in his will (discussed in Giovarelli, 219). Also, Lastarria-Cornhiel and Giovarelli, “Shared Tenure Options for Women: A Global Overview,” 21. “Tenancy by the Curtesy” in *Introduction to the Law of Real Property*, ed. Cornelius J. Moynihan and Sheldon F. Kurtz, Third Edition (Saint Paul: West

Group, 2002), 67-68. William B. Stoebuck and Dale Whitman, *The Law of Property*, Third Edition (Saint Paul: West Group, 2000), 233-34, states that (and this was even the case in the United States at the time noted), "Of the community property, the husband was the manager, though even before the 1970s the tendency was toward the wife's increasing participation."

³⁷ Reverse tenancy occurs when "the small landowner leases out to a large landowner," from Dr. N.C. Saxena, "Tenancy reforms vs open market leasing – what would serve the poor better?" (Discussion Paper, Planning Commission, Government of India, New Delhi: n.d.). See "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security" (FAO, Rome: 2012), parts 7.3, 9.9. See also parts 3B.4., 4.6, and part 12. See generally, "Governing land for women and men: A technical guide to support the achievement of responsible gender-equitable governance of land tenure" (Governance of Tenure Technical Guide No. 1, FAO, Rome: 2013).

³⁸ Or urban. See, e.g., Bipasha Baruah, "Women and Landed Property in Urban India: Negotiating Closed Doors and Windows of Opportunity" (Working Paper No. 2010/56, UNU-Wider, Long Beach, CA: 2010).