

FAO LAND TENURE STUDIES

4

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**Gender and access
to land**

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Foreword

The present volume is part of a series of Land Tenure Studies produced by FAO's Land Tenure Service of the Rural Development Division. Land tenure plays a vital role in achieving sustainable rural development. Increasing social, economic and technological changes are requiring a re-examination of the institutional arrangements used to administer who has rights to what resources and under what conditions.

This volume is designed to support land administrators who are involved in land access and administration questions in rural development. It is frequently the case that gender issues are left out or misunderstood in such situations, with often long lasting and very negative results. This guide sets out basic principles that should underlie gender and access to land. The Land Tenure Service has been working on these issues for some time together with the International Federation of Surveyors (FIG) in response to requests for guidance in this area. FIG's involvement was led by the Federation's Commission 7 on Cadastre and Land Management, with support from the Swedish International Development Agency and SwedeSurvey, and this assistance is greatly acknowledged.

The guide forms part of the Land Tenure Service's programme designed in response to FAO's overall concern for food security and poverty alleviation. Member Nations are increasingly turning to modern land tenure systems to improve access to land by the poor (especially women, minorities and other disadvantaged groups) who want to engage in agricultural pursuits and to redress cases where existing land tenure arrangements do not support sustainable land uses. This book, like others in the series,

does not seek to be exhaustive but rather reflects what FAO and its many international collaborators, with special reference to FIG in this case, have discovered are "good practices" for a particular aspect of land administration. It is intended to be of use to technical officers of Member Nations, other senior authorities responsible for land policy and rural development, and FAO field officers.

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1. Introduction

- 1.1 Access to land is a central issue because it is a crucial asset for food production and a key factor for shelter and community development. How issues related to rights of access are addressed in development projects and programmes has a direct impact on the livelihood and security of people not only in rural areas, but in urban and peri-urban settings as well. Failure to address the land tenure interests of all stakeholders in land development or land reform can cause problems and inequities. These problems can unintentionally fall on the most vulnerable and disadvantaged members of society.¹ Land administration professionals therefore should be aware of gender issues relating to access to land.
- 1.2 For this guide, discussion is not restricted to access to land alone, but also includes access to other natural resources, such as water and trees, which may be essential for people's livelihoods. For convenience, "access to land" is used here to include access to other natural resources as well.
- 1.3 Women, the elderly, minorities and other sometimes marginalized groups can be at risk in land reform and land administration projects. Very often, when land values increase as a result of external investments, women get marginalized in the process, and risk losing former benefits and accommodating situations. Women can be at risk even if it is intended that they share the benefits. For example, improving irrigation on women's fields may have the unintended effect that these now more valuable fields are reclaimed by men in the community.² Enhancing housing in a community or peri-urban area may have similar unintended results when the units become more marketable.³ Children and the elderly may also suffer although the original intention was to provide inclusion.
- 1.4 The purpose of these guidelines is thus:
 - to provide background information to land administrators and other land professionals on why gender issues matter in land projects; and

- to provide guidelines to assist development specialists and land administration agencies in ensuring that land administration enhances and protects the rights of all stakeholders.

While this guide is directed primarily towards land administrators, its contents should also be relevant to those working in broader development projects and programmes.

- 1.5 The guide aims to show where and why gender inclusion is important in projects and programmes that aim at improving land tenure and land administration arrangements. It provides material to raise awareness of some of the most critical gender issues that threaten access to land and its benefits. The guide emphasises the importance of developing a better understanding of the situation for men and women when societies are undergoing great economic, social, and environmental pressures. It identifies indicators for measuring the quality and quantity of access to land and housing before, during, and after an intervention to help inform decisions.
- 1.6 In no way, however, are these guidelines to be considered exhaustive. If there is a common variable in all the information accumulated in this research, it is the complexity of the issues involved. No general outline fits all circumstances in the international development field.
- 1.7 Chapter 2 begins with a working definition of what is meant by access to land and security of tenure and describes their importance in rural and urban settings. Chapter 3 illustrates why gender is an important issue for land reform and land administration. Chapter 4 lists some key indicators that can be used in land administration to evaluate and monitor gender-related access to land. Chapter 5 outlines recommended principles for land administration projects from the perspective of national and international organizations while Chapter 6 gives more detailed principles for land administration professionals. Finally Chapter 7 presents conclusions.

2. What is access to land

- 2.1 Throughout history, land has been recognized as a primary source of wealth, social status, and power. It is the basis for shelter, food, and economic activities; it is the most significant provider of employment opportunities in rural areas and is an increasingly scarce resource in urban areas. Access to water and other resources, as well as to basic services such as sanitation and electricity, is often conditioned by access to rights in land. The willingness and ability to make long term investments in arable land and in housing is directly dependent on the protection that society affords the holders of rights. Thus, any concept of sustainable development relies heavily on both access to property rights in land and the security of those rights.
- 2.2 Land also has great cultural, religious, and legal significance. There is a strong correlation in many societies between the decision-making powers that a person enjoys and the quantity and quality of land rights held by that person. In rural areas social inclusion or exclusion often depends solely on a person's land holding status. Even in urban areas, the right to participate in municipal planning, in community decisions, and sometimes elections, can depend on the status of an individual as a "resident" or "home owner". This is not a new phenomenon, since for many centuries only "land owners" could participate in elections in most western democracies. Access to land then is an important aspect of household, community, and national decision-making powers.
- 2.3 Access to land is governed through land tenure systems. Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. (For convenience, "land" is used here to include other natural resources such as water and trees.) Rules of tenure define how property rights in land are to be distributed within societies, along with associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources, for how long, and under what conditions.

