

International Institute for Environment and Development



WHO BENEFITS FROM LAND TITLING? LESSONS FROM BOLIVIA AND LAOS

Susana Lastarria-Cornhiel 2007

EXECUTIVE SUMMARY

As households in the developing world become more feminised through the breakdown of marriages, the impact of civil war and HIV/AIDs, secure access to land by women is crucial. Such land offers a safe place to raise families and forms the base for diversified livelihood strategies.

The last three decades have seen an unprecedented effort to give land users legal land ownership in the developing world. This effort on the part of government and donor agencies is largely in response to economic studies which suggest that secure property rights are a key precondition for development. In theory, property holders can access markets more easily and are better able to invest, resulting in higher incomes for both rural and urban families.

However, property formalisation is not seen as a panacea by everyone. Many assert that often there is no need for formalisation of rights, many national governments are not capable of providing the infrastructure to enforce these legal property rights and privatisation and titling can lead to land-grabbing by the powerful. Research also shows that for the poorest households, often the main target of these programmes, titling and registration do not in fact give them greater access to credit, nor do they increase their ability to buy land or to invest in their properties.

There is also concern over the uneven impacts of formalisation programmes, especially their potentially negative impacts on women. The author illustrates this concern drawing on her research in Bolivia and Laos PDR, where despite legal and policy contexts which support equal access to titling for both men and women, women still face significant social, political and cultural constraints to acquiring rights to land.

The author suggests that legal measures are not sufficient. Programmes that recognise and/or formalise land rights need to take explicit steps and procedures to include women:

- Policy and programme development processes should involve civil society, and state agencies need to adopt equity as a societal objective
- Programmes are needed to raise awareness of current discriminatory practices, and legal literacy programmes will help to instruct both women and men in their rights
- Legal assistance is required for women and minorities to help them navigate government agencies and legal channels and to provide moral and financial support
- Land reform, resettlement and state leasehold programmes should carefully and aggressively review their policies and regulations as well as their guidelines, training, and procedures to ensure that gender is prioritised and that both women and men are involved at all levels
- Research should be increased into the longer-term impacts of these titling programmes on women.

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INTRODUCTION

Since the 1980s there has been a wave of titling and property registration programmes as governments and donor agencies promote the privatisation of public and customary land, and the legal formalisation of land rights throughout the developing world. This has spawned an unprecedented effort to draw up a legal document and map for every parcel of land. Formalisation has been promoted for a number of reasons: titling, it is said, not only protects a person's access to and control of land, but also helps them get access to credit, agricultural resources and services. Legal formalisation of land rights has thus been advanced (mostly by a diverse set of economists such as Feder *et al.*, 1988; de Soto, 2000, and Deininger, 2003) as the best mechanism for securing landholders' property rights. Other positive development effects are expected to include improved access to factor markets and increased investment, resulting in higher incomes for both rural and urban families.

However, not everyone sees property formalisation as a magic bullet. There are two different areas of concern. The first surrounds the fundamental need for, and effectiveness of, titling—the contention is that in many areas there is no need for formalisation of rights, and that many national governments, in any case, are not capable of providing the infrastructure to enforce these legal property rights. Researchers point out the land-grabbing by elites, authorities and the well-connected that occurs when privatisation and titling programmes are implemented, as well as the many out-dated titling and registration records housed in government offices. Land records that are not updated do not have much value for securing current land rights. And quite a few studies have shown that low-income households and smallholder families, for whose sake these programmes were developed, are not able to access the benefits that justified the costs of titling and registration: they do not have greater access to credit, are not more able to buy land, and are not more likely to invest in their properties.¹

The second concern is the uneven impacts of formalisation programmes, especially their potentially negative impacts on women. I explore this concern in this paper and suggest some key steps which can help ensure that women benefit more equally from property formalisation.²

WOMEN AND LAND RIGHTS

Although rural income in many countries has become less dependent on agriculture, land continues to be a crucial resource for the survival and reproduction of rural populations. And as rural households become more feminised because of the breakdown of marriages, civil war and HIV/AIDS, land as a secure place to raise families and as a base for diversified livelihood strategies becomes more important for women. These cultural and social values attached to land are important considerations when designing programmes around land such as formalisation of rights.

For many of the historically disadvantaged population groups, land rights are not primarily marketable assets but rather a secure foundation for sheltering and nurturing their families and making a living. In addition to tenure security for women, research suggests that property ownership increases a woman's bargaining power within the household and her status as a citizen in the community (Meizen-Dick *et al.*, 1997).

