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**LAND GOVERNANCE IN THE 21<sup>ST</sup> CENTURY:  
FRAMING THE DEBATE SERIES**

**ISLAMIC INHERITANCE LAWS  
and their impact on rural women**

A synthesis of studies from Asia and West Africa and emerging recommendations

by Frida Khan

INTERNATIONAL  
**LAND**  
COALITION

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FOR LAND  
RIGHTS

## About the Framing the Debate series

The aim of the Framing the Debate series is to facilitate a deeper understanding of land governance debates. Land governance is understood as the formal and informal rules, mechanisms, processes and institutions through which land is accessed, used, controlled, transferred, and land-related conflicts are managed. It encompasses, therefore, land tenure systems, land and agrarian reforms, and land administration.

The terms of the debate on land, agrarian reform, land tenure and administration have become increasingly diverse and complex, as a result of a rapidly and radically changing global context. The greater demand for land, for productive use, human settlements, as well as for environmental conservation and climate mitigation purposes, creates new land governance challenges.

Framing the Debate comprises regionally or nationally focused thematic papers relating to on-going and emerging land-related debates. A single publication may treat a wide range of land governance issues or focus on a specific theme. This publication commissions renowned land experts to share their perspectives on key issues, while acknowledging and fairly discussing other views. The papers published in the Framing the Debate series are intended to be accessible to a wide audience of land specialists as well as non-land experts.

This publication serves to better understand the current state of the land governance debate, to trigger further debate and pave the way for future study.



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## THE CASE STUDIES

**SCOPE** (Society for Conservation and Protection of Environment) is a Pakistan based organisation working for the protection of the environment by following and implementing the “Agenda 21” approach. SCOPE works at the local, national and global level through networking, advocacy, capacity building, research, community organization, and legal actions in order to achieve self-sustainability. SCOPE uses a non-political, non-religious, non-racial, non-ethnic, democratic and transparent approach. SCOPE is an ILC member since 2007.

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**ALRD** (Association for Land Reform and Development) is the federating body of 273 peasant and landless organizations in Bangladesh involved in the struggle for establishing land rights, rights to food and defending the rights of indigenous peoples. It is currently the main organization in Bangladesh working exclusively on land reform issues. ALRD has been an ILC member since 2003.

**WILDAF** (Women in Law and Development in Africa) is a Togo-based NGO that promotes women’s rights and gender justice through awareness raising activities. WILDAF encourages and disseminates good practices across different organisations to ensure women’s participation at all levels. WILDAF is an ILC member since 2013.

**CAWL RIGHTS** (Collective for Advancement of Women’s Livelihood Rights) is an India-based collective of feminist individuals and organizations, committed to and working on gender- and livelihood-related issues. It aims at intensifying the engagement and analysis of women’s livelihood rights within the feminist movement while strengthening the voice of grassroots women. It combines action, research and knowledge building.

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# EXECUTIVE SUMMARY

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## BACKGROUND

The International Land Coalition (ILC) commissioned a series of studies to improve understanding of the barriers that prevent women from achieving tenure security, with a particular focus on inheritance laws in Muslim societies and the practices that influence women's land rights. The studies analysed inheritance laws and their impacts on rural women in Bangladesh, India, Pakistan, Indonesia, Senegal, Togo, and Mali. The studies focused on Muslim societies, but also looked at how these differed from, mirrored, or influenced the inheritance practices of non-Muslim groups in the same countries. The studies showed that women continue to be systematically denied their rights to inheritance, especially in rural areas. Inheritance practices are deeply embedded in local culture and tradition and, even though civil and religious laws exist that protect women's inheritance, customary laws are found to prevail, which largely exclude women from property ownership and inheritance. Disinheritance undermines women's economic security and independence and reinforces gender inequality.

## FINDINGS

The studies report on an interconnected mix of legal, religious, educational, economic, social and political reasons for discriminatory inheritance practices.

**Legal:** All the countries studied had ratified international legal instruments such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and had national laws that were gender-equal or provisions favouring women. However, the legal frameworks in these countries also recognised the authority and precedence of religious Islamic law in many personal matters, including marriage, divorce, custody, and inheritance. The application of religious laws often results in discrimination against women – for instance, in unequal shares of inheritance between sons and daughters. However, a more progressive rather than a literal interpretation of Islamic law suggests that these shares were not meant to entrench inequality but in fact were meant to protect women's share of inheritance, guaranteeing them a part and recognising them as inheritors in their own right, unlike contemporaneous social practices.

However, this progressive spirit of the law has been undermined by its literal application. Unfortunately, even this reduced share of women's inheritance in Islam is not practised in the countries studied, and more regressive patriarchal practices usually prevail, completely preventing women from inheriting their share – even a lesser one, let alone an equal one. In fact, in Mali, even religious authorities agreed that tradition was more important than religion. The complexity of legal systems, the patriarchal thinking in institutions, and weak sanctions against official collusion and abuse of authority against women all reduce women's access to and confidence in law enforcers and the judiciary.

**Religious:** Stereotypical gender roles often find sanction in religion. For instance, in Islam daughters inherit a share that is half that inherited by a son, and some interpretations point to this as divine endorsement of women's secondary or non-economic status. However, Islam actually prescribes a whole range of inheritors and describes their different inheritance rights depending on the nature of their relationship to the deceased and to the different financial responsibilities of the people involved. In many cases women inherit the same as or more than men. However, in the most common relationships, as spouses, siblings, and children, they inherit less. Similarly, other verses in the Quran can be interpreted to mean that males provide and care for women. Taken out of context, such verses reinforce the patriarchal mindset that women are secondary to men. In some traditionally matrilineal societies in Indonesia the influence of Islam has begun to erode women's status, with women forced to abandon their traditionally sanctioned public roles, while in other societies the two have found a way to co-exist without changing social patterns: for instance, introducing two streams of inheritance whereby land continues to be inherited matrilineally and the personal income of men is divided according to Islamic laws of inheritance.

**Social:** In many cases it was found that women and men simply do not possess complete information about inheritance rights under law or even religion. In some cases women reported knowing that they were eligible for a share in inheritance, but they did not have detailed information about the exact share or how the law protected that share. Even when women had inherited, as reported in Pakistan and India, they willingly gave up their share to males in the family. The study from West Africa pointed out that even religious scholars did not study in adequate detail issues concerning women, inheritance, and the law.

**Economic:** Other than in the matrilineal societies studied in Indonesia, men are considered the economic providers for the (often extended) family, and women the home-makers. Because of this financial responsibility, parents prefer sons to inherit rather than daughters, sisters forego their share in favour of their brothers (often through force or threat of violence), widows are disinherited, and men feel justified in consolidating their economic position by maintaining and expanding control over assets, including family property and land. However, men are not always the actual providers (such as in agricultural societies where women play a large role in the workforce) and they do not always fulfil this role – for instance, in relation to widows who, some studies report, are thrown out of the family rather than being cared for. In some parts of India and Indonesia, state acquisition of tribal and common land for economic development projects has also deprived women of their traditional source of livelihoods and community inheritance.

**Political:** In Pakistan and India in particular, it was reported that the issue of women and inheritance was not a political priority. Despite a few government-led projects aimed at giving women land rights, there was not much political interest in the issue. Even where women had acquired land as a result of a government intervention, the studies pointed out that control of and decision-making about the land still remained with men.



## RECOMMENDATIONS EMERGING FROM THE STUDIES

The **progressive spirit of Islamic inheritance laws** that recognises women as independent inheritors should be built upon. Sharia describes inheritance shares corresponding to a person's relationship to the deceased and their financial responsibility. Societies have evolved, and taking these standards as the minimum, religious scholars, legal experts, community leaders, and ordinary women and men need to reassess the changing roles of women, recognise their increasing participation and contribution to household income, and revise inheritance laws to reflect these transformations.

**Laws need to be reformed** to bring national legislation into line with ratified international conventions and to remove all discriminatory provisions against women. Reforms can be introduced gradually: for example, in India the first step would be to codify the Shariat Act 1937 and ensure its uniform application across all Muslims for all types of land, including agricultural land. Police and judicial officials need to be trained on inheritance law, and local statutory courts need to be more accessible to women. Legal procedures need to be simplified and streamlined so that they cannot be manipulated to exclude women. Women's rights to tribal and common land need to be protected.

Governments need to **mainstream gender in their land use policies** and programmes. They should support land distribution and agricultural programmes that favour women and women's groups. Women also need better access to training opportunities, extension services, and agricultural inputs to give them the skills, knowledge, and confidence to manage and use land.

**Education and advocacy campaigns** need to be undertaken to ensure that people understand inheritance law. Non-governmental organisations should be supported to lead advocacy, especially communities, on inheritance laws and women's rights

in general. Women's organisations in particular need to be supported, to help them develop and drive forward an agenda of gender equality in inheritance. NGO-led legal literacy centres and information hubs have been found to be particularly useful in West Africa and India and need to be expanded.

In short, the studies show how that even though all the countries studied have legal, religious, and institutional provisions that protect women's inheritance, their implementation in the patriarchal cultural context in which they exist is weak. Therefore, countries need to institute a mix of attitudinal and structural changes to create an environment and legal framework for gender equality in inheritance.



**Photo:** ©ILC/Jason Taylor

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# ANALYSIS

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## INTRODUCTION

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It is a sad irony that a religion which in its time was revolutionary in promoting women's rights, including those concerning inheritance, has now come to be associated with the worst forms of discrimination against women. The Muslim societies that have contributed to this impression are stuck not only in the dogma of outdated religious codes, but in the patriarchal practices that pre-date them and occlude the progressive spirit of Islam. Seen in the social context in which it emerged, Islam promoted women's rights in a way that no other religion or social practice of its time did. The Quran addresses men and women as distinct persons, different but equal individuals, and provides for equal treatment between them in some very fundamental ways in relation to their property rights. A Muslim woman retains control over her pre-marital property and finances throughout marriage, and, where applicable, beyond it into divorce or widowhood. A Muslim woman faces no restrictions on the property she can purchase out of her earnings or on the gifts she may receive from her birth family or her husband's family (ILC, India Study a). While conservatives interpret

women's reduced share of inheritance to represent their secondary economic status, more progressive, egalitarian interpretations say the opposite: that these shares actually protect and recognise women's rights. A Muslim man is not permitted to bequeath more than one-third of his property by will, which provides a safeguard to his spouse and female children against complete disinheritance, and under Islam women are considered competent heirs and inherit property absolutely in their own right (ILC, India Study b).

So more than religion, it is overarching patriarchal practices that seek to keep women subordinate to men, socially, legally, and above all economically, by restricting women's mobility, sexuality, participation in remunerative work, decision-making, and ownership of assets, including those gained through inheritance.

Sexual discrimination in inheritance laws is closely linked to the idea of males as economic providers and decision-makers, and therefore to the need to concentrate economic assets in their control. That is why – other than in some matrilineal societies – customary and religious laws prescribe inequalities in women's and men's inheritance rights, invariably favouring men.

In Europe, for example, women's inheritance rights have only been officially recognised since the late 1800s – in the UK in the 1880s and in France not until 1930.

While Western countries have been quick to close the gap in law between women and men, more conservative countries have been slower to bring about reform, though a movement to replace their customary and religious laws with more egalitarian interpretations is under way.

One example is India's Hindu Succession Act (HSA) of 1956, which also governs the rights of Buddhists, Jains, and Sikhs. The Act was built on the foundation of ancient legal doctrines that have prevailed in India since the 12th century AD; though it purported to prescribe equal rights of inheritance to sons and daughters, significant gender inequalities remained. Daughters of a male dying intestate were equal inheritors, along with sons, only of their father's separate property, and had no direct inheritance rights to joint family property. Sons, on the other hand, not only inherited their share of the father's own property but also had a direct right to an independent share of the joint family property. In addition to inheritance, sons could demand partition of the joint family property, while daughters could not (ROY 2015). This disparity was removed by an amendment that came into force on 9 September 2005 (MAHAJANI 2014).

There have also been movements in several Muslim-majority countries to reform religious law and make it more gender-equal. One example is Morocco's *Mudawana* (Family Code), which governs issues related to the family, including the regulation of marriage, polygamy, divorce, child custody, and inheritance. Originally based on Sunni<sup>1</sup> Islamic

jurisprudence, it was revised in 2004 and was praised for its measures to address women's rights and gender equality. However, though its codification brought significant outcomes in terms of equality in marriage, divorce, and guardianship, in terms of inheritance it was only able to enact a provision for grandchildren to inherit from maternal as well as paternal grandparents; this does not alter the structure of succession or the basic premise of Islamic inheritance laws that a daughter's share of inheritance is only half that of a son's (ALAMI 2014).

Even this premise, which at least guarantees part of the share of inheritance to women, albeit a reduced one, is often overruled by customary law that is enforced through a mix of social pressure and the socialisation process that enforces the secondary status of women and celebrates their "sacrificing" nature. Women commonly forego their lawful share of inheritance in favour of male members of the family, consolidating men's economic status in the family.

This is especially common in cases of inheritance of land and property. To avoid selling property or fragmenting land, the weaker members of the family – usually women – are dispossessed of their share by being coerced into not claiming their rights or simply by being erased from the records as an inheritor (ILC, India Study a). Though this may mean gains in agricultural efficiency on landholdings, such consolidation of land is not done lawfully and is almost always to the detriment of women in the family. If women are not allowed to become landholders, they do not gain the

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different groups practise their faith: they differ in doctrine, ritual, law, theology, and religious organisation. Sunnis regard themselves as the orthodox branch of Islam. The name "Sunni" is derived from the phrase "Ahl al-Sunnah", or "People of the Tradition". The tradition in this case refers to practices based on what the Prophet Muhammad said, did, agreed to, or condemned. All Muslims are guided by the Sunnah, but Sunnis stress its primacy. Shias are also guided by the wisdom of Muhammad's descendants through his son-in-law and cousin, Ali. In early Islamic history, the Shia were a movement – literally "Shiat Ali" or the "Party of Ali". They claimed that Ali was the rightful successor to the Prophet Muhammad as leader (imam) of the Muslim community following his death in AD 632. For more background, see BBC News (2016) "Sunnis and Shia: Islam's ancient schism". <http://www.bbc.com/news/world-middle-east-16047709>

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1 There are two main Muslim sects, the Sunni being the largest, making up 90% of the world's Muslim population (and being the majority in all the countries studied in this paper). The other main group are the Shia, who make up a significant minority in many countries and are a majority in Iran. The shared faith is considered a strong bond, but there is often conflict. There are also variations in the way that

social and economic benefits that such asset ownership could bring, including food, access to credit, and social recognition. In this way, discriminatory inheritance laws and practices become a major barrier to women achieving tenure security. Data from India illustrate this point well: 63% of economically active women work in agriculture, but only 11% of all landholders are women (FAO 2016).

Land rights are particularly important for women's empowerment and gender equality. Owning land is a source of power and security for both women and men, and studies show that women who own land are able to negotiate space for themselves in the household with more confidence and independence (ILC, Pakistan Study; RICHARDSON 2004; KHATTAK 2010). Furthermore, studies have shown that giving land rights to women has multiple impacts, including reducing poverty, improving household food security, and providing access to employment and to capital, as well as having a positive impact on their own education and health and those of their children (FAO, WB, IFAD 2008; ILC, India Study b)).

Land titles for women also lead to a reduction in levels of violence against them, and a number of movements and networks have emerged that attempt to create entitlements for women, as a means to address their status in society (ILC, India Study a)). However, despite the evidence, women's ability to buy, rent, or inherit land (either by donation or succession) continues to be restricted.

Between 2013 and 2015, the International Land Coalition (ILC) commissioned a series of studies under the framework of a research project on women's inheritance rights in Muslim societies. The aim was to improve understanding of the barriers that prevent women from achieving tenure security, with a particular focus on inheritance laws and the practices that influence women's land rights in Asia. The project was funded and coordinated by ILC and involved both Coalition members and independent researchers. The studies analysed inheritance laws and their impact on rural women in selected countries in Asia and West Africa – India, Pakistan, Bangladesh, Indonesia,

Senegal, Togo, and Mali. These countries have different demographics but common issues around discriminatory inheritance practices and laws, especially for their Muslim populations (see Annex 1 for country profiles). The comparative study in West Africa, covering two Muslim-majority countries (Mali and Senegal) and one Christian-majority country (Togo), was added later in the process to allow for a broader view of Islam and its interpretations relative to women's inheritance rights. The current paper synthesises the findings and policy recommendations from all of these country-level research studies.

## **WOMEN'S INHERITANCE RIGHTS: KEY ISSUES EMERGING FROM THE RESEARCH**

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### **A CULTURE OF SECONDARY STATUS FOR WOMEN**

The most intractable and overarching problem is the general status of women in society in the countries studied. This is especially problematic when subservience is presented as a virtue and is furthermore said to be divinely ordained (ILC, India Study a)) and therefore is a value that even women themselves often uphold and reinforce.

Women generally have only secondary rights to property. In South Asia, they usually live in patrilocal settings with usufruct rights over places of residence and land: single, widowed, and divorced women have such rights in their birthhomes, married women in marital homes, and older women in their sons' homes (ILC, Pakistan Study). Findings from West Africa show similar trends, with women having only indirect access to land through male heads of household or village chiefs.

Women who do have access to land enjoy only precarious rights in their roles as spouses, which become void in the event of the husband's death. In some cases the woman herself is considered as part of the estate of the deceased and the family council is more interested in giving her away to a brother or uncle of her late husband rather than granting her a share of the inheritance (ILC, West Africa Study), or, as reported in Pakistan, guardianship of women is taken over by other men (ILC, Pakistan Study).

It is common for women to be pressured or driven out of their share of inheritance (ILC, West Africa Study), or even to give it up voluntarily because they believe they do not need it as much as the men in the family (ILC, India Study a ). Women also fear being seen as greedy and selfish if they ask for their share of inheritance (ILC, Pakistan Study). Women interviewed in Azamgarh in India said that they were content to receive the little care and shelter on offer, rather than risk being labelled a bad woman (ILC, India Study a ) or spoil relations with the family (ILC, India Study b ).

Parents sometimes resist giving property to their daughters in favour of their sons, as they view sons as their guardians and providers in old age (ILC, Pakistan Study). Land can also be used as a "bribe"; in Maharashtra in India, it was reported that land was used as a means of barter to gain respect for a daughter, not by assigning inheritance to the daughter directly but by giving the land to her husband, in the expectation of greater security and dignity for the daughter (ILC, India Study a ). Interestingly, in the matrilineal community of Batu Songgan in Indonesia, a parents' house is usually bequeathed either to the youngest daughter, because it is expected that her older sisters are likely to be better established in their lives, or to the daughter who will care for her parents in old age (ILC, Indonesia Study).

***"If a woman has a place to live and a piece of land to cultivate, she will have a life of respect and dignity"***

***Shaniben, a community leader in Gujarat, India (ILC, India Study a )***

At the same time, however, women can be put under pressure from their husbands or sons to claim inheritance from their parents. If they make a claim on their share of inheritance they risk censure from their brothers, and if they give up their inheritance in favour of their brothers, they face censure from their husbands and children.

In some families, women's choice of husband is restricted to keep land and property within the family through practices such as consanguineous marriages. Another practice in which women are exchanged as brides between two families acts as a mutual deterrent to daughters claiming their inheritance, as a counter-claim can always be initiated by the other family (ILC, India Study b ).

In some areas of Pakistan, the pressure to prevent women from taking property away from the family through marriage is so severe that they are "married" to the Quran (ILC, Pakistan Study). This means that a woman is not allowed to marry a man, does not leave her father's house or bear any children, and instead spends her life reading the Quran, thus preventing any transfer of property out of the family (YAZDANI 2012). In India, most of the land that women do own (only 12% of the total) they have inherited as widows from their husbands rather than from their birth natal homes. In many cases, a widow simply inherits land in order to pass it on to her son, who takes care of her in old age (ILC, India Study b ). However, becoming a widow often means no longer being welcome even in the marital home and families may try to expel widows from their husband's house, or at least prevent them from inheriting and thus keeping the husband's share for blood relations only. In Bangladesh it was found that a husband's death can mean a loss of status, and widows are denied their

share of inheritance as they are no longer considered part of the husband's family, even if by law they are. After being evicted from their homes as a result of these misogynistic inheritance practices, women are left without adequate housing and livelihoods.

Whether they acquire land through inheritance, or simply attempt to do so, women are often the victims of harassment and violence, in various forms: emotional blackmail, death threats, eviction from farming areas, illicit sale of land, or banishment from the community. These transgressions weaken women's ownership rights with regard to land, and also deter them from even wishing to exercise those rights.

In Indonesia, Islamic patriarchal thought is eroding women's status in traditionally matrilineal societies. As women remove themselves from public spaces, opportunities for them to get involved and to develop and share their knowledge, such as in traditional medicine, and to participate in community decisions are diminishing (ILC, Indonesia Study).

## **THE "MALE BREADWINNER" MODEL**

The secondary importance accorded to women stems from the traditional model of the male breadwinner, whereby the women of the family are considered to be home-makers and the men the economic providers, thereby giving men a greater claim to all means of production, including land (ILC, West Africa Study, Bangladesh Study, India Study a ). This also gives men an interest in preventing the fragmentation of land assets, which is most easily done by denying women their shares (ILC India Study a ) & b ).

Other religious laws, such as Islamic divorce law, which recognises that a wife may seek a decree for the dissolution of her marriage on the grounds that her husband is incapable of maintaining her, or refuses to, further endorse the view of the man as the maintainer and provider (ILC, Pakistan). In India, an unmarried woman might stand to inherit since brothers may feel more obligated to provide for her,

but a married woman is less likely to inherit, since her maintenance has been transferred to her husband (ILC, India Study b ).

In Cirompang, Indonesia, inheritance is usually distributed equally between women and men, sometimes during the parents' lifetimes. Indigenous traditions allow women to have inheritance rights over land and other property such as houses, jewellery, and livestock. However, some families give greater access to men, because they think that men need more land to support their traditional role as head of the household ( ILC, Indonesia Study).

Land is not only a source of income but is also a symbolic and material source of authority and, conversely, a source of oppression when it is denied (ILC, India Study a ). In the largely patriarchal societies in the countries studied, it is understandable therefore that land is owned largely by men, even though women are actively involved across the agricultural and livestock value chains, often forming a majority of agricultural workers.

***"There is a deep-rooted bias against a daughter that she is an 'other' in the family and is treated likewise. There is a need to change this widespread perception and bias towards daughters in every Indian community, including Muslims, as we cannot make progress unless and until we get rid of this presumption."***

***Maulana Abdul Hameed Nomani, India (ILC, India Study b )***

Country	Employment rate in agriculture (%) <sup>2</sup>		Percentage of female agricultural landholders out of total landholders <sup>3</sup>
	Female	Male	
Bangladesh	68.1	41.8	4.6
India	59.7	42.9	12.8
Indonesia	33.4	35.6	8.8
Mali	67.8	63.9	3.1
Pakistan	74	34.2	Data not available
Senegal	49.1	43.8	9.1
Togo	48.2	60.5	Data not available

Such gender stereotypes also discourage women from resorting to litigation to claim their rights. In Senegal, it was found that women apply to courts mostly when they are sure that no family relations are involved and there is no threat to family cohesion (ILC, West Africa Study) or sometimes, as reported in India, women will go to court if there is a family interest involved but without staking an explicit claim for themselves, in the hope that the family will acknowledge their role and give them a share (ILC, India Study a). Because they are so dependent on men and family structures to support them, women's spaces to negotiate or claim any rights to inheritance are severely constrained (ILC, West Africa Study). Only if women had a strong educational background or a government job which provided them with economic security, in the case of India, were they willing to assert their rights.

2 ILO, key indicators of labour market (KILM).

3 The agricultural holder is defined in agricultural censuses as: "The civil or juridical person who makes the major decisions regarding resource use and exercises management control over the agricultural holding operation. The agricultural holder has technical and economic responsibility for the holding and may undertake all responsibilities directly, or delegate responsibilities related to day-to-day work management to a hired manager." Campos et al. (2015) "Gender and Land Statistics: Recent developments in FAO's Gender and Land Rights Database", FAO.

The model of the male breadwinner also fails to take into account that societies are changing, and more women are becoming economically independent and making a bigger economic contribution to their families' welfare. The increasing migration of men in India, for example, means that women are increasingly becoming the primary productive workers (ILC, India Study a). This social change is not reflected in inheritance laws, which remain strongly paternalistic.

## MULTIPLE LEGAL SYSTEMS: RELIGIOUS LAWS AND PATRIARCHAL CUSTOMS OVERRIDE CIVIL LAW

All the countries studied have laws and constitutional guarantees that uphold gender equality, including ratification of the Convention to End All Forms of Discrimination Against Women (CEDAW),<sup>4</sup> albeit with reservations in some cases (see Annex 1 for details).<sup>5</sup> Pakistan, for example, while ratifying the Convention, has declared that, "the accession by [the] Government of the Islamic Republic of Pakistan to the [Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan."<sup>6</sup> The constitutions of Pakistan and Bangladesh,

4 Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submitting national reports, at least every four years, on the measures they have taken to comply with their treaty obligations. UN Women. <http://www.un.org/womenwatch/daw/cedaw/reports.htm>

5 The Convention permits ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the Convention. Some States Parties that enter reservations to CEDAW do not enter reservations to similar provisions in other human rights treaties. A number of states enter reservations to particular articles on the grounds that national law, tradition, religion, or culture are not congruent with Convention principles, and purport to justify the reservation on that basis. Some states enter a reservation to Article 2 (anti-discrimination), although their own national constitutions or laws prohibit discrimination: there is therefore an inherent conflict between the provisions of the state's constitution and its reservation to the Convention. Some reservations are drawn so widely that their effect cannot be limited to specific provisions in the Convention.

6 UN Women. <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>



for example, also uphold the supremacy of Islam and Sharia, and therefore accept the inequality of religious doctrine (ILC, Bangladesh Study).

Civil laws exist that in some cases uphold gender equality and in other cases overturn it by countenancing traditional and religious practices, especially with regard to inheritance (ILC, West Africa Study). In practice, traditional customs usually prevail over both the constitution and civil laws (ILC, India Study a ), usually to the detriment of women. Such pluralisms create ambiguities for women, and enable patriarchal institutions to interpret laws to accommodate patriarchal interests (ILC, India Study a ).

For example, the constitution of Pakistan clearly stipulates equal rights for women, including the right to own and control land: “every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan.” Inheritance rights are actually regulated by an intricate combination of civil, Islamic, and customary laws. Civil laws, such as the Transfer of Property Act 1882 and the Registration Act 1908 in India, govern the ownership and transfer of property without any discrimination based on sex or marital status. However, in Pakistan inheritance rights are subject to the Muslim Personal Law of 1962, which follows Islamic Sharia law (ILC, Pakistan Study) and sets out different shares for women and men. Women’s rights to inheritance are further protected in Pakistan by a recent civil law, the Prevention of Anti-Women Practices Act, or the Criminal Law (Third Amendment Act), which prescribes a fine and/or imprisonment for “whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession”. However, despite these multiple legal protections, traditional practices still prevail which completely deny women their share of inheritance.

In India, the constitution not only grants equality to women but also empowers the state to adopt measures of positive discrimination in their favour.<sup>7</sup> Muslims follow their personal law under the Shariat Act 1937, which does not allow women to seek inheritance rights in agricultural land. In Uttar Pradesh (UP), for instance, the devolution of agricultural land is governed by a customary law called the UP Zamindari Abolition and Land Reform Act, 1950 (ZALRA). Under this Act, only unmarried daughters of property owners have the right to inherit property, and male lineal descendants are typically the first-order heirs in the inheritance of agriculture land. Widows inherit only in the absence of male heirs. Unmarried daughters are included in the list, but they come very low in the order of heirs (ILC, India Study b ). Some states in India have amended their laws to allow agricultural land to also be inherited according to Sharia, but most have yet to follow suit (ILC, India Study b ).

Similar contradictions exist In Indonesia, where the constitution guarantees comprehensive rights for women<sup>8</sup> and the Basic Agrarian Law of 1960 guarantees equitable access to land for both women and men (ILC, Indonesia Study). However, although the country has one of the largest Muslim matrilineal communities in the world, the Minangkabau of West Sumatra (BLACKWOOD 1999), and smaller ones such as the Batu Songgan in Sumatra, its Marriage Act No. 1/1974, Article 31, paragraph 3 states that a husband is head of the family.

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7 [http://mospi.nic.in/Mospi\\_New/upload/man\\_and\\_women/Constitutional & Legal Rights.pdf](http://mospi.nic.in/Mospi_New/upload/man_and_women/Constitutional%20&%20Legal%20Rights.pdf)

8 GIZ, “Strengthening Women’s Rights (SWR)”. <https://www.giz.de/en/worldwide/16701.html>

## **MATRILINY IN INDONESIA**

In Batu Songgan, women continue to be property holders. For example, Ibu Ruwaidah, a woman from the Domo clan, is married to a man from the Petopang clan. After marriage, the husband traditionally resides in the bride's house and becomes part of her family. As a newcomer he is not required to bring any property into the marriage. To support his family, he cultivates and takes care of the farmlands, orchards, and livestock owned by Ibu Ruwaidah. When it comes to inheritance, she will make bequests according to local custom. She has five children, three sons and two daughters, and is already preparing inheritance bequests for her daughters. Each daughter already knows the number of fields and gardens that will be hers. Currently her eldest daughter is living with her mother at home, with five children from her own marriage, while her younger daughter has followed her husband, who is working outside the community. The eldest daughter is taking care of her parents and managing the family property (ILC, Indonesia Study).

Despite having constitutional guarantees of gender equality and a whole system of civil law, all the countries studied allow for parallel systems of religious law. They have significant non-Muslim populations: all have Hindu and Christian communities, and there are Buddhists in Indonesia and Bangladesh and further ethnic groups such as the Chakma, Santal, and Garos in Bangladesh. In West Africa, two countries are predominantly Muslim while one is predominantly Christian, but all of them have minorities of the other religion. Each country has a different set of laws and practices regarding inheritance rights (ILC, India Study a). Even amongst

Muslim communities, Sharia law is different for Shias and Sunnis, the two main sects within Islam, and inheritance laws of each sect are recognised. These religion- or sect-specific laws are known as personal laws and usually govern marriage, divorce, child custody, and inheritance. However, even religious laws and their positive prescriptions compete with monolithic (usually patriarchal) traditions and religious laws (ILC, West Africa). This means that Muslim women in Pakistan, India, and Bangladesh, for instance, are not able to benefit from the relatively improved share that Islamic inheritance law would give them and continue to be disinherited due to the prevalence of customary, unilineal practices that favour men.