2.4 The manner in which rights to land are actually distributed and used can be very complex. Land tenure is often categorised as:

- Private: the assignment of rights to a private party who may be an individual, a married couple, a group of people, or a corporate body such as a commercial entity or non-profit organization. For example, within a community, individual families may have exclusive rights to residential parcels, agricultural parcels and certain trees. Other members of the community can be excluded from using these resources without the consent of those who hold the rights.
- Communal: a right of commons may exist within a community where each member has a right to use independently the holdings of the community. For example, members of a community may have the right to graze cattle on a common pasture.
- Open access: specific rights are not assigned to anyone and no-one can be excluded. This typically includes marine tenure where access to the high seas is generally open to anyone; it may include rangelands, forests, etc, where there may be free access to the resources for all. (An important difference between open access and communal systems is that under a communal system non-members of the community are excluded from using the common areas.)
- State: property rights are assigned to some authority in the public sector. For example, in some countries, forest lands may fall under the mandate of the state, whether at a central or decentralised level of government.

In practice, most forms of holdings may be found within a given society, for example, common grazing rights, private residential and agricultural holdings, and state ownership of forests.

2.5 Rights to land are diverse and, in practice, multiple rights to an object can be held by several persons or groups. This has given rise to the concept of the “bundle of rights”. Different rights to the same parcel of land, such as rights to sell the land, rights to use the land through a lease,

or rights to travel across the land, may be pictured as “sticks in the bundle”, each of which may be held by a different party. Although a large and varied number of rights may exist, it is sometimes useful to illustrate that rights of access to land can take the form of:

- **use rights:** the right to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.
- **control rights:** the right to make decisions on how the land should be used and to benefit financially from the sale of crops, etc.
- **transfer rights:** the right to sell or mortgage the land, to convey the land to others through intra-community reallocations or to heirs, and to reallocate use and control rights.

Very often, the poor in a community have only use rights. A woman, for example, may have the right to use the land to grow crops to feed the family, while her husband may collect the profits from selling any crops at the market. While such simplifications can be useful, it should be noted that the exact manner in which rights to land are actually distributed and enjoyed can be very complex.

2.6 The rules of land tenure are applied and made operational through land administration. Land administration, whether formal or informal, comprises an extensive range of systems and processes to administer:

- **land rights:** the allocation of rights in land; the delimitation of boundaries of parcels for which the rights are allocated; the transfer from one party to another through sale, lease, loan, gift or inheritance; the registration of land rights; and the adjudication of doubts and disputes regarding rights and parcel boundaries.
- **land-use regulation:** land-use planning and enforcement and the adjudication of land use conflicts.
- **land valuation and taxation:** the gathering of revenues through forms of land valuation and taxation, and the adjudication of land valuation and taxation disputes.

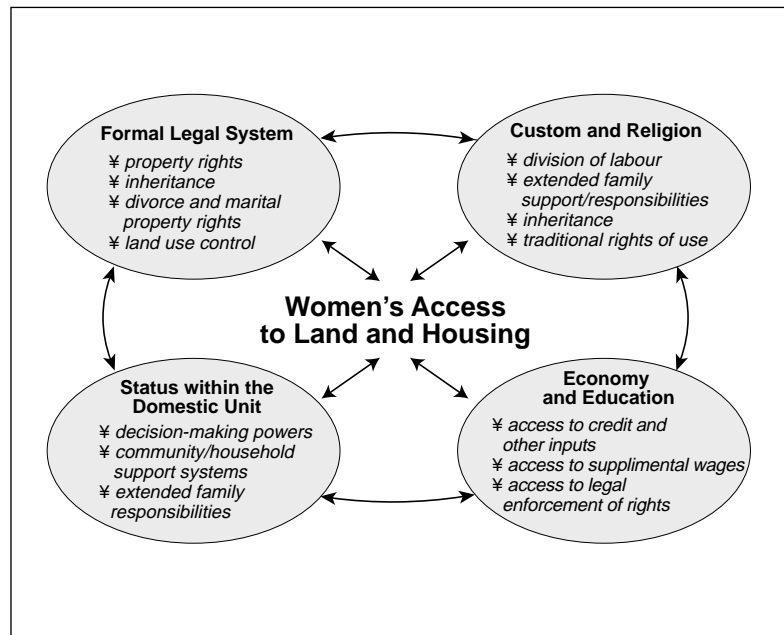
- 2.7 In many communities, access to land resources is governed by both statutory and customary laws. Conflicts can exist between traditional norms and national laws, as is often the case when land rights are considered. Local norms as enforced by community members are most likely to prevail, particularly in rural areas. National constitutions and laws granting equal access to productive resources are essential for gender equity. However, for these rights to appear legitimate and be enforced, they need to be accepted by the local community. Such acceptance is primarily enhanced through local community involvement in the process of the design and implementation, as well as the approach used during information and education campaigns. Understanding the local situation, as well as the national legal structure, is therefore essential in land-related programmes.
- 2.8 Increasingly, the dramatic demographic, economic and social changes affecting urban and rural communities in developing economies is marginalising those who are least equipped to cope with these shifts. Whether the issue is growth of informal settlements in urban areas, the decreasing role of men in the community due to labour migration, or the need to readjust household relations to accommodate the elderly, the orphaned, and the sick, people need to be able to access land and shelter efficiently and equitably.
- 2.9 As nontraditional household arrangements emerge, and as rural lands become engulfed in the urban fringe, the greatest risks of losing access to land fall generally to the most disadvantaged segments of society. Nations and communities need to rethink how overstressed land resources will be accessed and allocated in order to adjust to the changing demands and opportunities at the local level. The economic and social well-being of households are at increased risk when maintenance and decision-making roles are altered by, for example, death, divorce, abandonment or disability. When the heads of households do not or cannot exercise their traditional responsibilities there is a need to ensure that remaining household members have appropriate access to the land that supports them.

- 2.10 The changing dynamics of households and communities must be considered in land administration if it is to be effective and equitable. Improving gender inclusive access to land, and the benefits from land, may be one way to overcome economic and social disadvantages. Men as well as women can suffer discrimination in society through, for example, age, health, or education and they should also be seen as “an untapped resource”.