Because land and property rights are such a basic societal right, their importance for the welfare of individuals and groups is far-reaching. Exclusion from property rights is not only an indicator of exclusion from other societal rights and benefits, but contributes, both materially and culturally, to a pattern of exclusion and secondary status. Democratic governance is based on social equity and empowerment for all community members—in other words, there must be no secondary citizens. The exclusion of population groups, such as women, from equal property rights is to deny them full citizenship status. As Herring (1999: 29) so nicely put it: "...it seems clear from everything we know about oppression, exclusion and opportunity that redressing gendered inequalities in much of the world must include reform of property relations."

That does not mean, nevertheless, that individual private property is always and everywhere the only mechanism for securing land rights—land rights and land

^{2.} This paper is based on results from a study undertaken in Azerbaijan, Bolivia, Ghana, and Lao PDR by Renee Giovarelli, Elizabeth Katz, Susana Lastarria-Cornhiel and Susan Nichols during 2004-2005. The study was funded by the World Bank's Gender and Rural Development Thematic Group and the Land Policy Thematic Group. A synthesis of those country studies was published by the World Bank (2005).

tenure systems evolve as society evolves. Equitable access to land means that society's members have equitable opportunity to access land (be it through private property ownership, communal access, or corporate membership) and that gender, ethnicity, caste or any other ascribed attribute is not used to deny a person or group their land rights.

Why are women missing out in land formalisation programmes?

Numerous studies have shown that until recently titling programmes have targeted men as titleholders, leaving most women without legal property rights, even to the secondary access rights many hold under customary tenure. The implications for women are: (1) those who have access rights to their families' land but do not have title to that land may find themselves at risk of losing the land if their relationship to the titleholder (e.g., the husband) is broken; (2) women without title have little assurance that the land they are using will not be sold, leased, or mortgaged without their consent, or that they will benefit from these transactions.

This exclusion of women was due in part to how titling programmes were conceived: as purely technical and legal processes. In addition, titling experts and administrators have focused on problems of efficiency and technology—ignoring complex cultural norms and practices around land rights—and found it easier to title only the household head. Thus, certain groups (such as women) are disenfranchised of the rights they held under customary tenure or even under formal law. Where state or public land has been distributed to families, titling programmes have also disregarded the formal legal rights women have to that land as equal citizens. This practice reveals the other reason women have been left out of the titling process: patriarchal ideology that considers only men as property holders (Box 1).

There is a rising concern for gender equity among donor institutions promoting and funding titling and registration programmes. Advocates of extending legal land rights to women have promoted issuing joint title to couples for the land they hold and work as an alternative to titling only the household head.³ Thus, some titling programmes have recently incorporated the option of joint titles. In some programmes, joint title is legally mandated, particularly if the land being titled has been allocated by the state or if it was acquired by a couple during marriage.

^{3.} Deere and Leon (2001) make this argument in their comprehensive study on women's rights to land in Latin America.

Box 1. Land rights and gender identity in traditional systems

Most customary land tenure systems reflect and re-create gendered cultural norms and practices. Patrilineal kinship, patrilocal marriage and residency patterns where women leave their own community to live in the husband's community, and patrilineal inheritance practices ensure that men maintain control over land and its resources and that women have only access rights through their relation to a man as daughter, wife, or sister. These norms and practices not only help define the land tenure system (how land rights are allocated and passed on), but also contribute to gender identification—part of male identity is control over land, part of female identity is exclusion from control over land and resources. When individual women attempt to claim legal land rights or groups of women struggle for recognition of women's rights to land, they are also confronting gendered structures and ideology, in this way threatening male identity and power.⁴

I now describe two titling programmes, in Bolivia and Lao PDR, which officially advocated women's equal land rights and wives' rights to landed property. I then go on to explore how women have fared in these programmes.

FORMALISATION OF LAND RIGHTS IN BOLIVIA AND LAOS

Bolivia and Lao PDR both began land titling programmes in the mid- to late-1990s. The two countries share many other characteristics, in spite of their many obvious differences. These two countries are both amongst the poorest in their region: 63% of Bolivia's population and 39% of Laos' population are below the national poverty line. Table 1 shows that while the per capita gross national product (GNP) for Bolivia is about three times that of Laos, when converted to per capita purchasing power parity (PPP), Bolivia's is only 44% higher than Laos'. Both countries are multi-ethnic, rural societies and a great proportion of households are dependent on access to cropland and pastures for their livelihood. Laos is highly agricultural: agriculture contributes to 49% of Laos' GDP while only to 15% of Bolivia's GDP. Recent labour force figures show that 77% of Laos' labour force and 37% of Bolivia's is in the agricultural sector. Women working in agriculture make up 81% of the female labour force in Laos and only 3% in Bolivia.⁵ A review of some other indicators shows higher illiteracy rates for women, low life expectancy, high fertility rates, and high maternal mortality ratios in both countries.

