

PRINCIPLES FOR EQUITABLE GENDER INCLUSION IN LAND ADMINISTRATION: FIG GUIDELINES ON WOMEN'S ACCESS TO LAND

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1. INTRODUCTION

Land and housing are central issues in developing economies. How land tenure issues are addressed in development projects and by land administration agencies can directly impact the livelihood and security of people in urban, peri-urban, and rural settings. Failing to address the land and shelter rights of all stakeholders in a land development project or programme can cause unexpected problems and inequities, and often for the most vulnerable and disadvantaged members of society [See, for example, Harden, 1990].

Whether due to tradition, law, education, or economics, women are sometimes at risk in land development projects, even if it is intended that they share the benefits. For example, improving irrigation on women's fields may have the unintended effect of having these now valuable fields reclaimed by men in the community [Zwarteveen, 1997]. Enhancing housing in a community or peri-urban area may have similar unintended results when the units become more marketable [Varley and Blasco, 2000]. Professionals, such as surveyors, who are involved with land and housing projects therefore need to be aware of gender issues and need to ensure that the real objectives of the projects are truly met.

This paper is based on a report commissioned by the International Federation of Surveyors (FIG) to develop a set of guidelines for ensuring that land reform and land administration projects in developing countries and countries in transition are gender inclusive. The work is based on research conducted at the University of New Brunswick and on experience in a number of development projects. It is a further extension of initial work conducted by UNCHS and Sida for Habitat II [Sida et al., 1995] in Istanbul and by the United Nations Food and Agricultural Organization (FAO) [Komjathy, 1999; FAO, 1999]. This paper is also based on a FIG Workshop on Women's Access to Land in September, 1999, co-sponsored by the New Zealand Institute of Surveyors [see, for example, Eriksson, 1999; Nichols, et al., 1999].

The purpose of this paper is to provide a short summary on why gender issues matter in development projects and to propose guidelines that will assist development project managers, surveyors, and others in ensuring that land administration enhances and protects the rights of all stakeholders, including women.

1.1 Why Surveyors Should be Concerned

According to the Women's Summit [UN, 1995] findings in most societies women have very unequal access to, and control over land, housing associated resources, and basic infrastructure. It has been long acknowledged however that providing food for the family is primarily the responsibility of women [e.g. Crowley, 2001]. Yet women's direct access to land resources, credit, and shelter can be put at risk in programmes such as land titling, formalization of property rights, and even housing or road improvements.

Surveyors and other land professionals, who help to establish how land rights are allocated, adjudicated, and protected, need to be more aware that gender inclusive land policies and land institutions are critical. A first step in this direction is understanding the complexities behind a simple term such as "access to land".

2. ACCESS TO LAND AND ITS RESOURCES

Access is the right or opportunity to use, manage, or control land and its resources. It includes the ability to reach and make use of the resource. When describing access to land, we can distinguish between quantitative parameters (such as the nature of tenure, the size of the parcel and its economic value) and qualitative parameters (for example, legal security, and documented, or registered evidence of rights to land). These parameters play an important role in "measuring" access to land before, during, and after development projects or land administration programmes.

In societies following customary rules, women's direct access to land through purchase or inheritance is often limited. Since women are the major producers of household food supply there are usually customary provisions for indirect access to land in terms of use rights as community members, wives, mothers, sisters, or daughters. These use rights, however, do not grant enough security for women when traditional family structures dissolve. The economic and social well-being of women and their children are at increased risk when women face widowhood and divorce, or when the male head of household does not or cannot exercise his traditional responsibilities to his family.

In many communities, access to resources is governed by both written and customary laws. In instances when conflicts exist between traditional norms and national laws, as is often the case when women's rights are considered, local norms generally prevail and are enforced by community members. Written national laws granting women equal access to productive resources are essential but for these rights to be legitimate and adhered to, it is necessary to secure the support of the local community. Thus "having a law" does not necessarily mean that women have equitable recourse to remedies should the law be broken.

Equitable access to land does not only mean the quantity of rights allocated. To make use of the rights and opportunities, access to land must also be enforceable or secure (for example, against seizure by force or by law). Equitable access must also be effective, i.e., by including equitable access to other resources such as irrigation, roads or finance. The support of legal, customary and family institutions are fundamental if women's access to land is to be preserved and improved.

