

WOMEN'S LAND TENURE SECURITY: A CONCEPTUAL FRAMEWORK

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Women's land rights and tenure security are increasingly seen as important, for reasons of gender equity, as a means to promote economic growth and development, and to reduce poverty. They are gaining prominence on the international agenda since two of the SDG indicators (5.A.1 and 1.4.2) focus on women's land rights.²

While there are increasingly policies and programs designed to strengthen women's land tenure security, some of which have been rigorously evaluated using qualitative and quantitative methods, it is often difficult to draw broader lessons from these analyses because they use different definitions, indicators, and data. In addition, they are implemented in very different contexts, and often the defining features of the context are not identified. Furthermore, the language and concepts used by the legal community, social science researchers, and advocacy agencies and practitioners often differ.

This paper develops a conceptual framework around women's land tenure security and the factors that influence it. It is an attempt to develop some shared definitions and concepts to facilitate aggregation of the lessons from individual analyses and case studies by outlining the key elements that may be related to women's tenure security. Many studies identify one or two of the elements without discussing how the others may be related. Studies considering how policies or projects may change tenure security in a particular context often do not provide sufficient information on the regional or national context to allow comparisons across countries. This framework outlines the key dimensions of the context that may be relevant. In addition, because women's tenure security is not static this framework identifies the types of factors that may change



women's tenure security, both to strengthen it and to undermine it.

The need for a framework and discussion of the key elements grew out of conversations with the new Research Consortium on women's land rights being organized by Resource Equity. This framework is designed for use by both practitioners and researchers, to provide some shared concepts and language.³ When more consistent data is collected, both qualitative and quantitative, comparative analyses become more feasible. Every project, both interventions and research on the impacts, will want to focus on the particular issues relevant for them. By including some common information in the analysis and evaluations, we can see how the lessons might apply elsewhere.

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² 5.A.1 is the (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure. 1.4.2 is the Proportion of total adult population with secure tenure rights to land, with legally recognized documentation and who perceive their rights to land as secure, by sex and by type of tenure.

³ A more academic version of this, with more extensive references to the literature is in process.

An extensive literature, both academic and policy oriented, identifies why women's land rights and women's tenure security are important.⁴ In this paper, we take for granted that women's secure land tenure is important, and focus on identifying the factors that promote it. We first discuss the concept and measures of women's land tenure security, followed by a presentation of the conceptual framework of factors that are likely to affect women's tenure security over land. The final section discusses how this framework might be used.

The framework is not meant to be exhaustive, and there will be details and nuances that are not explicitly discussed here. The implicit starting point is rural land, particularly agricultural land and homesteads, but many of the principles can be applied also to other types of rural lands (e.g. forests or rangelands) and urban land and housing. This framework is designed to identify core issues that shape the discussions around women's tenure security and to suggest critical dimensions that should be included in analyses of women's tenure security. Individual analyses may want to go deeper into specific issues; the conceptual framework will help to show how they contribute to our broader knowledge.

Conceptualizing and measuring land rights

If we are concerned with how women's land rights (or the lack thereof) affect women and their families, then it is important to consider their experiences, which requires going beyond legally codified rights, to understand the empirical complexities of rights.

For any land parcel, different individuals may have different rights. Thus, it is useful to disaggregate these rights and consider their multiple dimensions. In the social science literature, this is often conceptualized as a bundle of rights. It suggests that there are multiple rights and they can all be held by one individual or group or the rights be distributed among different individuals or groups. It encourages us to consider which individuals or groups hold which specific rights. This contrasts with the Western view of land rights where all possible rights to a parcel of land are narrowed into ownership held by one person or entity.⁵