Both countries' constitutions recognise and reaffirm women's equal rights. Different national legislation in both countries (such as agrarian reform laws, land titling laws, property laws, family codes) also recognises equal access to land and prop-

^{4.} Goebel (2005) describes how this dynamic has played out in Zimbabwe since the 1990s.

^{5.} These official figures on Bolivia's female labour force do not reflect the level of women's unremunerated family labour invested in peasant farms.

Indicators	Bolivia	Lao PDR	
GNP per capita (2000)	\$980	\$290	
PPP per capita* (2002)	\$2,390	\$1,660	
Population density (persons/sq. mile) (2002)	8	24	
Rural population (% of total population) (1998-2003)	36%	79%	
Poverty (% of population below national poverty line) (1998-2003)	63%	39%	
Agriculture as % of GDP (2003)	15%	49%	
Agricultural labour force (% of total labour force) (1997)	37%	77%	
Female labour force (% total labour force)	38% (2000)		
in agriculture (% of female labour force)	3% (2000)	81% (1990)	
Female life expectancy (years) (2000)	64	55	
Female adult illiteracy rate (2000)	21%	47%	
Male adult illiteracy rate (2000)	8%	24%	
Total fertility rate (births per woman) (2000)	3.9	5.0	
Maternal mortality ratio (per 100,000 live births) (2000)	420	650	

Table 1: General Development Indicators for Bolivia and Lao PDR

erty. One significant legal difference with regard to land rights and property is that Bolivia recognises private property and communal property (as well as public property), while Laos maintains that all land is state property and its citizens have permanent or temporary (short-term and long-term) use rights to land. These permanent use rights are similar to private property in the sense that holders of these rights control their land, are able to buy and sell use rights, mortgage them and otherwise use them as collateral, and may pass these rights to their heirs.

Both Bolivia and Laos have undergone land programmes in the last 50 years that involved the redistribution of land and the relocation of rural families. Bolivia initiated both a redistributive land reform programme and a land resettlement programme. In Laos, there were significant population movements, both within country and out of country, as a result of the independence struggles and the war in Vietnam. After Laos gained independence in 1975, there was a short-lived experiment with agricultural production cooperatives. This was abandoned in the mid 1980s when state policy shifted towards individual production and individual land control. These land programmes were very different in each country, but the result in both countries has been that much land has never been legally titled or, where titles do exist, they are outdated and do not reflect the current situation on the ground. This situation is seen by both governments and some donor agencies as a constraint to economic development and market transactions. As a result, government, with donor support, has initiated a land titling programme in each country to modernise the land administration system, to regularise land records, and provide secure title to landholders.

Land regularisation in Bolivia

Bolivia underwent a significant re-distributive land reform in the highlands during the 1950s and 60s, and promoted a land re-settlement programme in the lowlands which began in the 1960s and continued into the 1980s. A relatively small proportion of this land was titled to the new owners. In 1997, Bolivia began a national programme (*saneamiento*) to formally title and register land parcels that had been distributed through the land reform and resettlement programmes and to update the registration of already titled land.

Although Bolivia's formal legal system recognises equal land and property rights for both women and men, customary norms and practices show a strong bias against women owning land. Ownership documents were generally only in the husband's name and at the time of inheritance the land usually passes from father to sons (Salazar, 2004).

The 1953 agrarian reform law stated that all Bolivian farmers of 18 years and older, regardless of sex, were entitled to benefit from agrarian reform and land settlement programmes. However, in practice the only women who received land were female heads of household such as widows with small children. The Family Code of 1979 specifies that property acquired through grant or adjudication from the state (such as the land reform and land re-settlement programmes) forms part of the community property of the conjugal couple.⁶

The 1996 legislation that initiated the systematic land titling effort (Law 1715, Servicio Nacional de Reforma Agraria) explicitly recognises equal rights to land by women and men. Article 3, Paragraph V states that equity criteria will be applied in the distribution, administration, tenure, and use of land in favour of women, independent of their civil status. The last phrase is important since it does not require that a woman be a head of household or married in order to be eligible for