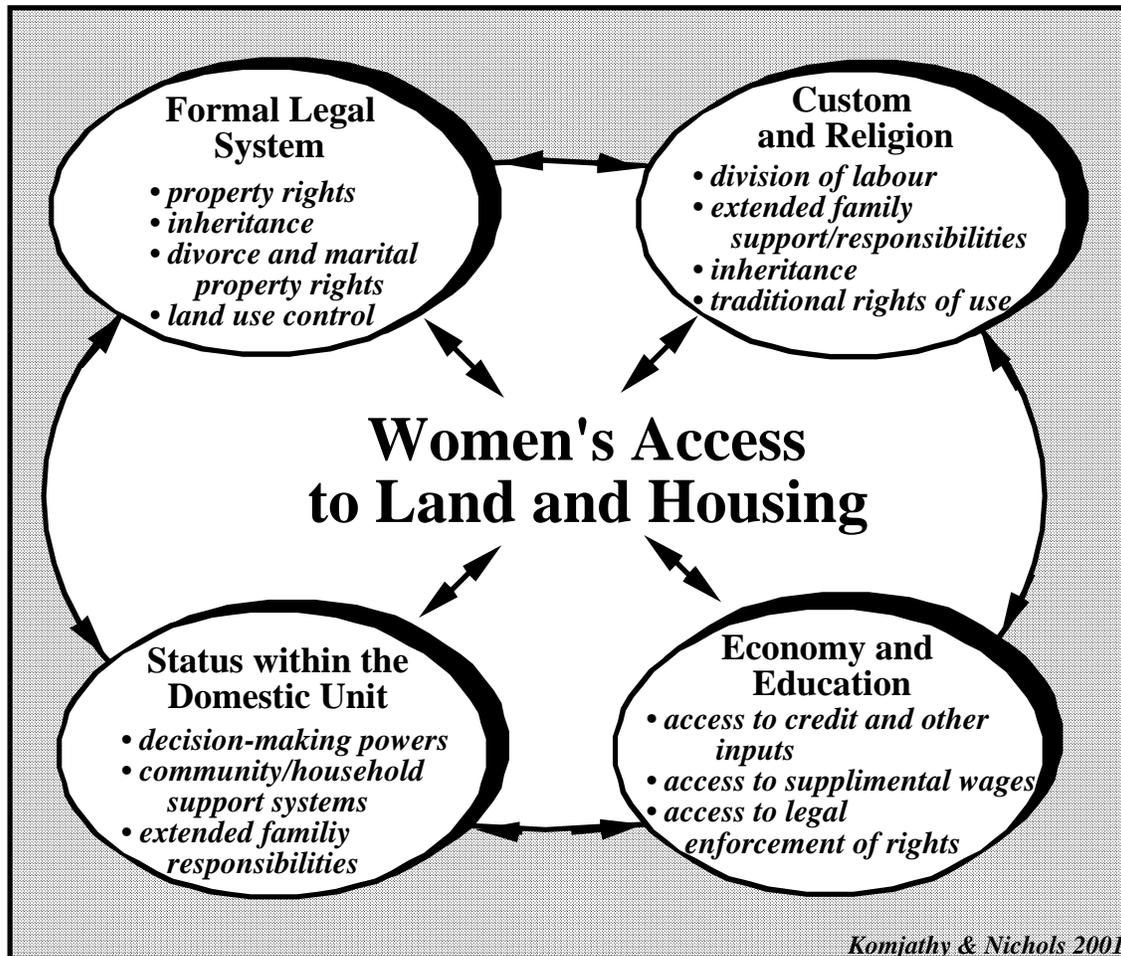


Figure 1. Institutions that Affect Women’s Access to Land and Housing Rights

3. WHY IS GENDER AN ISSUE IN LAND REFORM AND LAND ADMINISTRATION REFORM?

The body of evidence stressing that outcomes of land reform and land administration programmes and projects have different implications for men and women has grown significantly in recent years (e.g. Zwarteveen [1997], Lastarria-Cornhiel [1997], Agarwal [1995], Habitat [1999]). Traditionally, the involvement of men in such programs was viewed as sufficient and it was assumed that women and children would equally enjoy the benefits of the projects as dependents. As poverty and landlessness continues to expand and “feminization” of poverty becomes more apparent, development organizations and practitioners have had to seek a new direction to tackle these problems. Furthermore, as social, political and economical changes continue to undermine women’s ability to secure adequate housing, fulfill the food requirement of the household and use land in a sustainable manner, development projects have begun observing women’s priorities and concerns as separate issues.