The bundles and rights have been defined in many ways. Schlager & Ostrom (1992) present one often-cited framework that identifies five elements of the bundle of rights. First is the right of access, which is the right to be on the land, such as to walk across it. Second is the right of withdrawal or the right to

take something from the land, such as firewood, water, wild plants, or gleanings. Third is the right of management, which is the right to regulate use and make improvements, for example by planting crops or trees, clearing bush, or improving the soil. Fourth, the right of exclusion is the right to prevent others from using the land or resource. Finally, transfer rights are the rights to sell, rent, gift, or bequeath the land.⁶

A second framework is based on the Roman law system, which has three components. The first is *Usus*, or the right to use the land. This would incorporate both access and withdrawal rights. The second is *Abusus*, which is the right to change the land. It includes both management and transformation rights.⁷ Transformation is the right to change the land, so that it has a different use. Together *usus* and *abusus* are defined by legal scholars as possession. The third right is *fructus*, which is the right to make profit and loss. The UN system of accounts refers to the person who holds the *fructus* rights as the economic owner (European Commission et al., 2009). The Schlager and Ostrom bundle of rights do not explicitly identify this third set of rights. Conversely, the Roman framework does not explicitly include transfer rights.

The literature on women's property rights does not map clearly into either of the two frameworks. Much of the literature talks about use and control of land, to distinguish women's rights to property from ownership rights (Johnson, Kovarik, Meinzen-Dick, Njuki, & Quisumbing, 2016). Use rights generally mean that a woman can farm the land. Control implies a greater power over the land, including management rights and *fructus*, the right to make a profit or loss. Finally, ownership is usually used to describe someone who independently has all of these rights, including the right to alienate.

Furthermore, it is necessary to distinguish between a situation in which a woman has access to land and one in which she has the right to access land. Is her ability to access the land a right or is she simply allowed to do so by the person who holds the right? Can her access be withheld at the whim of someone else? If so, it is not a right. The latter may be called "tolerated use" (Meinzen-Dick and Pradhan, 2002). The term "interest" is a broad term covering both rights and tolerated use. An interest in land does not rise to the level of a socially or legally recognized right but still has value. If the State or a company is compensating users of land for a taking, for example, they should be compensating interests in that land, not only rights to the land.

Finally, in many contexts, there may be people who have *future* interests in the land. Individuals may have the right to inherit land, for example, from their spouse or their parents. Thus, while they may not have use rights in the present, the land cannot be

⁴ For example, Agarwal's groundbreaking book, *A Field of One's Own* (1995), highlighted the importance of women's land rights. In a recent review, Meinzen-Dick, Quisumbing, Theis and Doss (2017) discuss the evidence on how women's land rights are related to poverty reduction, drawing on a conceptual framework developed through the Gender, Agriculture and Assets Project. Budlender and Alma (2011) provide evidence from a number of IDRC projects on the positive impacts of women's tenure security. ⁵ Yet even in Europe and the US, people other than the landowner have some rights. This includes the right to walk across land in Scotland or government rights to claim land for public use, and zoning restrictions apply in most countries.

⁶ Schlager and Ostrom (1992) use the term alienation rights, rather than transfer rights, to identify these rights. However, in legal terms, alienation rights are only the rights to completely dispose of property rights and possession, and transfer rights include the broader set. Thus, we keep the meaning of what Schlager and Ostrom identify, but use the broader term to reflect it.

⁷ Commenting on Schlager and Ostrom (1992), Galik and Jagger (2015) suggest that we distinguish management and transformation.



sold without their consent, because they would be losing their inheritance. Among some indigenous peoples, land is not owned by a person or even by the current members of the group, but rather belongs to past and future generations. Collectively-held land can be held in trust for the group as a whole with rules around current and future use of the land.

The role of the state also varies widely. The state may allow individuals or groups to hold the entire bundle of land rights, or the right of ownership may be vested in the State and the rights of individuals or groups may be more limited. For example, individuals and groups may hold use rights to state owned land, but not the right to alienate.