3. Why is gender an issue in access to land

- 3.1 Gender differences in land tenure should be recognized if land objectives, such as increasing land productivity, providing affordable housing, or promoting sustainable resource management, are to be met. There is a need for land tenure policy frameworks that explicitly address gender inclusive access to land. Without specific attention to gender inclusiveness, important segments of society may be excluded from the benefits of land administration, management, and development schemes. This is underscored by the findings of the Women's Summit⁴ that, in most of today's societies, there are great gender inequities in access to land, housing and basic infrastructure. Finally, but not least of all, equitable access to land is a human rights issue and, as the UN Economic and Social Council Commission on the Status of Women states, "land rights discrimination is a violation of human rights."⁵
- 3.2 In many countries, there is still a lack of adequate provisions for women to hold land rights independently of their husbands or male relatives. Statutory law often does not provide for women's independent rights and when such legislation does exist, mechanisms to enforce it are often absent. In traditional or "customary" societies, women's direct access to land through purchase or inheritance is often limited, yet they may have greater management and use rights than men. Since women are frequently the major household food producers, there are usually customary provisions for indirect access to land in terms of use rights acquired through kinship relationships and their status as wives, mothers, sisters, or daughters. (See Figure 1.)
- 3.3 These use rights, however, may not grant enough security for women and other dependants when traditional family structures dissolve. Through labour mobility, divorce, separation, or death, an increasing number of

FIGURE 1
Institutions that affect women's access to land rights



women are becoming the heads of households. They are thus making many of the day-to-day decisions affecting shelter, food production, and household economics. Yet only a small proportion of these women hold secure land rights. Similarly, there are societies where access to land stems from the female line, and in this case male partners and children may be disadvantaged as societies change.

- 3.4 Urbanisation is a major factor in such societal changes. The Second United Nations Conference on Human Settlements (Habitat II) noted that people and investments are being attracted to cities and this trend is expected to accelerate in the future. Friedmann⁶ estimates that about 30-40 percent of urban populations are female-maintained, i.e., responsible for food and other household matters. That number can be expected to be larger in many developing countries where more people may comprise a

household and thus be the responsibility of women. On the other hand, there are increasing numbers of men and children who are homeless. Such gender-related changes in household and community maintenance need to be addressed in housing and economic development projects which target groups, for example, through special credit or rental arrangements.

- 3.5 Migration to urban centres has resulted in a rapid rise in the number of rural families that have women as the heads of households. Many of these women are those with the least social power (i.e., single parents, widows, divorcees, wives of migrant workers, the aged and the infirm). They are largely without effective decision-making powers, often without a voice in community governance, and increasingly without security as individuals under traditional law. Attempts to assert their rights can cause conflicts at the community or even national levels. Too often, women are left holding whatever rights they have at the will of male relatives. Single, divorced or widowed women can end up dependent on the goodwill of distant family members.
- 3.6 At the same time female-headed households are faced with the responsibility for food production for growing populations. Even in male-headed households, women often have prime responsibility for food production while men commonly concentrate on cash crops. Rural women in particular are responsible for half the world's food production and produce between 60 and 80 percent of the food in most developing countries. In sub-Saharan Africa and the Caribbean, women produce up to 80 percent of basic foodstuffs. In Asia, between 50 and 90 percent of the work in the rice fields is done by women. After the harvest, rural women in developing countries are almost entirely responsible for storage, handling, stocking, marketing and processing.
- 3.7 Making access to land more equitable does not mean addressing only 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 to land must also be effective, i.e., by including equitable access to transportation, credit, markets, etc. The support of legal, customary and family institutions are fundamental if more effective access to land is to be improved for men and women.

- 3.8 To create gender equity, whether on the basis of human rights or for reasons of economic efficiency, then the principal challenges for land administration are:
- to understand and acknowledge the complexity of property rights regimes as they relate to the dynamic roles of both men and women in today's societies; and
 - to provide effective institutional structures that can protect and strengthen equitable access to land within the framework of a society's particular land policy goals.

This is important given that land is the main source of income and food security for the majority of rural households in many countries.

- 3.9 These are not easy challenges because land tenure arrangements are dynamic and can vary greatly within and among countries. There may not even be any clear consensus, nationally or regionally, on what land policy goals are or should be. Despite these limitations, land administrators need to understand how land reform, land management and land development schemes may impact on access to land from a gender perspective.
- 3.10 There is increasing evidence that outcomes of land reform and land administration activities have different implications for men and women.⁷ Traditionally, the involvement of men as the *de jure* heads of households as primary beneficiaries in such programmes was viewed as sufficient to ensure that other household members would equally enjoy the benefits of the projects as dependents. Today, it is increasingly being recognized that such assumptions cannot be made.

- 3.11 With significant demographic shifts in rural and urban areas, development organisations and professionals have had to seek new strategies to tackle gender issues. In the land sector, this may mean giving women and men, directly or through co-ownership, greater security of tenure and better access to land resources. Greater security of rights to land increases the holder's ability to make decisions regarding appropriate economic strategies that may include diversification from subsistence farming. Security of tenure is a key to enabling individuals and households to participate effectively in economic development.
- 3.12 The timeliness of this new vision is underscored by some experience from the past. As Rocheleau and Edmunds (1997)⁸ comment: "Women who enjoy access to a variety of tree, forest and rangeland resources across the rural landscape may find their access restricted after formal land titling or land tenure reforms have invested greater powers of exclusion in land owners, whether male or female. Even where formal title is given jointly to a husband and wife, a woman may lose decision-making authority over her former domains on and off farm as the household 'heads' take on the full and exclusive responsibility for the management of household land and all the plants and animals upon it."
- 3.13 Another example is given by Lastarria-Cornhiel (1997)⁹: "Among the Mandinka ... of Gambia both common and individual property rights are recognized: family-cleared land designated *maruo* collectively farmed by the family but under the control of the male household head; and individually cleared land designated *kamanyango* which if cleared by a woman gives her access to land with partial autonomy, controlling the profits and able to transfer land to daughters. In the late 1940s and early 1950s women sought to establish *kamanyango* rights of new rice lands by clearing former mangrove swamps. In 1984, the Jahaly Pacharr irrigation project, designed to increase productivity of the rice paddies by enabling year-round cultivation, recognizing that women were the key farmers on this land, sought to title the land to women. Household heads (generally male) registered the land in women's names but then designated it as *maruo* land."