Still, protecting and strengthening women's access to land and its benefits are not without adversities. The following example is a case in this point [for further examples see Nichols et al., 1999]:

Documenting Customary Tenure: In several African countries (e.g., Zimbabwe, Uganda, Malawi) there have been recent discussions and proposals to document or register customary rights in land as part of the development of national land policies. The arguments for these certificates of customary tenure and for registration are that the processes will:

- provide greater security of tenure on customary lands;
- provide a document that can be used as collateral for credit;
- provide more information for planning and land management.

Despite the merits or limitations of the processes, there could be significant impacts on women's access to land. The major difficulty is the fact that such documentation effectively freezes customary rules that are in place at the time. No account is made, for example, of such future rights as the right of a woman to return home and receive a parcel of family land after a divorce. Limited rights such as the right to pick fruit or gather wood on another's property may be eliminated by the documentation.

Then there is the question of whose name(s) the certificates or registers will record. For example, will the name be the *de facto* head of household, who may be a woman whose husband works away from home, or the *de jure* head of household according to customary law; there are limitations with both of these approaches, including the problem of whether the documents have priority over customary law in cases of inheritance when both names are recorded.

5. MONITORING AND EVALUATING THE SITUATION OF WOMEN

Having some measurement system for evaluating access to land is essential if the 'success' or 'failure' of a particular program, policy, or project is to be determined. There needs to be a set of indicators that can describe the situation before, during, and after something (e.g., a new law, a titling project) has occurred. Basically this is the same as a deformation survey of a dam – campaigns of measurements at discrete intervals of time to detect movement. The problem in measuring access to land is similar to the problem of determining which points on the dam are critical in detecting movement. These 'points' become indicators.

Measurement of access to land needs to involve both qualitative and quantitative parameters [See, for example, Nichols, et al., 1999]. Surveyors and other land administrators tend to think primarily of property rights to the surface of the land together with its fixed improvements. The focus becomes the quantity of rights (e.g., leasehold, freehold, easement), the size of the parcel of land, or its economic value. On the other hand, social anthropologists have tended to emphasize the uniqueness of land tenure systems within a given culture and focus on the nature or quality of the rights that may be involved. Both approaches are valid for certain purposes and both have their limitations. If, however, we are to design a way of measuring women's access to land it may be important to draw on both approaches.

One way of examining the quantity of rights is to view the ‘bundle’ of rights as a spectrum. At one end of the quantitative spectrum are temporary rights of use. At the other end is absolute control over what can be done with a particular resource, including who else can use the resource and for how long. Somewhere in the middle of the spectrum is the management of the resource where there is more limited decision making power (e.g., the ability to transfer rights and the opportunities to reap the direct and indirect profits from the resource). An English common law freehold estate then might be considered to be at the management level subject to the overall control of the state. A short term leasehold might be considered a temporary use right.

Examining the quality of the rights to determine indicators is more complex and only a few examples can be given here. One measure of quality is the legal security of the rights, i.e., how well do formal law (e.g., legislation) or informal law (e.g., traditional or local community rules) protect the ownership of the rights. Thus, for example, inheritance through entail or patrilineal inheritance rules may limit women’s right of management or control. Physical security is another indicator that may be affected, for example, by war or by custom in many countries where land is seized by the male relatives on death of a husband. A third example of quality of rights is transferability. Use rights may often be non-transferable because they are vested in a family or particular family members. Furthermore, transferability may be affected by the quality of the evidence of the right, such as an official document or register.