Thus, it is useful to consider the following bundles of rights:

- Usus:** rights to use, including the rights of access and withdrawal
- Abusus:** rights to change, including both management and transformation rights
- Fructus:** rights to make profit and loss, economic owner
- Transfer:** rights to transfer the land, whether temporarily or permanently
- Future interests:** could include the right to inherit or may cover rights that can be realized at some future point

However, rights to land as articulated above do not necessarily map neatly into the empirical work done to date, especially that using quantitative survey data. Most empirical work on land rights has used data at the household level. Only recently has there been much of an attempt to identify the rights held by individuals within the household, rather than simply asking about the tenure status at the household level. The household-level questions may ask about all household land or ask about each

plot. It is increasingly common to ask about the tenure status for each plot – that is, whether it is owned by someone in the household, leased, rented, borrowed, etc. If it is owned, surveys often ask whether there is an ownership or registration document, and, if so, what form of document (title, deed, registration, receipt, will, etc. as appropriate in the local context).⁸ Some surveys ask, at the household level, about the rights that the household has over the land, typically about alienation rights, such as whether someone in the household has the right to sell it, rent it out, or use it for collateral.

Consideration of women's land rights has pushed data collection efforts to collect details about who within the household holds the various rights. Some surveys now ask who within the household owns the land and may ask who is listed as an owner on any document. They may include whether the ownership is jointly held and whether both joint owners are named on the documents. These may include options for someone outside the household being listed as the holder of the documents or for someone from a past generation if the documents have not been updated. Surveys may ask whether the land can be sold, rented, or used as collateral or may ask who within the household has that right or who makes the decisions about it. In addition, questions may be asked about management, such as who manages or makes the decisions about whether and what to plant. And finally, there may be questions about who controls the output, who decides whether or not to sell the produce, and who controls the income if it is sold. Initial analyses from six countries in Africa suggest that it is not necessarily the case that the same person holds all of the rights and that women tend to hold fewer or weaker rights than men (Slavchevska, De la O Campos, Brunelli, & Doss, 2017).

Other sources of data, such as administrative records, typically capture only one dimension of rights. They only identify the

⁸ When ownership is formally vested in the state, in countries such as Ethiopia or China, ownership in this context is used to mean the most extensive set of rights that an individual may hold.

person or persons who have the formal, legal rights to the land. In some instances, they reflect the administrative process, rather than the legal rights holder, so they may only include the name of the male household head, even when the husband and wife have joint marital property rights. The process of claiming the rights may be facilitated by having one's name on the administrative documents in addition to having the right through marriage. Which administrative records document the rights may vary across countries; they may be deeds or certificates of use. Typically, these records do not include the information on the sex of the person holding the rights, which makes gender analysis difficult. In addition, in the documentation, the various rights are often treated as if they are held by one person, even though in reality they may be distributed among different people.

Collectively-held lands raise additional issues. Particularly in rural areas, women (and men) often depend not only on individual or household land, but on a mosaic of land types, drawing water, fodder, fuelwood, and other products from collective water sources, rangelands, and forests. These lands may be officially held as state lands or devolved to various forms of communities or user groups. Women's tenure security on those lands depends on the community or group's rights to those lands, as well as to women's rights within the groups. For example, for women to have management (*abusus*) rights to a forest, the women need to have a meaningful voice in forest user groups that have recognized rights to the forest lands.

Land Tenure Security

Understanding women's land tenure security involves knowing not only the rights that women hold but the extent to which these rights are secure. For this, the simple yes/no binary of whether or not women are tenure secure is insufficient. Instead, we need to consider the extent to which women are tenure secure and what that would mean. Tenure security has multiple dimensions and men and women may have different experiences of it.

Place et al. (1994) identify three components of tenure security:

- **Completeness of the bundle of rights:**

When more rights from the bundle are held by one individual or group, tenure is more secure.

- **Duration:** Rights of a known and lengthy duration are more secure.

- **Robustness:** Rights that are known by the holder/s, accepted by the community, and are enforceable are more secure.

Specific consideration of women's tenure security prompts us to add a fourth component:

- **Individual or Shared Rights:** To what extent are rights held individually or jointly and what are the relationships among the rights holders?