However, in some cases the prevalence of customary law benefits women. This includes Muslim women in Cirompang, Indonesia, where inheritance is divided equally between men and women, and in some cases women inherit a larger share, and women in Batu Songgan, also in Indonesia, where inheritance is matrilineal to the extent that it is considered taboo for men even to take part in any discussion involving family wealth (ILC, Indonesia Study). In Batu Songgan, the community is comfortable in accommodating matrilineal practices within Islam through adjustments such as "high inheritance" (such as land and houses) continuing to pass from mother to daughter, while "low inheritance" (such as income earned by the father) is divided according to shares determined by Sharia. In some cases, traditional fertility rituals, the role of women as keepers of medicinal knowledge, and their contributions to community decision-making have been eroded under the influence of patriarchal interpretations of Islam (BLACKWOOD 1999). Although these might seem like small concessions, they could – coupled with migration, urbanisation, and the loosening of clan ties – slowly erode women's status. This has happened to the Christian and animist Garo community in Bangladesh, where traditional matrilineality is being questioned and coloured by the country's mainstream patriarchal culture; due to their increasing interaction with this trend, Garo women are also losing their exclusive rights over land (ILC, Bangladesh Study).

Sometimes the application of common law is also complicated by customary practices regarding land use and land rights, as in the case of Indonesia, where traditional wisdom governs which land remains common to the clan (such as forests), which remains in the use of families, and which can be inherited and disposed of by individuals.

## **LACK OF KNOWLEDGE ABOUT LEGAL RIGHTS**

In many cases there is no bad intent behind women being denied their inheritance – it is simply a case of people not knowing their rights. In fact, even religious scholars and imams are not always aware of the intricacies of Islamic laws of inheritance (ILC, West Africa). The general impression is that the one and only way to distribute the property of a deceased person is to allocate one-third to daughters and one-eighth to the widow or widows; but this is an oversimplification of the Quranic prescriptions. The Quran goes to great lengths to explain how property should be transferred following a death and covers many different cases in which women are entitled to different inheritance rights depending on the nature of their relationship to the deceased and the different financial responsibilities of the people involved. Quranic rules present four distinct situations in which women inherit half of what men inherit, several cases (more than eight), many others (more than ten) in which they inherit more than men, and a certain number of cases in which women inherit everything (ILC, India Study b). Nevertheless, it remains the case that daughters, sisters, and wives nearly always receive a lesser share than their male counterparts. A detailed description of the division of shares under Shia and Sunni Islamic law is provided in Annex 2.

The capacity of duty-bearers – the organs of the state – is also poor. There is weak legal capacity to enforce inheritance and land laws and poor institutional capacity among government bodies to handle land issues (ILC, Bangladesh Study). In India it was reported that revenue officials responsible for adjudicating on the Shariat Act and the inheritance

provisions it contains are not even aware of or trained on the provisions of Muslim personal law (ILC, India Study b).

In some communities women do not know about their rights at all, as reported in Bangladesh, though they do have a perception that they were, by and large, being deprived of their inheritance rights to land (ILC, Bangladesh Study). In Rajasthan in India, despite a high level of literacy among the community, the majority of respondents were ignorant about Sharia laws, including inheritance rights under the law (ILC, India Study b). In rural Sindh in Pakistan, a misinterpretation of women's religious inheritance rights had led women to believe that Islam forbids women from owning land at all (ILC, Pakistan Study). However, with the spread of mass education and the emergence of a new middle class, for instance amongst Muslims in India, legal awareness and legal empowerment of Muslim women are gradually increasing (ILC, Pakistan Study).

In other communities it was found that, although women had some awareness about their legitimate rights to claim inheritance, they were often unaware of what their legitimate share should be or unsure about whom to approach and the procedures involved (ILC, India Study a). In a nationwide survey in Pakistan in 2012, 85% of respondents (89% of men, 81% of women) said they knew that women had a right to inheritance but did not know how much they were entitled to inherit and, revealingly, only 54% of the female respondents reported having received their share (ILC, Pakistan Study).

Similarly, in India it was found that women were aware of changing land use and property patterns, but had negligible knowledge about the processes involved in the registration of property, the sale of land, and so on. Women who had claimed their property shares had learned from their experience about the registration process and the administrative bodies involved but they reported that middlemen, who claimed to be able to ease the process, in fact created ambiguities, especially in relation to fees (ILC, India Study a).

Women may be unaware of the legislative and protective measures that have been instituted to protect property rights and thus may not seek recourse when necessary due to a lack of knowledge (ILC, Pakistan Study). For example, in Pakistan lawmakers have tried to address women's inheritance rights in the Prevention of Anti-Women Practices Act of 2011, which prescribes punishment and/or imprisonment for anyone who deprives women of their inheritance, but few people are aware of this provision or how to act on it.

One reason for women's lack of awareness is their low level of representation in powerful community organisations and decision-making bodies. The study from India reviewing the Shariat Act 1937 observes that, even if women are members of such bodies, they often tend to be submissive and ineffective as mobilisers or advocates (ILC, India Study b). In India, women's membership of *panchayats* (local-level self-governing assemblies) is mandatory, at proportions of up to 50% in some states. Studies looking at whether women's membership has translated into empowerment confirm that women have not made effective contributions to the *panchayats*, tending to operate as proxies for men rather than as independent agents.<sup>9</sup> Part of this comes down to a lack of the skills needed to conduct the business at hand. As one observer writes: "the role of the *panchayats* has evolved in the recent past, with considerable development and financial [responsibilities] – right from implementing development and welfare schemes [...] to construction of roads and drainages. These involve preparing audit reports and giving sanctions for projects [...] However, since most women are illiterate and do not have any training of handling technical issues and financial deals, they have no option but to take assistance from male family members" (MALHOTRA 2014). Many women have expressed

the need for capacity-building in terms of better education and training focused on the functioning of *panchayats*.<sup>10</sup> However, it must be remembered that empowerment is a slow and incremental process, and women's representation, though not a guarantee of effective participation, is a prerequisite.

Other studies on the impact of women's mandatory membership of *panchayats* paint a more positive picture, with evidence of change beginning to happen. According to a report by the Centre for Development and Human Rights, a sizeable proportion of women surveyed perceived enhancements to their self-esteem, confidence, decision-making ability, and respect within the family after winning an election (Centre for Development and Human Rights 2009). Though they were timid and dependent on men to begin with, within two years they were found to be more assertive and knowledgeable. A third study stated: "more women were expressing themselves; they had an opinion on various matters that came up for discussion, a qualitatively improved participation in terms of the contents of their comments was also evident. Many women members were taking interest in acquiring a better knowledge of the working of *zilla parishads* (district councils). It was also noticed that the women representatives and office bearers were not corrupt and they had a no-nonsense approach in dealing with education, health, hygiene and such matters which come under the purview of *panchayats* (CHANDRASHEKAR 2010).

In Togo, advocacy by civil society organisations and by the Ministry of Social Action, Advancement of Women and Literacy has shown good results as traditional authorities are becoming more open to women's rights, especially with regards to their access to land. Although most traditional authorities do not recognise the principle of the equal sharing of assets, they do take action to avoid the total

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9 Centre for Social Research, "Participation of Women". <http://www.csrindia.org/participation-of-women-in-panchayati-raj-institutions>

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10 Centre for Social Research, "Participation of Women". <http://www.csrindia.org/participation-of-women-in-panchayati-raj-institutions>

exclusion of women from the land. Women are also more informed about and encouraged by modern laws as an alternative to traditional means of justice. However, while women in West Africa reported a preference for modern law over traditional, across all three countries, Senegal, Mali, and Togo, rural women still find it difficult to access courts. However, women who live in villages close to cities have begun to take legal action when their rights have been violated (ILC, West Africa).

In India, too, there have been a number of movements aimed at raising awareness about women and land rights, such as the Laxmi Mukti campaign initiated in 1989, which urged its members to transfer half of their property into the names of women in their households, and more recently Mahila Sarvangeen Utkarsh Mandal (MASUM) in Pune, which is a drive to promote joint ownership of houses (ILC, India Study a) ).

## **WEAK ENFORCEMENT OF LAWS AND CUMBERSOME LEGAL PROCEDURES**

In countries like Pakistan, the registration of births and death is not compulsory and many families do not register the births of their children, especially daughters and especially in rural areas. This means that in many cases women are not even registered as citizens, and can simply be rendered invisible when inheritance is divided (ILC, Pakistan Study). Obtaining documentation such as birth certificates and identity cards can be a long and difficult process if not done at birth or shortly afterwards.

The Senegal study found that even if Muslim women wished to have inheritance matters settled according to civil law rather than Sharia, they ended up having to conform to Islamic law. The Senegalese Family Code provides that inheritance cases should be decided either by ordinary law or by Islamic law, but that Islamic law would “apply to the successions of persons, who, during their lifetime, clearly expressed, or demonstrated in their behaviour a wish that their

succession would be regulated according to the rules of Islamic Law” (art. 571). Faced with such a vague formulation, Senegalese judges tend to consider that if the deceased was a Muslim, the estate should be distributed according to Sharia law. This does not respect the principle of secularism promoted by lawmakers, nor does it leave space for more egalitarian provisions (ILC, West Africa Study). In some areas of Togo, meanwhile, women can purchase land only if they are assisted by a man (ILC, West Africa Study).

In the India study of the Shariat Act 1937, a major problem identified was that the Act has not been codified. This means that women are not granted any rights automatically by the legal system but instead must go to court to claim their rights; further, the provisions of the Act are open to subjective interpretations, which are often patriarchal in their nature (ILC, India Study b) ).

The studies in West Africa all found that only a very small proportion of rural women go to court when their inheritance rights have been violated or when they have been the victims of discrimination in the settling of an estate in land. They are more likely to seek recourse to courts when they have purchased land and they encounter difficulties with the seller. In Senegal, geographical and financial constraints were identified in particular as preventing women from accessing courts (ILC, West Africa Study).

In India, women reported that formal partition of landholdings was costly and time-consuming and therefore families preferred to avoid getting involved in the process (ILC, India Study a) ). Property disputes were often referred to alternative community judicial systems such as *Jamaats* (organised religious groups) or local self-governing bodies. However, women are rarely represented in such forums (ILC, India Study b) ).

There have been some attempts to make the legal process easier for women to negotiate. In Pakistan, the provincial government of Punjab has amended the Punjab Land Revenue (Amendment) Act 2012

to allow the partition of joint holdings as soon as a landowner dies, and without any prior requirement for the submission of an application. This is an attempt to stop families delaying the partition of property and land so as to avoid giving shares to daughters (ILC, India Study b). It is a welcome move, but the problem remains that corrupt officials can be bribed to remove women's names from titles. Since there is no formal coordination between government departments, the existence of a sister or widow can be completely removed from the record or a claim can be made that she is deceased, especially since birth, death, and marriage certificates are not mandatory and do not have to be provided to the registrar (ILC, Pakistan Study).

The general environment of courts is hostile for women. In Pakistan, courts often lack facilities to help women and children wait their turn, and there are very few female lawyers trained in land rights or domestic violence, with whom women might feel more comfortable than with male lawyers (ILC, Pakistan Study).

In the case of a woman forfeiting her right to inheritance, the onus is on men to prove that she has done so. However, in practice men simply get a woman's thumbprint on a document and complete all the procedural matters without the formal consent of the woman involved. In addition to women's consent to forfeit, recent amendments to partition procedures by the provincial government of Khyber Pakhtunkhwa in Pakistan ask for further proof that appropriate compensation has been provided to them for the property.

In the Vidharbha and Sakav regions of India, activist organisations have used an amendment to the Bombay Stamp Act, 1958<sup>11</sup> to the advantage of

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11 This law relates to stamps and stamp duties regarding documents such as bills of exchange, promissory notes, bills of lading, letters of credit, insurance policies, transfer of shares, debentures, proxies, and receipts. An amendment enables the transfer of immovable property such as land or buildings to children or other relatives without the imposition of a stamp duty.

women in land partitioning cases to record women's names in the revenue records. Though these efforts have paved the way for progressive action, there is a continuing debate about their legality, as they do not refer back to the laws, leaving a gap between administrative intent and legislative rights (ILC, India Study a).

Some families try to compensate female members or circumvent inheritance laws by gifting land or making bequests in wills. Under Islamic law, only one-third of an estate can be bequeathed by way of a will; according to one analysis, "other heirs must accept the will at the time of its drafting or ratify it thereafter. The will is not a definitive act. It can be modified throughout the life of the donor, and may even be revoked" (ZAIREG 2014). Gifts can be contested in court, though in Pakistan courts have generally been favourable to women, upholding instances of gifts when they have benefited women and striking them down when they have been made with the intent of depriving female heirs of their shares (ILC, Pakistan Study).

***"Indigenous women are part of groups (indigenous communities) who have roles and functions in ensuring community survival, preserving ancestral origin from generation to generation over a customary region, where they have had sovereignty over land and natural resources, and preserving social and cultural life as governed by customary law and institutions."***

***(ILC, Indonesia Study)***

In Indonesia, as laws become more formally codified, women who have owned land through traditional matrilineal practices are being forced to turn to patriarchal procedures in order to formalise their ownership. For example, women wishing to take part in a programme for palm oil farmers cannot certify their inherited land under their own names

but must use their husbands' names as a head of the family or the names of their brothers. The company managing the scheme cites ease of administration, as men usually already have identity cards. As a result, women participating in the programme have lost their title to property (ILC, Indonesia Study).

Even in Pakistan, since the system of titling and private property was introduced ownership has tilted towards men's advantage (ILC, Pakistan Study).

## STATE-ELITE COLLUSION

In India, the revenue department has been found commonly to collude in denying women their rights. This can range from tampering with land records to deleting the names of female inheritors from documents, from faking death certificates to delaying partition procedures. Currently such actions are penalised through internal administrative action, but even that action is rarely taken (ILC, India Study a).

### GOOD PRACTICE

In West Africa, groups of women have organised themselves into working units to exploit parcels of land. In Mali, Bambara women have managed to establish themselves as a major working force in small family farming. Furthermore, Mali's Agricultural Orientation Act (Law 06-045 of 5 September 2006) is a major innovation in land policy in so far as it deals with the precarious situation of women.

In Togo, traditional authorities have supported the equal sharing of assets inherited through succession between men and women. This resulted in the adoption at the local level, on 20 May 2002, of the principle of equal sharing of assets through succession between men and women (ILC, West Africa Study).

Lawyers sometimes use delaying tactics, such as needlessly raising questions of law or applying for stay orders, to prolong decisions on inheritance cases. Such delays benefit male inheritors when a woman has filed a case, as in the absence of a decision the man remains the legal owner. This applies to case flow problems across the judicial system, but a civil lawsuit for property can take anything from six months to 15 years to resolve, depending on the complexity of the case and the risk of connivance. This has been shown to put litigants off pursuing cases, especially women, because of the time and costs involved without any assurance of a timely decision (ILC, India Study; ILC, Pakistan Study).

States have been seen to subvert women's movements that campaign for their rights. This is because of the patriarchal nature of the state itself, which favours male control over land, while women's right to land is interpreted as a "shelter for survival", without taking into account their role in productive activities or essential contribution to livelihoods.

## DOWRY AND GIFTS – SUBSTITUTES FOR INHERITANCE

Certain verses of the Quran have been interpreted to justify reducing women's share of inheritance, on the grounds that it is balanced out by other payments due to them - including items such as jewellery (ILC, Pakistan Study)) - or by their lack of economic responsibility (ILC, Bangladesh Study). For example, when a woman marries, her husband's family is supposed to pay a sum to her as a dowry (*haq mehr*), and it is claimed that this compensates her for any share of inheritance she may lose. When the bride's own family gives a dowry, her parents and brothers assume that this has replaced her share of inheritance and she should relinquish any further claim (ILC, India Study a) & b)). Dowry is a common practice among Indian Muslims of all socioeconomic strata and castes, and in all regions (ILC, India Study b)).

In the same vein, scholars have interpreted Sharia law to say that a Muslim wife is not expected to share her resources or spend them on the household, even if her husband is destitute. This is extended to mean that she keeps her own resources and enjoys the financial support of her husband, in addition to inheritance, and therefore the reduced amount is balanced out (ILC, Pakistan Study).

Even though this might be true in many cases, there is no mechanism to ensure that such compensation is in fact provided. The reasoning behind compensation and reduced inheritance is based on situations that may no longer be valid in the modern day. It completely overlooks women who are not married and does not take into consideration the usually inconsequential value of payments such as dowry (ILC, India Study b) ) compared with the value of the land that women forfeit in their stead (ILC, India Study b); ILC, Pakistan Study). In some cases women are prevented from inheriting land from their own families, who claim that they will marry into another family who will then be responsible for providing them with land (ILC, West Africa Study).

***“Before I got married, I used to manage and control my land and was able to deal with all issues such as hiring and negotiating with tenants, buying inputs, and selling my produce after harvesting through middlemen. After I got married, my husband slowly took control of the land; he did not like me going out and managing land-related affairs. I gave in and handed over control to my husband. However, I regret my decision now and feel very unhappy. I wish women were given more freedom to choose the way they want to live their lives.”***

***Yusra Qazi, landowner, Pakistan (ILC, Pakistan Study)***

In Bangladesh, more than one-third of women were found to have received money instead of inheriting land (ILC, Bangladesh Study), but it is unclear whether these payments were of the same value as the land, or less. In any case, this practice prevents women from exercising control over the land and benefiting from the revenue generated from its use or from its sale after appreciation.

## **WOMEN RECEIVE THE LEAST VALUABLE PART OF THE FAMILY INHERITANCE**

In many cases where women do inherit land, they are apportioned the least valuable plots. In India, cases were reported where agricultural land was given to sons while wasteland or degraded land was given to daughters. Certain categories of wasteland<sup>12</sup> can be converted to agricultural land, but they would require far more effort and inputs to overcome the degradation.

Not only do more men own land than women, but in India it was found that the size of landholdings across categories is larger for men than for women, and the gap increases with the size of the holding (RAO 2015). Furthermore, in a majority of cases women inherit land in areas where the market price of land is significantly lower than that of land received by their male counterparts. In Bangladesh, taking these factors into consideration, women rarely receive more than 25% of the land (ILC, Bangladesh Study).

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12 In India two types of wasteland are categorised by the National Wastelands Development Board: “culturable wasteland”, which has potential for the development of vegetative cover and is not being used due to various constraints such as erosion, waterlogging, salinity, etc., and “unculturable wasteland”, which is land that cannot be developed for vegetative cover, for instance barren rocky areas and snow-covered glacier areas. Green Clean Guide, “Wastelands: Types and Status in India”. <http://greencleanguide.com/wastelands-types-and-status-in-india/>



## WOMEN LACK SKILLS TO ACCESS, MANAGE, AND CONTROL LAND

In Pakistan land reforms, instituted in the 1970s to try and cap the maximum landholdings that an individual could own, did not consider women as beneficiaries. Women were never registered as tenants and so did not benefit directly from any of the country's attempts at land reform or redistribution. They only benefited inadvertently from the transfer of property and land above the ceiling when families wanted to keep ownership within the family (ILC, Pakistan Study). This was followed many years later in 2008 by a programme aimed specifically at women in Sindh province, which aimed to redistribute uncultivated state land primarily to women.

Though women have therefore become title-holders of land, it does not necessarily mean that they have control over it. The studies found that even when women have acquired title through transfer or inheritance, decisions about how the land is used, its sale, and the use of money generated from it are controlled by men, or at best taken jointly by husbands and wives (ROY 2015; ILC Bangladesh Study). In the Pakistan province of Khyber Pakhtunkhwa, women receive property as part of the marriage contract, but they do not have control over it. Men control the land, though they cannot sell it. If a woman is divorced she loses the property.

Similarly, in Uttar Pradesh in India, land titling for women had been encouraged through a tax incentive, and this has indeed led to women having larger landholdings than men, in contrast with other parts of the country (ILC, India Study a ). However, although this tax incentive has succeeded in increasing women's land ownership, social barriers in the region raise doubts that ownership has also translated into increased control over the land.

Tribal women in India have rights to manage land and its produce but are allowed a claim to, or control over, only a share of the produce from the land in the form of maintenance for small purchases.

Their small incomes from the collection of minor forest products are transacted through a series of petty traders, who exchange their share of produce for a line of credit that allows them to meet daily consumption needs from the market place. Women's dependency on these traders increases their vulnerability to market forces and their economic burden of debt (ILC, India Study a ).

Furthermore, women generally do not have the skills or access to inputs to make optimal use of the land they own or could own. In Pakistan it has been observed that, even though women spend more time than men on agriculture- and livestock-related activities (such as planting, weeding, seed cleaning, drying, storage, binding of crops, harvesting, feeding animals, cleaning animal sheds, milking, making dung cakes for fuel, providing primary medical care to animals, and marketing dairy products), they rarely get the opportunity to develop their skills and knowledge. In fact, many of these activities are conflated with women's reproductive roles and are not even counted as productive activities. As a result, agricultural extension programmes focus on men and do not encourage women to participate, reinforcing the widespread view that women lack the competence, knowledge, and skills needed to access, control, and manage land (ILC, Pakistan Study).

Women are further constrained by their limited access to farm inputs and credit, which could help them to improve their use of land and the benefits from it. In a study conducted in Punjab province, Pakistan, 10% of women surveyed reported that they owned land (a higher proportion than in the country's three other provinces), but fewer than 3% had access to agricultural inputs, water and irrigation, land tenure, the right to buy and sell land, or visits from extension services (ILC, Pakistan Study).

The Pakistan study explores the constraints of *purdah* which women in Muslim societies commonly live with. The concept of *purdah* can include veiling, seclusion, limited mobility, and avoiding interactions with strangers or in public, all of which prevent women from

working their land or building the skills to manage it. Women may have freedom of mobility to go out and fetch water, something that is considered to be their task, but they do not have the freedom to go out and manage land (ILC, Pakistan Study).

Respondents to a survey in Pakistan indicated that although there is acceptance of women owning property, there may be less acceptance of them controlling it (ILC, Pakistan Study). Having legal ownership, even without control, is nevertheless an important first step towards empowerment. Findings from Bangladesh show that women who have access to and control over land enjoy greater economic independence and decision-making power than those who do not. Some women have invested money made from the sale of inherited land, some have paid for family members to go abroad to find work, and others have started small trading activities and have improved their farms. Widows also reported that inheriting from their husbands had enabled them to maintain social respect and to access food and health services (ILC, Bangladesh Study).

## COMMON AND TRIBAL LAND

*“We are not encroachers on this land. We have lived off this land for generations. My ancestors have tilled this land. My father and grandfather have tilled this land. When I was born, my placenta was buried in this land. I am bound to this land. I do not intend to leave it.”*

*Khamniben, of Khanpatla village, India, who has fought for her rights to forest land (ILC, India Study a)*

In some communities, land belongs to the clan and cannot be sold under any circumstances. Tribal or clan ownership of common land is widely recognised over generations, and neither men nor women have any private property rights to the land – only land usage is permitted (ILC, West Africa Study). However, in Indonesia, where there is an increased focus on

registration and certification, communities are faced with the problem of registering their land under the name of a single owner, albeit a female owner. The people of Batu Songann have so far resisted, feeling that this would restrict their sense of belonging to the land and that individual ownership would prevent the land from being used for its primary social function of providing for the clan. Female owners would be bound to face conflicts over managing vital assets such as forests, water, and declining tribal territory and over the use of wealth such as gold and silver from the land, as these belong to the clan and cannot be owned individually (ILC, Indonesia Study). This pattern of dispossession – a shift from a commons-based, open sharing of resources to the privatisation of the commons – has also been seen amongst tribal communities in India (ILC, Indonesia Study).

The governments of Indonesia and India have also declared large tracts of land, customarily used as common property by tribes and clans, to be government-protected land, such as national parks, which has deprived communities of their inheritance rights to these lands. This has led to tenure security issues and the loss to indigenous peoples of sources of inheritance. This has prompted social changes, including in gender relations, with many Indonesian women from Cirompang becoming farm labourers or moving to nearby towns to work as housemaids. Men have also started looking for other jobs, such as driving motorcycle taxis or working as farm labourers or in construction, since the land no longer promises to maintain their traditional family life and social structure (ILC, Indonesia Study). This has led to an alienation from traditional ways of living off the land; for women, it has meant a greater burden and a struggle to retain what little control they currently have. Tribal women are often the most powerless and vulnerable in any conflict with non-tribals. They do not have the resources to fight long, protracted legal battles, nor can they contend individually with the nexus between local police, the bureaucracy, and power structures within the village, or stand up to force and coercion from them (ILC, India Study a).

In India, along with the loss of private property, rural women have been dispossessed from using and benefiting from common land such as forests and from water bodies and fishing rights, which has had a detrimental impact on their livelihoods and has increased their dependence on men. Experiences from Gujarat show how efforts by government to regularise the ownership of tribal forest land, to which women have traditionally had access and the right of use, have marginalised them. Later, in the Forest Rights Act (2005) there was, fortunately, an explicit recognition of the need to grant joint titles to land to men and women (ILC, India Study a ).

## **UNDER-REPRESENTATION OF WOMEN ON DECISION-MAKING BODIES**

If women are to make their voices heard, they need to have a more tangible presence in decision-making bodies. The main barrier to women asserting their rights is inadequate representation in key organisations, including Islamic bodies such as Waqf Boards, Jamiat Ulema-I-Hind, the Zakat Foundation, and so on. These institutions are centres of power as they have strong contacts with both communities and politically influential people, and they are also where agendas are set (ILC, India Study b ). If women actively participate and take lead roles in such organisations, it improves the chances that the issues that concern them will be put across more often and more assertively. Even if, as the studies from India suggest, women tend to be submissive and hesitant when they first become members of decision-making bodies, it has been found that with time, as they gain experience and confidence, and especially if they receive training, they become more assertive, begin to renegotiate gender relations within their own families and communities, and eventually become effective advocates of women's rights.

## **LACK OF POLITICAL WILL TO ENFORCE THE IMPLEMENTATION OF LAWS**

The issue of gender discrimination in inheritance does not feature very high on the political agenda. In Pakistan, apart from the land distribution programme in Sindh in 2008 which allotted women uncultivated land, there have been few programmes targeted at enhancing women's land rights. Political parties have promised to protect women's land and inheritance rights in their manifestos, but little has been done on the ground. The National Policy for Development and Empowerment of Women of 2002 states as its purpose "to remove inequities and imbalances in all sectors of socio-economic development and to ensure women's equal access to all development benefits and social services"; however, it does not give any priority to the issue of women and inheritance (ILC, Pakistan Study).

There appears to be a lack of political will amongst political parties, legislators, policy-makers, and the judiciary in implementing existing laws as well as promoting effective new legislation. There are instances of courts deciding in favour of women but being unable to implement their decisions. In addition, courts generally consider issues like inheritance to be a private matter and so leave them to the parties involved to settle their disputes using customary practice. There are also examples of superior courts applying laws based on the Quran or Hadith Sharia (Islamic law), but no efforts have been made to inquire whether the decisions have been implemented or if women have been able to gain their land/property rights. Thus, the enforcing of laws and the implementation of court decisions remain serious challenges (ILC, Pakistan Study).



Photo: ©ILC/Jason Taylor

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# RECOMMENDATIONS

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The research describes how even though all the countries studied – whether in West Africa or Asia, with a Muslim majority or a Muslim minority – have legal, religious, and institutional provisions that protect women’s inheritance rights, their implementation in the patriarchal cultural context in which they exist is weak. Achieving gender equality has always been a slow and incremental process and when it is heavily entwined with money and power, as with inheritance, it is also a fiercely contested process. Therefore, the studies suggest a mix of legal, procedural, institutional, and, most importantly, attitudinal changes to create an environment and a legal framework for gender equality in inheritance. The recommendations focus on the wider context of gender and land rights in which the issue of inheritance rights for women is embedded.

## REFORM LAWS

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International law discourages countries from maintaining dual systems of law, civil and traditional, and requires that they adopt one standard applicable to all (ILC, Bangladesh Study). Therefore, the first level of law reform must be to **bring national legislation into line with ratified international conventions**. All the studies across all countries endorse this principle of compliance. International conventions provide the benchmarks and a strong rationale for countries to implement legal reforms, in particular to revise inheritance laws (ILC, West Africa Study) . As the Desk Review on Islamic Practices points out, “Islam is neither the problem nor the solution in a secular state” (ILC, India Study b) ).

This will require a **review and revision of all religious, personal, and civil laws to identify and amend discriminatory provisions**.

In Indonesia the move towards codified, civil law has actually undermined the traditional rights that women enjoyed in matrilineal societies. The Marriage Act declares the husband to be the head of family (ILC, Indonesia Study).

Such assumptions reinforce gender stereotypes and should be removed so that there is no legally sanctioned discrimination. In West Africa, the Persons and Family Codes need to be amended to remove the legal loopholes that countenance traditional and religious practices, especially with regard to inheritance (ILC, West Africa Study). The anomaly in the Senegalese Family Code which provides that inheritance cases should be decided either by ordinary law or by Islamic law should also be reviewed, as litigants are often forced to follow religious law even if they would prefer civil (ILC, West Africa Study).

Since reforming religious law is bound to be an emotive proposition, one of the studies from India recommends considering introducing only **gradual reforms** in personal law (ILC, India Study a ), so that changes are more acceptable and build up towards gender equality incrementally. For instance, in India the Shariat Act 1937 does not include agricultural land in its purview. As a first step, the Shariat Act 1937 should be amended to include agricultural land so that women begin receiving at least the share that Islamic law apportions to them, even though this is still less than men's. It also needs to be codified to ensure standard interpretations of the Sharia, and it should apply to all Indian states and across all Muslim sects.<sup>13</sup> At a later stage, the law can be reviewed further to recommend equal shares for men and women, or simply the replacement of personal inheritance law with a national, universally applicable civil law. As recommended by the studies from West Africa, reform of land and inheritance laws needs continual support (ILC, West Africa Study).

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13 "[The Shariat Act 1937] is not applicable in many states and Union Territories, including J&K, Lakshadweep (both Muslim-dominated states), Daman and Diu, Goa, and Pondicherry. These states have their own customs and traditions. Moreover, there are separate laws for some sects among Muslim sects, such as Bohras, Khojas, Moplas, Memons, Sunni Bohras, etc. These groups have separate laws originally enacted for them by British legislatures."(ILC, India Study b)

The West African and South Asian studies point to how Islamic provisions, which appear to be biased against women, can actually be interpreted far more positively. While conservatives interpret women's reduced share of inheritance as representing their secondary economic status, more progressive, egalitarian interpretations say the opposite: that these shares actually protect and recognise women's rights. Under Islam, women are considered competent heirs and inherit property absolutely in their own right. A Muslim man cannot bequeath more than one-third of his property by will, which provides a safeguard to his spouse and female children against complete disinheritance. There is no concept of a limited estate of a widow in Islam, and the rights of women are not restricted merely to maintenance (ILC, India Study b ). The discourse on women and inheritance needs to **build on this progressive spirit of Islam**.<sup>14</sup> The Quran goes to great lengths to explain how property resulting from a death should be transferred. Quranic rules present four distinct situations in which women inherit half of what men inherit, more than eight different cases in which they inherit the same as men, more than ten in which they inherit more than men, and a certain number of cases in which women inherit everything. The rules cover female relationships ranging from a wife to a son's great-granddaughter and their different inheritance rights, depending on the nature of their relationship to the deceased and the different financial responsibilities of the people involved (ILC, West Africa Study). As the study from West Africa points out, societies and gender roles have evolved and, taking Sharia inheritance standards as the minimum, religious scholars, legal experts, community leaders, and ordinary women and men must take this enlightened approach forward.