In assessing the quality and quantity of rights, the scope of potential rights of access must be broad. For this reason we have chosen the term “access to land and the benefits of land”. Some of these direct and indirect benefits that should be considered in measuring access include:

- rights to shelter;
- rights to access water, firewood, fish, or fruit;
- rights to shares in inheritance on the death of a family member;
- rights to shares in land and improvements on the death or departure of a partner in an informal marriage;
- rights of access to financing and financial inputs;
- rights to the profits from the use or sale of the resource;
- social status in the community based on access to land;
- role in decision-making (e.g., management and control).

The next step for project managers, policy makers and others who want to know more about the quantity and quality of access to land, is what specific indicators might be used? These will be important in pre-project assessments and in later monitoring and post-project evaluation. Again only a few samples can be given here.

In many land administration projects and programs the conventional approach has been to use documents of land rights or land registry records. This has the advantage of being straightforward and reasonable objective but the limitations are many. Even in western countries title documents and registers only record a limited set of rights and the situation is made more complex in customary societies and less-developed nations where either:

- few documents or registers exist;
- they may not be up-to-date or complete;
- they may not reflect the on-site situation;
- they often only list one name (*de jure* head of household)
- they probably do not reflect the variety of formal and informal rights that exist through custom and tradition.

A second major indicator used to measure access to land is legislation, such as laws for inheritance, divorce, or land use. This however may also be misleading since the formal legislation may not reflect what actually is accepted as practice on the ground. One example are the divorce laws in some socialist states which may recognize equal division of property. How well a woman's (or man's) rights might be protected on divorce, especially in impoverished rural regions, will also depend on the degree of access to the courts, ability to finance litigation, and the degree of support provided by the family or community. Similarly calls for equal rights in constitutions can be quite meaningless in the actual practice of local communities.

Other indicators include physical occupation or proof of the actual exercise of the rights. Again this has some difficulties in that it may not agree with the formal (legal) status and it may be difficult to observe (especially in a short time span) all of rights in play. Related to these indicators are indicators such as: *de facto* head of household; primary food provider; community acceptance or agreement of someone's rights; or the share of financial and labour inputs. Even more difficult to measure objectively and completely are factors such as social status and decision-making power.

7. RECOMMENDED GUIDELINES FOR SURVEYORS IN LAND ADMINISTRATION AGENCIES AND PROJECTS

The surveying community should not underestimate its role in allocating, adjudicating, protecting, and changing the way in which people hold rights to land. In the past the major impact was the size and shape of land parcels and the general pattern of the parcel fabric. Today, surveyors also have a role in land reform and promoting security of tenure in ensuring that the cadastral systems, laws, and procedures put in place during such reform do not adversely affect the rights of groups and individuals that the reforms were meant to benefit.

Learning more on how to approach the gender dimension of such programmes and projects and acquiring the tools necessary to address them are vital for securing a more equitable outcome. The following section discusses some of the measures that should be considered by practitioners working in development of human settlements both rural and urban environment. The authors are aware that it may not be possible or practical to exhaust all of these measures during a project cycle. Also, collecting gender disaggregated data as well as general information on women and minorities often prove to be a serious challenge. Recently however, there has been a significant, although far from sufficient, increase in the number of sources offering applicable data and information.

The special focus of this paper is on rural development, but most recommendations are also applicable in urban development projects.