- 3.14 The “Toolkit on Gender in Agriculture”¹⁰ prepared by the World Bank includes the following observation: “Land title and tenure tend to be vested in men, either by legal condition or by sociocultural norms. Land reform and resettlement have tended to reinforce this bias against tenure for women. Land shortage is common among women. Compared to men, women farm smaller and more dispersed plots and are less likely to hold title, secure tenure, or the same rights to use, improve or dispose of land.”
- 3.15 Statistical information is far from complete and, where it exists, lack of uniformity makes comparison difficult. For example, in some cases the definition of “ownership” does not take into account “co-ownership”. Some researchers¹¹ put land ownership by women at less than 10 percent world-wide. Others argue that women may actually have more direct use and management of land than men through lesser rights than ownership. However, the discrepancy between decision-making powers and labour input is compelling in many situations.
- 3.16 As the percentage of population living in households that can be considered *de facto* or *de jure* female-headed household is on the rise,¹² there is a need to re-examine how property rights are allocated and secured. There is also a need to better understand the complex relationships between use, control and ownership of land resources. A simple certificate of title could certainly not reflect the diversity of land rights found in many cultures.
- 3.17 The difficulties of protecting and enhancing access to land is illustrated by Box 1 and the following paragraphs.
- 3.18 **Documenting customary tenure.** There is increasing interest in several African countries in documenting customary rights (e.g., Uganda’s Land Act of 1998). The arguments for registering these certificates of customary tenure are that the processes will:
- provide greater security of tenure on customary lands

BOX 1

MAJOR CONCERNS**Causes of poverty among rural women and their families:**¹³

- women's lack of access and control over productive resources and services
- serious underemployment of rural women
- persistent inequalities between men and women regarding employment opportunities and compensation
- exclusion of women and the poor from decision- and policy-making
- legal environments that favour men's rights over women's rights

New pressures affecting traditional arrangements:

- changing socio-economic conditions, such as increased population, new types of employment and the growing cash economies
- urban and peri-urban migration
- incorporation and/or replacement of traditional tribal and religious institutions by national and local government structures
- changes in inheritance patterns, particularly with increased education and outside employment opportunities
- the changing household structure through death, disability, divorce, and abandonment

Constraints to secure acceptable urban housing:¹⁴

- obtaining title that enables formal land registration (and transactions) is unmanageable for the poor, due to cost and time requirements
- dealing with bureaucracy and providing documentation and information when going through official channels is also time-consuming and requires education
- developing land use regulations that negatively affect income generating activities and safety for those working from their houses

- provide a document that can be used as collateral for credit
- provide more information for planning and land management

3.19 Despite the merits or limitations of the processes, there could be significant impacts on some land rights. A major difficulty is the fact that

such documentation can effectively freeze customary rules that are in place at the time. No account is made, for example, of such future rights as the right of a child 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. And 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. In this regard, polygamy is a significant complicating factor when issuing land titles. Unregistered marriages, divorces and polygamy can have a major impact on women's security of tenure.

- 3.20 ***Dynamic cultural and religious values.*** Traditional laws and religious laws often protected women and provided for wives, widows, and female children through other means than, for instance, equal land shares on inheritance. Under Islamic law, for example, daughters may receive half the land that sons receive on the death of their father. This is in effect their dowry to bring to a marriage. The sons on the other hand have the responsibility to provide for unmarried sisters and their mother and in theory require more land. Other cultures have had similar traditional laws.
- 3.21 Traditional societies and religious based communities are not immune to the influence of social changes around them. Education of women and greater opportunities for employment and self-sufficiency are affecting many traditional communities. Divorce, desertion, and urban migration may also challenge the traditional safety nets. The devastation of HIV/AIDS and war have further fragmented the extended and traditional family arrangements. At the same time, in the midst of obvious need for changes, who has the right to demand that these changes be made or to force another community to adopt its values? This raises ethical dilemmas for the land professional.

- 3.22 ***Gender-targeted development projects.*** International aid organisations have been targeting particular groups such as women and children for special assistance for decades. More recently the protection and enhancement of women’s rights to land have become a focus for some land reform projects. One difficulty is that these projects often enhance the economic value of the land which may change how that land is viewed within the community. For example, part of a community may have used parcels of marginal land to raise personal crops. After a land development project, this marginal land may have access to irrigation and to a new road, thus enhancing its value. Will local authorities allow the original land users to maintain their land rights after the project is over? Experience in housing projects has also shown that making improvements to a house may lead to “expropriation” of rights to the house by more powerful members of the community.
- 3.23 The intention of this discussion is not to discourage gender-related projects and programmes. Instead, it is to demonstrate that making changes does not always result in the benefits originally intended.¹⁵ The situation is complex and requires looking at the existing constraints at the macro-level (legislation and policies), institutional arrangements (mechanisms and procedures for land administration), and local dynamics (prevalent social organizations and related factors in social beliefs, rules, and customary practices).

4. Monitoring and evaluating access to land

QUANTITATIVE AND QUALITATIVE ASSESSMENTS

- 4.1 Having some measurement system for evaluating access to land is essential if the “success” or “failure” of a particular policy, programme or project is to be determined. Measurement of access to land needs to involve both qualitative and quantitative parameters.¹⁶ Most land administration activities are concerned with property rights to the surface of the land, together with its fixed improvements and resources. The focus becomes the *quantity of rights* (e.g., ownership, lease, 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. In designing a way of measuring gender-related access to land, it may be important to draw on both approaches.
- 4.2 ***Quantity of rights.*** One way of examining the quantity of rights is to identify a range of rights within the “bundle” of rights. These can be categorized as:
- use rights (rights to use the land for grazing, growing subsistence crops, gathering minor forestry products, etc.)
 - control rights (rights to make decisions how the land should be used including deciding what crops should be planted, and to benefit financially from the sale of the crops, etc.)
 - transfer rights (rights to sell or mortgage the land, to convey the land to others through intra-community reallocations or to heirs, and to reallocate the use and control rights)
- 4.3 In practice the scope of potential rights of access may be broad and measurements could be required for rights such as the following.