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14 In fact, as documented in the study from Bangladesh, the demands of Hindu and Santal women to be considered for one-third inheritance mirror what Islam has already laid down for Muslim women, though it is often not implemented.

They should reassess the changing roles of women, recognising women's increasing participation and contribution to productive and community management roles and even the economic value of their reproductive role and changing family structures – the move from extended families to nuclear ones – and revise inheritance laws to reflect these transformations.

The West African study recommends that **traditional and religious authorities should be involved in reviewing laws** so that they understand and support the change. Their endorsement is important, as they have influence over community leaders, village councils, and traditional village courts (e.g. *jirgas* in Pakistan) (ILC, Pakistan Study). Such an approach has shown good results in Togo, where traditional authorities worked with an NGO to pilot equal sharing between men and women of assets inherited through succession. This resulted in the adoption in 2002, at the local level, of the principle of the equal sharing of assets through succession. Traditional and religious authorities who have played a positive role in the evolution of women's access to land in their localities should also receive special support or patronage (ILC, West Africa Study).

## IMPROVE LEGAL PROCEDURES

**In Pakistan, the Civil Procedure Code and Rules need to be amended.** Previously, heirs were required to submit an application before the partition of land could happen. The Punjab government has removed this requirement, however, and made partition automatic upon the death of a landholder, and therefore has managed to remove a loophole that was often used to delay proceedings (ILC, Pakistan Study). Similarly, in countries where registration of births is lax and women often go uncounted – as in Pakistan – there needs to be a greater focus on making birth registration mandatory to **ensure that women are registered** and cannot be denied inheritance later in life.

Discriminatory **procedures that reinforce women's secondary status should be revised.**

For instance, in some areas of rural Togo women can only buy land if they are assisted by a man (ILC, West Africa Study).

Based on findings from the Cirompang community in Indonesia, where inheritance passes equally to women and men (in fact usually favouring women), the Indonesian study suggests promoting the Islamic provision of "gifts" (ILC, Indonesia Study). Similarly, respondents from Bangladesh suggested that fathers may make wills in favour of their daughters so that brothers cannot misappropriate the equal rights of their sisters (ILC, Bangladesh Study). **Gifts and wills** are recognised by Islam as a legitimate way of bequeathing wealth to children and are not subject to division according to gendered Islamic inheritance shares, though for gifts it would depend on how just parents were in making their gifts, and for wills there is a limit that only one-third of the property can be willed.

The studies from India and West Africa emphasise the **importance of records and documentation.**

The state must ensure that women's shares of land rights are recorded, on a retrospective basis, in official revenue land records within a set period of time. It is important to register women in the revenue records and to have gender-disaggregated data easily available for benchmarking, monitoring, and evaluation. Land consolidation and revenue systems need to be reviewed, regularised, and even refashioned with better documentation and transparent processes so that they are easy for women to access (ILC, India Study a). However, land registration has worked against women in matrilineal societies in Indonesia, as their traditional, undocumented ownership has been replaced by titles in the name of men (ILC, Indonesia Study).

**The legal process also needs to be made more efficient.** The prospect of lengthy, costly cases often conducted in courts far from home deters applicants, especially women, from litigation.

The study from Pakistan suggests the possibility of courts instituting user charges for litigants in return for an assurance of quicker disposal of cases (ILC, Pakistan Study), but any such measure must be weighed carefully against the fundamental reasons why court cases are so delayed (such as the sheer volume of cases) and the need for more courts and judges. Charging user fees for justice also risks excluding the people who most need free and fair hearings.

**Access to courts can also be improved** by building more facilities or by the use of mobile courts, especially in under-served rural areas, suggests the study on Togo, Mali, and Senegal. Respondents in Bangladesh also suggested promoting the "*Salish*", **an alternative village-level dispute settlement system**, with the involvement of gender-sensitive people who would protect women's interests (ILC, Bangladesh Study). This recommendation is endorsed by findings from India, which suggest that community dispute resolution mechanisms run by women's collectives could facilitate negotiation with families as well as play an important role in building the accountability of state institutions (ILC, India Study a ). In Bangladesh it was also suggested that "union"-level (small unit of administration) committees and legal advisers could be introduced to oversee village-level inheritance issues (ILC, Bangladesh Study). The study from West Africa highlights the need to simplify legal texts to make them more accessible (ILC, West Africa Study).

## IMPROVE LAW ENFORCEMENT

Most of the studies agree that poor implementation of legal precepts is a problem. The process of litigation is difficult, but **weak enforcement of law** means that getting a decision implemented is even more difficult. Even when courts have taken affirmative action to process inheritance cases, there is no mechanism in place to enforce court decisions on the ground (ILC, Pakistan Study).

The studies from West Africa and India stress the importance of taking **strict action against anyone who denies women the right to inherit**, including those who abuse their official authority to collude against women and those who abuse their social authority to discriminate against women in their family (ILC, West Africa) or use violence and intimidation to disenfranchise women (ILC, India Study a ). For instance, while the studies report many examples of official connivance – such as in Pakistan where lawyers can be bribed or it is possible to obtain documents declaring women in the family to be deceased, or in India where malpractices within the land and revenue department are a major deterrent for women to access the system (ILC, India Study a ), or in Bangladesh where court clerks take money to sway verdicts in favour of the bribing party – none cite cases where any action has been taken. Similarly, more attention has to be paid to the linkages between domestic violence and dowry, as highlighted in Bangladesh (ILC, Bangladesh Study). The law must not consider these simply as personal issues.

## TRAIN DUTY-BEARERS

A common issue emerging from the studies was that **duty-bearers**, the people involved in developing legislation and interpreting and implementing religious and civil law, do not have adequate knowledge about women's rights, gender, or inheritance. For example, in West Africa it was found that even religious leaders such as imams generally have not mastered all the inheritance allocation scenarios, and rule in accordance with a principle that is unequal in its application. (ILC , West Africa Study) Religious leaders, elected representatives, the civil judiciary, revenue officials (ILC, India Study b ), and even police (ILC, Pakistan Study) need training on women's land rights and the provisions of law versus traditional customs.



The study on Pakistan, bearing in mind the patriarchal, conservative society to be found in some areas, points out that there are few **female lawyers** trained in inheritance and land laws. More women should be trained in this branch of law, as rural women might feel more comfortable with them than with male lawyers, especially where mixing of the sexes is restricted socially (ILC, Pakistan Study). Though not covered in the studies, in India the Working Group for Women and Land Ownership (WGWLO), a network of non-government and community-based organisations, has recommended that female social workers with expertise on land issues should be present in all land *kacheris* (courts) held for land redistribution.

**Case law** should be developed that provides lawyers and the judiciary with examples of legal precedents where the law has been interpreted in favour of women and gender equality. There are several such instances in Pakistan, where inheritance disputes have been settled in favour of women (ILC, Pakistan Study), and if these were more widely known they could both help guide the judiciary and give confidence to litigants that the legal system does work in favour of women.

Training and **advocacy with parliamentarians and policy-makers** helps give political prominence to issues of gender and inheritance. In Mali, parliamentarians passed a landmark land policy, the Agricultural Orientation Act 2006, which addresses the precarious situation of women. In Togo, the Ministry of Social Action, Women and Literacy led an advocacy campaign with traditional chiefs and this patronage from the government has resulted in chiefs, regardless of the religion prevailing in their area, taking stands in favour of women. In the province of Khyber Pakhtunkhwa, Pakistan, community-based organisations lobbied parliamentarians and the judiciary, leading to the formulation and adoption of a law on women's land ownership, the Enforcement of Women Ownership Rights Bill 2012.

Training should be augmented by advocacy to exert pressure on the **judiciary to take up cases and implement decisions** (ILC, Pakistan Study).

## INCREASE INFORMATION FOR RIGHTS-HOLDERS

Except for Indonesia, where the study focused on more egalitarian and matrilineal societies, across the countries studied it emerged that, generally, women and men simply do not know about their inheritance rights under law, religious or civil, or any legal protection they have in the case of violation and how to seek recourse to justice.

**Community centres with trained staff** with whom women feel comfortable talking should be set up to provide legal advice to women. The Bangladesh report suggests setting up such structures at the lowest administrative level, the union. The study from West Africa recommends setting up more "Listening Centres" (ILC, West Africa); listening centres or law shops (*boutiques de droit*) provide free legal advice, support, and advocacy for women in pursuing inheritance claims (EVANS 2015). A similar set-up was reported in India, where WGWLO has set up 15 Swa Bhoomi ("My Land") Centres in 12 districts in Gujarat. These hubs have provided rural women with greater awareness on their rights as landowners and, importantly, have provided access to productive resources that can support women farmers (UNDP 2015). The recommendation from Pakistan to **establish a panel of legal experts to provide free advice** (ILC, Pakistan Study) could be integrated with the recommendation to set up community-based legal aid centres.

Outreach NGOs and other community based organisations should be tapped into to disseminate information about inheritance rights. **NGOs and women's groups need to work with Muslim women** to help them understand their rights to inheritance, improve their access to justice, and support them in court processes

(ILC, India Study a) ). As highlighted by the study from West Africa, it is very important to engage men. There should even be separate training sessions for men to help them understand and manage the changes in land management that would arise from a more gender-equal division of inheritance (ILC, West Africa). The study from Pakistan recommends that **toolkits** should be developed for such organisations that can be used in the field for advocacy, information, and training (ILC, Pakistan Study), while the West Africa study suggests that **simplifying legal texts** and making them more accessible will help women to understand and use them (ILC, West Africa).

Such support structures become all the more important considering that there are cases where even when women win court cases and receive their inheritance, they are subsequently ostracised by their families and local communities (ILC, Pakistan Study).

All the studies agreed on the importance of **advocacy and information campaigns** to help reach a wide audience (ILC, Pakistan Study). Campaigns should focus on women and should inform them of their rights in general (ILC, India Study b) ) including, as pointed out in Bangladesh, the need to abolish dowry (ILC, Bangladesh Study). They should also inform women and men about inheritance laws and the existence of legal protections available to them (ILC, West Africa Study). The Pakistan study recommends advocacy campaigns conducted through the media. Media outlets should be trained on issues of gender and inheritance so that they can raise mass awareness about them (ILC, Pakistan Study).

An interesting recommendation from India was to **make the legal rights of women part of the curriculum in schools**, especially Urdu-medium schools where rural families are likely to send their children, so that boys and girls understand these concepts from a young age (ILC, India Study b) ).

All the studies recommended improving **research** and evidence bases to help understand the prevalence and impact of gender discrimination in inheritance. Findings should be shared widely and used as the basis for policy advocacy (ILC, India Study b) ). Suggested areas for study include:

- » Gender discrimination and discrepancies in laws relating to property and land rights;
- » Gaps in policy and the practice of inheritance laws;
- » Data on the extent of women's access to and control over land. In Pakistan, official documents including censuses, household panel surveys, and other official surveys, do not include gender-disaggregated data on this issue or information about the application of inheritance rights;
- » Outcomes for women's empowerment and gender equality as a result of land distribution programmes, such as those that have been implemented in Pakistan;
- » In Indonesia, women's inheritance rights to common land and natural resources in communities such as Batu Songgan and Cirompang, to disentangle the participation of women, power relationships, and decision-making processes of collective rights and private collective rights in the management of community wealth;
- » The effects of patriarchal practices eroding women's traditional authority in matrilineal societies (e.g. as keepers of traditional medicinal knowledge or as community decision-makers).

A comprehensive list and description should also be compiled of land-based, gender-focused, rural poverty alleviation projects designed and implemented by governments, NGOs, or other actors. This would allow future projects to benefit from the experiences of others, provide a resource bank for projects to draw on, and perhaps reveal patterns of success and failure that can inform future efforts.<sup>15</sup>

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15      FAO, "Making Land Rights Real for India's Rural Poor".

## STRENGTHEN PARTICIPATION BY CIVIL SOCIETY AND BY WOMEN

Though organisations in India have been working on issues affecting Muslim women since independence, comparatively little work has been done on the issue of land rights compared with other issues such as polygamy, divorce, triple *talaq*, early marriage, education, and so on. Inheritance rights and land rights have not become part of the discourse of women's movements, especially amongst Muslim women. Development organisations should work to **consolidate and develop the capacity of civil society organisations** to become effective advocates of women's land and inheritance rights (IC, India Study b ). WGWLO, for instance, has worked with state governments in India to update land records and discourage the practice of deleting women's names from land ownership and inheritance documents (ILC, India Study a ).

Governments have seldom acknowledged women's rights to land without an assertion from women's movements themselves, whether on policies for rehabilitation and resettlement or for widows and destitute women, or in the provisions of housing schemes.<sup>16</sup> All the studies, therefore, recommend measures to **support collective action taken by women**, increase their agency, and bring them together to form their own organisations. India provides many examples of success where women have come together and have organised as collectives or movements, and the study from there specifically recommends creating Women's Forums that NGOs or development organisations can train as pressure groups to initiate policy advocacy on gender rights and setting rights and development agendas by women and for women. Recommendations from India suggest using women's collectives as alternative, community-level dispute resolution

<http://www.fao.org/docrep/007/j2602e/j2602e04.htm>

16 Ibid.

mechanisms to facilitate negotiations with families, strengthen women's claims, and deal with the perpetrators of violence (ILC, India Study a ).

The Indian studies further describe **models for women's collectives**. Land that is available through Gram Sabhas<sup>17</sup> or the revenue department, including ponds, forests, and grasslands, can be leased to women collectively rather than being sold or leased out on contract. This would give women alternative access to land for livelihoods and income that will stay within the community, along with autonomy and decision-making, benefits from working together, and a support group structure.

Leasing land to collectives should be augmented by **programmes to provide access to other resources**. A good example of this is the "Sarvangi Vikas Karyakram" (Holistic Development Programme) in Dahod, India. This programme has encouraged women's collectives, particularly collectives of single women, elderly women, and the physically challenged, to lease land for vegetable cultivation and the production of compost (ILC, India Study a ). The government could support such collectives with programmes targeted towards women to help develop their skills and to improve access to credit and inputs, as well as land distribution programmes aimed at increasing women's ownership, or at least joint ownership, of land.<sup>18</sup>

17 A unit of local government in India, where a village or a group of villages with a population of not less than 1,500 forms a Gram Sabha. Every adult in the village is a member of the Gram Sabha. See: <http://www.importantindia.com/12463/gram-sabha-and-gram-panchayat-in-india/>

18 "Proponents of individual title consider it the most useful to women: individual title provides women the flexibility to make decisions about the land, and women with individual title can explore alternative arrangements for the cultivation and management of the land. There is no evidence that women with joint title have any more control over the land than those with no title. What benefits does a woman with joint title receive? How does a woman exercise her right to a half interest in land in the event of divorce? How is the ownership transferred at death? Land and livelihoods... On the other side of the debate, those arguing for joint title note that it provides women with the resources to be able to invest in the land, it may preserve plots at a sustainable size, and it protects women from seizure of land by

All the studies agree that **women's representation in decision-making bodies** should be increased, or even mandated (ILC, India Study b ), in community groups that manage common land. The studies from India go on to suggest representation in specific groups such as the influential Jamiat Ulema-I-Hind – the country's biggest organisation of religious scholars. Women's organisations should also have representation in all statutory bodies, including local government bodies such as Gram Sabhas in India (ILC, India Study a ). One study from India raises the important point that Islamic organisations, which are also pressure groups and power structures, need to ask themselves whether they truly uphold the principles of equality and justice as preached by Islam and whether they ensure equal representation of women at all levels (ILC, India Study b ).

Disenfranchisement due to government acquisition of land was identified as an issue in Indonesia and India, especially with reference to tribal land. Women often do not know when public meetings for land records or state land acquisition are being held, and they are denied the opportunity to be heard.<sup>19</sup> In India, changes in 2014 to the Land Acquisition Act seem to favour the acquisition of land by the private sector and state infrastructure interests. The state must ensure **consultations and engagement with women in determining land use changes**, along with a transparent process (ILC India Study a ), a recommendation echoed by the findings from West Africa. Changes to land use must be made only after due consideration of the livelihood needs of communities, including food, fodder, and fuel; at least 30% of land should be retained for the community, and women need to be involved in decisions on how land is used. It is only through the adoption of participatory and inclusive processes that land governance will improve (ILC, West Africa Study).

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male relatives." FAO, "Making Land Rights Real for India's Rural Poor". <http://www.fao.org/docrep/007/j2602e/j2602e04.htm>

19 "Comments from Working Group for Women and Land Ownership, Gujarat, on Draft Land Reform Policy"(2013): [http://www.wgwo.org/files/gr/Land Reform Policy Gender-WGWLO\\_Gujarat \(August 2013\).pdf](http://www.wgwo.org/files/gr/Land Reform Policy Gender-WGWLO_Gujarat (August 2013).pdf)

## **INCREASE WOMEN'S SKILLS AND ACCESS TO AGRICULTURAL INPUTS**

One of the reasons why women, even if they own land, have limited control over it is that social and cultural environments, traditional roles, and limited mobility restrict women's access to markets for credit, inputs, and products (ILC, Pakistan Study) and to skills development opportunities. The studies from Asia confirm that land reforms should be supported by a **wider framework** of enablers, including agricultural skills development, mobility, and access to credit and inputs, and involving the agencies responsible for each, such as NGOs and providers of technical education and financial services.

Respondents in Bangladesh identified a lack of education as a problem for women and recommended that women should pursue "higher studies" and be **educated about the maintenance and utilisation of land**, as well as other assets (ILC, Bangladesh Study)

Helping women to **access non-agricultural employment** in India is also important in establishing an income stream, which in turn can strengthen women's capacity as investors and producers on their land (ILC, India Study a ). Local waged employment should be available to supplement women's incomes to enable them to survive from rain-fed subsistence agriculture. Wage protection through government employment guarantee schemes on their own lands for the production of food grains is an important measure to support land ownership by marginalised women, reduce distress, and improve productivity (ILC, India Study a ).

Findings from India also suggest that access to **savings and credit programmes** is important to meet emergency needs for health and food and to prevent the distress sale of land. Access to larger loans from banks is necessary to release mortgaged land in order to take part in soil and water

conservation schemes and to lease land for women's collectives to undertake agricultural production (ILC, India Study a). Respondents in West Africa, furthermore, said that simplifying access to credit would help make women's agricultural production more profitable (ILC, West Africa Study).

## AFFIRMATIVE ACTION TO PROMOTE WOMEN'S OWNERSHIP OF LAND

All the countries studied had very low levels of female land ownership, even though women's participation in the agricultural labour force was higher than men's. The studies from West Africa and Pakistan recommend **state-sponsored land distribution**, whereby land could be allocated directly to women through community development programmes (ILC, West Africa Study). A recommendation from India further suggests that such schemes should be decentralised when it comes to disbursement, establishing direct points of interaction between women and formal institutions to enable women to engage and negotiate with the state as active participants rather than passive beneficiaries (ILC, India Study b).

Recommendations from India include making **joint ownership of land mandatory** between husband and wife. The study also suggests other procedural protections for women, such as the imposition of a **time stipulation before women can forsake their claim** to inheritance (ILC, India Study a).

Findings from India identify fragmentation of land as another issue. The state's policy on land usage and management should also take into consideration the significantly high percentage of landlessness or near-landlessness due to the extremely small size of landholdings (ILC, India Study a), which is a disincentive to allowing women to inherit as it makes little economic sense to further divide already small holdings. Strategies such as **shared land use**, while keeping the parcel large enough to be economically viable, can be designed. An example from Bihar in

India provides an interesting model that could be followed. Male migration to jobs in other areas is high and women have historically worked the agricultural fields as labourers. However, wages were low and women were vulnerable to exploitation by employers and moneylenders. An NGO, Adithi Mahila Vigayan Kendra, evaluated the situation and negotiated with landowners on behalf of a group of women to grant them land under *batai*, a sharecropper tenancy arrangement. The NGO stood as guarantor for the women, and the landowners agreed. The NGO provided the women with training and support, and agricultural production increased. The women are now seeing the benefits of increased production from the land and protection from abuse by landowners and moneylenders.<sup>20</sup>

Studies from Indonesia and India recommend that governments should **protect common land such as community forests, with women as equal partners**. Rather than promote private acquisition and commercial interests, governments should protect community rights, especially those of women. (ILC, India Study a). Findings from India show that only a small percentage of land is in women's hands, and the majority of women who have title are widows (ILC, India Study a). The "commons" is where women, especially poor women, have some autonomy in how they are able to negotiate the needs of their families for survival and acquire some status. It is important to understand how gender relations shift when women are denied access to and control of the commons. Efforts should be made to restore the legitimate rights of communities to these resources, enabling them to sustain themselves, while evolving more egalitarian systems of governance and use of such resources, which acknowledge women's roles and provide equal opportunities for decision-making.<sup>21</sup>

20 FAO, "Making Land Rights Real for India's Rural Poor". <http://www.fao.org/docrep/007/j2602e/j2602e04.htm>

21 Abelenda, A. (2014) "Reclaiming the Commons for Gender and

The study from India is critical about the government's neo-liberal, market-driven development policy, which focuses on economic growth to the detriment of natural resources. It recommends that development policy should recognise and promote local subsistence farming, and suggests that common lands be reserved for land-based livelihoods and usufruct rights for women (ILC, India Study a) ).

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Economic Justice: Struggles and Movements in India". <http://www.awid.org/news-and-analysis/reclaiming-commons-gender-and-economic-justice-struggles-and-movements-india-sthash.4BAC4hti.dpuf>

### **GOOD PRACTICES (FROM ALL OVER THE WORLD):**

**Automatic partition upon the death of a landholder** to remove a loophole, often used to delay proceedings –Punjab, Pakistan. (ILC, Pakistan Study).

**Sarvangi Vikas Karyakram” (Holistic Development Programme)** encourages women's collectives (in particular collectives of single women, elderly, physically challenged) to lease land for vegetable cultivation- Dahod, India. (ILC, India Study a) ).

**Enforcement of Women Ownership Rights Bill 2012:** community-based organisations lobbied parliamentarians and the judiciary, leading to the formulation and adoption of a law on women's land ownership–Khyber Pakhtunkhwa, Pakistan. (ILC, Pakistan Study).

**Government-led Citizen's Feedback Monitoring Program:** Introduced by Punjab government in several of its districts, through which government proactively reaches out to users of public services to gather quantifiable feedback, particularly on inefficiency and corruption. In its pilot stage the model has helped reduce corruption significantly (<http://cfmp.punjab.gov.pk/>).

**Reclaim degraded lowland areas using participatory methods:** the project devolved ownership of the land from individual landowners to the community, and the community provided labour for the reclamation activities. After reclamation, the community redistributed the land, on an equal basis, to those who had provided labour. The majority of reclamation workers were women, and women made up 90% of the land beneficiaries – Gambia (WB, Gender Issues in Land Policy and Administration, Module 4).

**Tax exemption** to give families an incentive to share land with their wives, daughters, and sisters: between 2001 and 2009, women's land ownership in Nepal increased by 300%–Nepal (JALAL 2015).

**Swa Bhoomi (“My Land”) Centres** in 12 districts in Gujarat: these hubs provided rural women with greater awareness on their rights as landowners and provided access to productive resources that can support women farmers – Gujarat, India (UNDP 2015).

**Training female paralegals specialising in women's rights and inheritance law:** these women go from door to door raising awareness about women's rights, government schemes, and entitlements, counselling women and helping them to fill out of the necessary supporting documents – Guajarat, India (UNDP 2015).

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# CONCLUSION

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Land is power – immutable and unyielding. It provides succour and sustenance. For the vast majority of rural dwellers in South Asia and West Africa, without land it is impossible to grow food. Without land there is no collateral, and the opportunities that that brings. In many farming communities, land ownership determines involvement in decision-making over land use, water, agriculture, and forestry (JALAL 2015). Therefore the issue of land rights for women is not simply one of livelihoods, or of food security, or of access to credit: it is all of these and much more – it is about human rights.<sup>22</sup> And while the debate on human rights has

progressed in terms of women’s rights to education, work, and health, it has been slow to tackle land rights. As a 2008 report by the Sustainable Development Policy Institute (SDPI), points out, “it is easier to shift education, health and non-farm assets to women rather than give them land rights, because giving these will improve well-being and welfare, whereas giving land would mean giving power. The impact on social, economic and political power can be almost immediate” (Sustainable Development Policy Institute 2008).

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22 Inheritance laws restricting women’s equal access to resources abuse women’s right to health. Additionally, such laws violate countries’ obligations to uphold other rights, including:

- **Right to non-discrimination** on the grounds of sex or gender: Under human rights law, countries must accord to women equal rights in property ownership, acquisition, management, administration, enjoyment, and disposition.
- **Right to development:** Women are entitled to access to, control of, and use of productive resources.
- Forced eviction is a “gross violation of human rights”, in particular the right to housing.
- **Right to property:** Individuals have the right to own property alone as well as in association with others, and no one can be arbitrarily deprived of his or her property.

- Individuals also have the right to non-discrimination. Women and men, therefore, have equal rights to enjoy the right to property, and countries need to take steps to ensure that statutory and customary laws are gender-sensitive. The right to property also includes the right to property in marriage and the right to property in the case of separation, divorce, or annulment of marriage.
- **The right to inheritance:** The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, added in 2003, gives a widow the right to an equitable share in inheritance of her husband’s property. She also has the right to continue to live in the matrimonial home. If she remarries, she retains this right if she owns or has inherited the house. The protocol goes further to protect the inheritance rights of girl children by stating that women and men have the right to inherit in equitable shares. This provides equal inheritance rights for female and male children. See USAID, “Human Rights, Inequitable Inheritance”. <http://www.policyproject.com/matrix/Inheritance.cfm>

These studies show that women's rights, including the right to own and inherit land, are routinely denied. In Muslim societies it is commonly accepted that women's secondary status stems from Islamic law. And there is no doubt that some of the verses of the Quran, read in this day and age, are discriminatory. However, it is important to understand the spirit of Islamic law, rather than the letter, and that is actually quite progressive, especially seen in the context of the time in which Islam emerged. Islam recognises women as equal to men in many spheres and aspects, including inheritance, where they are considered competent heirs and can inherit property absolutely in their own right. It is patriarchal practices and self-interest that override the reformist ethos of Islam.

This is illustrated by the studies from West Africa, where the situation of women regarding inheritance was found to be similar in both Muslim-majority Mali and Senegal and Christian-majority Togo. It shows that while Christian prescriptions do not seem to affect rural women's capacity to access, transfer, or use land; while animism, more widespread in Togo than in Mali or Senegal, has next to no impact on women's access to land; and while Islam lays down distribution rules based on the Quran, it is traditional and customary practices that determine women's access to land, and these often depend on the will of traditional councils (ILC, West Africa Study).

It is important to promote the reformist, rather than the purist, tradition of Islam, otherwise we will see egalitarian practices – such as women's decision-making roles or their centrality in the public sphere in Muslim matrilineal societies in Indonesia – being eroded by patriarchal interpretations of Islam. Some organisations and movements have begun to reclaim this enlightened, egalitarian, even feminist spirit of Islam, and they provide important lessons for others to follow. One such global movement is Musawah ([www.musawah.org](http://www.musawah.org)), whose name means “equality” in Arabic, which propagates a

holistic approach combining Islamic principles and jurisprudence, international human rights standards, national laws, and constitutional guarantees of equality and non-discrimination with the lived realities of women and men.

Evidence from all the studies confirms that women's inheritance rights are affected by a wider culture of restrictions on women. These restrictions often stem from socioeconomic imperatives, such as the need to consolidate land and reduce fragmentation, and the expectation that males should be economic providers for the family. These imperatives are further reinforced by discrimination in (or at least discriminatory interpretations of) Islamic texts, which are then institutionalised in law and organisational procedures. This leads to a perpetuation of gender stereotypes of women's and men's roles and behaviour in work and family life, which continue to deprive women of their rights to organise and to access skills and education, credit, and mobility, without which they cannot break out of this vicious cycle. Any reform of inheritance rights must, therefore, take place in this wider agenda of transformation (ILC, Bangladesh Study). There are some who think that even debating issues such as discriminatory inheritance laws is premature. They say that any attempts at changing laws should be preceded by a transformation of national mentalities, which will happen over years, if not generations (GHRIBI 2014). There has to be, therefore, simultaneous and continuous advocacy to change attitudes towards women. The studies point to a number of actors who should lead such advocacy efforts, including media, NGOs, and women's organisations. And while these studies throw light on the tremendous challenges and obstacles that women face in this struggle to be equal, they also provide some excellent examples of how women – and not only women, but men too – have worked together in reforming laws and enforcing them, transforming traditions, and building women's agency to assert equal rights to own, inherit, use, and dispose of land as they wish.



# CASE STUDIES

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# BANGLADESH

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## ASSESSING INHERITANCE LAWS AND THEIR IMPACT ON RURAL WOMEN IN BANGLADESH

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*Abul Barkat, Manzuma Ahsan, Asmar Osman, Jahirul Alam,  
Hasna Hena Shawaly (in collaboration with ALRD)*

### BACKGROUND

The issue of inheritance is as old as human civilisation itself. Its rules differ from society to society and have undergone many changes over time. Inheritance rights are also human rights; however, such rights are often violated by an uneven distribution of inherited wealth, which in turn leads to economic inequality. In particular, in many societies inequality in inheritance is based on gender, with women invariably losing out. The most common type of intergenerational inheritance is the transfer of

property, often immovable, to the immediate heirs following a person's death, and the most visible kind of transfer is that of land. However, women are denied inheritance rights over land in many ways. The denial of their rights, and in particular the right to inherit land, marginalises women and contributes to their continued poverty and social subjugation. This study attempts to establish an accurate picture of inheritance rights to land for rural women across Bangladesh.

### METHODOLOGY

The study was perceived as an exploratory piece of research, designed to analyse the status of land inheritance for rural women. Relevant literature, documents, articles, laws, and policies were reviewed critically in line with its objectives. A survey was also conducted, using both quantitative and qualitative methods, and covering five broad groups of people living in rural areas of Bangladesh: (1) Muslim, (2) Hindu, (3) Chakma, (4) Garo, and (5) Santhal. The study attempts to quantify the gap between the amount of land that women should rightfully inherit and the amount they actually receive. For

Muslim women this was done in a quantitative way; for non-Muslim women, the research was mostly qualitative in nature. Respondents at household level were women who have experienced the issue of land inheritance at least once in their lives, from a deceased father, mother, or husband.