7.1 Land administration procedures should accommodate all segments of the population

- *Ensure women's ACTIVE participation in the processes.* This includes ensuring that women in the community affected and on staff are involved in the project or policy processes, not as an afterthought, but from planning, to implementation, and to evaluation of the results. This is not always an easy process and sensitive ways must be found in some communities to allow women to share their views and experiences openly, especially with strangers. Another way in which women in the community or organization can be encouraged to participate is to provide role models, such as appointing women as key project members and supporting them.¹
- *Obtain knowledge of the local situation.* For project managers to know whether women's access to land may be an issue, there is a need for an adequate pre-project assessment of the situation. The level of detail and complexity will depend on the local situation and the objectives of the project. However, if the situation does appear to have issues directly related to women's rights, then special measures may have to be taken to understand the potential implications of the project. This can be assisted by monitoring changes during the project and by obtaining feedback from women as well as male community leaders before and during the project. Post-project evaluation (the role of which is too often disregarded or minimized) is also important for understanding what worked and what did not and what were the lessons learned.
- *Provide opportunities for women's rights to be explicitly recognized.* If a land titling, cadastral surveying, land registration, or information system project is going to document rights to land, then decisions need to be made as to: what rights will be included? whose names will be documented and based on what evidence? and how will these names be kept up to date? In addition there is a need for the decisions made on these issues to be acceptable to the recipient community to ensure the sustainability of the systems introduced.
- *Support women in land administration organizations.* In major internationally funded projects, women employees often do not have the same access to opportunities on the project. Yet these women may be able to help foreign project members and recipient organization staff to better understand the issues related to women's access to land locally. They may also be a communication bridge to the community's women. Projects can also enhance women's sustained participation in a land project through education and training. The Swedish International Development Agency, for example, has required that 50% of all participants in cadastral training and education projects abroad be women.
- *Ensure effective access through other support.* Providing equity is not enough. To be effective, access to land must also include access to other resources (such as financing, technology, and training) and to required support systems (e.g., water,

¹ The importance of role models was made very apparent to Dr. Nichols in her first year of teaching cadastral surveying. After a guest lecture by the only woman cadastral surveyor in Canada at the time, one first year foreign student wanted to know whether all cadastral surveyors in Canada were women.

roads, marketing co-operatives). Without these resources and support, the projects may leave nothing but paper titles behind.

- *Share awareness of the issues and their complexity.* Just being aware that there may be some potential issues is a long step forward. This will help project managers, task managers, and other participants in policy formation or project design understand that they need to be sensitive to potential impacts. Awareness of the complications in what may have seemed to be a straight forward surveying project, may help professionals decide whether or not people with specialized expertise may be necessary. It is also important that surveyors share this awareness with their staff and others involved in the projects.
- *Include women among surveying professionals working with local communities.* Female professionals might be able to establish connection with women's groups in communities where religious or cultural customs prohibit social contact between the sexes or when women are not allowed to speak publicly in the presence of their husbands. It is however equally important that female professionals responsible for these tasks have a good understanding of the gender dimensions of the project, the local situation and are willing and able to undertake these assignments.
- *Add a spouse's or partner's name to all legal documents concerning land rights, including any official register of land rights.* This helps to prevent fraud, adds security for the woman beyond family or legislative recognition (e.g., matrimonial laws), and helps to ensure that both partners understand what their rights are.
- *Consider that women have limited access to financial resources.* Any procedures that would require financial compensation should be carefully examined not to present an additional burden for women and exclude them from the benefits of the project.
- *Safeguard and enforce women's rights.* Pottier [1999] and others suggest that women often lose access to certain resources when those become profitable or receive more attention.
- *Explain the rights and obligations associated with holding title to land.* Women should feel comfortable about being title holders. They should understand the rights, responsibilities and opportunities granting title to land carries and the potential changes and consequences this may bring in terms of their status (i.e. fees to be paid during transaction, possible tension with male relatives, etc.)
- *Discuss the meanings of land administration terms with women.* For instance, women's understanding of the term security of tenure or ownership can be greatly different from what men think [Varley and Blasco, 2000]. This should be within a non-threatening environment where women are not afraid to ask questions.
- *Establish land administration institutions that are responsive and accommodating to women as well as men.* Efficient, decentralized land administration agencies are better able to serve the community. Participatory methodologies and decision-making structures can provide opportunities for inclusion.

- *Simplify registration procedures.* Women, especially poor women and female heads of households are often unable to comply with excessive documentation requirements. They are also unlikely to represent their interests effectively and in a timely manner required in procedures designed with a bias toward the more affluent segments of society.
- *Recognize women as stakeholders.* Zwarteveen [1997] emphasizes the importance of women’s informed participation when individuals’ access to water and land is determined. Their active participation throughout the program - from research to implementation and post project evaluation - is key if their interest is to be taken into account. This participation also has to be in a meaningful way. They have to be informed of their rights and a support system has to be in place to help them defend those rights.
- *Propose alternative ownership models.* There are instances where combining individual, common, public or group ownership may provide a better solution for women or groups of women to secure or extend their existing rights. Under customary regimes women have use rights to their male relatives land. During privatization programmes they can easily lose these rights if the land is titled under the name of the male relative without giving consideration to women’s overlapping use rights. Identify joint ownership interests during registration where applicable.
- *Document lessons learned and best practices.* Obtaining relevant and reliable information regarding the situation of women is often difficult. For that reason, sharing information and experiences within the surveying community has enormous significance.