Developing empirical measures of tenure security is particularly

challenging. A recent review of the quantitative empirical literature on land tenure security (Arnot, Luckert, and Boxall, 2017), which does not explicitly focus on women's land rights, notes the wide range of indicators used for tenure security. Most of these develop a binary measure of whether or not tenure is secure. The indicators include perceptions of tenure security, use and transfer rights, legal title, likelihood of expropriation, individual ownership (in contrast to group ownership), and tenure type. The data that generates these indicators is based on a wide range of survey questions. So comparisons of tenure security not only have to contend with the challenge that the contexts may differ but also that the indicators of tenure security are very different. Thus, defining and identifying the various dimensions of tenure security across contexts provides better comparisons and strengthens the opportunities to learn both policy and programmatic lessons.

Completeness of the bundle of rights:

A deeply embedded assumption in both the academic and policy literature is that there is a ranking of rights, with alienation being the strongest, and thus the most desirable, right. A related assumption is that tenure security increases as one holds more of the rights. Thus, the extent to which one holds a more complete bundle of rights is often used as an indicator of tenure security.

With better data on the extent of the rights held by individuals, it would be possible to interrogate this assumption. One of the arguments against land titling and registration, particularly from a gender perspective, is that formalization often loses the nuances and dynamics of tenure that existed and usually combines all of the rights in the bundle and vests them in a single person (or persons). When this happens, others who had rights, particularly women, can lose the rights that they had before the formalization program began (Lastarria-Cornhiel, 1997). In these circumstances, formalizing a set of more complete rights for one person or group at the expense of others may create more tenure insecurity. For example, titling programs that document ownership in the name of the household head may make the head's rights more complete at the expense of his or her spouse.

The term ownership is often used to reflect the strongest property right in a particular context. But the understanding of what ownership means may vary widely across contexts; the rights that ownership confers may also differ across households and may differ by gender. Thus, for the purposes of this conceptual framework, we focus on the specific rights, rather than ownership.

Duration:

Duration is a crucial dimension of tenure security; it indicates the time horizon over which someone has rights and the extent to which the time horizon is certain or known. Security that relates to duration exists along axes of length and certainty; someone may have the right to use the land for a season, others for their lifetime, and the longer the rights the more secure they are.

However, uncertainty over the terms and conditions of termination of the right creates insecurity, even if the right in fact lasts a long time.

Especially for women, duration may not necessarily be specified in terms of an amount of time, but rather in terms of a relationship (Giovarelli & Scalise, 2016). Women's rights to land are often derived through their relationship to a man, like a father, husband, or son, making them vulnerable to changes in their social status or family structure. Frequently, the duration of a woman's property rights is limited to the time while she is married; upon divorce, desertion, or the death of her husband, she may lose any rights to land.

Robustness:

The robustness of rights relates to the extent to which they are enforceable when under threat, and that forums to protect rights are accessible to the holder of the rights. This, in turn, depends on the legal, social, or normative systems and the institutions that stand behind the rights. Because robustness depends on the source of the rights and the nature of challenges to those rights, it is more difficult to measure than completeness and duration. Rights that are culturally and legally legitimate are more robust than those that are contested by laws or social norms (Giovarelli and Scalise, 2016).

The robustness of rights will also depend on their exercisability. This is the extent to which women are aware of their rights, understand the meaning of their rights, understand how to document their rights, and understand how to use them to their benefit. Financial constraints may limit the exercisability of rights.

Legal pluralism—the coexistence of multiple sources of law—is pervasive, but is especially relevant to women in developing countries and can affect the robustness dimension of tenure security. The source of claims to land rights affects how well rights stand up to different types of challenges. For example, customary land rights are often stronger at the local level than statutory systems, especially when it comes to local knowledge and enforcement. Statutory land rights, and the ability to call upon the state to enforce one's land rights, are often stronger when it comes to dealing with outsiders to the household or community.