## RESEARCH FINDINGS

Inheritance law in Bangladesh is a complex and thorny issue since the country has no uniform legislation in this area. Instead, inheritance laws are formulated mainly on the basis of religious doctrine, with Muslims, Hindus, Christians, Buddhists, and various ethnic communities having different systems of personal law concerning inheritance rights. Although the country's constitution forbids discrimination on the basis of gender, women in Bangladesh rarely enjoy equal property rights with men and rarely hold title to land. Social and customary practices effectively exclude them from direct access to land, and generally they are unlikely to claim their share of family property unless it is offered to them voluntarily.

At a conservative estimate, no more than 4% (and perhaps as little as 2%) of land in rural Bangladesh is owned by women. The majority of women, irrespective of socio-economic class, religion, or ethnic group, are deprived of their legal rights to land, including in the area of inheritance. This is particularly the case for Hindu women, as well as Chakma and Santhal women; Muslim women fare slightly better. Garo society is matrilineal and women inherit and own land; however, increasing interaction with Bangladesh's mainstream patriarchal culture means that Garo women are beginning to lose their exclusive rights to land.

Few women, either Muslim or non-Muslim, have any idea about the content of inheritance laws, but almost all perceive that, by and large, they are deprived of their rights to inherit land. Many have called for initiatives to bring about change in this particular area of legal practice.

Most men, on the other hand, are aware that Bangladesh has inheritance laws for both men and women, and that these laws are derived mainly from religious principles. They also know that the majority of women receive less in terms of inheritance, especially where land is concerned. However, they believe that women are provided for with other benefits (property, money, gifts, etc.) from other sources that can help make their lives comfortable. Most males oppose any changes to existing laws and customs, though this scenario is slightly different among Garo men, who cannot inherit land under their society's matrilineal system.

Muslim women in rural Bangladesh: According to religious principles, Muslim women have legal inheritance rights, even though these are limited. However, in reality they are deprived of their rights as a result of the overwhelmingly patriarchal mindset of Bangladeshi society. Established values and norms dictate that a "good sister" should surrender her share of paternal property in favour of her brothers, and this discourages women from asserting their rights. Among the rural households surveyed for this study, the average land holding was 65.1 decimals (1 decimal = 435.6 sq ft, or about one-hundredth of an acre), of which only 10.3 decimals was owned by women, or 15.8% at the household level. Looking at women's effective ownership of land, the scenario is even more depressing. At a conservative estimate, no more than 5% (and as little as 3%) of land in rural Bangladesh is effectively owned by Muslim women.

The Muslim women surveyed had received only 43.2% of the total land they were lawfully entitled to inherit. Even then they were discriminated against: in the majority of cases, women inherited land in areas where the market price was significantly lower than for land received by their brothers. This means that the amount of land actually received may not always be indicative of a woman's full legal rights. Based on the survey data, it is estimated that in practice women generally receive no more than 25% (ranging between 20% and 25%) of the land to which they are legally entitled. Again the

picture is worse when considering the real rights of women in terms of effective ownership. If a financial value could be calculated for the pain and suffering endured by women in the process of land inheritance and deducted from the value of the inherited land, the actual amount of inheritance received would be even further from what they are entitled to.

Women's decisions about utilising inherited land – i.e. selling it, using money generated from it – are mostly taken jointly with their husbands. However, in group discussions it was clear that joint decisions were largely dominated by husbands, meaning that women do not enjoy any real ownership of the land.

In rural Bangladesh, when a husband dies, a widow is frequently rejected by her in-laws' household and thus faces even greater problems in claiming any land inherited from her deceased spouse. In a majority of cases, women become vulnerable after their husband's death as they are not economically independent and have no prospect of fighting to claim their lawful rights.

Rural women face problems both before and after any land inheritance is received. They face potential ill-treatment from their husband or other family members if they do not bring their share of landed property from their father's house on marriage, while their brothers and their wives may become hostile if a woman receives a share of land inherited from her father or mother. As well as receiving a smaller amount of land (or sometimes a sum of money paid instead of land), women face problems in the form of stress, expenditure of time and money in order to resolve disputes, and sometimes even physical violence.

The social structure of Bangladesh and its prevailing norms and values mean that the dynamics of land inheritance have a complex impact on the lives of rural women. Even rightful land ownership may not always have a positive outcome: for example, inherited land can empower women, but tensions may also arise between husbands and wives over the land's control. Claiming their rightful share of inherited land can also disrupt relationships between women and their brothers.

Rural Muslim women clearly face serious dilemmas in balancing relationships between their parents' households and their own. If they succeed in obtaining their rightful share of property when their parents die, they risk damaging family ties with their brothers. However, losing their inheritance rights risks damaging their relationships with their husbands and represents a big setback for their children. Faced with the country's patriarchal social structure, most rural women lack any effective strategy to claim proper access and control over inherited land. Rationally, and balancing both relationships, many settle for what they can get: generally, if a woman gains even a smaller amount of inherited land (or money in lieu), she tends to consider herself fortunate.

### **Hindu women**

Hindu law was extensively modified in 1937 by the Hindu Women's Right to Property Act, but no reforms benefiting women have been enacted since then. In general, Hindu law has no provisions for women to inherit, except in a few exceptional circumstances. Women's position both in the family and in society is therefore peripheral and vulnerable.

Hindus in Bangladesh follow the body of law known as Dayabhaga (also known as the Bengal school). This implies the right of male heirs to offer oblations to purify the body of the deceased and give rest to the spirit, and is the guiding principle for succession, with heirs prioritised according to this right. Female heirs are not given priority and are ranked after any son of the deceased, then son's sons, and grandson's sons.

When a female heir inherits even after all these discriminatory rules, she faces certain restrictions under the concept of stridhana, or the right of a woman to dispose of her own property to her own heirs. She can sell her property only out of legal necessity or for religious or charitable purposes.

Hindu law clearly discriminates against women, with daughters excluded in favour of sons and women having only limited rights to inherit property. They face other disadvantages too. For example, the field survey confirmed that in Hindu families land is generally owned by the head of the household, and in most cases the head of the household is a man. Men therefore not only inherit all family assets in terms of land and property, but own, administer, and enjoy all the benefits from them.

In addition, the responses of Hindu women to the survey revealed that, although the Dayabhaga school governs cases of inheritance, people habitually ignore its principles and try to avoid giving any possessions to women.

The women said that, by tradition, they were given no part of their fathers' property or land, and received nothing of their husband's property or lands if he died. Instead, they were often driven away or forced to live on the mercy of others. They inherit property or land only if there is no male issue in the family, or directly from their mothers.

All the responses indicated that Hindu women are largely excluded in terms of inheritance. Patriarchal attitudes deprive them of any entitlement to their fathers' or husbands' properties, and they face serious hardship as a result.

All of the Hindu women interviewed admitted that they knew nothing about Hindu inheritance laws, and many had not even heard of the Dayabhaga school, which governs the inheritance system. Hindu women have, however, urged the government to take action to enact laws in their favour, by modifying inheritance laws and making provisions for women to inherit property.

## **Chakma women**

The Chakmas are the largest of more than 45 different ethnic communities living in Bangladesh. They are found throughout the Chittagong Hill Tracts (CHT), the hilly southeastern part of the country bordering India and Myanmar.

Traditionally, the Chakma community had no concept of private ownership or of inheritance, and felt no need for either. However, this has gradually changed, and the custom of property inheritance has spread throughout the Chakma community. Property is distributed in accordance with social tradition, and no deeds are required. Preference is given to heirs (often the eldest child) who can take responsibility for looking after their parents in old age. There is a hierarchy of preferences for heirs to a deceased person's property, often bound up with certain conditions.

According to the Chakmas' customary inheritance system, only sons can inherit the family property. If a family does not have any male children, then daughters usually inherit by default. A Chakma widow does not have any right of ownership over her late husband's property.

According to section 7 of CHT Regulation No. 1 of 1900 (the CHT manual), the District Commissioner is empowered to issue certificates of succession to the heirs of a deceased person. This has some implications for the Chakma people's inheritance of land and possessions. The field survey suggested that in Chakma families all land and property are owned by the head of the household, who is usually a man. In general, female family members are not entitled to own any assets or land, unless the family has no male issue.

However, this situation is beginning to change in some respects. Better-off families who have surplus land after dividing their property amongst sons have started to give entitlements to their daughters, who receive a portion of the property/lands through written consent from their parents. Chakma women have called for immediate changes to customary rules, with provisions for the inclusion of women in the right to inherit.

## **Garó women**

The Garó community is large and extends across the plains of Bangladesh. The Garó social system is matrilineal, centred on the mother, and is known as Mahari. However, male authority is increasing in influence, along with male participation in a number of important activities.

Garó inheritance rights include their own identification and distribution system, based on customary laws. Family properties are passed down in the female line, and individual inheritance depends largely on the marriage system. In choosing marriage partners, the Garós still follow old customs and traditions that dictate who may marry whom.

Under the matrilineal system, land and other assets are nominally owned by women, who also utilise and manage the properties. In reality, however, it is men who in most cases control, administer, and operate the land. The Garós are comfortable with this system of land and property distribution. Since it is essentially matrilineal in nature, women do not face any problems in inheriting land, although men sometimes do.

Garó women, including key informants for this study, have suggested that Garó customary laws on inheritance should be enshrined in a Bill in the House of the Nation (Parliament), giving the community legal scope to exercise a standardised system of authority in the settlement of inherited property. However, one objection is that some Garó men feel a sense of deprivation when it comes to land ownership and claim that they should have greater entitlements.

## **Santhal women**

The Santhals, in common with other indigenous communities, have their own customary rules and beliefs. Santhal society is patriarchal in nature, and their customary law allows for all the sons of a deceased father to receive an equal share in the inheritance of property, both movable and immovable. Daughters, however, are blatantly discriminated against and deprived of the right to

claim any portion of parental property. In addition, a widow can make no claim on her husband's property, or even claim any maintenance from the family.

The field research suggests that in Santhal families land is mostly owned by men. Female members of the household are not entitled to own or inherit land or any other kind of asset. Deprived of these basic human rights, many Santhal women are left facing extreme poverty. These same traditional practices are found even in comparatively well-to-do families, where women cannot inherit and have very little decision-making power.

Santhal women interviewed have asserted that, lawfully and ethically, they should be able to inherit land from their parents. They have suggested modifications to customary laws, along with provisions to incorporate their legal right to own property, and more specifically, to inherit land.

With the spread of education, Santhal society appears to be becoming more liberal, and there are glimmers of hope that ancient laws may be starting to change. Some Santhals are beginning to pass on part of their property to their daughters in the form of a gift, to protect them against disinheritance and deprivation.

## **CONCLUSION**

The issue of inheritance rights to land and property for women in Bangladesh is extremely complex and politically very sensitive. Partly, the issue's sensitivity is due to its wider implications in signalling the need for broader social, political, and educational changes in every sphere of life in order to redress the historical injustices faced by women.

Not a single government since the country's foundation in 1971 has properly acknowledged this burning issue. Asserting women's rights to land calls for united efforts by multiple stakeholders, including state machinery and government, political parties, financial institutions, non-government and social organisations, individuals, families, and civil society in general. Bangladesh's constitution emphasises

the participation of women in every sphere of national life, but government efforts to achieve the emancipation of women need to be stepped up, so that a balanced society – where women are freely entitled to equal shares in the inheritance of property – might emerge in the future.

### **MUSLIM WOMAN: PAINFUL PROCESS TO CLAIM HER RIGHTFUL INHERITANCE**

Jamila Akhter, a 49-year-old woman, inherited 9.5 decimals of land (1 decimal = 435.6 sq ft, or about one-hundredth of an acre) after her father's death – but the process was by no means easy. Her father left 58 decimals of land altogether, including paddyfields and a house. Before he died he was very ill, but his sons and their wives failed to look after him or provide him with medicine and food. Instead, his daughters-in-law beat him and even tortured him with burning coals. Seeing this, Jamila brought her father to her husband's house, where she and her family looked after him. A few years later, when her father started to recover, he willed 15 decimals of land to Jamila.

When her father eventually died, Jamila and her husband paid all the expenses for the funeral rites (Dafon Kafon). According to Muslim inheritance law, she was entitled to receive a further 9.5 decimals of land, but her brothers refused to hand over this property. They claimed that Jamila had already received her share before their father's death and that she would get no more.

However, when she learned that she was entitled to more land under the inheritance law, she went to her brothers

to claim her rightful property. They reacted by beating her and her husband badly, inflicting serious head injuries. After this incident, she took her mother to live in her husband's house. She sought justice from the Union Parishad (local council), but without success. However, she then filed a case against her brothers in court and finally received her rightful property.

Now she has possession of her land, on which she cultivates crops. She earns money from the property, and she and her husband decide jointly how to use this income; most of it is spent on healthcare. She did not know the laws regarding the inheritance of property before, but now she does. She thinks that if the government were to ensure the transfer of inherited property immediately after a person's death, then clashes of this kind between brothers and sisters would not happen.

### **MUSLIM WOMAN: PARENTS PROVIDED FOR THEIR DAUGHTERS**

Jamila Begum is 50 years old and is from Nilphamari. She has one brother and two sisters. Her father left 384 decimals of land, and gave 64 decimals to each of his three daughters before his death. She did not face any difficulties in taking possession of this property, and can use it as she wishes. At present, she uses the land to cultivate crops, mostly rice. She can make any decisions regarding the income she makes from this land independently.

Her mother died in 1989 and left 112 decimals of land, of which Jamila

inherited 16 decimals. She did not face any trouble in getting hold of this property either, as her brother gave her the exact amount after her mother's death. She is also using this land for cultivation, and with what she earns from it she can easily afford to cover her family expenses. Again, she can take decisions independently about using the income from her property.

With the combined earnings from all her land, circumstances have improved for Jamila's family, and they are now relatively well-off and able to live comfortably. However, her story is very much the exception in the context of rural Bangladesh. Despite her own experiences, she believes that the laws regarding inheritance should be changed to ensure that women receive their fair and rightful share of family property.

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### **HINDU WOMAN: INHERITANCE DENIED FOR RELIGIOUS REASONS**

Lata Rani Mondol from Gopalganj and her elder sister did not receive any land from their father. He was an educated man, progressive in outlook and involved in various social activities, but still he gave his all land to his two sons. Lata and her sister and their families are reasonably well off, but even so they regret the loss of the land they might have inherited. She once asked her father why he had not given them any land, even when they got married. He responded, "There is no provision for giving land to daughters in our religion. As a man respected by society, how could I break the rules of the religion?"

Lata Rani had to endure some harsh words from her in-laws in her early married life, as she did not bring any landed property to the family. She said, "The wives of my husband's brothers were endowed with inherited land, and they received favourable attention from my father-in-law. They also made unkind comments about me. Though my husband never pressed me on this issue, I know that he would have been pleased if I could have brought some land."

As well as her father, Lata Rani feels that she has been badly treated by her two brothers, who have never shown any intention of sharing the land with their sisters. Her eldest son lived in the house of her deceased father with his uncles, as it was near the high school he attended. When he planted a guava tree, Lata's younger brother remarked, "The tree is yours, not the land." Lata found this comment hurtful.

Lata Rani thinks that access to any land or property inherited from parents empowers a woman in her husband's house, and that parents should not use religious restrictions as an excuse for not passing on property to their daughters.

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### **CHAKMA WOMAN: CUSTOM DOES NOT ENSURE INHERITANCE RIGHTS**

Mala Chakma is the only daughter in her family, but has three brothers. When she got married, she joined a middle-class family and moved to Rangamati. At first, she did not receive any property from her parents or other relatives, but she was adored by her parents even after her marriage. Mala's father decided of his own free will to give his only daughter some property, and gave her 100 decimals of land.

At first, all the members of her family seemed happy to accept that she should be entitled to this share of land. However, her younger brother soon started to make trouble, citing rules and regulations under Chakma custom to prevent her from acquiring her share of the property. She thinks that some other family members also supported her brother. However, Mala's father and her two other brothers took steps to dissuade him. When their father threatened him with losing his own share of inherited property, he stopped creating problems for his sister. Mala and her husband have now planted trees on the land, and are hoping that it will give them financial security in the future.

According to Mala, women in her community do not usually inherit any share of family property, and Chakma custom does not ensure women's inheritance rights. She believes that existing rules and regulations should be changed so that women are entitled to inherit property.

### **GARO WOMAN: MAHARI CUSTOM MAKES JHUMA OWNER OF INHERITED LAND**

Jhuma inherited some land from her deceased mother under the Garo people's matrilineal Mahari system. Although the amount of land is so small that it can only be used for homestead purposes, she still faced problems from her brother in taking possession of it.

In the Garo community, daughters usually get ownership of their mothers' properties. However, Jhuma's brother did not want to give her any portion of land, and pressurised her to give up her share. When Jhuma refused to do this, her brother grabbed the land illegally. She could not handle this hostility from her own brother on her own, and asked her neighbours and the local community for help. The community follows the same Mahari custom, and so local people supported her and not her brother. This meant he could not continue to exercise any power and eventually, with the support of influential members of the community, Jhuma got justice and succeeded in claiming her inherited land.

Jhuma has leased out the land for cultivation. She emphasised that the Mahari system is an appropriate system for land distribution and knows that, without it, her brother would be likely to seize her land.



Photo: ©ILC/Jason Taylor

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# INDIA

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## **A) STUDY - AGAINST ALL ODDS: ASSESSING INHERITANCE LAWS AND THEIR IMPACT ON RURAL WOMEN IN INDIA**

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### **INTRODUCTION**

Access to land is inversely proportional to the various vulnerabilities that women experience. Processes of dispossession, where land, water, and other natural resources are increasingly converted to alienable commodities, freed for capital accumulation, adversely affect women's lives and impinge upon their social status as inheritors of land.

This, along with denials of their rights to land in the private domain in agrarian and urbanising societies, serves to disinherit women in all spheres. In India, women make up just 11.7% of operational holders of land, according to the Agricultural Census of 2011. In many instances, land is inherited by women as widows, but they seldom actually gain control over it, and only a few women inherit land from their natal families. As distress situations force men to migrate for work or to mortgage assets, women are compelled to eke out subsistence livelihoods from marginal farmlands or the commons and sometimes to supplement this with waged work. Their social vulnerability constrains their claim to property and renders them increasingly dependent on the same family structures.

The study is based on the following aspects:

- » Land, defined by means of the livelihoods it supports, not the capital or rent it generates;
- » Land as the composite of a number of resources (land, forest, water, soil, etc.) and relationships intertwined in the uses of these resources and in their conservation;

- » Land as a denominator for the construction of social, political, and economic relationships, dignity, identity, citizenship, social and intergenerational security, status, and buffer against hunger and deprivation;
- » Gendered and cultural meaning of land – status, value, bodily integrity, security, autonomy;
- » Resistance to collective strategies in land programmes in relation with the political potential of marginalised communities.

### **Study of land inheritance rights in India – objectives**

- » To explore the shifts in women's rights to land and inheritance in the current pluralistic terrain of land rights – ethnicity and religious pluralism, customary and constitutional pluralism, different categories and relationships with land.
- » To identify barriers and institutional impediments to women's rights to land and to explore strategies to address these, especially from the perspective of poor women from marginalised communities.
- » To explore and examine strategies and spaces for women across different regions, ecological terrains, and communities, especially those subject to social vulnerabilities, to negotiate better access to and control of land and improved livelihoods, in the context of macro policies on land that deny women their rights.

At the same time, poor women across communities have maintained an intrinsic relationship with the land, despite changing and increasingly adverse circumstances.

A livelihoods view of land rights: This study of women's land inheritance rights was undertaken in order to highlight the intersectionalities that impinge on inheritance rights and the increased complexity and difficulties faced by poor rural women in the context of current trends of commodification of land markets, as communities are dispossessed by encroachments on their rights by the state, the market, and class influenced interests. The authors

have taken a livelihoods approach to the issue of land rights and inheritance, and call for a re-examination of the concept of inheritance in order to sustain the synergistic relationship of communities with nature, as a means of sustaining life, livelihoods, and human societies, as defined by the needs of both humans and the environment.

## **THE STUDY**

This study explores the experience of tribal women, Muslim women, and single women located in three geographic areas of India with varied socio-economic and cultural contexts. It draws on women's narratives and the experiences of revenue officials, leaders of land rights movements, and networks of CSOs and NGOs, as well as relevant national- and regional-level literature, to understand land and inheritance rights, women's claims to different types of land, and the impact of social, economic, and legal contexts on the lives and livelihoods of rural, marginalised women. Based on research conducted in Dahod and Panchmahal (Gujarat) with tribal women, with Muslim women in Azamgarh (Uttar Pradesh), and with single women in Sangli (Maharashtra), the study provides insights and analysis of the terrain of the land rights movement, customary and constitutional jurisprudence, state engagement (or rather disengagement) in provisioning and supporting women's land rights, and women's struggles (both individually and collectively) for property rights – over marital, natal, and/or state lands.

## **FINDINGS**

The research analysis unfolds women's experiences around land: dispossession, claim-making and resistance, structural violence, and struggles for rights. Socio-economic dynamics interact with culture, religion, and law to challenge and construct how land is defined to reinforce the denial of rights for marginalised women, even as the family, state, and market collude to appropriate land rights and influence women's access to, and control over, private, common, forest, and state lands across the study areas.

## Dispossession

The study reveals a vicious cycle of dispossession of land rights, even as women strive to contest this situation and make land claims and assert their rights consistently. They face various barriers, including threats from within the household and women's own construction of mediating security and honour. Land and its gendered meanings emerge differently for women's status and dignity, in how they negotiate land rights and social positioning as defined by their marital and occupational status and children's and families' needs, as well as land value and ownership. Women's dispossession from land is thus pegged along these various axes.

## Land rights, status, and misogyny of male privilege

For Muslim women, the right to inherit land is located primarily in the natal home and invokes security and entitlement. Although women's livelihoods are no longer directly derived from land, land still represents security of residence and an asset that provides them with a degree of autonomy. The circumstances of Muslim women in Azamgarh, Uttar Pradesh are largely circumscribed by the increasing marginalisation of their communities from land and livelihoods in a context of increasing land values and alienation due to incursions and land grabs by powerful sections of society. Normative structures compel Muslim women to "accept" a lack of rights to resources, while they themselves are silenced by their social and structural vulnerability. Women accept the moral and religious privilege of men to own land, and justify this by virtue of men being "providers". They lack awareness of their rights to land and the procedures by which they can claim them, and this is enforced by their lack of identity within the natal home. Households withhold information on daughters' rights, so they are unaware of their entitlement. As a result women perceive a sense of lack of rights when they have to demand from the birth family to "take them back" and provide shelter at a time of extreme vulnerability, despite the

provisions of the Shariat law. Despite the likelihood of receiving support from parents, women are reluctant to make claims from their birth family, since this is often their only secure space and they are afraid of losing this support. Within the marital home, too, women struggle to assert themselves and can be the victims of threats or violence in the event of divorce, desertion, or widowhood. Even where title has been accorded to their children, or they are resident, women's situation remains tenuous due to the lack of formal processes, rendering them vulnerable to circumstances and dependent on the benevolence of family members.

Some women do question the patriarchal control of assets in circumstances of domestic crisis, or if they are single, and this points to a greater potential for "agency". A number of women have laid claim to a small portion of land for residence in the natal home, when circumstances in the marital home have become too adverse or violent or they have been thrown out. Most of these claims are made to provide shelter for themselves and their children. Support from birth families enables women to stake claims in marital homes, but only to the limited extent to which they can pursue these cases financially and bear the time burden for doing so themselves. Women who have education and assets have pursued their claims to a greater extent since their livelihoods are secure. In the absence of secure livelihoods and means to support their children, women struggle in extremely vulnerable situations, but have challenged family and community structures to assert their claims. Hence, autonomy of income and family support allow women greater agency to assert claims, for themselves and for their families.

Single women in Sangli district, Maharashtra, view land inheritance as a way to buy respect for their daughters and to acquire dignity and social position for them in a marital family. For them, as for Muslim women in Azamgarh, allocating their own land to a son-in-law in order to gain a favourable attitude towards a daughter is viewed as a more desirable

course of action than giving the land to the daughter herself to ensure her autonomy. Single women are more inclined to pass on their land to nephews who provide care for them in their advancing years than to their own daughters. Patriarchal values continue to dominate narratives of land inheritance even after women's own struggles to claim that land. For all these women, their experience defines the extent to which they are able and willing to claim autonomy by making a claim to land. Recently, the monetary value of land – what returns it can provide in the market or as a symbol of status for a woman's family, or its potential to render her independent – has attained greater significance. Single women's claims to public land or forest wasteland may free their brothers from having to take account of their needs.

Processes of dispossession among tribal women in Gujarat are compounded by the state and by intrusions by non-tribal people on their traditional and statutory land rights – rights that provide a means of livelihood and are closely associated with the tribal way of life. For women, this means a greater burden and a struggle to retain what little control they have, even as men migrate in search of wages, as they experience alienation from traditional practices and from the land. Inheritance is the main source of land rights for women, but women are compelled, coerced, and threatened to sign away their claims to land. Otherwise they risk losing their privileges of the "protection" of their natal families or of their marital extended family, in the event of their spouse's death or any form of marital discord or crisis that may render them vulnerable.

Most women consider themselves less than qualified to claim land entitlement. A number of women in Maharashtra felt that desertion or widowhood disqualified them from making claims to marital property. Many were of the opinion that land and resource claims could not be made by second or third wives, revealing a dominant discourse of women's loss of entitlement in any situation of "abnormativity". Across all the locations, commonly

held patriarchal views asserted male privilege even in the ownership and inheritance of a woman's "own land", influencing decisions regarding its inheritance by nephews or sons-in-law. A single woman from Maharashtra said: "Daughters are doing well, and don't need it. If we give land to the daughter it might upset the son-in-law, if I give it to my son-in-law, he is more likely to treat my daughter well."

### **Feminisation of poverty, privatisation, and livelihood vulnerability**

With land as the primary source of livelihood, women deploy multiple strategies in the absence of sustainable or sufficient resources to address their economic needs and to overcome poverty, to survive and live with dignity. Most significantly, women seek to achieve food security from their access to, and possession of, agricultural land, owning or claiming agricultural land and producing for self-consumption in marginal households.

Muslim women in Azamgarh who are not farmers undertake home-based work to augment their incomes to provide for themselves and their households. Single women in Sangli either work on family land, subservient to their brothers or brothers-in-law, or work as agricultural labourers to meet survival needs for themselves and their children, as well as contributing to their brothers' households. Tribal women struggle to make or retain customary claims on public and forest lands to access non-timber forest products (NTFPs), resisting dispossession by the state.

***"... [W]ho has dug wells and made fields, who has made different partitions of land, who works the fields and in whose names are the fields, who has made these rules..."***

These verses of a song composed by tribal women in Dahod, Gujarat, bear testimony to their situation of being dispossessed, as they question the creation of private property and seek recognition of the livelihood struggles of tribal people in general, and

women in particular. For agrarian communities, especially for the marginalised amongst them, including minorities and single women, the process of displacement due to debt, encroachment, or denial by dominant groups has forced them to break their dependency on land resources to find other occupations. Of the 33 cases of land being claimed by 15 women in the study sample in Dahod, seven of the women were indebted or had had their land encroached upon by non-tribal people in the previous generation. Several were forced to mortgage their land in distress, while others were allotted public wasteland through a notification or in exchange for forest land that was occupied by non-tribal people (who now refuse them possession).

For the (poor) women of Azamgarh, changing land patterns reveal a changing power dynamic, with land being purchased by economically and politically dominant groups, depriving Muslim families of such land. Loss of land and external competition from large businesses displace the traditional occupations of artisan producers, who are compelled to sell land at low rates to survive, while many also migrate. Families still need the harvest for subsistence but find themselves increasingly alienated from the land. Revenues from work outside the region (due to male migration) do not flow back into the region. Instead, many women are left without a source of income, deserted, destitute, and dependent on minimal shelter and care.

The phenomenon of the feminisation of marginal agriculture, witnessed in all of the study regions, amplifies this situation. Agriculture involves an entrenched narrative of power relations where the man is constructed as the endowed, assertive, productive decision-maker. The rural woman is subjugated to the periphery, the denial of her land rights compounded by the increasing burden of agriculture and associated chores in the absence of men, leaving her in a subservient role of production and reproduction. Increasing land values and conversion of land to other uses aggravate the situation of alienation and the denial of women's rights to private and public lands.

While modernisers see a shift from land-based livelihoods towards the service sector as a progressive move in the accumulation of capital wealth, this deprives already marginalised groups of resources that give them their cultural moorings and their means of living.

### **Claim-making and resistance**

Literature on women's claims for land rights tends to focus on two issues. The first is the absence of the natal home as a site for claims, perpetrating the patriarchal, conventional view that women's claims are legitimate only in the marital home and then only on the death of a husband. The second is that women's claims are only possible when support is received from male relatives in the claiming process, or male relatives pursue claims on their behalf. The study noted a perceptible shift from these positions, as women not only claim in their natal and marital homes, but also pursue claims over state and forest and common lands. They can also become protagonists on behalf of the family, in the marital home as well as in the natal home, in claiming forest lands or lands captured by non-tribal men (as in the Dahod region among tribal women, and with Muslim women who seek to claim their rights in order to support dependent children and disabled or alcoholic husbands). This shift has been made possible by determined struggles by women's groups in two of the three study areas, though in Azamgarh women still face a dire situation in terms of survival and securing sustenance for their families.

Women have also negotiated rights within the maternal home, for themselves and for their children, initially less assertively as with young children their vulnerability is higher, but gradually more strategically. They have pursued cases even without the support of male relatives, moving as far as Mumbai from Sangli, for instance, and to the high court in Uttar Pradesh to seek allocation of land from the courts and the state.

Allocation of land to girls and women in the natal family may occur when they are single, widowed, or ostracised by the marital family, facing violence in the marital home, or have dependent, disabled children. Kaliben from Moti Mangoi village spoke of how she had taken the initiative in entering her name as a partner in her husband's share of marital land: "I am the farmer, my husband migrates to work. I have invested my labour in making this one bigha [less than 0.5 acres] of land profitable by sowing vegetables. Should I not be an equal owner of the land?" Land provides women with a means of social protection and legitimacy in the eyes of the community, especially within the contexts of disability, old age and widowhood (as mentioned by women in Dahod, Gujarat).

The study shows that in tribal areas claims made by women are largely aimed at securing title to land already in their possession or which they are cultivating. Title without possession has little value, and amplifies the process of dispossession. Some tribal women may exercise usufruct rights to land even when their household is not based in that village in order to assert a presence.