- 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 informal and formal marriages
- rights to use the interest to secure 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

4.4 **Quality of rights.** 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 patrilineal rules may limit women's right of control. Physical security is another indicator that may be affected, for example, by war or by custom 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.

4.5 Because at times there can be great differences between rights as defined (in statutory law or customary norms) and those rights as actually practiced, an assessment should consider the extent to which people are able to enjoy their rights, and the quality of the protections afforded to them through formal courts, community arbitration processes, etc.

DEVELOPMENT OF INDICATORS

4.6 The next step is what specific indicators might be used to measure quality and quantity. Such indicators will be important in pre-project assessments and in later monitoring and post-project evaluation. Only a few samples can be given here and boxes 2 and 3 present more comprehensive lists of

indicators that point to areas where gender disaggregated information might be collected and analyzed.

- 4.7 One major indicator used to measure access to land is information on rights held by people. The conventional approach has been to use documents of land rights or land registry records. This approach has the advantage of being straight forward and reasonably objective but it has many limitations. Land registries are not the sole source of information on all rights relating to a parcel of land, and even in western countries title documents and registers record only a limited set of rights and may register the rights in the name of only one person. The situation is made more complex in developing nations where:
- few documents or registers exist
 - registers may not be up-to-date or complete

BOX 2

EXAMPLES OF INDICATORS FOR COLLECTING GENDER DISAGGREGATED INFORMATION - LEGAL AND POLITICAL FACTORS

- Rights granted by constitutions, statutes, and official tribunals
- Rights granted by other laws – customary, informal, secondary, temporary
- Security of the aforementioned rights in terms of enforcement and application
- Land-related or subsidiary rights that women and men are free to practice without specific mention in formal or informal laws
- Effective access to fair adjudication including the court systems or other dispute resolution processes
- Comparison by gender of the formal and informal inheritance systems and how they operate in distributing land rights and holdings
- Effective access to and participation in the local decision-making bodies
- Social status in the community based on access to land
- Role in household decision making (e.g., on income strategies, provision of food and shelter)
- Relative percentages of male and female population holding secure (e.g., recorded) and insecure (at will) title to land

BOX 3

**EXAMPLES OF INDICATORS FOR COLLECTING GENDER
DISAGGREGATED INFORMATION - SOCIO-ECONOMIC FACTORS**

Characteristics of land holdings in an area:

- Origins of landholdings by gender (e.g. custom, statute, occupation, inheritance)
- Rural and urban demography by gender
- Size and relative location (e.g., to transportation and other services or amenities) of land parcels and housing by gender
- Acquisition through inheritance of assets other than land, by gender
- Percentage of population depending on agriculture for their livelihood by gender
- Heads of households by gender (*de facto* and *de jure*)
- Average number of dependants in male and female headed households

Benefits, roles, and responsibilities of land tenure by household:

- Traditional land-related responsibilities by gender
- Economic aspects of land assets by gender
- Effective access to credit based on land assets by gender
- Relative participation by gender in formal and informal housing and land markets (types of transactions, procedures taken, obstacles, etc.)
- Beneficiaries of land sales by gender (i.e., how were the proceeds of the sale used)
- Economic and physical resource allocation by gender within the household
- Proportion of household food produced directly by gender
- Proportion of cash-crops produced by gender
- Percentages of paid and unpaid labour activities by gender
- Access to and use of hired labour by gender

- registers and documents may not reflect the *de facto* situation
- documents and registers often only list one name (*de jure* head of household)
- documents and registers probably do not reflect the variety of formal and informal rights that exist through custom and tradition

4.8 A second major indicator is legislation, such as laws for inheritance, divorce, or land use. Such an indicator can be useful but it can also be

misleading since the formal legislation may not reflect what actually is accepted practice on the ground. One example is divorce law of socialist states that recognises equal division of property. How well a spouse'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 light of the actual practice of local communities.

- 4.9 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, in a short time span, all of rights in play. Related to these indicators are measures 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.

5. The role of development organizations

- 5.1 International, national and non-governmental organizations can play important roles in promoting equitable gender inclusion in land administration. Development organizations have been targeting groups, such as women or the landless poor, for special assistance in land programmes to address equity concerns and to increase the effectiveness of some aid activities. Similar trends can be seen in the credit industries in developed countries where female-headed businesses are increasingly recognized as an important sector of the economy.
- 5.2 Gender inclusiveness in land projects is essential if the outcomes are to truly enhance security and effective access to land resources and the benefits from those resources. In order to ensure that project outcomes reflect the initial goals and do not have unintended negative impacts on men or women, the donor community and international organizations, should take on the following responsibilities at minimum.

IMPROVE THE ENVIRONMENT FOR GENDER INCLUSIVENESS

- 5.3 *Advocate gender inclusiveness:*
- Encourage nations to sign international declarations that promote equitable gender status under the law and equitable access to productive resources.
 - Urge constitutional recognition of equal access to property. Such provisions provide a strong basis for subsequent legislative initiatives or court interpretations.
 - Promote national policies for legal and policy reforms related to land and property that will improve gender equity.
- 5.4 *Analyse gender issues:*
- Identify areas in national and local land and housing laws and procedures that are constraints to gender inclusiveness.

- Identify areas in customary law and procedures that also serve as constraints.
- Collect gender disaggregated data and making them available to researchers, practitioners, and the public.

5.5 ***Document and publicise gender issues such as:***

- The benefits of gender inclusion in land holding and management.
- Violations of rights to land where appropriate.

Information campaigns should be directed “upstream” to policy makers and other leaders, and “downstream” to involved communities, implementers and other stakeholders.

5.6

Lead by example by providing demonstrations of gender inclusiveness in their own organizations and activities. Göler von Ravensburg and Jacobsen (1999)¹⁷, for example, suggest that: “Development cooperation can make it a precondition for any intensification of policy dialogue that international principles and law regarding women’s land rights be included into national policy and law, make relevant suggestions in this regard and monitor whether the respective laws are implemented such that men and women indeed obtain equal status in all land matters.”