For women's land tenure security, the interplay of legal pluralism and community or family norms adds a layer of complexity. For example, even if a woman has a statutory right to inherit land from her parents, local norms or family pressures may not recognize and defend that right, and may even actively work against women claiming land inheritance. Claiming land rights may create tension between women and their families or communities, which may involve losses of access to other resources and support. Likewise, statutory dispute resolution institutions and forums may be physically, socially, or linguistically inaccessible to

women or significant social stigma may be attached to women for using them.

This also raises the point that it is not enough to look at the rights holders (or claimants): it is also essential to consider the duty bearers—those who are charged with protecting a particular right. Essentially, property rights are not about a relationship between people and things (the property), but a social relationship between the right holders and the rest of society who are to respect that right. Beyond this general duty to respect a right, there are specific people or positions who are charged with enforcing rights when they are challenged. In the case of statutory rights, that might include officials in legal courts and potentially even the police to enforce the court decisions. Duty bearers under customary law may include local chiefs and elders. Women's land rights, in practice, will be shaped by the duty-bearers' own norms and beliefs, awareness of what the legal framework says about women's property and how to apply the framework, and willingness to uphold/support women's tenure when doing so may be contrary to norms or one or more aspects of pluralistic systems.

In general, a right is only as robust as the institution(s) that stand behind it. This includes both the normative strength of the rules (how widely they are accepted) and the strength of the duty bearers, which is influenced by the normative as well as physical and economic resources at their disposal. Therefore, Giovarelli and Scalise (2016) stress the importance of enforceability: that women are able to present a claim, be guaranteed that cases will be heard, and that the resulting decision will be implemented.

Individual or Shared Rights:

Rights may be held by individual people or collectively by a group. When rights are held collectively, a person's tenure security will be affected both by the security of the group's rights and by his or her position within the group. For example, under much of customary tenure in Africa, land is held by the clan or lineage, but there is variability in whether women who marry in are recognized as part of the lineage. They may be instead seen as part of their natal lineage, and therefore have no rights to the husband's land if he dies.⁹

When rights are held by individuals, rather than collectively, they may be held by a single person, jointly by spouses, jointly within a generation (such as when children jointly hold the rights to land inherited from parents), or jointly across generations (such as those held jointly by parents and children). Understanding who holds the rights and the extent to which they can exercise them is critical to understanding land tenure security. A wife who owns land jointly with her spouse may be a full and equal partner in exercising all the rights or, in practice, her husband may exercise all of the rights, even if she is listed as an owner on a document or is an owner by operation of law (e.g. the law says married couples who purchase property have joint

⁹ The inheritance rights of men who marry into matrilineal systems also vary.

ownership over the property.) A man may hold all of the rights, but have obligations to other family members, such as expectations to make land available for his wife to farm, or provide maintenance for his wife and children. Parents may own a parcel of land, but their children may have the right to prevent them from selling it outside the family. Household members may own a piece of land, but require permission from the community to sell it. These become gender issues when women are face additional or different requirements to exercise their rights than would men.