Maniben from Dahod in Gujarat has staked a claim to NTFPs: "We have 25 mahua trees in the forest. It is forest department land, but the trees are ours. Only the brave acquire forestland. Those who have the courage to face bears and leopards cultivate land. My father's father did it. Then my father looked after those trees. Now, these trees are shared between my father's brothers' families, and my sister and I." Claiming processes thus extend beyond land as a commodity to traditional common lands such as grazing land, forests, and open ground – where it is not just a matter of inheritance but of relationship with the resource itself. Therefore women are less willing to accept compensation.

## **Nature and impact of claim-making**

Although across the study sample it could be seen that women have exerted their agency and negotiated for their rights, the authors found that their claims were invariably for a lesser share, only enough to subsist on and provide for their needs, rather than claiming their right to an equal share.

Women are not motivated to claim their entitlement to land purely on a legal basis or as equal rights holders. They are less likely to stake a claim in circumstances where their family or community is under threat, and more likely to do so when there are means of securing livelihoods that can be shared; this indicates that rational decision-making influences their claim-making behaviour, rather than self-serving motivations.

Claims are also being made by women on behalf of their families, where fathers, brothers, or in-laws have been unable to restore their rights to land that has been usurped by others, or in cases where claims are denied by the state for traditional rights to forests, or for land awarded as compensation but not actually allocated. Once again, women assert their agency in such situations in a fight for justice and as representatives of the family interest. Some do this without staking an explicit claim for themselves, and hope that the family will acknowledge their role and give them a share; others have learned through the collective experience of their local organisations – Sangathans (in Sangli and Dahod) – and negotiate their own rights within wider efforts to redress denials of families' rights over land.

Motivations and circumstances for staking a claim can be varied: from a position of relative security to creating inter-generational security; from a position of abject insecurity (having no land and meagre income); and situations where the primary concern is to secure the rights of children. "I went to Mumbai several times to fight our case at the High Court. None of my brothers did anything to protect our family land," said Akkatai, a woman in Maharashtra, with much pride and a sense of assurance that



she has now earned her right to make a claim on that property. The fact of women's agency in the process of claiming land and property rights, both as inheritance and as a means of livelihood, is critical for the debate on women's land rights in the current neoliberal context.

### **Agency as process and resistance**

With dispossession comes the potential for dissent and agency, as women begin to explore means of survival and extend this to others subjugated in the same way, and even to rebel against the status quo. Local customary practices and community-based bodies recognise and restrict women's rights over land in different ways, which creates different scenarios for claiming land. As the study found, such complexities reinforce the institutional and structural challenges faced by those claiming inheritance rights.

### **Experiences of structural violence in struggle**

What kind of violence embedded within this issue do women face; what are the symbols of violence and humiliation forcing woman to comply, in terms of experience on a day-to-day basis? How do we negotiate, and in what spaces? These were the issues that the study sought to address.

Land relations are embedded in power and in hegemonic assertions, the sub-textual reality of which is violence, in both covert and overt forms. Women who assert their land rights face different forms of violence from members of their families and communities, ranging from emotional blackmail and physical harassment to desertion, social ostracism, victimisation and bullying, and actions that might even lead to their death.

The ambivalence of the state, when it does not intercede to prevent encroachment on state land allocated to women and allows the dominant to continue to claim that land, is a violent act of denial of the security and protection owed by the state.

Single women have campaigned to claim land from the state; other women have sought to claim forest or open grazing land allocated to them by their parents, but have struggled to access these resources. Their claims have been met with apathy and derision, threats, and even violence by the state. The patriarchal character of the state is evident in its complicity in acts of denial, violence, and appropriation, and in the weak pursuit of cases, pretending a lack of complaints or weakness of the system in making appropriate documentation available. Procedures have been long and drawn out, revenue departments have not been cooperative, legal systems are patriarchal in nature, and the administrative machinery remains ambivalent at best.

Power holders at every stage – men in the family, the community, the state, and the market – are not penalised for impeding women's rights. The state, by means of its apathy and withdrawal, becomes complicit in excluding women from gaining access to property. The state resists women's claims, through both administrative and legal processes and outright violence. Abuse, non-compliance, refusal to recognise claims – these are typical of women's experiences. The state may turn a blind eye to women's complaints, as in the case of Mangiben, whose appeal before the courts was suppressed to abet the violation of her rights by non-tribal encroachers. In other cases, the state becomes the abettor to violence and the violator itself – perpetuating the denial of rights of women like Nanda in regard to her claim to forest land, where she has built a house to live with her five children, away from the violence of her marital family. Teitben in Gujarat won her case after 12 long years, but she continues to struggle to get the judgement implemented. In instances where women are entitled to land, grassroots-level revenue officials (talati), witnesses and local power structures of customary authorities conspire together (with men in families and in communities) to privilege the male lineage. This is manifested in the deletion of women's names from records or failure to enter them as title-bearers.

When organised, women have sought to challenge the circumstances of their denial of rights, for themselves and on behalf of their families, confronting dominant parties and state actors to stake a claim to forest lands and to rights in family property in natal and marital homes. The vulnerability of their children becomes a compelling factor motivating women to struggle to claim rights, even in situations of violence. Their awareness and support from women's organisations empowers them to confront the structures of denial to negotiate and claim from the state and other parties individually and collectively, confident in their solidarity.

The status of women's livelihoods in the absence of clear ownership, restricted access, and tardy allocations, is often complicated by resistant and complicit or apathetic bureaucratic machinery. Every assertion of a claim to rights is an assertion of women's identity and their rights to to autonomy and equality.

## CONCLUSION

From denial, dispossession, and violence to agency and resistance, across the study areas the continuum of claim-making by women to land rights is complex. It is complicated by repeated incidents of possession and dispossession as communities and families support and oppose women's rights. Significant numbers of claims have been made in the marital and the natal home, due to increasing awareness of laws and rights gained through support organisations and their initiatives, along with higher levels of awareness, education, and income. Outcomes and gains from claim-making processes can be seen most importantly in the persistence of women's pursuit of the land itself, even though this strongly affects their lives in terms of expense and time.

The visibility of women persisting with claims in such circumstances also leads to a greater acceptance of women's rights as claimants. Dispossessed women claiming their rights, negotiating, and attempting to access land face constant tests of their resilience

and have to negotiate difficult terrain to claim their rightful share. Many women from marginalised groups – rural poor, Dalit and Adivasi, from ethnic and regional marginalities, from situations of extreme impoverishment – have struggled against the denial of their land rights, asserting their identity as claimants and rightful owners with autonomy over decisions and use. They have come together in movements to protest against the denial of access to resources on which their livelihoods depend and their traditional rights, to demand sovereignty over decisions on these rights and resources.

Resisting the pressure of patriarchies and the encroachment of development on their regions and resources, women have struggled to claim and own land, to secure themselves and sustain their livelihoods. This calls for a deeper engagement to challenge the means by which dispossession occurs and points to a need to expose the nexus of state and societal institutions that perpetuate such denial, causing significant loss and distress in women's lives. Their struggles also call for a renewed effort by movements, CSOs, NGOs, and most of all the state, to address the adverse impacts of increasing economic, political, and religious polarisations on women within marginalised communities to ensure their rights and dignity through access to inheritance, land, and other reproductive resources.

As Akkatai, a woman in Sangli, Maharashtra, said of the power of women's collectives and movements: "The law has given women the same rights as men, but we will not get them easily. We will have to come together, to pursue them with our collective strength. Women have to come together and support each other."

Evidence from this study suggests that access to land for livelihood needs must be viewed as non-negotiable, and women's rights and entitlements to assets and resources must be recognised equally with those of men.

## RECOMMENDATIONS AND ADVOCACY AGENDA

Land rights for women in India need to be understood in light of the larger processes of dispossession taking place, where increasingly land, water, and other natural resources are becoming alienable commodities that are being freed for capital accumulation. Some recommendations emerge from this study to form an agenda for action and advocacy with regards to policy.

**Land redistribution:** In order to address gender inequality and discrimination, the state must ensure that all redistribution of public land is henceforth done solely in women's names.

**Land use:** The state must make sure that women are adequately represented in consultations and must make engagement with women a mandatory requirement in determining land use changes to ensure that women's groups and the marginalised are accorded priority access in order to support livelihoods.

**Processing of inheritance claims:** Procedures related to the processing of inheritance claims must include provisions to allow women a "cooling off" period when they relinquish their claims to inheritance, in order to give them time to reconsider their decision; at the same time their ability to claim their rightful share of inheritance should be supported.

**Recording of revenue land rights:** The state must ensure that women's share of land rights according to the relevant customary laws are recorded, on a retrospective basis, in official revenue land records within a set period of time. Sufficient budgetary commitments must also be made for this exercise.

Community Resource Centres for Gender Justice, acting as decentralised facilitation centres for the realisation of women's entitlements from the state, as well as their rights to land, forests, and housing, will go a long way in supporting women to claim their rights, including inheritance, and can provide support in cases of violence.

### GUJARAT: TRIBAL WOMEN'S NARRATIVES – THE STORY OF NANDABEN NAYAK

When leaders of the Devgahd Mahila Sangathan first met Nandaben Nayak, a 45-year-old widow, she was sitting outside her kachcha home, feeding her six children wild berries foraged from the forest. Her grain bin was empty and the children had nothing else to eat. Her marital family had thrown her out of her home, and she had no access to the grain produced on their land.

Nandaben staked a claim to her marital property after the death of her husband. The family owns around four bigha of agricultural land, shared between her husband's six brothers. They rejected her claim, and threatened her with physical and emotional violence. She explained: "Immediately after my husband's death, there was a lot of violence from my brothers-in-law. They threatened to rape me, raised their hands and every day asked me to leave the house. They beat me up on many occasions. You see these bones – they were broken by my brothers-in-law." She was eventually chased away from the house and land, losing access to her only source of livelihood.

She built a house on the outskirts of the village on forest land that the family was cultivating. Both her marital family and the forest department resisted even this claim, harassing her in a number of ways. She said: "My brother-in-law demanded Rs. 10,000 from me to use the land as repayment of a loan my husband took from him. I thought, where should I get

this Rs. 10,000? But I told him – when did you give this Rs. 10,000 to my husband? I'll return it if you show me a receipt."

It was during this time that Nanda came into contact with the Sangathan, who were conducting an awareness campaign on the National Rural Employment Guarantee Act. She said: "When I met these women, I started going out with them, attended meetings and started meeting different people. It opened up my world. I felt I was not alone – there were people to support me. That's when I decided I would not leave my house and land that I have built with such difficulty."

With the support of the Sangathan, Nandaben began claiming her entitlements to food and work. The women in her village got together to get their job cards and demand waged work. Next came the struggle to access subsidised grain under the public distribution system. For over four years, the Sangathan supported her struggle for an Antyodaya ration card, along with 158 other single women.

When she claimed her marital land, she had to persuade members of the Panchayat to vouch for her and sign an affidavit identifying her children as direct heirs, as very few marriages are legally registered in the area. Nandaben's marital family resisted this process too. They accused her of having sexual relations with those in the Panch who were supporting her, and accused them of taking bribes from her. By then, however, Nandaben had engaged with government officials and managed to get her name registered on the land titles.

Tribal communities and forest dwellers

have long struggled for recognition of their land rights. For years these communities have cultivated tracts of land adjoining the village, while the forest department has regularly tried to evict them by issuing penalties and often by using force. The introduction of the Forest Rights Act (FRA) sought to reverse this historic injustice by recognising rights to lands cultivated by forest dwellers, but claims were not easily recognised on the ground.

In Nandaben's village, forest guards came in jeeps and beat up her neighbours in their houses. Nandaben asked the village headman to call an ambulance, but he was afraid. She recalled: "We took them to hospital. We tried to register a complaint at the police station, but nobody would take it. I suggested that we approach the Sangathan, but others from the village were hesitant. These injustices should not be tolerated, I said. We should complain. But they refused. They just bore their beatings silently and returned to the village."

She then took up a leadership role in resisting the state, with the help of the Sangathan. "For a couple of days I just kept quiet, and I thought I should probably leave it there. But then I thought, this is not right, this is injustice. Why should we be afraid of living on our own land? So I called up the Gender Justice Centre coordinator and sought the Sangathan's help to register the police complaint and stop the violence."

The Sanghathan mobilised a large number of women at the site and called for a public hearing. Slowly people emerged from their houses and spoke about the events of that day. The forest

guards came too, but left after seeing the crowd. Nandaben recounted: "Since no senior forest officials had turned up, we decided to stage a sit-in at the forest office at the block level. We went in trucks with women from nearby villages the very next day to protest and ensure that we were heard. Women came from everywhere. We demanded that they take action against the people who had beaten us up. It was only after a prolonged struggle that the senior forest officer came to the site and gave us assurances that an enquiry would be conducted and that there would be no evictions and no force used by the forest guards."

The violence stopped after that, and eventually a year later work began to register the forest lands under the FRA. The Gender Justice Centre used GIS mapping to help file the claims. Many have now been regularised, though others are still waiting to be processed. Nandaben insisted that her claim be filed separately from that of her brothers-in-law and, although it is a small plot, she now proudly has her name on the title as owner of the land she cultivates.

Nandaben's struggle continues. As a single woman, she has to work her land herself and also does all the unpaid household work. However, her journey in the last few years from despair and dependence to taking control of her life gives strength to her children and to the community at large.

## **AKKATAI POL**

Akkatai Pol, from Vangi village in Southern Maharashtra, India, is a longstanding member of the Stree Mukti Sangharsh Chalwal movement, which champions women's rights. Today, at the age of 44, she has achieved many things.

Akkatai left school after fourth grade and helped with household work, before getting married at 17. "I had known him since childhood. We liked each other, and sent each other letters before our marriage," she recalled. Initially her father was reluctant because her husband's family had no land, but in the end he agreed, as Akkatai was so determined.

However, the couple soon experienced problems. She said: "When he got frustrated, he began taking it out on me. We began to fight frequently." She moved to her parents' house, and soon afterwards her husband fell sick with typhoid and died. She had two children at the time.

The first six months after her husband's death were really difficult. She suffered from depression, but eventually recovered and worked hard to support herself and the children. She trained in tailoring, bought a sewing machine with a loan, and started sewing clothes at home. Her mother-in-law and brother-in-law treated her badly, so she went back to live with her birth family. However, her brother was a drunk and her sister was being abused by her husband, so she had to take responsibility for the rest of her family too.

She did not want to relinquish her right to her husband's share of his ancestral property. When her in-laws froze her out, however, she filed a case against them, back in 1993. She did not have good legal counsel and her marital family had connections and money, so the case dragged on. For the first few years, Akkatai never missed a single court date, but the lengthy process took its toll and, disappointed, she decided to abandon the effort.

During this time, she discovered Stree Mukti Sangharsh Chalwal. "While I was doing tailoring training in town, I saw that there was a melawa in a nearby school. A lot of women were gathered there, so I went to see what was happening. That's when I first met Indutai [the movement's leader]. I learned many new things as I got involved, and I made so many friends. I came to understand my rights, and how to survive on my own."

Being part of the movement has increased her confidence. "Although I don't have much education, I can go to any government office and get the necessary information. I can travel anywhere on my own." She talks proudly about what the women have achieved through their collective strength. "Through the movement we came to realise our rights. Previously, ration cards were only in the names of men. But we struggled to get them in women's names, and we did it."

The movement's most important demand was for housing plots for single women. Akkatai explained: "Single women do not get anything from their families. So we demanded that the state give us housing land. We were not begging for anything, we were just asking for our right.

We struggled so much for it. We organised protests and processions and went to Vita, Sangli, and even to Mumbai." The movement achieved its goal, and the women were granted housing plots. However, for Akkatai and 15 or so others from her village the struggle is not over, as political and administrative constraints mean they have yet to receive their land.

Meanwhile, she has managed to secure her birth family's ancestral land, after a cousin took control of her father's share, although this has been another long, hard struggle. "We went through so much for that land. My father was murdered for it. They even attacked my mother and sister, and my mother was wounded. All the responsibility fell on me. The case was filed in the High Court, and I had to go Mumbai for the hearings."

The case continued for many years, and repeated trips to Mumbai were time-consuming and expensive. Since the conflict was with members of the extended family living nearby, there was also constant stress. Akkatai was scared for her children's safety, but in the end she won the case and got the three acres of land back.

Since then the situation has improved. Both her brothers now live outside the village, so she manages the land with her mother and her sister's family. They have a well for irrigation, with enough water to last the whole season. They grow food crops, which they use mostly for their own consumption.

She now wants to secure her own share of the family land. "After my father's death, all our names were registered as successors. Now we are thinking about khatefod [dividing the property], so that we all get our shares. My brothers are good, and have agreed that I and my sister should both get our shares. We will soon begin the process."

Her only regret is that her son does not appreciate her efforts. "He often asks me what I have done for him. He says that everything I have done so far has been for others. So once I get hold of that land, I want to give it to him." She has also provided for her daughter. "She is married and her husband is a good man. They have their own house, and are doing well. I have taken out an insurance policy in her name, so she has been taken care of too."

Even today Akkatai is willing to fight for the land she claimed from the state. She has seen how, through a collective movement, women can assert their rights, and she talks proudly about the days when the movement was at its peak. "The law has given women the same rights as men, but we will not get them easily. We will have to come together and we will have to pursue them with our collective strength. If we want to get what we want, we will have to fight for it."

## **AZAMGARH, UTTAR PRADESH**

Shabiha is a 42-year-old, Muslim woman (with seven siblings) and has studied up to eighth grade. At present she lives in a village with her six children and her husband, who is a daily labourer. She has done different kinds of work, from stitching clothes at home to being part of Pulse Polio camp (an initiative of the Indian government), to earn extra money. Shabiha has ensured that all their children complete their studies. Two of her daughters have already graduated from school, one is in 12th grade, and the other children are also studying in regular school.

Shabiha's father inherited 12 bissa of agricultural land. When her father fell ill, her mother wanted to sell some of this land out of desperation, but discovered that he had already sold some of it. But before her father could give any details, he passed away and the family was left without any information about the transaction. To find out about the sale deed, the family must go to the tehsil (sub-district) office, but they are postponing this as the process will take time and money. Meanwhile, the land is not being used, and people have started to encroach on illegally.

When Shabiha got married, her father gave her 2 bissa (0.06 acre) of land, but she never took possession of it, and there was no written documentation. Now her husband is pressurising her to ask her mother and her only brother to give her this share. However, given the pressure that her birth family are under, Shabiha does not want to ask for her share, at least not at this stage.

At the time of her marriage, Shabiha's marital family had 2 bissa of land and a house. Her husband and brothers-in-law have divided the house, but the land is still undivided and the family are using it for subsistence farming. The formal partition of land requires a registration fee and payment at the revenue office for processing the papers, and thus families tend to avoid the formal division of property. She has also spoken with Pradhan about the allocation of a patta (land title), but according to him there is no land left in the village to be allocated. She refuses to accept this, and is sure that there is money involved as well.

She still remembers the communal riots that occurred in the village in 1989–1990, when the houses of rich Shia Muslim families (along with other kutchha houses) were burned by rioters. One of the buildings destroyed housed the land documents for most of the villagers who had leased out land to the rich and powerful. She recollects that at the time of the riots half of the land in the village was owned by the Shia community, but after the violence Shia families sold off their land and migrated to other districts. This distress selling of land, at half its market rate, presented an opportunity that was seized by families from the Hindu and Other Backward Castes (OBC) communities, some of whom came from outside the village.

Shabiha sees this incident as a scar on the village and also a turning point in socioeconomic relations between the Hindu and Muslim elements of this mixed community.

She says that, now, common areas such as graveyards and open-air laundries are being encroached upon by rich and powerful men, and any opposition to them is crushed by muscle power. She does not see any future in the land, except that it adds to the social power and economic well-being of the family and, if needed, can be sold to buy a better future for the next generation.



# STUDY B) - DESK REVIEW OF ISLAMIC PRACTICES AS LIVED REALITIES VIS-À-VIS THE SHARIAT ACT 1937 IN INDIA

*Chandni Tyagi and Naveen Kumar (Landesa)*

Muslims in India are governed in matters of inheritance, marriage, family, divorce, and so on by the Muslim Personal Law (Shariat) Application Act, 1937. The inheritance provisions under the Act are in accordance with Islamic principles as interpreted from the Quran. This study discusses the law and its practice amongst Muslims in India. It also examines factors determining local cultural practices and gaps and barriers at the level of institutions, including the state, civil society, and civil society organisations (CSOs), and makes recommendations on the way forward.

The study is primarily a desk review of secondary data available online, such as studies and reports, journal and newspaper articles, doctoral theses, and books. It also includes primary qualitative data in the form of key informant interviews (KIIs) with a gender activist, a state representative, and a member of an Islamic organisation. The desk review looks at literature from seven states – Gujarat, Haryana, Karnataka, Maharashtra, Rajasthan, Uttar Pradesh, and West Bengal – and represents Muslim populations across different socioeconomic strata, castes, and sects. The selection of communities and states for this study depended on the availability of secondary literature online and the existence of recent books in the public domain.

The 2001 Census of India estimates that Muslims account for 13.4% of the country's total population –138,188,240 people (the most recent 2011 Census was not yet available when the research was conducted- editor's note). According to the Pew Research Center,<sup>23</sup> India is home to the world's second largest Muslim population, after Indonesia. Although Muslims represent the largest religious minority within the country, they are also the demographic which suffers the most in terms of economic disenfranchisement and poverty (MASOOD 2014).

The Sachar Committee Report (2006) states that the Muslim community exhibits "deficits and deprivation in practically all dimensions of development" (p.27). It also states unequivocally that Muslims are one of the most socially disadvantaged and economically backward communities in India. Land ownership is one of the key indicators of economic status in rural communities, but Muslims do badly on this measure. According to the National Sample Survey Office (NSSO, 2004–2005), almost 94% of rural households in India own land, including homestead land, while 87% own more than one acre. The proportion of Muslim households owning land, at 83%, is much lower than other Socio-Religious Categories (SRC). The data also show that the average size of land holding owned by Muslims is smaller than all other SRCs (Sachar Committee Report, 2006).

Several studies exist that capture aspects such as legal issues, local practice, influence of other religions, diversity in practices, and the social challenges faced by Muslim women in exercising their rights and entitlements. However, there is no overview document that captures the essence of all these aspects; this study seeks to fill this gap, creating a broad overview that documents

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23 The Pew Research Center, a subsidiary of the Pew Charitable Trusts, is a non-partisan think tank based in Washington, DC. It conducts public opinion polling, demographic research, media content analysis, and other empirical social science research, without taking policy positions.

and maps the law and practice of inheritance provisions, giving development practitioners, government (including policy-makers), and activists a clearer understanding of the situation. The study sets out to help inform debate on this issue by bringing together a myriad of opinions, insights, and views from a gender perspective. It also aspires to help open doors to further empirical, evidence-based work and policy advocacy on the land rights of Muslim women in India. The desk review helps to identify gaps in the existing body of knowledge, so that appropriate interventions can be planned in the course of future work.

The research objectives were to establish:

- » The extent to which the Muslim Personal Law (Shariat) Application Act, 1937 (as amended) is practised socially amongst Muslim families in relation to inheritance;
- » Whether local cultural practices derived from Islam or other cultural practices regardless of religion dictate the inheritance rights of daughters and widows;
- » The key determinants of local cultural factors, as reported in the literature;
- » The state's response to the practice of law or cultural practices and to gaps therein.

For the purpose of obtaining secondary information, the following types of literature were used as a bibliography: studies (24), articles (10), newspaper cuttings (eight), books (five), reports (four), and doctoral theses (three). The rationale for conducting a desk review was to compile a short bibliography capturing an overview of the Shariat Act and other cultural practices, and to identify examples from different states in the literature to determine both common trends and diversity of practices.

Qualitative methods were employed to collect primary data through key informant interviews. The KIIs were conducted in order to understand the perspectives of experts in the field and to gain greater insights into the issues involved.

They helped the authors in compiling, understanding, analysing, and unpacking different layers from the vantage point of experts working in the areas of women's rights, government and administration, and religious organisations.

Feedback, comments, and suggestions from these experts and from an ILC regional researchers' workshop on the preliminary findings that took place in Dhaka on 13–15 August 2014 have been incorporated into this report. Researchers from India, Bangladesh, Indonesia, and Pakistan participated in the workshop and shared their preliminary findings, which helped to fine-tune the framework of the study. Formal and informal interactions with participants from Muslim-dominated countries provided useful insights on the challenges that Muslim women in India face in realising their rights and entitlements, owing to their minority status.

The main report is divided into seven chapters. Chapter 1 presents a brief introduction on the socioeconomic status of Muslims in India and situates land rights in this context. Chapter 2 explains the background to the study and research methodology, including methods, sites, objectives, operational definitions, and the study's scope and limitations. Chapter 3 details the legal context surrounding Muslim women's land rights, explaining provisions under Islamic inheritance laws and inheritance provisions under the Shariat Act, 1937. Chapter 4 discusses the mapping of inheritance practices amongst Muslims, as reported in secondary literature originating from seven states of India. Chapter 5 describes local practices related to inheritance and the factors that determine them. Chapter 6 highlights institutional gaps at state, civil society, legal, and community levels to help understand challenges to women's rights and entitlements. Chapter 7 sets out a broad set of recommendations for initiating advocacy on policy.

## GENERAL FINDINGS OF THE STUDY

The literacy rate was selected as an indicator of a community's social development. In developed states such as Gujarat, Maharashtra, and Karnataka, the Muslim population outperforms the general population in terms of literacy, but in the Hindi belt states of Haryana, Rajasthan, and Uttar Pradesh, Muslim communities are a long way behind. In states such as Gujarat, the giving of land to daughters is highly conditional; in some cases agricultural land is given to sons, while daughters receive only waste land. In other cases, economically weak married daughters are supported by giving them a share of land. Muslim widows receive shares in property according to the revenue laws governed by the Bombay Land Revenue Code and not through the Shariat Act, 1937. Haryana is one of the most developed states in India, but certain development indicators relating to Muslims in general and to the Meo community in particular not only tell a story of their exclusion from the mainstream of development, but also raise significant questions about the definition of development itself. In Haryana, only about 20% of Muslim women are literate. While the Muslim Personal Law provides a fixed share for daughters in their fathers' property, local customary law does not make any such provision. Male community members in Sikand interviewed for the study said: "Granting daughters inheritance rights in land would further contribute to the rapidly increasing fragmentation of already unviable, small landholdings – a problem that has become extremely acute with the rapidly growing population." (SIKAND 2014: 8)

The study also revealed that dowries have become an acute problem in Meo society. This is crucial: members of the community pointed out that after a woman has received a dowry when she gets married, she loses her property rights in her birth family. While several southern states have passed legislation

to apply the Muslim Personal Law to agricultural land (Tamil Nadu, Andhra Pradesh, and Kerala), in Karnataka the inheritance of agricultural land is still mostly governed by custom. This implies that Muslim women in most areas of Karnataka do not have the legal right to inherit agricultural land.

A study conducted by Brown et al. (2002) found that dowries are a common practice among both Hindus and Muslims in all regions and districts. The researchers did not encounter any Muslim women who had inherited agricultural land. They reported: "Some Muslims in Dakshina Kannada did state that daughters could inherit agricultural land, but would usually opt not to claim the land because they felt if they did they could not later turn to their brothers for assistance. Also, several Muslim women said inheriting field land would not be very useful to them, since they do not often leave their house or garden plot. Like Hindus, they also customarily moved to their husband's village, so it was not viewed as practical to inherit a portion of their birth family's land" (BROWN 2001 : 28-29).

According to the Rahman Committee Report, in urban areas of Maharashtra Muslims are poorer than even members of the Scheduled Castes and Scheduled Tribes. It found that around 49% of Muslims in the state were poor, compared with the national average of 38.4%. Only 10% of Muslims in Maharashtra own land. A study conducted by Nasreen Fazalbhoy in 2005 shows that, in practice, women are not getting either their share of inheritance or mehr (a mandatory payment of money or possessions to a bride on marriage by the groom or his family). The few women who actually get mehr do not receive their rightful share. The study shows that, despite high levels of literacy among the population in Rajasthan, a majority of respondents were ignorant about Sharia laws, including inheritance rights. It is also evident from other studies that the Shariat Act is rarely observed amongst this community, as "women received only a few thousand rupee in cash or credit from their

natal families, while other immovable and movable property was distributed among the sons" (BANU 1995: 37). This study added: "Objections are usually confined to words alone. It is on rare occasions that a daughter/sister dares to take the matter to civil court" (Ibid: 38).

A study conducted by Arora and Singhi (2009) shows that in a state like Uttar Pradesh it is mainly males who inherit agricultural land. The main reasons for women not inheriting land are the tradition of land inheritance by male members of the family, the small size of landholdings and the fact that women are not legally entitled to agricultural land. In the majority of cases, sons of the deceased who are of legal age inherit land, and not the widow. If the son is a minor, the widow acts as a caretaker of the land, but she has no right of entitlement to it. The study said that widows are generally deprived of the right to inherit agricultural land because of the prevalent fear that a widow who inherits land would sell that land or marry someone else. Widows inherit land only if there is no son. It is the Maulvi (a Muslim religious scholar) who decides whether the widow should be given an independent share in her husband's estate or not. In villages in both Lucknow and Bahraich, family elders and the Lekhpal (revenue inspector) are important decision-makers in determining land inheritance rights.

In Bengal, at least 65% of Muslims are engaged in low-income and precarious livelihoods; only 1.86% of the total Muslim population are graduates (BROWN & CHOWDHURY 2002). This study found that both Hindu and Muslim women were generally aware of the inheritance laws that apply to them. "They also realized that they have to sign away their inheritance rights in order to give them up. Daughters occasionally claim their share with the intention of selling it, often giving their brothers the first right of refusal to purchase the land" (BROWN & CHOWDHURY 2002 : 21), the study pointed out. It was also found that Muslim widows regularly inherit

land in accordance with the law. This is because generally widows, either Hindu or Muslim, do not cultivate the land themselves but depend on male relatives (usually a son) to oversee it. A son who cares for his mother will often inherit his mother's share of the family land when she dies (BROWN & CHOWDHURY 2002).

An overall mapping of inheritance practices amongst Muslims, based on these studies and other literature, suggests that when it comes to inheritance for women, customs and time-honoured traditions are given primacy over the Shariat Act of 1937. Though the Quran, Hadiths and Islamic law provide for inheritance rights for women, the literature shows that local inheritance practices are not congruent with either Islamic principles or law. Women do not assert their land rights as they do not want to spoil relations with their brothers and families. Parents and brothers are not willing to give shares of land to daughters or sisters because they assume that their shares have been replaced by dowries.

### **Nature of local inheritance practice**

As far as the land rights of daughters are concerned, there are striking similarities in inheritance practices throughout the states and communities examined. Inheritance by daughters of their shares in their fathers' property is highly conditional and contextual. The Quran fixes a daughter's share in her father's property as half that of a son, but as far as implementation is concerned even this is still a pipedream. The main reasons for daughters being unable to claim their inheritance rights are the practice of dowry amongst Muslims in India and daughters' fears of being ostracised by their birth families and brothers.