IMPROVE OPPORTUNITIES FOR GENDER INCLUSIVENESS

5.7 ***Promote gender integration at all levels of projects and programmes:***

- Ensure the full integration of gender perspectives in all future activities as it is required by, for example, FAO’s Gender Plan of Action¹⁸ and the UNCHS¹⁹.
- Ensure gender inclusiveness in project and programme planning and in policy- and decision-making, aiming towards a balanced representation of men and women in these bodies.
- Ensure the participation of both men and women at the local level in land projects and programmes.

- Develop indicators to measure the effectiveness of projects and programmes with respect to gender inclusiveness, including development of long-term monitoring and evaluation schemes.

5.8 ***Promote gender integration through education and sensitisation:***

- Ensure that effective and culturally appropriate mechanisms are in place for input, discussions, conflict resolution, and negotiations regarding gender issues.
- Provide opportunities to discuss and explore gender issues related to land in as neutral a forum as possible.
- Provide education and sensitization on gender issues to local leaders in order to build support for the involvement of women and men.
- Provide equal opportunities for men and women in education, training, study trips, etc. associated with any land-related programme to enhance future gender balanced capacity.
- Support the selection of qualified women candidates in key leadership and decision-making roles concerning land related matters.

5.9 ***Promote gender integration through legislation and policy*** by assisting governments in the development of property laws and land policies that recognize the diversity of household arrangements, and acknowledge both modern and traditionally dominant household patterns.

5.10 ***Promote gender integration by example*** such as providing role models and gender sensitivity training among project participants where possible.

6. The role of land administration professionals

- 6.1 Land administrators should not underestimate their role, in conjunction with other professions, in allocating, adjudicating, protecting, and changing the way in which people hold rights to land. In the past the major impact of land administration was on the size and shape of land parcels and the granting and adjudicating of associated rights. Today, land administrators also have a role in broad tenure reforms and in improving security of tenure through law, land economics, and information management. They should be ensuring that the land administration systems, laws and procedures that are put in place during such reforms do not adversely affect the rights of groups and individuals.
- 6.2 Learning more about how to approach the gender dimension in both dynamic, wide-sweeping projects and day-to-day operations is a first step in achieving desired objectives. Land administrators need a much deeper understanding of the complexity of land tenure arrangements than they had in the past if they are to address the gender and equity issues. The following section discusses some of the measures that should be considered by professionals working in both rural and urban environments. It is recognised that it may not be possible or practical to apply fully all of these measures during a project cycle.

INCLUDE ALL SECTORS OF THE POPULATION

- 6.3 ***Obtain knowledge of the local situation.*** If project managers are to know whether gender issues exist with respect to access to land, there must be an adequate pre-project assessment of the situation. The level of detail and complexity of the assessment will depend on the local situation and the objectives of the project. However, if the situation does appear to have gender-related issues, then special measures may have to be taken to understand the potential implications of and for the project. This can be assisted by undertaking baseline studies and monitoring

changes during the project. Obtaining feedback before and during the project from all members of the community, in addition to community leaders, is important. Post-project evaluation (the role of which is too often disregarded or minimized) is essential to understand what worked and what did not and what were the lessons learned.

6.4 ***Ensure active participation by both women and men in the processes.***

This includes ensuring that both women and men in the project staff and communities affected participate fully in all stages of the project processes. Inclusion should not be just an afterthought, but should exist from planning, to implementation, and to evaluation of the results. Sensitive ways must be found in some communities to allow women and men to share their views and experiences openly, especially with strangers or in front of community leaders. For example, one way in which people in the community or organization can be encouraged to participate is to provide gender role models as key project staff members.

6.5 ***Explain the rights and obligations associated with holding title to land.***

Title recipients should feel comfortable about being title or formal rights holders. They should understand the rights, responsibilities and opportunities that title to land carries and the potential changes and consequences this may bring in terms of their status (e.g., fees and taxes to be paid during transaction, possible tension with relatives, etc.)

6.6 ***Provide opportunities for all rights holders to be explicitly recognized.***

If a land titling, land registration, or information system project is designed to document rights to land, then decisions need to be made as to:

- what rights will be included
- whose names will be documented
- what evidence will be used
- how will these names be kept up to date

In addition, there is a need for the decisions made on these issues to be accepted by the recipient community to ensure the sustainability of the systems introduced.

- 6.7 ***Include a spouse's or partner's name in all legal documents as appropriate.*** The identification of the spouse on documents concerning land rights, including any official register of land rights, helps to prevent fraud, adds security for both partners beyond family or legislative recognition (e.g., matrimonial laws), and helps to ensure that both partners understand what their rights are. Situations involving more than one spouse or where spouses are absent need also to be considered in conjunction with the community. In addition provisions need to be in place to efficiently maintain any status changes. Legislative changes could be promoted to provide that if a person is married, the land or house is held in joint ownership unless proved otherwise.
- 6.8 ***Consider that many have limited financial resources.*** Many members of the community may have limited access to financial resources outside immediate family members. Any procedures requiring financial compensation (e.g., fees for services under cost-recovery schemes or taxes for registration) should be carefully examined to ensure they do not present a burden for the disadvantaged and thus exclude them from the benefits of the project.
- 6.9 ***Simplify and decentralise registration and other land administration procedures.*** The very poor or the illiterate 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. A major factor may be transportation and the need to take time from employment.
- 6.10 ***Establish land administration institutions that are responsive and accommodating to women as well as men.*** Efficient, decentralised land administration agencies are better able to serve the community. Participatory methodologies and decision-making structures can provide opportunities for inclusion.