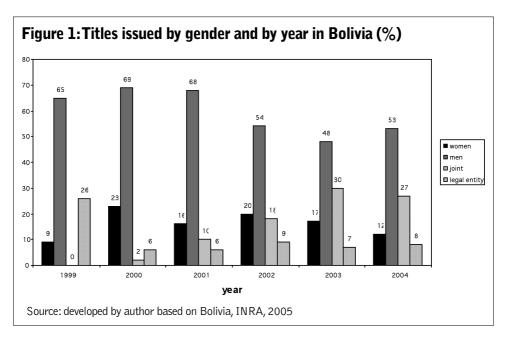
6. Article 111 (5) states: Community property includes that which is obtained by grant or adjudication from the state. (Author's translation).

land rights. However, the law does not enter into more detail on women's rights to land and the regulations did not include sufficient procedural guidelines to assure gender equity in the *saneamiento* process.

Thus, in spite of this gender-sensitive legislation, during the first few years of the saneamiento programme, the implementing agency, Instituto Nacional de Reforma Agraria (INRA), did not take any measures to ensure (1) that women were made aware of their legal rights, (2) that women participated in the saneamiento process, or (3) that its personnel and the titling brigades received gender training in women's land rights. As saneamiento advanced, it was evident that very few women were being titled, either as individuals or as co-owners. Scholars and NGOs demanded that the titling process adopt gender objectives-they specifically pointed out that wives should be included on titles for household land. Consequently, in late 2001, INRA modified its procedures in order to include more women in the process and to grant land rights to more women. For example, using the Family Code article mentioned above for state land, INRA instructed its titling brigades that all land parcels being titled for the first time were to be titled to the couple, not only to the head of household. The new procedures included explicitly inviting women to the information campaigns that explained the titling process in the local language, modifying titling forms and activities to include both spouses, and explicitly encouraging women to have their name included on titles (Camacho Laguna, 2003).

Figure 1 shows the number of titles issued to individual men and women, as well as to couples and legally registered commercial farms between 1999 and 2004. The data clearly show that over this period, while the number of titles to individual women increased from a low of 9% in 1999 to a high of 23% in 2000, this increase has not been sustained. On the other hand, the number of joint titles has consistently increased, from nearly none in 1999 to 27-30% in the last few years. Nevertheless, individual men continue to receive the majority of the land titles.

If we examine the amount of land titled, the level of disparity is even greater. Figure 2 confirms that the amount of land being titled to men far exceeds the amount titled to women as individuals and to women in joint titles. If we disaggregate by type of farm, it appears that women are more likely to obtain title (individual and joint) to smaller parcels of land. Individual men have obtained the great majority of land titles for all land, homesteads, agricultural parcels, and corporate farms. While the number of individual and joint titles issued to women has increased over the years, it appears that they are mostly for homestead (*solar*) land and small farms.



These figures demonstrate the continued discrimination facing women in the land titling process, despite the supportive legal and policy framework. Between 2000 and 2004 INRA headquarters gave repeated instructions to its departmental and field offices to include women in titling activities such as information meetings and to include women's names on adjudication documentation. These insistent instructions reveal the difficulties faced by titling brigades in carrying out the instructions. The Land Registry, for example, refused to register co-ownership titles (as community property) to consensual couples, insisting that only legally married couples should be recognised as legitimate spouses. As a result, titles to couples without an accompanying marriage certificate were being rejected by the Land Registry and titling brigades were therefore reluctant to issue such titles.⁷ Titling brigades were also experiencing resistance from male household heads and from community authorities to include women in the *saneamiento* process and on the land titles.

Land titles versus land use certificates in Lao PDR

Lao legislation is very similar to Bolivia's, in that it acknowledges the importance of gender equity in family, inheritance and property laws. Customary norms for land rights and gender are generally more equal than in Bolivia and are applied

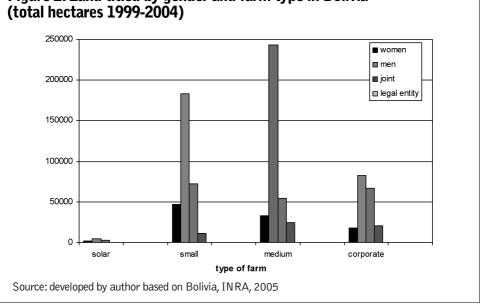


Figure 2: Land titled by gender and farm type in Bolivia

principally through inheritance practices. Laos is a multi-ethnic country with mainly patrilineal traditions, and some small pockets of matrilineal groups. With the exception of some strongly patrilineal minority groups,⁸ in most patrilineal and matrilineal groups, both daughters and sons can inherit land and there are no cultural restrictions on women owning land. Inheritance practices are not rigid and parents usually decide which children will inherit what family property. The traditional practice is for the youngest daughter to remain in her parents' home after marriage to take care of them in their old age; she therefore inherits the family homestead-if the family has other parcels, these are distributed to the other children.