Parents do not want to give land to daughters because they believe that they now belong to their marital families and thus have no rights to their fathers' property. This reflects patriarchal thinking in Indian society, where daughters are considered as *paraya dhan* (belonging to someone

else). Secondly, parents assume that the dowry has substituted for their daughters' land rights. There is a deep-rooted belief in society that a son gets land while a daughter gets a dowry. Some daughters go to court to seek redress and demand their rightful share of their fathers' property, but there are many more who just keep quiet because they do not want property at the cost of relations with their parents and brothers. Mehr is also seen as a substitute for women's land rights and as a tool for providing economic security for women. However, the literature shows that, across the Muslim community, mehr is either not paid or the amount is too little to replace women's land rights or provide them with any economic security.

Some practices concerning widows' land rights are commonly found, while others diverge. For example, while Muslim women in other states inherit according to the Shariat Act (at least in theory), in Gujarat widows receive a share of property as set out in the Bombay Land Revenue Code. Common practices observed from the literature and from expert interviews include the fact that widows are likely to inherit more than daughters. It can be concluded, based on findings from the secondary literature and expert interviews, that the Shariat Act is rarely implemented on matters of inheritance among Muslim families. The land rights of Muslim women are highly contextualised, and depend on many other factors besides law.

Despite the differences in background context, there are still some commonalities when it comes to inheritance among all these sub-groups. When people convert to Islam, for instance, they often hold to their former practices. In the case of inheritance, newly converted Muslims often want to maintain their own practices whereby women, and particularly daughters, do not inherit any property (IYER 2013). Moreover, syncretic relations between Hindu and Muslim communities within the social structure have had an impact in the form of Hindu customs and traditions influencing those of

the Muslim community. Maulana Abdul Hameed Nomani (Secretary, Jamiat Ulema-I-Hind, one of the key informant) reported: "Muslim community is no different than other communities when it comes to subordinated status of women. There is a deep-rooted bias against daughter that she is an 'other' in the family and is treated likewise. There is a need to change this widespread perception and bias towards daughters in every Indian community including Muslims."

### **Gaps at the Institutional level**

There are a number of intermediary institutions, such as the state and its bodies, CSOs, legal institutions, communities, and so on, that bridge the gap between women and the law, so that women have access to secure land rights. These institutions facilitate the realisation of rights by creating a favourable environment in which women can become legally empowered. Any gap at the level of these institutions therefore has serious repercussions on women's rights and entitlements. This section discusses some of the barriers and gaps at the level of these institutions, in order to find a way forwards in bridging the gap between law and practice as far as the Shariat Act of 1937 is concerned.

The first main barrier is inadequacies in the laws, including the Shariat Act, especially in inheritance provisions, as agricultural land is exempt from equal inheritance by women. In Uttar Pradesh the devolution of agricultural land is governed by a customary law, the U.P. Zamindari Abolition and Land Reform Act, 1950 (ZALRA), and not by the Muslim Personal Law. This act is highly discriminatory against the majority of women who live in rural areas of the state. Firstly, under a 2008 amendment made to the Act, only unmarried daughters of property owners have the right to inherit property (The Hindu, 2009). Secondly, the ZALR Act is highly patriarchal in outlook towards women, as male lineal descendants are typically first-order heirs in the inheritance of agricultural land. Widows inherit only in the absence

of male heirs (AGARWAL 1996). Unmarried daughters are included in the heir list, but they come very low in the order of heirs (TRIPATHI 2014).

There have been strong demands from various quarters of civil society – from gender activists, academics and Islamic organisations such as the All India Muslim Personal Law Board (AIMPLB) and Jamiat Ulema-I-Hind, etc. – to amend the ZALR Act in Uttar Pradesh in order to enable daughters to claim equal inheritance rights over their parents' agricultural land. However, the state government has done little beyond promising to move such an amendment in the state assembly. Many states have also amended their personal acts to include agricultural land within the purview of daughters' inheritance rights. But in several states in northwest India, including Uttar Pradesh, Punjab, Himachal Pradesh, and Haryana, the Act has not been amended to include agricultural land, and customs prevailing prior to the Act still govern succession for such land, as they do also in Jammu and Kashmir (J&K), which was not covered by the Act. Women usually hold a limited interest in land, and usually after a woman's death the land goes not to her heirs but to the heirs of the last male landowner. She also loses the land if she remarries or abandons it (AGARWAL 1996).

The second barrier is the fact that the Shariat Act, 1937 does not apply throughout India. It is not applicable in many states and Union Territories, including J&K, Lakshadweep (both Muslim-dominated states), Daman and Diu, Goa, and Pondicherry. These states have their own customs and traditions. Moreover, there are separate laws for some Muslim sects, such as Bohras, Khojas, Moplas, Memons, Sunni Bohras, etc. These groups have separate laws originally enacted for them by British legislatures. The Shariat Act needs to be implemented in all states and in all Muslim sub-communities to ensure standardisation and uniformity of application.

Thirdly, the Shariat Act, 1937 represents a move towards scriptures and not away from them. This creates negative repercussions, as the core gender inequalities embedded in Islamic inheritance laws – i.e. a daughter's share is half that of a son – cannot be touched as long as the Shariat is the basis of law. The fact that Islam is neither the problem nor the solution in a secular state cannot be over-emphasised.

Another barrier is a lack of knowledge amongst revenue officials about the provisions of the Shariat Act, 1937. The secondary literature and a number of interactions indicate that many revenue officials are not trained on, or even aware of, the provisions of the Muslim Personal Law. Yet another barrier is the lack of codification. In terms of the Shariat Act, 1937, this raises a number of problems, especially where women's rights are concerned.

### **Gaps at the civil society level**

The main barrier here is a lack of consensus and interest among civil society on Muslim women's land and property rights. "Inheritance rights or land rights have not become a movement among Muslim women," according to Sheeba Aslam. Though certain organisations have been working on issues affecting Muslim women since independence, not much work has been done on the issue of land rights compared with other issues such as polygamy, divorce, early marriage, education, and so on. The silver lining is that, with the spread of education amongst the masses and the emergence of a middle class amongst Muslims in India, legal awareness and legal empowerment are gradually increasing for Muslim women.

The second barrier is inadequate representation of women in key organisations, including Islamic organisations such as Waqf boards, AIMPLB, Jamiat Ulema-I-Hind, Zakaat Foundation, etc. These organisations hold great power as they have strong contacts with both communities and with the political classes. If women actively participate and take lead roles in such organisations, there is a greater chance that their issues will be discussed more widely, passionately, and assertively.

The third barrier is the patriarchal mindset towards women at large. Many customs such as dowries and inheritance rights are conditioned into individuals through the patriarchal attitude of Indian society. The subordinated status of women of all castes, creeds, religions, and regions is anchored in the patriarchal norms nurtured by traditional customs and practices.

Another barrier is the lack of legal empowerment for women. This has two components: a lack of awareness among women about their rights, and their inability to assert these rights due to a number of factors, including the absence of an enabling environment to assert rights either in the community or in the home.

### **The main findings of the study are as follows:**

- » In the matter of inheritance, Muslim families follow local customs and traditional norms and not the provisions of the Shariat Act, 1937. Most of these customary laws, especially in northwest India, are patriarchal in nature and put women in a disadvantaged position in terms of land rights. Women do not assert their land rights, as they do not want to spoil relations with their brothers and families. Parents and brothers are not willing to give shares of land to daughters or sisters because they assume that their shares have been replaced by dowries. Dowries are a common practice among Indian Muslims of all socioeconomic strata and castes and in all regions.
- » The Shariat Act, 1937 does not allow women to seek inheritance rights in agricultural land. This was later rectified by some southern states but, by and large, most states have kept this provision intact and it continues to deny daughters and widows their fair share of land.

- » Inheritance practices are still determined by local customs and traditions that were prevalent before the law came into being. These have been influenced primarily by syncretic relationships with other religious communities, notably Hindus.
- » The main gaps at the state level are the law's inadequacy as it does not apply to agricultural land; the fact that it does not apply to all states in India or across the Muslim community; the non-codification of law and subjective interpretations that are patriarchal in outlook; and the location of Muslim women's identity in religion, thereby justifying their neglect.

Based on the desk review of secondary literature and key informant interviews, the study makes the following key recommendations for action.

## **AT THE LEVEL OF THE STATE**

- » **Modify the Shariat Act, 1937:** Make necessary and appropriate amendments to the Muslim Personal Law (Shariat) Application Act, 1937 in order to bring agricultural land under the purview of inheritance rights for women.
- » **Codification of the Shariat Act, 1937:** Codify the Muslim Personal Law (Shariat) Application Act, 1937. Such a step will help to emphasise the spirit of justice, as embodied in the Quran and preached by Islam. This will ensure exact interpretations of Sharia law on pertinent issues affecting women such as divorce, inheritance, and polygamy, instead of contemporary readings that wrong women. Codification should be primarily with respect to laws governing marriage, divorce, inheritance, custody of children in the case of divorce, maintenance, and status after divorce, as these are the most important areas of personal law.

- » **Apply the Shariat Act, 1937 to the entire country:** The government and its legislative bodies need to pave the way for the application of this law to the whole of India, so that law prevails over customs.
- » **Training of revenue officials on the Shariat Act, 1937:** Conduct training and sensitisation of revenue officials on the Act.
- » **Gender sensitivity in disbursement of government schemes:** Government schemes benefiting women, especially minority women, need to be decentralised when it comes to disbursement, with direct points of interaction established between women and formal institutions. This will enable women to engage and negotiate with the state as active participants rather than passive beneficiaries. Subsequently, women will have a voice in schemes and plans designed for them.

## AT THE LEVEL OF CIVIL SOCIETY

- » **Legal awareness among women:** It is important to ensure that women are aware of their rights and are encouraged to pursue them in court if their rights are violated. CSOs can take a lead in spreading legal literacy among women through workshops, seminars, and awareness and community mobilisation programmes. This effort needs to be undertaken in a campaigning spirit. There could also be steps such as making women's legal rights part of the curriculum in Urdu-medium schools for both boys and girls, in order to catch them young.
- » **Create women's forums to set the agenda:** Forums are very important structures in any democracy as they enhance the bargaining power of social groups. Forums lead to the formation of pressure groups, which in turn help to set the agenda with government. There has been a beginning in this direction with the emergence of forums such as Bhartiya Muslim Mahila Andolan. However, there is a need for individuals and CSOs to intensify such efforts.
- » **Enhance women's representation at decision-making levels in key organisations:** Charity begins at home. Islamic organisations, which are also pressure groups and power structures, need to reflect and ask themselves whether they truly uphold the principles of equality and justice as preached by Islam and whether they ensure equal representation of women at all levels.
- » There is a **need for further empirical study** on the issue of Muslim women's land rights in order to plug gaps in the body of knowledge and to initiate robust evidence-based advocacy.
- » There is a **need to sensitise wider society on women's property rights** in order to create an enabling environment where women can assert their rights without fear or apprehension.



- » It is important to acknowledge that **the identity of Muslim women does not lie in their religion**. There is a need for integrated efforts at the state, civil society, and individual levels to locate the existence of Muslim women outside of religion.

The findings of this study will be shared with a wider audience, so that informed debate on the issue can be conducted with a variety of stakeholders. It is also envisaged that the learning and experience gained from this desk review will be harnessed for further empirical study in order to initiate robust advocacy with government and policy-makers to secure the land rights of Muslim women.

This study is a desk review of inheritance provisions as stated in the Shariat Act, 1937 and their practice amongst Muslims in India. It has some limitations, such as the small amount of secondary literature available and the lack of recent data- as the 2011 Census report was not available at the moment of the writing (it is now available [http://www.censusindia.gov.in/2011census/population\\_enumeration.html-editor's note](http://www.censusindia.gov.in/2011census/population_enumeration.html-editor's%20note)) so that the authors had to rely on data from the 2001 Census. The biggest challenge, however, was finding relevant material, as not much prior work has been done in this direction. The selection of states was also constrained due to the lack of availability of secondary literature in the public domain. The study also relies on secondary data, mainly in the form of studies conducted in different states with a few sections of the Muslim community. The purpose of capturing these findings is not to generalise them to the entire Muslim population of India, but to explore, understand, and interpret commonalities and diversities in these practices across regions and communities.

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# INDONESIA

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## **THE IMPACT OF RELIGIOUS AND CUSTOMARY LAWS AND PRACTICES ON WOMEN'S INHERITANCE RIGHTS IN INDONESIA (BATU SONGGAN AND CIROMPANG)**

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This comparative study analyses inheritance mechanisms among two majority Muslim indigenous communities in Indonesia. The communities studied were Batu Songgan in Riau province, whose society is based on matrilineal kinship, and Cirompang in West Java province, which follows a patrilineal system.

Customary law, Islamic law, and state law all have impacts on the inheritance mechanisms practised by these communities. The research highlighted factors crucial to an understanding of the inheritance process: wealth, inheritor roles, power relations, and concepts of property.

The study shows that indigenous communities prefer to follow inheritance practices based on cultural traditions rather than Islamic or state law. In the matrilineal context of Batu Songgan, decision-making mechanisms around inheritance are managed by women in accordance with cultural norms, and daughters are fully entitled to inherit property. Decision-making mechanisms governing the inheritance of family wealth are less clear in Cirompang; however, wealth is divided equally between men and women.

The aim of the study was to understand the influence of Islamic law on traditional inheritance systems in a context characterised by complex and diverse tenure problems, and it represents a first attempt to more broadly document and understand interactions between Islamic and indigenous norms. One of the main elements of the analysis involves

the communities' different perceptions of collective and private property and the role played by different institutions and groups.

As well as analysing Islamic practices relating to women's inheritance rights, the study takes into account laws and practices originating from other backgrounds, in order to identify elements of Islamic law that have changed over time and are now to be considered "cultural" rather than "religious".

Data were collected in the field and analysed using qualitative methods. Data collection included interviews with various key informants, such as traditional leaders, religious leaders, those responsible for village governance, and women with experience of inheritance. Stories were also collected with the aim of exploring women's experiences and understanding their perspectives.

## THE STUDY

Indonesia aims to ensure gender equality in different areas through a diverse set of laws: for example, the Basic Agrarian Law of 1960 guarantees equitable access to land for women and men, and Law No. 1 of 1974 on Marriage is gender-neutral. Indonesia has ratified and adopted (under Regulation No. 7 of 1984) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), whose Article 14 protects rural women,. It has also ratified the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 22 of which covers protection of the rights of vulnerable groups, including women.

By religion, 87.2% of Indonesia's population are Muslim. However, the Indonesian context is one of legal pluralism, where different sources of law interact, despite attempts to enforce a degree of uniformity and inheritance norms. This pluralism has a strong impact on inheritance mechanisms in the communities studied.

The research questions identified by SAINS – Sajogo Institute focused on:

- » ownership and property;
- » differences in the amount of inherited land owned by women and men;
- » decision-making roles and implementation of decision-making mechanisms;
- » differences between inheritance mechanisms before and after the arrival of Islam in Indonesia.

The study is very community-specific and does not provide an overview of all the situations and systems of inheritance in Indonesia, nor of the broader impact of religion on women's rights. However, the two selected communities are considered particularly representative. As a basic premise, the study describes general Islamic norms on inheritance and adjustments made to them through interactions with state law.

## MAIN FINDINGS

From the field research, the authors identified two main elements that were then treated as guidelines for the analysis – property and authority.

### Property

Indigenous communities perceive land rights as a bundle of issues that go beyond ownership, including control and access. Property is not conceived of as a personal, limited, or individual possession in either Batu Songgan or Cirompang. Both individuals and collectivities have a mandate to carry out certain social functions that involve relevant related assets; ownership and social functions are therefore closely associated. These factors must be considered in order to understand inheritance practices.

Property can be owned by families, clans, or tribes, and collective rights can be managed from one generation to the next to ensure the survival of the community and as a source of inheritance for the family or clan. Focus group discussions conducted with women and men, representatives of traditional institutions, and elders highlighted that land is considered as a gift from God for the benefit of the community.

In Batu Songgan, there are no restrictions on the amount of land that can be managed by a family or that can be part of family wealth. However, there are restrictions on a family's ability to manage the resources and other benefits received from the land.

This different understanding of property by indigenous communities is not recognised by the state, which has unilaterally imposed a system of state ownership over indigenous peoples' assets. This lack of understanding and of willingness to recognise indigenous people and their territories has led to issues of tenure security and a loss of indigenous peoples' approach to inheritance.

According to testimony from Batu Songgan, there is no benefit to the community in registering its land, because everyone – including women, and especially mothers – knows their family land history, which is a marker of origin of family, clan, or tribe. However, it seems that women encounter difficulties when land is registered as private individual property. The traditional inheritance system aims at maintaining social functions and social bonds; people in Batu Songgan do not want to encourage individualisation through family ownership. Generally speaking, women's inheritance rights are expected to become a more pressing issue, even though registration and certification of land are not current practice in Batu Songgan.

The situation is worsened by conflicts over valuable resources such as gold and silver deposits, which belong to the clan or tribe as a whole and cannot be owned individually. This situation is also managed according to community norms, but it has the potential to trigger a land market involving outside parties. Land is not a commodity to be sold outside the Batu Songgan community, and since land cannot be sold without a certificate it further complicates the situation. Furthermore, as it is designated as a wildlife reserve, the territory of Batu Songgan cannot be put under concession for any purpose. There is an effort both to protect the territory and to avoid vertical conflict between the community and the state regarding territorial claims.

In Cirompang, a patriarchal culture, the situation is quite similar in terms of access to and management of land and natural resources. There are also restrictions on people's access to natural resources, because of the existence of Mount Halimun Salak National Park. Social changes and expansion of settlements have pushed Cirompang women to become farm workers or to emigrate to work as domestic servants in town, as the land is no longer sufficient to sustain their families. This situation also affects men, who have had to look for other jobs such as motorcycle taxi drivers, farm workers, and construction workers.

State limitations on ownership and access to land have had an impact on inheritance. According to a participatory mapping exercise, each family in Cirompang owns on average 0.6 hectares of land (0.18 hectare per person), and the inheritance process is complicated by the difficulties involved in dividing the property. For this reason, the research highlights the need for deliberation in the inheritance procedure for both land and other natural resources.

One option in addressing the lack of land is to regulate the use of paddyfields within the family, alternating between brothers and sisters: this keeps the land under family control while ensuring access to the resource. Another form of sharing legacy implies internal solidarity and exchange within the family, mostly from wealthier brothers and sisters to poorer siblings.

In any case, the lack of clarity on inheritance mechanisms has an impact on women's land rights. These are also affected by an increase in certification and individual ownership, with the registration of land certificates tending to exclude women from ownership. Indeed, it was not possible to find any land certificates in women's names or any joint titles during the research. However, it must be noted that the researchers involved encountered some difficulties due to a limited knowledge of local languages, which had a constraining effect on interviews with key informants. A better understanding of the languages spoken by the communities under study would have helped in the analysis.

Despite the differences in kinship systems (patrilineal in Cirompang and matrilineal in Batu Songgan), a number of commonalities exist in terms of local customs and their prevalence in inheritance practices. Despite the influence of Islamic law, most of the people in these communities follow local customs and tradition – for example, they observe Sunda Wiwitan, a religious belief system that includes equal division of property between women and men. Parents, who determine the inheritance rights of their sons and daughters, naturally play the main role in inheritance practices. The division of inheritance may take place when heirs get married, as well as when parents die.

### **Authority**

The research identified the authority system as a key element of inheritance mechanisms. Indigenous women play an essential role in matrilineal societies, such as that of Batu Songgan, where family identity and property pass through the mother's line; therefore men are responsible, for their sisters' sons, who are their heirs.

In the local language, the word for "mother" has a strong connection with the idea of "creation". Even women who have no children have a role as "social mothers". Matrilineal kinship has a great deal of influence because it determines political loyalty and rights to inheritance and wealth. In matrilineal societies, women also play a role in guiding regulations and validating marriages, and provide support to individuals in adverse circumstances (such as a death in the family, economic hardship, and other difficult situations).

In Batu Songgan customs and tribal identity are focused on women, and this has influenced inheritance practices for daughters. The survival of families and clans relies on the role played by women, including through intergenerational inheritance of family wealth. The control of wealth in this society is divided between two groups: those with authority over family wealth and those

with authority over clan wealth. The authorities responsible for these two kinds of wealth and respective social functions are different, but they are strongly interconnected.

Women are in charge of family wealth, of which they have control, management, and ownership. They undertake social functions to ensure the sustainability of their families and communities. Access to and control over land, as well as decision-making processes, are centralised under women's authority. Daughters are strongly involved in the maintenance and use of farmland, paddyfields, and other assets, together with fathers and brothers. The division of inheritance takes place when daughters are able to work on the fields and farmlands.

The researchers noted that, during interviews where family wealth was discussed, men (fathers, husbands, brothers, and sons) invariably stepped out of the room. This is because a taboo exists on men being involved in discussions about family wealth. This is particularly relevant for husbands, who join the clan from outside (*urana semondo*) but do not belong to it. It also applies also to eldest sons, who can join the discussion only if invited by female family members (in particular, sisters and nieces). Wealth (with the exception of items such as motorbikes, machetes, and nets, and some livestock) belongs to women. Even in cases of divorce, wealth acquired after marriage remains in women's hands. Maternal uncles play a relevant role as guardians of the interests of the entire group.

Collective property is given to men, but cannot be divided. In Batu Songgan, any change of status from collective to individual wealth must be decided by all the actors involved (family, clan, tribe, and community). Customary institutions represent a collective leadership, which includes the interests of various groups. Decision-making takes place during dedicated customary meetings. Forest reserves are a typical example of the kind of wealth that may change in status.

The research finds that the authority over collective wealth given to men is a way to balance power relations within the community and within the existing limits in the management of family wealth, and that it helps to ensure the sustainability of the inheritance process (and identity) within the family or the clan. Despite not having family wealth of their own, men's function is to maintain, protect, and develop this collective wealth.

Division of power is interlinked with social functions and related authority. Although women are still in charge of maintaining family wealth and have full authority over it, the regulatory function of collective wealth is becoming weaker, since customary institutions are now less relevant.

This whole situation deserves a deeper analysis, as some differences between heirs emerged during interviews with key informants. Some have no authority or powers of negotiation over inheritance, while others play an active role.

All these observations on authority apply only to the case of Batu Songgan; in Cirompang, authority rests solely with parents. However, here most of the concerns of key informants were focused on limitations applying to access to land, not on ownership issues. Existing instruments that serve to recognise, control, and protect indigenous rights, such as the payment of a harvesting tax to a traditional institution, cannot be seen simply as a way of mastering the territory, but must also be seen in terms of their social function and their embodiment of social guarantees to the community.

However, interventions by customary institutions are not very significant in Cirompang, and have not influenced inheritance or trade practices in recent years. The research found no relevant data from district religious courts concerning cases connected to inheritance.

Furthermore, land trades involving external actors are already taking place in the Cirompang community, linked with the ongoing individualisation of family ownership. However, the researchers could

find no connection between family inheritance and collective property.

### Interactions with Islam

In Batu Songgan customary laws regulate inheritance practices, despite the community being Muslim. It seems that in this case customary structures are not influenced by the Islamic tradition. However, the introduction of Islam has affected the role of women's knowledge and their traditional roles within the community, in particular when it comes to rituals, including those concerning seeds. Mutual help groups, which enable women to share information and experiences, are now rare in Batu Songgan.

In particular, accommodations between customary laws and Islam have resulted in a number of specific legal agreements:

- » **Segamo-Gamo:** Basically enactment is not strong so the law is not permanent and it can be changed.
- » **Besamo-Samo:** The law is set by mutual agreement but still allows for mistakes or error. The law is weak, and usually follows the dynamics of collective decision-making.
- » **Seeio-Lamo:** This law has a solid foundation and is increasingly accepted in the community with the support of community leaders and scholars. It usually deals with high-value inheritances such as land and other assets.

In Cirompang, inheritance practices follow community precepts and those of community leaders, and are influenced equally by both customary and Islamic law. When inheritance rights are executed, property is usually distributed in accordance with parents' wishes, and divided evenly between men and women. The indigenous traditions of the Kasepuhan Banten Kidul community allow women to inherit rights over land and other property such as houses, jewellery, and livestock. However, some families give greater access to men, because they think they need more land to support their traditional role as head of the household.

Other, more general, examples of Islamic influence on traditional practices include local rituals dealing with fertility and prosperity, dispute settlement, and reciprocal recognition of tribes. Some of these rituals have been replaced by formal religious procedures, which do not include women in the social space.

Government administrative practices concerning property ownership also discriminate against women and limit their access to wealth and inheritance; for example, they cannot certify their ownership of inherited land by registering it. Government recognition of equality of rights and status for women and men has failed in terms of implementation. Furthermore, men are advantaged in terms of identity cards, access to information, and literacy.

## RECOMMENDATIONS

The study demonstrates the different inheritance practices implemented by ethnically diverse indigenous communities in Indonesia, in particular relating to land and natural resources. However, these practices appear to have been inadequately documented to date. A better understanding of the cases of Batu Songgan and Cirompang would require further and deeper analysis, in particular looking at the role of women in power relations and decision-making processes. Differences between collective and private rights would also represent a key element of this analysis.

What emerges from the study as it stands is that Islamic prescriptions may affect traditional norms and customs in different ways, but in some cases they limit women's traditional roles. However, further analysis and study are required to better understand the changes that have occurred in terms of power relations and how these affect the recognition and protection of women's inheritance rights in rural indigenous communities.

### CASE STUDY FROM BATU SONGGAN

Ibu Ruwaidah, a woman from the Domo clan, married a man from the Petopang clan. It is the local custom that, after marriage, the husband lives in the bride's house and becomes part of her family. As a newcomer (*urang semondo*), a husband is not required to bring any property into the marriage. To support his family, Ibu Ruwaidah's husband cultivates and tends the farmlands, orchards, and livestock that she owns. The couple have five children, three sons and two daughters, and it is Ibu Ruwaidah who will decide what they will inherit.

When she was interviewed, she was already preparing inheritance bequests for her two daughters, who both already knew how many fields or gardens they would receive. The oldest daughter is currently living at home with her mother and has five children of her own, while the youngest daughter has followed her husband, who is working outside the community. The eldest daughter is taking care of her parents and, in this situation, it is very likely that she will inherit her parents' house, even though traditionally this goes to the youngest.

### **CASE STUDY FROM CIROPANG**

When villager Umi Ella and her husband Iras first got married, they lived in a house inherited from her parents. Umi Ela also inherited six terraced rice fields from her father. Two years later the couple moved to Cikuning; however, as Iras wanted to live near his parents, the family moved to Ciropang. To build a new house, Umi Ela mortgaged her rice terraces. This decision was taken because Iras's parents were unwilling to lend money to build a house, even though they had promised to do so when they got married, and he did not have any rice fields or gardens of his own. The lack of regulation regarding property division after marriage in Ciropang makes women like Umi Ela uncertain of their rights. The default rights to maintain inheritance rights to property following marriage were not clearly discussed by the parties prior to marriage.



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# PAKISTAN

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## ASSESSING INHERITANCE LAWS AND THEIR IMPACT ON RURAL WOMEN IN PAKISTAN

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*Shakil Ghori (in collaboration with SCOPE)*

This study provides an account of existing statutory, customary, and religious laws and of practices affecting inheritance rights in Pakistan, with particular reference to women. It helps towards an understanding of key determinants that might support or hinder the implementation of statutory laws and of factors that make such laws difficult to implement, due to long-held societal perceptions and acceptance of customary and religious practices.

The research is intended to inform the process of designing and developing effective advocacy campaigns to influence law, policy, and practice in Pakistan at regional, provincial, and national levels.

It also supports SCOPE (Society for Conservation and Protection of Environment)'s ongoing engagement in projects focused on sustainable development, agriculture, food security, and land rights monitoring in Pakistan. SCOPE's recent engagement with a series of land rights monitoring reports produced by ANGOC, in particular a scoping study on women's land rights in Pakistan, provided an opportunity to link its work with other issues such as food security, gender, and land rights. In addition, SCOPE has played a pivotal role in the formation and organisation of networks focused on land rights and food security, such as the National Peasants Coalition of Pakistan (NPCP), supported by Oxfam Novib and the International Land Coalition (ILC). SCOPE is also a focal point for Pakistan's National Chapter of the Alliance against Hunger and Malnutrition (AAHM Pakistan).

From its engagements in the field, SCOPE recognises that effective advocacy, targeted and relevant dissemination of information, knowledge sharing, and the development of support mechanisms on the ground are central to achieving any improvement in securing women's

land inheritance rights and their rights to own, control, and manage land. SCOPE also believes that meaningful results can be achieved only if well-organised advocacy, information dissemination, and knowledge sharing campaigns, as well as plans for creating support mechanisms, are informed by in-depth policy research and analysis.

SCOPE's interest in this research is therefore to develop an understanding of the status of women's land rights, laws and legislation pertaining to their inheritance rights, and customary and religious barriers, as well as how these statutory, customary, and religious laws are translated into practice on the ground. In addition, there is a need to explore the application of statutory, customary, and religious laws and to evaluate their comparative values. It is important to note that there are many differences in societal perceptions in Pakistan based on gender (differences between men and women), socio-economic status (differences in income or class), and religion (Muslim and non-Muslim).

Women in Pakistan, particularly in rural areas, face many challenges, and often their role is undervalued and unpaid. Low priority for girls' education, limited ability to enter into waged employment, lack of control over income and assets, lack of decision-making power within the household, limited mobility, low levels of participation in public life, and high levels of violence against women are among the factors that hinder women's opportunities and access to a legitimate share of resources, including inheritance and agricultural land (MUMTAZ & NOSHIRWANI 2007). In addition, most agricultural extension programmes focus on men, and women's participation in extension activities is not encouraged (NOSHEEN et al. 2008). Because of these attitudes, and due to a lack of knowledge and a lack of access to credit, women's participation in decision-making with regard to farm activities is extremely limited (REHMAN, BATOOL, & YOUNIS 2001; ARSHAD et al. 2010).

Pakistan's constitution clearly stipulates equal rights for women, including the right to own and control land. Pakistan has also ratified a number of international conventions promoting gender equality, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and ILO core convention 100 on equal remuneration for women. However, as one analysis points out, "there is no direct provision in the Constitution on women's right to inheritance but it does provide guarantees and principles of policy to ensure justice without discrimination" (MUMTAZ & NOSHIRWANI 2007: 3).

It is surprising to note that no hard data are available on the extent of women's access to and control over land in Pakistan (SDPI 2008a). Official documents including censuses, household panel surveys, and other official surveys do not include gender-disaggregated data on this topic. However, anecdotal evidence suggests that very few women own land and even fewer control land (SDPI 2008; GEP 2011; MORRISON et al. 2007). One research study indicates that women own only 3% of all agricultural plots in Pakistan (MASON & CARLSSON 2004). Another study of women in Punjab suggests that 10% of women there reported owning land; however, fewer than 3% said that they had access to agricultural inputs, cultivation, water/irrigation, land tenure, the right to sell/purchase land, or visits from extension services (YAQOOB et al. 2006).