- 6.11 ***Recognize both women and men as stakeholders.***²⁰ Zwarteveen emphasizes the importance of gender inclusive participation when rights of access to water and land are determined. The active participation of all stakeholders throughout the program – from research to implementation and post project evaluation – is key if their interests are to be taken into account. A detailed knowledge of community groups is important when conducting stakeholder analyses. Women’s associations involved with farming operations and other related activities should be enhanced and promoted.
- 6.12 ***Propose alternative land holding models.*** There are instances where combining individual, common, public or group ownership may provide a better gender inclusive solution than existing land tenure arrangements. For example, in some societies individual titles may deprive some people of use rights unless they are protected in some other way.
- 6.13 ***Ensure effective access to land through other support.*** Providing equitable access to land 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., roads, marketing co-operatives). Without gender inclusive access to these resources and support, the projects may leave behind nothing but paper titles and boundary markers.
- 6.14 ***Ensure that mechanisms for safeguarding and enforcing land rights are sustainable.*** Pottier²¹ and others suggest that those who do not have power or status in the community (often women or marginalized persons) frequently lose access to certain resources when they become profitable or receive more attention. Too often this will occur after the development project team has left. To prevent capture of project benefits by elites or other powerful groups, the establishment of longer-term community structures, such as committees comprising men and women, should be promoted.
- 6.15 ***Support gender inclusive participation in land administration organisations.*** This will help the project implementers ensure that foreign

project members and recipient organization staff have a better understanding of the issues related to gender and land locally. This gender inclusiveness can also open up communication bridges to the community reducing gender barriers in project participation. Projects can also enhance sustained gender inclusive participation in a land project through education and training. Some donors require that women and men should participate equally in land administration training and education abroad and this strategy has been very successful in enhancing the sustainability of any gender inclusive policy.

REMOVE BARRIERS TO ACCESS TO INFORMATION

- 6.16 *Share awareness of the issues and their complexity.* Just being aware that there may be some potential gender issues is a long step forward. This will help project 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 land administration project, may help professionals decide whether or not people with specialised expertise may be necessary. It is also important that land administrators share this awareness with their staff and others involved in the projects.
- 6.17 *Disseminate information in a way that is easily understood by both women and men.* The illiteracy rate is often much higher among women than men, and higher for rural people than urban populations. Furthermore, the ways in which people relate to certain issues, such as efficient household water access, may be very gender dependent. Adoption of training and advisory materials for different types of audiences is necessary because differences will not only be reflected by gender, but by education and economic status. Employ those forms of media that best reach all people including those in rural areas and in poorer districts of cities. Radio and television may be more effective communication tools than public forums in some cultures.
- 6.18 *Consult those people directly who will be affected by the program outcomes.* More accurate information can be gathered as to the priorities

and interests of all stakeholders when they are asked directly. This may require gender sensitive approaches and understanding of the cultural protocols.

- 6.19 **Ensure that there is a two-way communication mechanism in place between women and project implementers.** Gender-related experience and knowledge should be part of the initial community assessment. Facts pertinent to the project should be communicated to all stakeholders and all must have opportunity to voice their concerns in an appropriate manner. Religious and customary laws governing the interactions between women and men must be understood before the project and accommodated in the project.
- 6.20 *Ensure that staff working with local communities are gender balanced.* Both men and women generally relate better to authority figures or outsiders who are of the same gender. Staff will also need to be briefed because it should not be assumed that a man or woman wants to or is able to take on a gender-bridging role in the project.
- 6.21 *Document and share lessons learned and best practices.* Obtaining relevant and reliable information regarding gender and land is often difficult. For that reason, sharing information and experiences within the larger land administration community has enormous significance.

ADDRESS THE OBSTACLES TO PARTICIPATION

- 6.22 *Be aware of daily schedules.* Plan meetings and information sessions during those parts of the day when women and men are able to attend; these times may be different. Rural poor are also seldom able to travel long distances for the purpose of attending meetings or complying with procedures. The place of meeting schedules should be considered as some women may be uncomfortable or unable to leave their homes unaccompanied. Holding meetings in a woman's house, for example, may encourage more involvement.

- 6.23 **Analyse decision-making patterns within domestic units.** It is often the male head of the domestic unit who is viewed as the decision-maker but this may not always be correct. Research also has shown that a male or female decision-maker does not necessarily represent the interests of all other members in the domestic unit.²² Receiving independent input from both women and men is essential when a project may affect their well-being.
- 6.24 **Recognise the different needs of people.** All women are not alike and neither are all men. People who are economically or educationally in a relatively good position will have different interests than many poorer rural people, for example. Their participation and input should not replace that of those less advantaged. Special attention also needs to be given to the situation of divorcees, single parent households, and the elderly.

WORK WITH THE LOCAL COMMUNITIES

- 6.25 **Identify rural institutions responsible for the implementation of customary rules.** This can often be complex and detailed, and may vary between communities. One of the important elements in the project or programme may be an interdisciplinary approach. Land administrators are not usually sociologists or anthropologists, nor micro finance experts. Part of any successful project is knowing when to bring in the experts.
- 6.26 **Oversee the legitimacy of all validated land claims.** Access to resources can only be sustainable if it is viewed by the community – both men and women – as legitimate. Projects should strive to create a framework within which resources can be allocated more equitably. Projects should ensure that their outcomes are accepted by the members of the community.
- 6.27 **Investigate what rights prevail in conflicts.** Identify the rights (including inheritance, divorce, property rights, family law, etc.) that are upheld in the event of conflict between written and customary laws. Once again, experts can provide those who design and implement projects with a

better understanding of the issues, the status of the law, and any contradictions.

- 6.28 ***Acknowledge when there is a problem regarding inequitable access to land and associated resources.*** Gender inequities in secure access land are not always transparent. Customary tenure systems vary from place to place; they are also subject to transformation over time as the social and economic fabric of rural communities are subject to new forces. Bringing the issue to the attention of appropriate authorities may not always be popular, but should be considered part of a professional's code of ethics.

7. Final comments

- 7.1 Most donor-funded projects dealing with land administration concern themselves with only one aspect of land administration, principally that of administering land rights through some form of identification and documentation of rights. They do not usually address other aspects such as land use planning and enforcement, and land valuation and taxation, or do so only marginally. This guide reflects this focus.
- 7.2 Some land administration projects aim at making existing access to land more secure, for example through titling and registration. These projects include an adjudication process, i.e., actions to authoritatively determine existing rights and claims of people to land. It is generally accepted that adjudication should not alter existing rights or create new ones, but should instead establish what rights exist, who holds them, and with what limitations. However, experience shows that even projects that limit their scope to strengthening existing rights to land can still face significant practical problems. Such projects often have been criticised for concentrating overlapping rights to a parcel in the hands of one individual, and for neglecting claims of subordinate holders of partial or common rights to land.
- 7.3 Other projects seek to make changes to the way in which people gain access to land. Providing gender inclusiveness in access to land 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 housing and land stewardship. Such benefits, however, can only be fully realised if the strategies adopted for improving gender inclusion work in practice. Decision-makers and project teams need to know:
- the quality and distribution of rights in land;
 - the economic and cultural impediments that often limit effective and secure access to land;
 - the benefits that can be achieved by enhancing gender inclusion;

- the options that exist for providing more equitable access to land;
- and
- the implications of implementing these options.