Traditional land tenure systems in Laos have been based on use rights to land and customary inheritance practices. These systems have varied according to ethnic group. Generally, however, village heads (called Pho Ban or Nai Ban) and administrative committees have been responsible for land use and forest management

^{8.} In the strongly patrilineal ethnic groups, such as the Khumu and the Hmong living mostly in the midland and upland areas, men are the owners and administrators of land and land is transferred from one generation to another through sons when they marry and leave the house or when the parents become too old to work the land (Lao PDR, 2002).

and for mediating land disputes (Ireson-Doolittle, 1999; Seth, 1968). Most rural land continues to be controlled by community authorities and families. Traditionally, a mixture of swidden agriculture and paddy rice cultivation has been practised, and continues to be practised in many rural areas. Families control their home plot, where they live and cultivate a home garden. They also have control of any paddy land they may have developed or acquired. Communities control common property such as forests and pasture lands and allocate land for swidden agriculture. Urban land, on the other hand, tends to be privately managed and controlled.

A land titling system was established at the beginning of the 20th century through the creation of the Land Book in 1912. Titles and cadastral plans for mostly urban land were recorded in this book. This system fell into disuse and an informal process for recording the transaction of land rights was developed. This process became more widespread as a result of displaced populations during the war of independence and particularly after a substantial proportion of the urban population left the country after 1975. In rural areas, land records, beyond those by village authorities, were not kept (Seth, 1968).

Although by law all land is vested in the state, legal and secure land rights to private parties occupying land are recognised.⁹ Since the early 1990s, land policy for the legalisation of land rights to citizens has followed two different paths: one for rural land and another for urban land. In the rural areas, the Ministry of Agriculture and Forestry¹⁰ has been implementing a programme allocating state land to community organisations and individual users. This programme involves the delineation of community boundaries and the classification of community lands. The Ministry issues land use certificates to community members for agricultural and forest land, accompanied by rough survey plans. These land certificates are inheritable but cannot be sold or used as collateral—they can also be converted into permanent rights over time. It is estimated that by 2003 approximately half of the rural households and communities in Laos had been issued land certificates.

In urban areas, a different policy has been implemented. Here, individual land rights are common and private property is the norm. In 1995, a land titling programme was begun in urban and peri-urban areas for what is considered urban

^{9.} The policy of state-owned land comes from at least the colonial era when all unoccupied as well as untitled land was the property of the state. Land records, beyond those kept by village authorities, were not kept for rural land (Seth, 1968).

^{10.} With the support of the Swedish and German development agencies.

land—non-agricultural and non-forest land that has construction on it. These titles give occupants the right to pass on their use rights to heirs, the right to sell their use rights, and the right to use them as collateral for credit. Once urban and periurban areas have been titled, the government intends to title the most commercial agricultural land, such as lowland rice fields.

In spite of positive legal, political, and cultural conditions for recognition of women's rights in Laos, there have been problems in issuing land documents (land certificates and land titles) to women. This is the case particularly in rural areas where land use certificates are being issued, but was also the case during the first years of the titling programme in urban areas. A study undertaken in 1998 compared information on who had acquired land with whose name was on the land document. The results showed that the names on land documents did not always reflect the actual landholder: while more women inherited land than men, many more land use certificates and titles were issued only in the husbands' names (see Table 2). In addition, couples (husband and wife) had jointly acquired over half of the land parcels, yet only a small percentage of these received joint certificates and titles.

How land was acquired (n=4,255 land parcels)		Name on land use documents (n=4,255 land parcels)	
	Percentage		Percentage
From husband's family	18	Husband	58
From wife's family	30	Wife	16
As a couple	52	Couple	7
		Other name	7
		No documents	12
TOTAL	100		100

Various reasons were put forward for these discrepancies:

• The certification or titling process: in most households, only the men participated in the information meetings and other certificate or titling activities. Therefore, women were not aware of the legal and economic significance of having their names on land use documents and were not present when decisions were made about whose name would appear on the certificate or title (GRID, 2000).