Land and inheritance rights in Pakistan, and women's ability to own and control land, are regulated by an intricate combination of civil, Islamic, and customary laws. Civil laws such as the Contract Act 1872, the Transfer of Property Act 1882, and the Registration Act 1908 largely govern the ownership and transfer of property and are gender-neutral, though inheritance rights are subject to the Muslim Personal Law 1962, which is enforced under Sharia law (SDPI 2008a).

Inheritance is a complex and multi-faceted issue that affects the lives of countless Pakistani women. One study sums up the issues as follows: "Inheritance rights are one of the most ignored gender issues owing to biased interpretations of religious directives and deep-rooted patriarchal customary practices denying women their due right. If they are at all given a share in inheritance, often possession and authority over it is denied. This problem is aggravated owing to inadequate policies/laws, inefficient implementation, enforcement system and absence of monitoring mechanism. Lack of political will is also a contributing factor to this situation" (NCSW, 2005: 1).

Statutory laws may be in favour of women owning land, but they cannot be enforced in a context where customary and religious laws prevail. The way that women are perceived by society in general limits the possibilities for them to exercise their ownership and control rights. Moreover, women may not be aware of the legislative and protective measures that have been instituted to ensure property rights, and thus may not seek recourse when necessary (PALLAS 2011). It is widely accepted that women are denied their rights to hold land titles (IFAD, 2001), are manipulated over land inheritance, and are expected – and sometimes pressurised – to surrender their land inheritance rights in favour of male members of their families (MUMTAZ & NOSHIRWANI 2007).

Women have never been registered as tenants and so have not benefited from any of Pakistan's attempts at land reform and land redistribution. They benefited only inadvertently from the ceiling on land holdings, which caused large landowners to divide their property between relatives in order to protect it (KHATTAK et al. 2010). Since this court ruling, all land redistribution has been done through irrigating state land and providing land titles. In 2008, the government of Sindh province, led by the Peoples Party, created a programme to redistribute uncultivated state land, primarily to women.

Women's ownership of property is constrained by the fact that there is no law allowing a woman to claim land acquired by her husband during marriage. If a woman has paid for such a property in cash, she can file a case under the Benami Transaction Law (i.e. not in her own name), but such cases are difficult to prove. In the same vein, divorced women are not entitled to receive support from their husbands (SDPI 2008a).

The main conceptual barrier to equality in Islamic inheritance law is the idea that a woman should receive half the share of a man. Many of the arguments and rationalisations for this law may no longer be applicable. It would be useful to encourage people to see this as a necessary minimum (ALI 2006).

Women may be forced to relinquish their rights under a practice known as *Haq Bukhshwana*, which is prevalent in the provinces of Khyber Pakhtunkhwa (KPK), Balochistan and Sindh. Women are never married or are "married" to the Quran in order to prevent the transfer of property (NCSW 2007). In certain parts of the country it may be customarily unacceptable for women to own any property, and even if a woman is the sole surviving heir, property will be transferred to a distant relative. Women can sometimes be considered as property themselves and their guardianship taken over by other men. Women, generally, do not claim their inheritance without some degree of male or familial support. If they do so without any support, they are likely to be censured and regarded as outcasts (KHATTAK et al. 2010; MUMTAZ & NOSHIRWANI 2007). In extreme cases, they may face violence or even "honour" killings (*kari*), especially in Sindh (NCSW 2007).

Women may own land in name but may not be able to control or manage it, due to restrictions of varying degree imposed by the practice of *purdah*, which is mandatory under customary law. These include veiling, seclusion, limited mobility, and being prevented from interacting with strangers or in public. In one survey, *purdah* was considered by

male respondents to be a crucial reason why women could not manage land. In addition, *purdah* prevents women from being able to build the skills they need (SDPI 2008b).

Customary law is contradictory in some regards. For instance, women may have freedom of movement to leave the house to fetch water, which is considered to be their task, but do not have the freedom to go out and manage lands. Statutory law has been tightened to prevent women from having their property taken away without their consent, and in some instances a woman may be required to go out, be present in front of a public official, and sign documents to ensure a transfer. Women complained that men who usually did not allow them to leave the house would have no problem parading them in front of public officials to obtain the necessary transfer documents (MUMTAZ & NOSHIRWANI 2007).

In a survey by the Sustainable Development Policy Institute (SDPI), 50% of male respondents stated that women did not claim land because of customary law, 32.4% said it was because of familial obligations, and 29% said it was because of ignorance of the law. Female respondents explained their lack of rights as being due to culture or custom or because they wanted to preserve family support in the future (SDPI Survey 2012).

A survey conducted in South Punjab by the Awaz Foundation asked respondents why women did not demand their inheritance rights. The most commonly stated answers were social customs/practices (85%), fear of annoying family (80%), and the possibility of having to turn to one's natal family for future support (70%). Other responses included that women may forego their rights as a symbol of respect (45%), or due to a lack of awareness (45%), or because of a lack of assertiveness (30%) (AWAZ 2010).

Interviews with key informants identified three categories under which women could hold, manage, and control land in Pakistan. Firstly, they could obtain land through the distribution of state land. However, this has only taken place in Sindh, in two phases

between 2008 and 2010. During the first phase land was distributed largely among males, while in the second phase it was allotted largely to females.

Secondly, women may have inheritance rights over residential and other properties. In Punjab, the Punjab Women Empowerment Package 2012 and the Punjab Women Empowerment Initiative 2014 have been introduced with the goals of eliminating barriers and addressing the issues that deprive women of their land rights. State land in a number of katchi abadis (ramshackle neighbourhoods) in the province is allotted under joint ownership to both spouses.

Thirdly, women may inherit agricultural land. Despite the contribution they make to agriculture, it is difficult for women to claim their inheritance rights over farmland under existing statutory and Islamic laws, and women own a very small proportion of the country's agricultural land.

It is important to note that effective advocacy campaigns, together with strategies for the targeted dissemination of information and support mechanisms on the ground, could really advance the cause of women's land and inheritance rights by informing and lobbying key stakeholders and the policy formulation process. It is worth highlighting two examples where activists and campaigners have managed to achieve a change in law, policy, and practice regarding women's land and inheritance rights.

The first example concerns the successful advocacy campaigns conducted by civil society organisations (CSOs) in Sindh to get more rural women included in government land distribution programmes. In 2008, such programmes not only provided land to women but also an economic support package to help them develop their land. A total of 41,517 acres were distributed among landless farmers, to 1,184 men and 2,845 women (interview with Participatory Development Initiative, 2009).

The second example is the formulation of a law on women's land ownership in KPK, where the provincial government adopted the Enforcement

of Women Ownership Rights Bill 2012 as a result of effective advocacy and campaigning. Laws like these could help CSOs to put pressure on government and on the judiciary to take up cases and implement decisions.

## RECOMMENDATIONS

- » Pakistan has laws in place regarding women's property rights; however, these are not implemented for various reasons, including societal perceptions of women's roles. There is a need for law enforcement agencies, revenue officers, patwaris (local-level land record officers), and court officials to work closely together to enforce the law and implement court decisions.
- » There is a need to interact with political leaders, who are in the best position to influence the enforcement of laws and the implementation of court orders at provincial and national levels. Political leadership also has the potential to influence the collection, maintenance, and transfer of land records. Women face problems at local revenue and patwari levels if they want to claim their inheritance rights.
- » There is a need to promote education and economic empowerment for women as a means of improving their situation. With education, women are better able to understand and claim their rights.
- » CSOs need to develop effective advocacy campaigns to inform the public, as well as policy- and decision-makers, and to encourage the latter to introduce new measures in favour of women.
- » The legal system requires a fundamental reorganisation to make it more approachable for common people.
- » There should be special legislation on the implementation of court decisions, giving courts powers of implementation.
- » Stakeholders should work together to put the issues of inheritance and land rights onto the political agenda. Women currently fighting cases or willing to claim their rights should be supported with information and guidance.
- » Women claiming their inheritance rights should be supported in court proceedings. A panel of advocates could be organised that would provide expert opinion free of charge, as a social service. Lawyers, particularly young lawyers, should receive targeted training.
- » Existing legislation on land is appropriate, but there are problems with its implementation and enforcement. The issue of inheritance and land rights has positive consequences for women's empowerment, and any initiative to raise awareness or provide legal aid to affected women should be supported.
- » Legislation pertaining to inheritance and land rights should be reviewed and necessary amendments made to support women's right to inherit. There is a need for more lobbying and for research to be carried out to identify gaps in policy and practice.
- » Long-term efforts are required to sensitise the public and to raise awareness that denying women their rights is wrong and that women must be given their legal share.
- » There should be a single unified legal code to deal with inheritance claims. Codes and rules for civil procedures need to be amended. Provincial rules encourage interlocutory applications that are used as a delaying tactic. The law on evidence under the civil procedure code needs to be amended.
- » There is a need to lobby political parties and demand that they include action in their manifestos to address the issues.
- » Effective lobbying and advocacy campaigns should be organised to address issues around land governance, such as the distribution of state land to landless *haris* (peasants) as promised by political parties in their manifestos, the formation of agrarian land councils at the provincial level, and the implementation of land reform.

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# WEST AFRICA

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## STUDY ON CUSTOMARY AND RELIGIOUS PRACTICES AND THEIR INFLUENCE ON WOMEN'S ACCESS TO LAND (MALI, SENEGAL AND TOGO)

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This study analyses the religious and customary dynamics that affect women's access to land in Mali, Senegal, and Togo, three West African agricultural economies. These countries have different legal, cultural, and religious contexts, but all three have included non-discrimination as a constitutional

principle. They have also ratified international conventions (Convention on the Elimination of All Forms of Discrimination against Women – CEDAW) and regional legal instruments (Protocol on the African Charter on Human and Peoples' Rights on the Rights of Women in Africa), which require States Parties to take appropriate measures to address discrimination against women.

The study reveals the strong links between women's access to land and customary practices that discriminate against them. These practices not only prevent women from accessing land but also have a significant impact on existing national legislation, despite the fact that property rights are legally recognised and that the states are committed to protecting them.

This study analyses the specific aspects of women's access to land in these three countries, based on UN Food and Agriculture Organization (FAO) data on the role of women in agriculture. Although women represent 43% of the world's agricultural labour force and produce more than half of all the food grown globally, their ability to buy, rent, or inherit land (by donation or succession) continues to be restricted.

In 2008 in Senegal, only 26% of agricultural landowners were women; they owned only 13% of the land surface used for rain-fed farming and even less in the case of irrigated crops. In Mali, women play an active role in agricultural production: an estimated 51.6% of women live in rural areas; they account for 60% of the agricultural labour force and up to 80% of total food production. In Togo women make up 56.4% of the agricultural labour force, but they hardly ever head a farm.

## METHODOLOGY

The research focuses on the interactions between religious, customary, and statutory law. The study involved two key steps: a documentary review and interviews (including 20 focus groups) with all parties involved (civil society organisations (CSOs), women, judges, etc.). The methodology was based on a participatory and inclusive approach, which aimed at understanding the influence of religious and customary practices on rural women's access to land.

The research focused on seven localities in Senegal (Keur Demba, Thiokol, Fandène, Thiès None, Bounecomico, Boune Darou Salam, and Thiaroye), four in Mali (Baguinéda, Farako, Siby, and Sienne) and another four in Togo (Dapaong, Kara, Sokodé, and Kloto).

## OVERVIEW

In addition to the major religious differences between the countries (Senegal and Mali are Muslim countries whereas Togo is Christian), the study shows significant variations in traditions and customs between localities. It also revealed some common points, which helped to identify key issues and enabled the authors to formulate a number of recommendations.

This issue is sometimes less about actively excluding women from acquiring land than it is about protecting land heritage, which is one of the elements that help to localise the group in such

societies. Religious and traditional reasons are given for excluding women and reducing the amount of land they should receive, despite the existence of new laws and reforms, which conflict with practically unchangeable and cumbersome traditions and religious dogmas.

The study analyses the influences of different religious rituals in Mali, Senegal, and Togo. It shows that – while Christian prescriptions do not appear to affect the capacity of rural women to access, transfer, or use land; while animism, more widespread in Togo than in Mali or Senegal, has next to no impact on women's access to land; and while Islam lays down distribution rules based on the Quran – it is traditional and customary practices that determine women's access to land, and these often depend on the will of traditional councils.

The study reveals that the exclusion of women is influenced by diverse and complex factors. For example, in Mali (Baguinéda, Siby, Sienne), in some localities in Senegal (Keur Demba, Thiokol, Fandène, Notto), and in some Tem households (Sokodé in Togo), Muslim women are systematically excluded from the division of real property. However, in Sokodé (a Muslim municipality) in Togo, exclusion is not systematic. Islam does not prohibit women from buying or acquiring land by other means.

The study also reveals that people in the Tem traditional context believe that women are “not interested in land”, especially rural land, as they prefer business activities to agricultural work. However, women do have access to existing real estate and moveable assets.

## IMPACT OF TRADITION ON WOMEN'S ACCESS TO LAND

Traditional practices have a significant impact that goes well beyond Islam and Christianity and significantly hinders women's access to land. Such practices do, however, in a number of localities, acknowledge the right of women and girls to benefit from land to a

certain extent and in certain circumstances, albeit not in the same way as men and boys. Matriarchy is a good example of a tradition that has a positive impact on women's access to land: in Kloto prefecture in Togo and villages close to the border with Ghana, for example, traditions are based on matriarchy and guarantee equal access to land for women.

Traditional practices have an impact on all forms of land acquisition, whether through inheritance or purchase. Although this study focuses on inheritance, certain aspects relating to purchase and other means of access to land are equally important and were addressed during the research.

Traditional practices relating to inheritance are very diverse and often end up excluding women or limiting their access to land; in certain localities in Mali and Togo, women might even be driven out of inheritance altogether. Tem women from Sokodé (Togo), for example, can only inherit if they are either the family's eldest daughter, the only female in the family, or their father's only child. In Farako in Mali, tradition allows women to inherit land, but to a limited extent compared with men.

Other practices are more discriminating towards women and lead to their exclusion from inheritance or to the insecure transfer of plots of land for a limited time. These practices can be found in all three countries.

In Mali, a Muslim country, the provisions of the Quran regarding women's access to land are the same for the four localities studied (Baguinéda, Farako, Siby, and Sienne). However, traditional and religious authorities all agreed that tradition was more important than religion. Women's access to land is therefore hindered, despite positive religious prescriptions.

In Keur Demba, Thiokol, Fandène, and Notto (Senegal), the research showed that women gain indirect access to land through male heads of household or village chiefs. Women who do have access to land enjoy only precarious rights in their roles as spouses, however. In other cases, tradition

allows women access to their parents' land only if they are separated from their husbands, or widowed with no male children.

Women's right of access to land is therefore regulated by religion but even more so by local practices and traditions. For example, regardless of Islamic law, certain communities or families use tradition to justify excluding women from inheritance, the reason being that men in their capacity as family heads must handle family finances and that women are subject to men.

The main argument raised to prevent women from accessing land through inheritance in their own families is that they are bound to marry into another family, who will then be responsible for providing them with land. This principle may also apply to the purchase of land, as illustrated in Dapaong: rural women can only purchase land that has been bought from another community. In other contexts, such as the rural area of Kara (Togo), women can only purchase land if they are assisted by a man.

It should be noted, however, that purchase remains a common way of accessing land, even though it is not the only one. In Baguinéda (Mali), for example, women can only access land by renting it; in Thiaroye-sur-Mer (Senegal), a group of women ended up buying a plot of land in partnership with the Spanish development agency (AECID), for it to establish its local headquarters.

## **GOOD PRACTICES**

Despite all this, women and CSOs have been active in counteracting the barriers created by traditional practices. Groups of women have organised themselves into working units to exploit parcels of land. In Mali, in addition to the ever increasing involvement of CSOs in this area, two further elements need to be mentioned. The first concerns the Bambara women who managed to establish themselves a long time ago and have since been a major working force in small family farming; the second concerns Mali's Agricultural



Orientation Act (Law 06-045 of 5 September 2006), which is a major innovation in land policy insofar as it relates to the precarious situation of women.

In some cases, traditional chiefs, regardless of the religion prevailing in their area, have taken stands in favour of women. In Togo, one particular experiment was carried out by traditional authorities, which resulted in an equal sharing between men and women of assets inherited through succession. In Kloto prefecture, the traditional authorities carried out an unprecedented experiment with the help of an NGO named ALAFIA, which resulted in the adoption at the local level, on 20 May 2002, of the principle of equal sharing of assets through succession between men and women.

CSOs have also exercised a significant influence on the legal frameworks of the three countries under study, as they have attempted repeatedly to solve their contradictions. Indeed, although there are no discriminatory provisions against women in the constitutions or codes on private and state-owned land of the three countries, the Persons and Family Codes contain legal loopholes which countenance traditional and religious practices, especially with regard to inheritance.

In addition to these contradictions, the legal framework is significantly limited in its effects, due to the lack of harmony between national legislation and international legal instruments, the lack of clarity of legal documents, the presence of legal loopholes, and the discriminatory practices in place against women. Add to this the fact that customary law is often detrimental to women, and is applied regardless of the state law, notably in rural areas and more specifically in the area of inheritance. In Senegal, for instance, modern and religious law, more specifically Muslim law, exist side by side.

The judges interviewed for this study admit that only a very small proportion of rural women go to court when their inheritance rights have been violated or when they have been the victims of

discrimination in the settling of an estate in land. They are more likely to turn to a judge when they have purchased land and they encounter difficulties with the seller, the original owner, or if they have suffered violations of their property rights on this land. They apply to the courts mostly when they are sure that no family relations are involved and when there is no threat to family cohesion. This is true in Mali, Senegal, and Togo. To explain their low levels of recourse to the courts, Senegalese women also mention issues relating to the geographic, financial, and cultural accessibility of the courts. The women the authors met in Senegal therefore believed that it was more convenient to try and find amicable solutions on their own.

Tradition itself, however, is a major factor in the violations of property inflicted on women. In different localities, land is managed in accordance with traditional practices. Modern law and religion mostly differ on the sharing of the land assets of a deceased person.

One of the traditional chiefs interviewed for the study noted the opposition between modern law and traditional practices, and remarked that the former advocates the equal sharing of assets without taking local conditions into account, while the latter goes in an opposite direction. Indeed, equal sharing of assets on succession is not recognised by traditional practices.

In Togo, however, traditional authorities have increasingly shown some degree of adaptability regarding women's rights, especially with regards to their access to land. Although most do not recognise the principle of equal sharing of assets, they do take action to avoid total exclusion of women from the land. This attitude, which is more respectful of the law, can be considered a result of the continuous awareness campaigns conducted with traditional chiefs by CSOs and by the Ministry of Social Action, Advancement of Women and Literacy, which is responsible for the promotion of women's interests.

Women rarely feel up to challenging men on legal issues, but the right of access to the courts to settle these issues, which has long been ignored, is now slowly gaining more widespread recognition thanks to modern legislation. In the past, there was no recourse possible for women to claim their land rights – they could only turn to traditional authorities, which meant they had no chance of a favourable settlement. With modern law, rural women still find it difficult to apply to the courts. However, women who live in villages close to cities have started to bring legal actions.

## DATA ANALYSIS

In view of these different practices, which have been deeply influenced by tradition or religion, discrimination against women is still very prevalent in the three countries covered by this study. Various deeply entrenched principles and practices result in exclusion and discrimination against women in relation to land. The fact that these practices are rooted in tradition gives them increased strength, and makes them resistant to the relatively recently accepted principles of gender equality.

Indeed, if we take Islam as an example, in the three countries studied the transfer of property is all in favour of men. This can be explained by the fact that the Quran places the burden on men to provide for the needs of all the women in their families. This, however, does not necessarily mean that men fulfil this obligation. In any case, the women interviewed for the study were far from happy with this situation and found it difficult to claim greater access to land. The fact that in our modern world land is a key means of production and it can be developed and made profitable in many ways makes this question even more complex.

In traditional views of the issue, land is often unjustifiably considered as male property, which in turn means that men refuse to give women any access to it or only short-term access. In some communities – and this seems to be a fairer system – land belongs to the clan and cannot be sold under

any circumstances. Neither men nor women can in this case have private property rights to the land – only land usage is permitted. However, even in such situations, women sometimes have to face gender-discriminatory restrictions.

Another argument often used to justify the exclusion of women from inheriting land is that women are meant to get married and bear children. The children will then inherit from their mother property belonging to the mother's community and therefore this property will be removed from the assets of the community, being transferred to another community. This argument is detrimental to women, in that they are seen as strangers in their husbands' families and cannot inherit anything. Even worse, a woman herself may be considered part of the estate of the deceased. This of course explains why a family council will be more interested in giving a widow away to a brother or uncle of the deceased rather than grant her a share of the inheritance, and the council is even less likely to give her a piece of land.

As already mentioned, Islam itself is not opposed to women owning land. Traditional values are so deeply entrenched, however, that women do not even dare claim access to land. This is true in Mali, and in some areas of Senegal and Togo, where even when they wish to buy land women have to meet conditions that are totally incompatible with the spirit of Quranic rules. It seems that imams and members of Muslim communities refuse to abide by the rules of their religion in this respect. There is thus a combination of different factors such as the complexity of Islamic law, a marked lack of knowledge among imams, and a lack of interest and goodwill.

Indeed, collecting data in the areas where Islam is strong gives the impression that the only way to distribute the property of a deceased person is to allocate one-third to the daughters, and one-eighth to the widow or widows; however, the documentation review makes it clear that this is an oversimplification of the Quranic prescriptions and is far from being accurate. The Quran goes to great lengths to explain

how property should be transferred following a death and covers many different cases where women are entitled to different inheritance rights depending on the nature of their relationship to the deceased and to the different financial responsibilities of the people involved. Quranic rules present four distinct situations in which women inherit only half what men inherit, more than eight different cases in which they inherit the same as men, more than ten in which they inherit more than men, and a certain number of cases in which women inherit everything. The Quran also explains, at great length, which women, from a wife to a son's great-granddaughter, are entitled to inherit.

The study shows that imams generally do not master all these possible allocation situations and rule in accordance with a principle that is unequal in its application. This system was originally meant to apply to a specific situation and not to be used as a general principle. This raises once again the question of the role played by tradition in relation to religious norms. The question of female inheritance remains nevertheless quite complicated even in the Quran itself.

In addition, interactions between modern law and Islamic law have a negative impact on legal practices concerning women. In Senegal in particular, Muslim women who go to court to settle disputes over inheritance rights risk ending up having to conform to Islamic law. Article 571 of the Senegalese Family Code provides that inheritance cases should be decided either by ordinary law or by Islamic law. It states: "The provisions of this Title (Islamic Law) shall apply to the successions of persons, who, during their lifetime, clearly expressed, or demonstrated in their behaviour a wish that their succession would be regulated according to the rules of Islamic Law." Faced with such a vague formulation, Senegalese judges tend to consider that if the deceased was a Muslim, the estate should be distributed according to Sharia law. This attitude seems to defer to the Muslim religion; it does not respect the principle of secularism promoted by law-makers, nor does it leave space for more egalitarian provisions.

Traditional practices are also ambiguous with regard to women's access to land, though practices in Senegal, Mali, and Togo vary considerably. The traditions recorded in the study areas are numerous and diverse and sometimes seem to have emerged randomly. They sometimes differ within the same area, from family to family, sometimes even within the same family. Differing practices regarding women's access to land have been recorded, for instance, amongst the Tem people in central Togo.

From the data collected, a number of infringements of women's property rights can be noted. Whether they acquire land through inheritance or through purchase, women are often the victims of various forms of harassment or violence: death threats, often made by members of their own families, when claiming land; eviction from farming areas; violation and unauthorised use of land titles; breach of trust; illicit sale of land; and banishment from the community for women who have claimed their own property.

These transgressions weaken women's ownership rights with regard to land, but also deter them from even wishing to exercise those rights. The land is a constant threat to their peace of mind, even maybe to their lives themselves.

## RECOMMENDATIONS

The field study has led to the following recommendations, in different domains.

### Religion and customary practices

- » Train imams regarding the provisions of the Quran on inheritance.
- » Review and amend customary practices so that they conform with modern-day legal principles, with a view to putting an end to discrimination.

### Legal and judicial fields

- » Bring national legislation into line with ratified international conventions.
- » Further reform land law and inheritance law.

- » Simplify and make accessible legal texts regarding land, so that women can embrace them as their own.
- » Involve traditional and religious authorities in the process of law reform.
- » Introduce sanctions for those who deny women the right of access to land.
- » Improve rural women's access to justice.
- » Set up an early warning system to highlight violations of woman's access rights to land.
- » Create more Listening Centres for women in rural areas in order to provide legal information and assistance and facilitate access to justice.
- » Improve women's access to decision-making bodies and rural committees.
- » Improve land governance through the adoption of a participatory and inclusive process.
- » Improve communication regarding land and inheritance law.
- » Promote women's leadership and their involvement in decision-making.
- » Strengthen advocacy and lobbying activities with regard to land equity to the benefit of women.
- » Set up advocacy initiatives for a real consideration of women's concerns regarding land reform. This will improve land yields and simplify access to credit, thus making agricultural production by women more profitable.
- » Support and assist women with a view to developing their capacities in terms of land acquisition.
- » Give support to traditional and religious authorities who have played a positive role in the evolution of women's access to land in their localities.

### **Land matters**

- » Inform both men and women and make them aware of changes in behaviour needed regarding land management.
- » Facilitate training sessions involving men in order to change the situation.
- » Set up a support mechanism for women.
- » Organise land allocation to women by the state through local community development programmes.
- » Set up advocacy initiatives regarding land security in order to enable women to engage in productive activities efficiently and to protect their rights.
- » Promote land security through rural land registration, which would enable any owner of land in the national domain to hold a land title or other relevant document. This would also apply to plots of land used for residential purposes.
- » Advocacy and capacity development for women

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# ANNEXES

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# ANNEX 1: COUNTRY PROFILES

## BANGLADESH

1.	PEOPLE AND SOCIETY	
a.	<b>Population<sup>24</sup></b>	168,957,745
b.	<b>Ethnic groups</b>	Bengali 98%, other ethnic groups 1.1%
c.	<b>Religion</b>	Muslim 89.1% (Sunni majority), Hindu 10%, other (includes Buddhists, Christians) 0.9%
d.	<b>Maternal mortality rate</b>	176 deaths/100,000 live births
e.	<b>Infant mortality rate</b>	44.09 deaths/1,000 live births
f.	<b>Life expectancy</b>	
	<i>Male</i>	69.02 years
	<i>Female</i>	72.94 years
	<i>Total population</i>	70.94 years
g.	<b>Literacy</b>	
	<i>Literacy rate, male</i>	64.6%
	<i>Literacy rate, female</i>	58.5%
	<i>Literacy rate, total</i>	61.5%
h.	<b>Labour force participation</b>	
	<i>Labour force participation rate, male</i>	84%
	<i>Labour force participation rate, female</i>	58%
	<i>Labour force participation rate, total</i>	71%
i.	Employment in agriculture	
	<i>Employment rate, male</i>	41.8%
	<i>Employment rate, female</i>	68.1%
	<i>Employment rate, total</i>	47.5%
2.	ECONOMY	
a.	<b>GDP</b>	
	<i>Agriculture</i>	15.9%
	<i>Industry</i>	27.9%
	<i>Services</i>	56.2%

24 Source: World Bank, ILO, The Guardian

3.	WOMEN'S RIGHTS	
a.	<b>Domestic violence</b>	
	<i>Law specifically addresses domestic violence</i>	✓
	<i>Specialised court or procedure for domestic violence</i>	✓
	<i>Legislation includes unmarried relationships</i>	✓
	<i>Legislation includes emotional abuse</i>	✓
	<i>Relevant legislation includes financial abuse</i>	✓
	<i>Legislation includes physical abuse</i>	✓
	<i>Legislation includes sexual abuse</i>	✓
b.	<b>Constitution</b>	
	<i>Constitution includes a non-discrimination clause</i>	✓
	<i>Non-discrimination clause in the constitution mentions gender</i>	✓
	<i>Constitution guarantees equality before the law</i>	✓
c.	<b>Harassment</b>	
	<i>Law specifically addresses sexual harassment</i>	✓
	<i>Criminal sanctions for sexual harassment</i>	✓
	<i>A government department is tasked with addressing sexual harassment</i>	✗
	<i>Legislation on sexual harassment in education</i>	✓
	<i>Legislation on sexual harassment in employment</i>	✓
	<i>Legislation on sexual harassment in public spaces</i>	✓
	<i>Legislation on sexual harassment in service provision</i>	✗
	<i>Criminal sanctions for sexual harassment at work</i>	✗
d.	<b>Property</b>	
	<i>Married men and women have equal property ownership rights</i>	✓
	<i>Sons and daughters have equal inheritance rights</i>	✗
	<i>Female and male spouses have equal inheritance rights</i>	✗
e.	<b>Work</b>	
	<i>Law mandates paid or unpaid maternity leave</i>	✓
	<i>Law mandates paid or unpaid paternity leave</i>	✗
	<i>Law mandates equal pay for work of equal value</i>	✓
	<i>Law bans gender discrimination in hiring</i>	✗
	<i>Employers may not ask about family status in a job interview</i>	✗
	<i>Law penalises or prevents dismissal of pregnant women</i>	✗
	<i>Employers must provide break time for nursing mothers</i>	✗
f.	<b>Other</b>	
	<i>Unmarried women confer citizenship in the same way as men</i>	✓
	<i>Married women confer citizenship in the same way as men</i>	✓
	<i>Law does not require married women to obey their husbands</i>	✓

4.	CEDAW RATIFICATION/ACCESSION <sup>25</sup>	Accession: 6 November 1984
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a.	<b>Declarations and Reservations</b>	"The Government of the People's Republic of Bangladesh does not consider as binding upon itself the provisions of article 2, [...and...] 16 (1) (c) as they conflict with Sharia law based on Holy Quran and Sunna."
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25 Convention on the Elimination of All Forms of Discrimination Against Women. Serial no. 4a. for all tables, source: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en) - EndDec