- 7.4 Projects that seek to promote changes in access to land by women and men inevitably have to manage tensions introduced when changing the tenure structure. Such changes may result in shifts in the power structure within a family, within a community, or within a nation. The promotion of gender equity along with other trends such as the decentralisation of local government often may be in direct contrast with the “traditional way of doing things”. Without changes to the attitudes of much of the population, traditional practices are likely to continue regardless of the formulation of new policies or the enactment of new legislation.
- 7.5 Land administrators have an impact on land tenure systems worldwide. This implies that they also have a special responsibility to society. As the land tenure issues grow increasingly complex and become more diverse, they also have a responsibility to know more about the issues and to do more to ensure that the systems for administering property rights serve all sectors of societies well.

Notes

¹ See, for example, Harden, B. 1990. "Good Intentions." Chapter 5 in *Africa: Dispatches from a Fragile Continent*. New York: W.W. Norton and Company.

² Zwartveen, M. Z. 1997. "Water: From basic need to commodity: A discussion on gender and water rights in the context of irrigation." *World Development*, Vol. 25. No. 8, pp.1335-1349.

³ Varley, A. and M. Blasco. 2000. "Gender and Property in Mexico's colonias populares." Paper presented at the session on 'Gender and Property in Latin America' at the XXX International Congress of the Latin American Studies Association, Miami, 16-18 March 2000.

⁴ The Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing, 4-15 September 1995.

⁵ UN Economic and Social Council Commission on the Status of Women. Report of the forty-second session (2-13 March 1998). Supplement No. 7. E/CN.6/1998/12 – E/1998/27

⁶ Friedmann, J. 1992. Empowerment. Blackwell Publishers, Oxford, quoted in F. Kalabamu, 1998. "Effects of gendered land rights on urban housing by women in Botswana". *International Conference and Workshop on Land Tenure in the Developing World*. Cape Town, South Africa.

⁷ For example, Zwartveen, 1997, Lastarria-Cornhiel, 1997, Agarwal, 1995, and Habitat, 1999.

⁸ Rocheleau, D. and E. David. 1997. "Women, men and trees: Gender, power and property in forest and agrarian landscapes." *World Development*, Vol. 25. No. 8. pp.1351-1371.

⁹ Lastarria-Cornhiel, S. 1997. "Impact of privatization on gender and property rights in Africa." *World Development*, Vol. 25. No. 8. Pp.1317-1333.

¹⁰ World Bank. nd. "Toolkit on gender in agriculture." Gendernet, World Bank. [Http://www.worldbank.org/gender/tools/agtkit.pdf](http://www.worldbank.org/gender/tools/agtkit.pdf) Accessed on 24 October 2000.

¹¹ See Crowley, E. 1998. "Women's right to land and natural resources: Some implications for a human-rights based approach." *Workshop on "Rights-based Approach to Women's Empowerment and Advancement and Gender Equality"*. Rome, Italy; and Göler von Ravensburg, N. and I. Jacobsen, 1999. "Gender responsive land tenure development." Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH.

¹² Ayad, M., A. L. Piani, B. Barrere, K. Ekouevi, and J. Otto. 1994. "Demographic Characteristics of Households". DHS Comparative Studies No. 14. Calverton, Maryland: Macro International Inc. pp. 25-31.

¹³ FAO. 1997. "Gender: the key to sustainability and food security." FAO Sustainable Development Division, Rome, Italy. <http://www.fao.org/WAICENT/FAOINFO/SUSTDEV/WPdirect/WPdoe002.htm> Accessed on 24 October 2000.

¹⁴ See Kalabamu, F. 1998. "Effects of gendered land rights on urban housing by women in Botswana." *International Conference and Workshop on Land Tenure in the Developing World*. Cape Town, South Africa; and Njoh, A. J., 1998. "Urban planning, housing and the socio-economic development of women in a developing country." *Planning Perspectives*, Vol. 13, pp. 1-21.

¹⁵ See, for example, B. Harden, 1990. "Good intentions." Chapter 5 in *Africa: Dispatches from a Fragile Continent*. New York: W.W. Norton & Company, in which the author details the unexpected outcomes from a well intentioned aid project in Kenya.

¹⁶ Material in this section is based on research by Nichols, S., E. Crowley and K. Komjathy, 1999, as reported in "Women's access to land: Surveyors can make a difference." *Survey Quarterly*, No. 20. pp. 16-19.

¹⁷ Göler von Ravensburg, N. and I. Jacobsen. 1999. "Gender responsive land tenure development." Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH.

¹⁸ FAO. Gender and Development Plan of Action 2002-2007. <http://www.fao.org/docrep/meeting/003/Y1521e.htm>

¹⁹ UN Habitat. 1999. "Women's rights to land, housing and property in post-conflict situations and during reconstruction: A global overview." *Land Management Series No. 9*. United Nations Centre for Human Settlements (Habitat), Nairobi.

²⁰ Zwarteveen, M. Z. 1997. "Water: From basic need to commodity: A discussion on gender and water rights in the context of irrigation." *World Development*, Vol. 25. No. 8, pp.1335-1349.

²¹ Pottier, J. 1999. "Food Security and Gender: Information Gaps and How to Plug Them." FAO High Level Consultation on Rural Women and Information, FAO, Rome. <http://www.fao.org/docrep/X3803E/X3803E18.htm> Accessed: 24 October 2000.

²² World Neighbours. 2000. "Gender and Decision Making: Kenya Case Study." World Neighbours, Nairobi.

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