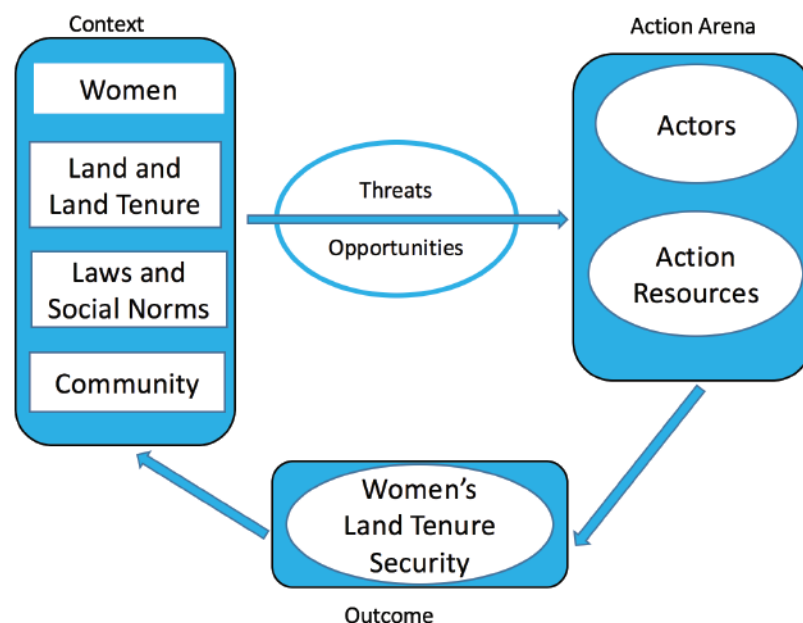
In statutory law, there are two distinct forms of common ownership, and they have different impacts on women's land tenure security. The first is joint tenancy, where parties equally share in the ownership of the property and have equal, undivided rights, including that of alienation. Each of the joint tenants also has the right of survivorship; if one of the two joint tenants dies, the other becomes the owner of all of the property. Joint tenancy provides spouses with the greatest security if the law and processes are set up to protect the rights of joint owners as if they are one, for example, where both joint owners must approve any transfer of immovable property. The second form of common ownership is when two or more people each own a share of the property. When one owner dies, his or her heirs inherit the share of the property owned by the deceased; the other owner may or may not be an heir. One owner may alienate her share of the property with or without the consent of the other.

As we move towards discussion of the conceptual framework, we will consider the outcomes in terms of the rights held by women as well as the duration, robustness, and jointness dimensions of tenure.

Conceptual Framework

This framework draws on a number of approaches, including the Institutional Analysis and Development Framework.¹⁰ It is adapted to address specific issues regarding women's land tenure security. The framework incorporates four broad areas. First is the context, which includes the socioeconomic context (including history), the biophysical characteristics (typically of the resource being studied, in this case the land) and the institutional characteristics, including both formal and informal institutions and norms. The second is the threats and opportunities to women's land rights. This makes explicit the catalysts of change, both those that strengthen and those that weaken women's tenure security. Third is the action arena, which includes both the actors and the action resources. The actors include everyone who influences women's tenure security. The action resources are those resources that different actors can use to seek their preferred outcomes, and may include money, education, networks and social status, or public speaking ability, depending on the issue at hand. This approach not only allows us to consider how the different contextual factors affect women's land tenure security, but also to analyze the processes of change. Finally, women's land tenure security is the outcome of interest, and feeds back to shape the context for women's land rights in the future.

Figure 1: Conceptual Framework of Factors Affecting Women's Land Tenure Security



¹⁰ See Ostrom, 2011 for a good discussion of the framework and how it has been used. The structure of the Action Arena builds on Di Gregorio et al. 2008.

Context

The first step is to provide a deep understanding of the context. While many aspects of the context may be relevant, we focus on four key categories of contextual factors that are particularly important. The categories below do at times overlap, but they identify key components necessary to understand these broad questions.

Women

Who are the women that we are considering? It is useful first to identify the demographic information of the women. The ethnicity, religion, or caste of the women or the heads of their household may affect which laws and social norms regarding land will affect them. Whether they live in an area where their ethnicity, religion, or caste is predominant may also be important.

The land tenure security of women often depends on their age and whether they are single, married, widowed, or divorced. It may also depend on the type of marriage (e.g. customary, civil, and different types of religious marriage). The ages and possibly the sex of their children may play a role, such as where widows are allowed to keep the land as custodians for sons, but have less leverage if they have daughters. Another important characteristic is the woman's position within the household. Women who are the heads of their own households will have different tenure security than women who are in a dual- or couple-headed household. Daughters and daughters-in-law of the head will have different roles and relations within the household. These factors all intersect with ethnicity, religion, class, and caste to shape their rights regarding land.