- The design of form used to collect landholder information: the land allocation teams and the land adjudication forms asked for the name of the household head, traditionally the oldest man in the family. Consequently, the land certificate or land title was issued to that person with others in the household listed as dependents. In addition, no provision was made on these forms for joint ownership (Lao PDR, 2002).
- Patriarchal norms: men are the traditional head of the family and wives defer to husbands, particularly in public situations. Women may have felt that the husband's name, as head of the family, should be on land use certificates and titles (GRID, 2000).

As a result of this 1998 study, many of these problems were corrected as the landuse titling programme has developed and the Lao Women's Union has become an active participant in the systematic adjudication teams and organises information campaigns and educational material. They also hold meetings with the women when titling begins in a community. Later studies (see Table 3) show a much higher level of titled women (both as individuals and as joint owners). They also indicate that compared to the rural land certification programme, the urban titling programme is including more women and issuing more joint titles.

Table 2 Distribution of land titles 8 land use contificates in Lass (0/)

Study & Year		Women	Men	Joint	Other	Total
Social Assessment (2002)	titles (urban)	34	24	38	3	100
(2002)	certificates (rural)	15	56	28	1	100
Baseline Socio- Economic (2003)	titles (urban)	28	20	41	11	100
	certificates (rural)	24	40	27	10	100

For example, a household survey was undertaken in 2002 in six provinces where the land titling programme had been implemented and in two provinces where no land titling had taken place. In the households with titled land, more women had titles than men and a substantial number of parcels (38%) were jointly titled to both wife and husband. The households in the untitled provinces had land use certificates issued by the Ministry of Agriculture and Forestry. Of the land parcels whose ownership could be determined, the majority (56%) had land use certificates issued to men; only 15% of the land use certificates were issued to women and 28% were joint certificates.

A study in 2003 also indicates that the land titling programme has been more successful than the land certification programme in recognising women's land rights. A comparison of households that received title and those that received another type of official document such as a land certificate reveals that a higher percentage of women received titles to land, either as individuals (28%) or jointly (41%) with their spouse. Since the land titling programme has focused on urban land, and other official land documents are more likely to be for rural land, some of the explanation for this gender disparity may be due to urban/rural and ethnic differences.

CONCLUSIONS

Contemporary history is witnessing the transition of customary communities, such as those in Bolivia and Laos, into market-based societies in most regions. The process is uneven and not always positive; nevertheless, rights to land are slowly but inexorably becoming linked to market forces. The wealth and power associated with land rights are accruing to those able to play the market game. During this transition, it appears that social equity and democratic governance do not develop at the same rate as market relations. The challenge for gender equity in the realm of property rights is ensuring that women have the same opportunity as men to acquire land rights during this transition period.

Most formal legislation is not biased with regard to property rights and gender. Yet women often face significant social, political and cultural constraints in acquiring land rights. Thus, legislation and public policy should not be simply gender neutral, but should recognise these constraints and take measures to remove them: simply declaring equal land rights does not erase gender bias. As these two case studies have shown, legal measures are not sufficient. Programmes that recognise and/or formalise land rights need to take explicit steps and procedures to include women.

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Real and effective rights for women will take time as norms of social equity and democratic governance are assimilated by communities and societies, and social actors adopt values and practices not based on gender bias. This process can be facilitated through policy decisions and programmes that work with civil society, and through state agencies that adopt equity as a societal objective. Programmes that raise awareness of current discriminatory practices increase the level of consciousness on the issue within society. The raising of awareness together with legal literacy programmes for both women and men give community members the basis for knowing what their rights are. Legal assistance for those women (and minorities) who want to exercise their rights not only allows them to navigate government agencies and legal channels, but can also offer women moral and financial support.

In addition to titling and registration, other programmes that specifically deal with land rights such as land reform, resettlement and state leasehold should carefully and aggressively review their policies and regulations as well as their guidelines, training, and procedures to ensure that gender is integrated as an important objective and that women as well as men are involved at all levels of the programme. For these programmes to successfully integrate gender and eliminate gender bias, strong political will is essential.

And finally, in this paper I have only summarised the immediate outcomes of two titling programmes. There is a need to look at what the longer term impacts of these titling programmes are for women: for example, do they improve women's access to the credit market and increase their income? Do they give them more decision-making authority in the household? Do they increase their participation and leadership in community organisations?

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