# INDIA

1.	PEOPLE AND SOCIETY	
a.	<b>Population</b>	1,251,695,584
b.	<b>Ethnic groups</b>	Indo-Aryan 72%, Dravidian 25%, Mongoloid and other 3%
c.	<b>Religion</b>	Hindu 79.8%, Muslim 14.2% (Sunni majority), Christian 2.3%, Sikh 1.7%, other and unspecified 2%
d.	<b>Maternal mortality rate</b>	174 deaths/100,000 live births
e.	<b>Infant mortality rate</b>	41.81 deaths/1,000 live births
f.	<b>Life expectancy</b>	
	<i>Male</i>	66.97 years
	<i>Female</i>	69.42 years
	<i>Total population</i>	68.13 years
g.	<b>Literacy</b>	
	<i>Literacy rate, male</i>	81.3%
	<i>Literacy rate, female</i>	60.6%
	<i>Literacy rate, total</i>	71.2%
h.	<b>Labour force participation</b>	
	<i>Labour force participation rate, male</i>	80%
	<i>Labour force participation rate, female</i>	27%
	<i>Labour force participation rate, total</i>	54%
i.	<b>Employment in agriculture</b>	
	<i>Employment rate, male</i>	42.9%
	<i>Employment rate, female</i>	59.7%
	<i>Employment rate, total</i>	49.7%
2.	ECONOMY	
a.	<b>GDP</b>	
	<i>Agriculture</i>	17%
	<i>Industry</i>	30%
	<i>Services</i>	53%
3.	WOMEN'S RIGHTS	
a.	<b>Domestic violence</b>	
	<i>Law specifically addresses domestic violence</i>	✓
	<i>Specialised court or procedure for domestic violence</i>	✓
	<i>Legislation includes unmarried relationships</i>	✓
	<i>Legislation includes emotional abuse</i>	✓
	<i>Relevant legislation includes financial abuse</i>	✓
	<i>Legislation includes physical abuse</i>	✓
	<i>Legislation includes sexual abuse</i>	✓
b.	<b>Constitution</b>	
	<i>Constitution includes a non-discrimination clause</i>	✓
	<i>Non-discrimination clause in the constitution mentions gender</i>	✓
	<i>Constitution guarantees equality before the law</i>	✓

c.	<b>Harassment</b>	
	<i>Law specifically addresses sexual harassment</i>	✓
	<i>Criminal sanctions for sexual harassment</i>	✓
	<i>A government department is tasked with addressing sexual harassment</i>	✓
	<i>Legislation on sexual harassment in education</i>	x
	<i>Legislation on sexual harassment in employment</i>	✓
	<i>Legislation on sexual harassment in public spaces</i>	x
	<i>Legislation on sexual harassment in service provision</i>	x
	<i>Criminal sanctions for sexual harassment at work</i>	✓
d.	<b>Property</b>	
	<i>Married men and women have equal property ownership rights</i>	✓
	<i>Sons and daughters have equal inheritance rights</i>	✓
	<i>Female and male spouses have equal inheritance rights</i>	✓
e.	<b>Work</b>	
	<i>Law mandates paid or unpaid maternity leave</i>	✓
	<i>Law mandates paid or unpaid paternity leave</i>	x
	<i>Law mandates equal pay for work of equal value</i>	x
	<i>Law bans gender discrimination in hiring</i>	✓
	<i>Employers may not ask about family status in a job interview</i>	x
	<i>Law penalises or prevents dismissal of pregnant women</i>	✓
	<i>Employers must provide break time for nursing mothers</i>	✓
f.	<b>Other</b>	
	<i>Unmarried women confer citizenship in the same way as men</i>	✓
	<i>Married women confer citizenship in the same way as men</i>	✓
	<i>Law does not require married women to obey their husbands</i>	✓

4.	CEDAW RATIFICATION/ACCESSION	Signed: 30 July 1980 Ratification: 9 July 1993
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a.	<b>Declarations and Reservations</b>	<p>Declarations:</p> <p>i) With regard to the article 5 (A) and 16 (1) of the CEDAW, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.</p> <p>ii) With regard to Article 16 (2) of the CEDAW, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy."</p> <p>Reservation: "With regard to article 29 of the CEDAW, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1. of this article."</p>
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# INDONESIA

1.	PEOPLE AND SOCIETY	
a.	<b>Population</b>	255,993,674
b.	<b>Ethnic groups</b>	Javanese 40.1%, Sundanese 15.5%, Malay 3.7%, Batak 3.6%, Madurese 3%, Betawi 2.9%, Minangkabau 2.7%, Buginese 2.7%, Bantenese 2%, Banjarese 1.7%, Balinese 1.7%, Acehnese 1.4%, Dayak 1.4%, Sasak 1.3%, Chinese 1.2%, other 15%
c.	<b>Religion</b>	Muslim 87.2% (Sunni majority), Christian 7%, Roman Catholic 2.9%, Hindu 1.7%, other (includes Buddhist and Confucian) 0.9%, unspecified 0.4%
d.	<b>Maternal mortality rate</b>	126 deaths/100,000 live births
e.	<b>Infant mortality rate</b>	24.29 deaths/1,000 live births
f.	<b>Life expectancy</b>	
	<i>Male</i>	69.85 years
	<i>Female</i>	75.17 years
	<i>Total population</i>	72.45 years
g.	<b>Literacy</b>	
	<i>Literacy rate, male</i>	96.3%
	<i>Literacy rate, female</i>	91.5%
	<i>Literacy rate, total</i>	93.9%
h.	<b>Labour force participation</b>	
	<i>Labour force participation rate, male</i>	84%
	<i>Labour force participation, female</i>	51%
	<i>Labour force participation rate, total</i>	68%
i.	<b>Employment in agriculture</b>	
	<i>Employment rate, male</i>	35.6%
	<i>Employment rate, female</i>	33.4%
	<i>Employment rate, total</i>	34.3%
2.	ECONOMY	
a.	<b>GDP</b>	
	<i>Agriculture</i>	13.7%
	<i>Industry</i>	42.9%
	<i>Services</i>	43.3%
3.	WOMEN'S RIGHTS	
a.	<b>Domestic violence</b>	
	<i>Law specifically addresses domestic violence</i>	✓
	<i>Specialised court or procedure for domestic violence</i>	✓
	<i>Legislation includes unmarried relationships</i>	✓
	<i>Legislation includes emotional abuse</i>	✓
	<i>Relevant legislation includes financial abuse</i>	✓
	<i>Legislation includes physical abuse</i>	✓
	<i>Legislation includes sexual abuse</i>	✓

b.	<b>Constitution</b>	
	<i>Constitution includes a non-discrimination clause</i>	✓
	<i>Non-discrimination clause in the constitution mentions gender</i>	✗
	<i>Constitution guarantees equality before the law</i>	✓
c.	<b>Harassment</b>	
	<i>Law specifically addresses sexual harassment</i>	✗
	<i>Criminal sanctions for sexual harassment</i>	✗
	<i>A government department is tasked with addressing sexual harassment</i>	✗
	<i>Legislation on sexual harassment in education</i>	✗
	<i>Legislation on sexual harassment in employment</i>	✗
	<i>Legislation on sexual harassment in public spaces</i>	✗
	<i>Legislation on sexual harassment in service provision</i>	✗
	<i>Criminal sanctions for sexual harassment at work</i>	✗
d.	<b>Property</b>	
	<i>Married men and women have equal property ownership rights</i>	✓
	<i>Sons and daughters have equal inheritance rights</i>	✗
	<i>Female and male spouses have equal inheritance rights</i>	✗
e.	<b>Work</b>	
	<i>Law mandates paid or unpaid maternity leave</i>	✓
	<i>Law mandates paid or unpaid paternity leave</i>	✓
	<i>Law mandates equal pay for work of equal value</i>	✗
	<i>Law bans gender discrimination in hiring</i>	✗
	<i>Employers may not ask about family status in a job interview</i>	✗
	<i>Law penalises or prevents dismissal of pregnant women</i>	✓
	<i>Employers must provide break time for nursing mother</i>	✓
f.	<b>Other</b>	
	<i>Unmarried women confer citizenship in the same way as men</i>	✓
	<i>Married women confer citizenship in the same way as men</i>	✓
	<i>Law does not require married women to obey their husbands</i>	✓

4.	CEDAW RATIFICATION/ACCESSION	Signed: 29 July 1980 Ratification: 13 September 1984
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a.	<b>Declarations and Reservations</b>	“The Government of the Republic of Indonesia does not consider itself bound by the provisions of article 29, paragraph 1 of this Convention and takes the position that any dispute relating to the interpretation or application of the Convention may only be submitted to arbitration or to the International Court of Justice with the agreement of all the parties to the dispute.”
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# MALI

1.	PEOPLE AND SOCIETY	
a.	<b>Population</b>	16,955,536
b.	<b>Ethnic groups</b>	Bambara 34.1%, Fulani (Peul) 14.7%, Sarakole 10.8%, Senufo 10.5%, Dogon 8.9%, Malinke 8.7%, Bobo 2.9%, Songhai 1.6%, Tuareg 0.9%, other Malian 6.1%, from members of Economic Community of West African States 0.3%, other 0.4%
c.	<b>Religion</b>	Muslim 94.8% (Sunni majority), Christian 2.4%, animist 2%, none 0.5%, unspecified 0.3%
d.	<b>Maternal mortality rate</b>	587 deaths/100,000 live births
e.	<b>Infant mortality rate</b>	102.23 deaths/1,000 live births
f.	<b>Life expectancy</b>	
	<i>Male</i>	53.48 years
	<i>Female</i>	57.25 years
	<i>Total population</i>	55.34 years
g.	<b>Literacy</b>	
	<i>Literacy rate, male</i>	48.2%
	<i>Literacy rate, female</i>	29.2%
	<i>Literacy rate, total</i>	38.7%
h.	<b>Labour force participation</b>	
	<i>Labour force participation, male</i>	81%
	<i>Labour force participation, female</i>	51%
	<i>Labour force participation, total</i>	66%
i.	<b>Employment in agriculture</b>	
	<i>Employment rate, male</i>	67.8%
	<i>Employment rate, female</i>	63.9%
	<i>Employment rate, total</i>	66%
2.	ECONOMY	
a.	<b>GDP</b>	
	<i>Agriculture</i>	38.3%
	<i>Industry</i>	23.2%
	<i>Services</i>	38.5%
3.	WOMEN'S RIGHTS	
a.	<b>Domestic violence</b>	
	<i>Law specifically addresses domestic violence</i>	✘
	<i>Specialised court or procedure for domestic violence</i>	✘
	<i>Legislation includes unmarried relationships</i>	✘
	<i>Legislation includes emotional abuse</i>	✘
	<i>Relevant legislation includes financial abuse</i>	✘
	<i>Legislation includes physical abuse</i>	✘
	<i>Legislation includes sexual abuse</i>	✘



b.	<b>Constitution</b>	
	<i>Constitution includes a non-discrimination clause</i>	✓
	<i>Non-discrimination clause in the constitution mentions gender</i>	✓
	<i>Constitution guarantees equality before the law</i>	✓
c.	<b>Harassment</b>	
	<i>Law specifically addresses sexual harassment</i>	✗
	<i>Criminal sanctions for sexual harassment</i>	✗
	<i>A government department is tasked with addressing sexual harassment</i>	✗
	<i>Legislation on sexual harassment in education</i>	✗
	<i>Legislation on sexual harassment in employment</i>	✗
	<i>Legislation on sexual harassment in public spaces</i>	✗
	<i>Legislation on sexual harassment in service provision</i>	✗
	<i>Criminal sanctions for sexual harassment at work</i>	✗
d.	<b>Property</b>	
	<i>Married men and women have equal property ownership rights?</i>	✓
	<i>Sons and daughters have equal inheritance rights</i>	✗
	<i>Female and male spouses have equal inheritance rights</i>	✓
e.	<b>Work</b>	
	<i>Law mandates paid or unpaid maternity leave</i>	✓
	<i>Law mandates paid or unpaid paternity leave</i>	✓
	<i>Law mandates equal pay for work of equal value</i>	✗
	<i>Law bans gender discrimination in hiring</i>	✗
	<i>Employers may not ask about family status in a job interview</i>	✗
	<i>Law penalises or prevents dismissal of pregnant women</i>	✓
	<i>Employers must provide break time for nursing mothers</i>	✓
f.	<b>Other</b>	
	<i>Unmarried women confer citizenship in the same way as men</i>	✓
	<i>Married women confer citizenship in the same way as men</i>	✗
	<i>Law does not require married women to obey their husbands</i>	✗

4.	CEDAW RATIFICATION/ACCESSION	Signed: 5 February 1985 Ratification: 10 September 1985
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a.	<b>Declarations and Reservations</b>	None
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# PAKISTAN

1.	PEOPLE AND SOCIETY	
a.	<b>Population</b>	199,085,847
b.	<b>Ethnic groups</b>	Punjabi 44.68%, Pashtun (Pathan) 15.42%, Sindhi 14.1%, Sariaki 8.38%, Muhajirs 7.57%, Balochi 3.57%, other 6.28%
c.	<b>Religion</b>	Muslim (official) 96.4% (Sunni 85–90%, Shia 10–15%), others (includes Hindus and Christians) 3.6%
d.	<b>Maternal mortality rate</b>	178 deaths/100,000 live births
e.	<b>Infant mortality rate</b>	55.67 deaths/1,000 live births
f.	<b>Life expectancy</b>	
	<i>Male</i>	65.47 years
	<i>Female</i>	69.4 years
	<i>Total population</i>	67.39 years
g.	<b>Literacy</b>	
	<i>Literacy rate, male</i>	69.5%
	<i>Literacy rate, female</i>	45.8%
	<i>Literacy rate, total</i>	57.9%
h.	<b>Labour force participation</b>	
	<i>Labour force participation, male</i>	83%
	<i>Labour force participation, female</i>	25%
	<i>Labour force participation rate, total</i>	55%
i.	<b>Employment in agriculture</b>	
	<i>Employment rate, male</i>	34.2%
	<i>Employment rate, female</i>	74%
	<i>Employment rate, total</i>	43.5%
2.	ECONOMY	
a.	<b>GDP</b>	
	<i>Agriculture</i>	25%
	<i>Industry</i>	20.9%
	<i>Services</i>	54.1%
3.	WOMEN'S RIGHTS	
a.	<b>Domestic violence</b>	
	<i>Law specifically addresses domestic violence</i>	✘
	<i>Specialised court or procedure for domestic violence</i>	✘
	<i>Legislation includes unmarried relationships</i>	✘
	<i>Legislation includes emotional abuse</i>	✘
	<i>Relevant legislation includes financial abuse</i>	✘
	<i>Legislation includes physical abuse</i>	✘
	<i>Legislation includes sexual abuse</i>	✘
b.	<b>Constitution</b>	
	<i>Constitution includes a non-discrimination clause</i>	✓
	<i>Non-discrimination clause in the constitution mentions gender</i>	✓
	<i>Constitution guarantees equality before the law</i>	✓

c.	<b>Harassment</b>	
	<i>Law specifically addresses sexual harassment</i>	✓
	<i>Criminal sanctions for sexual harassment</i>	✓
	<i>A government department is tasked with addressing sexual harassment</i>	✓
	<i>Legislation on sexual harassment in education</i>	✗
	<i>Legislation on sexual harassment in employment</i>	✓
	<i>Legislation on sexual harassment in public spaces</i>	✓
	<i>Legislation on sexual harassment in service provision</i>	✗
	<i>Criminal sanctions for sexual harassment at work</i>	✓
d.	<b>Property</b>	
	<i>Married men and women have equal property ownership rights</i>	✓
	<i>Sons and daughters have equal inheritance rights</i>	✗
	<i>Female and male spouses have equal inheritance rights</i>	✗
e.	<b>Work</b>	
	<i>Law mandates paid or unpaid maternity leave</i>	✓
	<i>Law mandates paid or unpaid paternity leave</i>	✗
	<i>Law mandates equal pay for work of equal value</i>	✗
	<i>Law bans gender discrimination in hiring</i>	✗
	<i>Employers may not ask about family status in a job interview</i>	✗
	<i>Law penalises or prevents dismissal of pregnant women</i>	✓
	<i>Employers must provide break time for nursing mothers</i>	✗
f.	<b>Other</b>	
	<i>Unmarried women confer citizenship in the same way as men</i>	✓
	<i>Married women confer citizenship in the same way as men</i>	✓
	<i>Law does not require married women to obey their husbands</i>	✓
4.	CEDAW RATIFICATION/ACCESSION	Accession: 12 March 1996
a.	<b>Declarations and Reservations</b>	Declaration: “The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.”  Reservation: “The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention.”

# SENEGAL

1.	PEOPLE AND SOCIETY	
a.	<b>Population</b>	13,975,834
b.	<b>Ethnic groups</b>	Wolof 38.7%, Pular 26.5%, Serer 15%, Mandinka 4.2%, Jola 4%, Soninke 2.3%, other 9.3% (includes Europeans and persons of Lebanese descent)
c.	<b>Religion</b>	Muslim 95.4% (Sunni majority) Christian 4.2%, animist 0.4%
d.	<b>Maternal mortality rate</b>	315 deaths/100,000 live births
e.	<b>Infant mortality rate</b>	51.54 deaths/1,000 live births
f.	<b>Life expectancy</b>	
	<i>Male</i>	59.29 years
	<i>Female</i>	63.42 years
	<i>Total population</i>	61.32 years
g.	<b>Literacy</b>	
	<i>Literacy rate, male</i>	69.7%
	<i>Literacy rate, female</i>	46.6%
	<i>Literacy rate, total</i>	57.7%
h.	<b>Labour force participation</b>	
	<i>Labour force participation rate, male</i>	88%
	<i>Labour force participation rate, female</i>	66%
	<i>Labour force participation rate, total</i>	77%
i.	<b>Employment in agriculture</b>	
	<i>Employment rate, male</i>	43.8%
	<i>Employment rate, female</i>	49.1%
	<i>Employment rate, total</i>	46.1%
2.	ECONOMY	
a.	<b>GDP</b>	
	<i>Agriculture</i>	17.2%
	<i>Industry</i>	24%
	<i>Services</i>	58.8%
3.	WOMEN'S RIGHTS	
a.	<b>Domestic violence</b>	
	<i>Law specifically addresses domestic violence</i>	✓
	<i>Specialised court or procedure for domestic violence</i>	✗
	<i>Legislation includes unmarried relationships</i>	✗
	<i>Legislation includes emotional abuse</i>	✗
	<i>Relevant legislation includes financial abuse</i>	✗
	<i>Legislation includes physical abuse</i>	✓
	<i>Legislation includes sexual abuse</i>	✗
b.	<b>Constitution</b>	
	<i>Constitution includes a non-discrimination clause</i>	✓
	<i>Non-discrimination clause in the constitution mentions gender</i>	✗
	<i>Constitution guarantees equality before the law</i>	✓

c.	<b>Harassment</b>	
	<i>Law specifically addresses sexual harassment</i>	✓
	<i>Criminal sanctions for sexual harassment</i>	✓
	<i>A government department is tasked with addressing sexual harassment</i>	✗
	<i>Legislation on sexual harassment in education</i>	✗
	<i>Legislation on sexual harassment in employment</i>	✓
	<i>Legislation on sexual harassment in public spaces</i>	✗
	<i>Legislation on sexual harassment in service provision</i>	✗
	<i>Criminal sanctions for sexual harassment at work</i>	✓
d.	<b>Property</b>	
	<i>Married men and women have equal property ownership rights</i>	✓
	<i>Sons and daughters have equal inheritance rights</i>	✗
	<i>Female and male spouses have equal inheritance rights</i>	✗
e.	<b>Work</b>	
	<i>Law mandates paid or unpaid maternity leave</i>	✓
	<i>Law mandates paid or unpaid paternity leave</i>	✗
	<i>Law mandates equal pay for work of equal value</i>	✗
	<i>Law bans gender discrimination in hiring</i>	✗
	<i>Employers may not ask about family status in a job interview</i>	✗
	<i>Law penalises or prevents dismissal of pregnant women</i>	✗
	<i>Employers must provide break time for nursing mothers</i>	✓
f.	<b>Other</b>	
	<i>Unmarried women confer citizenship in the same way as men</i>	✓
	<i>Married women confer citizenship in the same way as men</i>	✓
	<i>Law does not require married women to obey their husbands</i>	✓
4.	CEDAW RATIFICATION/ACCESSION	Signed: 29 July 1980 Ratification: 5 February 1985
a.	<b>Declarations and Reservations</b>	None

# TOGO

1.	PEOPLE AND SOCIETY	
a.	<b>Population</b>	7,552,318
b.	<b>Ethnic groups</b>	African (37 tribes; largest and most important are Ewe, Mina, and Kabre) 99%, European and Syrian-Lebanese less than 1%
c.	<b>Religion</b>	Christian 29%, Muslim 20% (Sunni majority), indigenous beliefs 51%
d.	<b>Maternal mortality rate</b>	368 deaths/100,000 live births
e.	<b>Infant mortality rate</b>	45.22 deaths/1,000 live births
f.	<b>Life expectancy</b>	
	<i>Male</i>	61.91 years
	<i>Female</i>	67.17 years
	<i>Total population</i>	64.51 years
g.	<b>Literacy</b>	
	<i>Literacy rate, male</i>	78.3%
	<i>Literacy rate, female</i>	55.3%
	<i>Literacy rate, total</i>	66.5%
h.	<b>Labour force participation</b>	
	<i>Labour force participation rate, male</i>	81%
	<i>Labour force participation rate, female</i>	81%
	<i>Labour force participation rate, total</i>	81%
i.	<b>Employment in agriculture</b>	
	<i>Employment rate, male</i>	60.5%
	<i>Employment rate, female</i>	48.2%
	<i>Employment rate, total</i>	54.1%
2.	ECONOMY	
a.	<b>GDP</b>	
	<i>Agriculture</i>	30.4%
	<i>Industry</i>	20.2%
	<i>Services</i>	49.4%
3.	WOMEN'S RIGHTS	
a.	<b>Domestic violence</b>	
	<i>Law specifically addresses domestic violence</i>	✓
	<i>Specialised court or procedure for domestic violence</i>	✗
	<i>Legislation includes unmarried relationships</i>	✗
	<i>Legislation includes emotional abuse</i>	✓
	<i>Relevant legislation includes financial abuse</i>	✓
	<i>Legislation includes physical abuse</i>	✓
	<i>Legislation includes sexual abuse</i>	✓
b.	<b>Constitution</b>	
	<i>Constitution includes a non-discrimination clause</i>	✗
	<i>Non-discrimination clause in the constitution mentions gender</i>	N/A
	<i>Constitution guarantees equality before the law</i>	✓

c.	<b>Harassment</b>	
	<i>Law specifically addresses sexual harassment</i>	✓
	<i>Criminal sanctions for sexual harassment</i>	✓
	<i>A government department is tasked with addressing sexual harassment</i>	Information not available
	<i>Legislation on sexual harassment in education</i>	✓
	<i>Legislation on sexual harassment in employment</i>	✓
	<i>Legislation on sexual harassment in public spaces</i>	✓
	<i>Legislation on sexual harassment in service provision</i>	✓
	<i>Criminal sanctions for sexual harassment at work</i>	✓
d.	<b>Property</b>	
	<i>Married men and women have equal property ownership rights</i>	✓
	<i>Sons and daughters have equal inheritance rights</i>	✓
	<i>Female and male spouses have equal inheritance rights</i>	✓
e.	<b>Work</b>	
	<i>Law mandates paid or unpaid maternity leave</i>	✓
	<i>Law mandates paid or unpaid paternity leave</i>	✓
	<i>Law mandates equal pay for work of equal value</i>	✓
	<i>Law bans gender discrimination in hiring</i>	✓
	<i>Employers may not ask about family status in a job interview</i>	✗
	<i>Law penalises or prevents dismissal of pregnant women</i>	✓
	<i>Employers must provide break time for nursing mothers</i>	✓
f.	<b>Other</b>	
	<i>Unmarried women confer citizenship in the same way as men</i>	✓
	<i>Married women confer citizenship in the same way as men</i>	✓
	<i>Law does not require married women to obey their husbands</i>	✓
4.	CEDAW RATIFICATION/ACCESSION	Accession: 26 September 1983
a.	<b>Declarations and Reservations</b>	None

# ANNEX 2: INHERITANCE AND DEGREES OF RELATIONSHIP, AS DESCRIBED IN THE QURAN

## MUSLIM SHARERS (SUNNI)

	Sharers	Share	Conditions under which the share is inherited	Whether excluded or converted into a residuary	
1	Husband	1/4	When there is a child or child of a son (how low so ever)	Excluded by none	
		1/2	When there is no child or child of a son (h.l.s.)		
2	Wife (one or more)	1/8	When there is a child or son's child (h.l.s.)	Excluded by none	
		1/4	When no child or son's child		
3	Daughter	1/2	If one (when there is no son)	Excluded by none	
		2/3	If one (when there is no son)		
		Residue	-		Converted into a residuary if there is one or more sons
4	Son's daughter	1/2	If one	Excluded by: son or son's son of higher grade two or more daughters or by two or more son's daughters of higher grade, or by one daughter together with two or more son's daughters of higher grade	
		2/3	If two or more, collectively get		
		1/6	When there is one daughter		
		Residue	-		Converted into a residuary if there is a son's son of equal or even lower grade
		Residue	-		Converted into a residuary if there is a son's son of equal or even lower grade
5	Father	1/6	When there is a son or son's son (h.l.s.)	Excluded by none	
		1/6 plus residue	When there are one or more daughters, or son's daughters, and there is no son or son's son		In this case, the father is a sharer and also a residuary
		Residue	When no child or son's child (h.l.s.)		
6	Mother	1/6	When there is a child or son's child (h.l.s.) or two or more brothers or sisters, whether full blood or half blood, and whether they inherit or are excluded or there is a brother and sister and the father	-	
		1/3	When there is no child or son's child and not more than one brother and sister		
		1/3 of residue	When there is a wife or husband and the father		Converted into a residuary by the father



Sharers	Share	Conditions under which the share is inherited	Whether excluded or converted into a residuary
<b>7 True grandfather</b>	1/6	When there is a child or son's child (h.l.s.) and no father or nearer true grandfather	Excluded by the father or nearer true grandfather
	1/6 plus residue	When with daughters or only son's daughters	
	Residue	When no child or son's child	Converted into a residuary if there is no descendant sharer or residuary
<b>8 True grandmother</b>	1/6	When no mother and no nearer true grandmother	Paternal true grandmother excluded by father or by a true grandfather. Any true grandmother is excluded by mother or by nearer true grandmother, whether paternal or maternal. Not a residuary
<b>9 Full sister</b>	1/2	If one (when no child or son's child (h.l.s.) or father or brother)	Excluded by son or son's son (h.l.s.) father or true grandfather. Also excluded as sharer by one or more daughters or son's daughters
	2/3	If two or more (when no child or son's child (h.l.s.) or father or brother)	
	Residue	-	Converted into residuary by full brother, that is when with one or more full brothers, subject to not being excluded or when with one or more daughters or son's daughters and no excluder, the full sisters one or more become residuaries with daughter i.e. they take the residue after deducting the shares of daughters
<b>10 Consanguine sister</b>	1/2	If one (when no child, son's child (h.l.s.), father or brother or full sister)	Excluded by son or son's son, father or true grandfather or by full brother or by full sister when she is a residuary  Also excluded by one or more daughters or son's daughters or by two or more full sisters
	2/3	If two or more (when no child, son's child (h.l.s.), father or brother or full sister)	
	1/6	When with one full sister only (the sister takes and consanguine sister takes ( - = ))	
	Residue	-	Converted into residuary by a consanguine brother. When there are one or more daughters, or son's daughters, and no excluder
<b>11 Uterine brother</b>	1/6	If one (when no child or son's child (h.l.s.) or father (h.h.s.))	Excluded by son or son's son, father, or true grandfather, or daughter or son's daughter  Never - converted into a residuary
<b>12 Uterine sister</b>	1/3	If two or more (when no child or son's child (h.l.s.) or father (h.h.s.))	

## TABLE 2: MUSLIM SHARERS (SHIA)

Sl.	Sharers	Share	Conditions under which the share is inherited	Whether excluded or converted into a residuary
1	Husband	1/4	When there is a child or child of a son how low so ever (h.l.s)	Excluded by none
		1/2	When there is no child or child of a son (h.l.s.)	
2	Wife (one or more)	1/8	When there is a child or son's child (h.l.s.)	Excluded by none
		1/4	When no child or son's child	
3	Daughter	1/2	If one (when there is no son)	Excluded by none
		2/3	If two or more (when there is no son)	
		Residue	-	Converted into a residuary if there is a son or two or more sons
4	Father	1/6	When there is a son or son's son (h.l.s.)	Excluded by none
		1/6 plus residue	When there are one or more daughters, or son's daughters, and there is no son or son's son	In this case, the father is a sharer and also a residuary
		Residue	When no child or son's child (h.l.s.)	Converted into residuary in the absence of any child
5	Mother	1/6	When there is a child or son's child (h.l.s.) or two or more brothers or sisters, whether full blood or half blood, and whether they inherit or are excluded or there is a brother and sister and the father	-
		1/3	When there is no child or son's child and not more than one brother and sister	
		1/3 of residue	When there is a wife or husband and the father	Converted into a residuary by the father
6	Full sister	1/2	If one (when no child or son's child (h.l.s.) or father or father's father or brother)	Excluded by son or son's son (h.l.s.), father or true grandfather. Also excluded as sharer by one or more daughters or son's daughters
		2/3	If two or more (when no child or son's child (h.l.s.) or father or father's father or brother)	
		Residue	-	Converted into residuary by full brother, i.e. when with one or more full brothers, subject to not being excluded or when with one or more daughters or son's daughters and no excluder, the full sisters one or more become residuaries with daughter, i.e. they take the residue after deducting the shares of daughters

Sl.	Sharers	Share	Conditions under which the share is inherited	Whether excluded or converted into a residuary
7	Consanguine sister	1/2	If one (when no child, son's child (h.l.s.), father, father's father, or brother or full sister)	Excluded by son or son's son, father or true grandfather or by full brother or by full sister when she is a residuary
		2/3	If two or more (when no child, son's child (h.l.s.), father, father's father, or brother or full more sister)	Also excluded by one or more daughters or son's daughters or by two or more full sisters
		1/6	When with one full sister only (the sister takes and consanguine sister takes ( - = ))	
		Residue	-	Converted into residuary by a consanguine brother. When there are one or more daughters, or son's daughters, and no excluder
8	Uterine brother	1/6	If one (when no child or son's child (how low so ever ) or father (how high .so ever)	Excluded by son or son's son, father, or daughter or son's daughter
9	Uterine sister	1/3	If two or more [when no child or son's child (h.l.s.) or father (h.h.s.)	Never – converted into a residuary

**Source:** ILC, Bangladesh Study.

**Note on terms used:** Consanguine brother/sister: siblings who have the same father but not the same mother; uterine brother/sister: siblings who have the same mother but not the same father; residue/residuary estate: the remaining portion of an estate that does not pass to specific heirs.

# NOTES



20 horizontal blue lines for writing notes.





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**ILC** is a global alliance of civil society and intergovernmental organisations working together to put people at the centre of land governance. The shared goal of ILC's 207 members is to realise land governance for and with people at country level, responding to the needs and protecting the rights of women, men and communities who live on and from the land.

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