Women's socioeconomic status also affects women's land rights. Their education, income, livelihood opportunities, and wealth will all affect how they interact with the land tenure system.

However, it is not just women's individual characteristics that are important, but also their relationships with others. As noted, their relationships with family, including extended family, will affect their tenure security. In addition, women may be involved with other groups, including women's groups, farmers' groups, and savings and credit organizations, all of which influence their access to information, networking, and support.

At the community level, the position of women within the community will also affect their tenure. Women are often excluded from discussions of land issues, whether formally or through social norms or their other responsibilities. They may not be members of local land commissions or customary authorities. When they are not considered stakeholders in discussions regarding land use and land acquisitions, their voices may not be heard, either at the local level or at the national level. Women's voice in collective decision-making is especially relevant when land is collectively owned and operated, such as for forests, rangelands, and even condominiums, to ensure that the management is conducted in a manner consistent with women's needs and interests in the resource (for example, not clearing shea trees, which can be important sources of revenue for women).

Land and Land Tenure

First, we need to understand the physical characteristics of the land itself. While some of these characteristics are about land quality, such as soil fertility, size, whether it is flat or mountainous, and whether it is suited for agricultural production, other physical characteristics are about human actions on the land. The land may be used for production of annual or perennial crops or as pasture, rangeland, or orchards. Tenure may differ for forests or wetlands. The tenure may differ if the land had a different use in the past, especially the recent past, such as land that was converted from pasture to cropland.

Smallholder farmers may have homestead plots, where their dwelling is located on their agricultural land. They may live in a village and walk to their fields. They may have a combination of the two. Whether or not a dwelling is on the land may affect its tenure.

The boundaries of one's land may be fixed and demarcated with fences or stones. At the other extreme, people may have rights to graze over large areas that are not clearly defined, such as in some pastoral systems.

The location of the land also matters. Land in urban or peri-urban areas may have different tenure arrangements than rural land in a remote area. The distance to roads, markets, and cities will influence the opportunities for market production and pressures on the land.

In addition to the geographic/physical characteristics of the land itself, there is often a complex relationship between land and associated resources such as water, trees, or infrastructure on the land. On the one hand, those who lack tenure security may not have the incentive to make long-term investments such as planting trees or building on the land. On the other hand, making such an investment can strengthen one's claim to land. In some cases, women may be explicitly prohibited from planting trees because that is seen as placing too strong of a claim on the land (effectively meaning women lack transformation rights).

Second, the social understandings around a particular parcel of land are also important. These will affect its use and tenure security. For example, in India, ancestral land is that which has been handed down through the family, and there are strong norms against its sale. Similarly, in Ghana, family land is that which is owned collectively by the family, which limits its uses or transfers.

Third, the characteristics of the land tenure system will affect men and women differently. As discussed above, the various rights to land may be held individually or shared. The rights may be bundled together or held by different individuals. The extent to which rights are formally documented and legally recognized will affect tenure security. In places where there is limited formal documentation of rights, other forms of documentation or oral testimony may be accepted as proof of land rights. For public land or commons, it is critical to understand the processes of how it is managed and whether or not women participate in its governance.



Finally, the historical context of land tenure systems in the area are also relevant. The characteristics of land and land tenure systems dimensions have been framed as though they are primarily static, but it is also key to understand their dynamics. Land markets are developing and changing in many areas of the world, and both local- and national-level land markets will change tenure security. Some transfers may be made through agreement of all parties affected while others will be contested. At the same time that markets and demand for land are changing, the availability and quality of agricultural land is changing owing to urbanization, agricultural and resource management practices, and, often, climate change.

Laws and Social Norms

Although legal frameworks and social norms may be thought of as distinct categories, in practice there is often a continuum of statutory law, customary law, and social norms.

The two most relevant sets of legal frameworks affecting women's land rights are property law and family law. Both of these may derive from statutory, customary, and religious law. In different contexts and depending on the particular issue, any one of these three may determine outcomes of issues regarding land rights. Regulations, and the administrative rules which guide them, contain rules on how to implement laws on land and resource tenure; these too are relevant to understanding the legal framework and the reform context.