7.2 Removing barriers to access to information

- *Disseminate information in a way that is comprehensible by women.* It should be taken into consideration that the illiteracy rate is much higher among women than men. Adoption of training and advisory materials for the non-literate population is essential. Employ those forms of media that reach women in rural areas and in poorer districts of cities.
- *Consult those women directly who will be affected by the program outcomes.* More and more accurate information can be gathered as to the priorities and interests of women when they are asked directly.
- *Ensure that there is a two-way communication mechanism in place between women and surveyors.* Women’s experience and knowledge should be part of the initial community assessment. Facts pertinent to the project should be communicated to women by development professionals and women must have opportunity to voice their concerns without being intimidated. Religious and customary laws governing the interactions between women and “outsiders” must be understood before the project, be adhered to, and worked around (e.g., by employing women to conduct the interaction).

7.3 Increasing awareness about the obstacles hindering women's participation

- *Be aware of women's daily schedules.* Plan meetings and information sessions during that part of the day when women are able to attend. Accommodate women's request in terms of timing and location. Women are seldom able to visit geographically remote areas for the purpose of attending meetings.
- *Analyze decision-making patterns within domestic units.* It is often the male head of the domestic unit who is viewed as the decision maker and it may be so. Research has shown [e.g. World Neighbours, 2000] that the male decision maker does not necessarily represent the interest of the women and children in the domestic unit. Receiving independent input from women is essential when a project may affect their well-being.
- *Recognize the different needs of different women.* All women are not equal. Women who are economically in a better position have different interests than poor women, and their participation and input do not replace poor women's participation and input. Instead, it represents another segment. Special attention need to be given to the situation of divorcees, female heads of households and widows.

7.4 Working with the local customary community

- *Identify rural institutions in charge of the implementation of customary rules.* One of the important elements in the project or programme may be an interdisciplinary approach. Surveyors are not sociologists or anthropologist, nor micro finance experts. Part of any successful project is knowing when to bring in the experts.
- *Oversee the legitimacy of women's land claims.* Women's access to resources can only be sustainable if it is viewed by the community - both men and women - as legitimate. Projects should strive to allocate resources equitably and strive to ensure acceptance by the members of the community.
- *Investigate what rights - in what areas (inheritance, divorce, property rights, family law etc.) are upheld in the event of controversy between written and customary laws.* Once again experts (lawyers and others) can provide project managers with a better understanding of the issues, the status of the law, and any contradictions.
- *Acknowledge when there is a problem regarding women's unequal access to land and associated resources.* Women's lack of access or insecure access to housing and productive resources are not always transparent and customary tenure systems vary from place to place and even in time as the social and economic fabric of rural communities are subject to transformation and modernization. Bringing the issue to the attention of appropriate authorities may not always be popular but may be considered part of a surveyor's code of ethics.

8. CONCLUSIONS

Providing secure and effective access to land for women can benefit families, communities, and nations through, for example:

- increased economic opportunities;
- increased investment in land and food production;
- improved family security during economic and social transitions; and
- better land stewardship.

However, these benefits can only be fully realised if the strategies adopted for improving women's access to land work in practice and if decision-makers and project teams are aware of those strategies that do and do not work. They need to know about the quality and distribution of rights in land, the economic and cultural impediments that limit women's effective and secure access to land, and the benefits that can be achieved by enhancing women's access. They also need to know what options for improving equitable access to land exist and be able to evaluate the full range of implications of these options.

Surveyors have an impact on land tenure systems worldwide. This implies that the profession also has a special responsibility to society. As the land tenure issues grow increasingly complex and become more diverse, the profession has a responsibility to know more about the issues and to do more to ensure that the systems for administering property rights serve all societies well.

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