The constitution of a country can provide for how customary law intersects with formal laws. It may also provide for key principles

that govern land tenure dynamics in a context. For instance, the constitution may vest all land in the state, or it may recognize the autonomy of indigenous peoples. Constitutional provisions create the foundation for other laws on these topics.

Property laws that govern land, land administration, resources (including forests, pastures, drylands), and real or immovable property are an important starting place for understanding the dimensions of land tenure in a given context. These laws can provide insight into many of the key features of a formal land tenure system and, in some cases, how customary land rights are treated. When it comes to gender, these laws can be a source for protection of women's rights that might arise in family laws (e.g. by providing for mandatory joint titling land rights held in the community, as defined in the marriage law), or they can be a source of weakening women's rights. Property laws can also provide for legal definitions of co-ownership or shared rights.

Family law can include marital property laws, the laws regarding inheritance, dowry, bride price, divorce, as well as laws on personal or civil status and household management. For women, statutory marital property laws might create a legal right where one does not exist in custom. Marital regimes normally take one of three types: (1) full community of property, where spouses jointly own all property brought into the marriage and acquired in the marriage, including gifts and inheritance; (2) limited community of property, where spouses jointly own all property which was acquired during the marriage relation, often with some exception for inheritance and gifts to one spouse; and (3) separation of property, in which each spouse owns their own property and no shared rights are established by the marriage relationship.

The laws regarding marital property often differ depending on whether the marriage is formally registered, recognized by customary or religious authorities, or some combination. Cohabitation may or may not create shared property rights.

Inheritance laws often determine how property rights should be treated when a rights holder is deceased. They normally provide for rules of intestate inheritance (without a will) and also how wills can be effectuated and any limitations to devising property to heirs, which is particularly important for widows and daughters.

In situations of legal pluralism, such as when both customary and statutory law are recognized or are applied, understanding the relationship in practice among the legal regimes is important. Customary law and formal law are not necessarily separate; very often they overlap and each can be influential in different circumstances. Whether land dispute adjudication is under statutory or customary law depends on the land tenure system that dominates in that particular area. Those involved may have some choice as to the forum that they select to resolve the dispute. Depending on the context, it may be seen as beneficial for women to choose one forum over another, but local norms and the resources women have available will determine whether they are able to appeal to that forum. Giovarelli and Scalise (2016) note that women's land rights are more secure when they have both cultural and legal legitimacy and when they are recognized in statutory law, customary law, and community and family norms.

Finally, discussions of legal frameworks should identify whose duty it is to ensure that land rights, and particularly women's land rights, are upheld. Further empirical attention to the attitudes of those duty bearers would identify whether women's rights are likely to be enforced, in practice. This is particularly important for the exercisability of women's land rights (Giovarelli and Scalise 2016).

The social norms about land rights, particularly women's land rights, may differ from the legal frameworks. Social norms mediate who seeks legal resolution of issues and which legal systems are used. Most issues around land are resolved without resorting to the statutory legal system. Thus, it is important to know the social norms and practices regarding property rights for men and women—which may operate at the level of the community or the household. In addition, gender norms more broadly may affect the way that men and women are treated and respond in various situations that impact women's tenure security.

Social norms will influence the extent to which women are viewed as legitimate property owners and whether it is culturally appropriate for them to claim any legal property rights. In the extreme cases where women themselves are viewed as property, it is particularly hard for them to claim that they have a right to own property. In general, women claiming property rights in contradiction to social norms may be ostracized by their family or community. Thus, women may legally own property and not be able to exercise any of the associated rights, and they may relinquish inherited land in order to maintain peace within their family.

Gender norms influence relationships, roles, and behaviors of women and men, and this can have a bearing on property rights.

For instance, in patrilineal systems where women who are married move to their husband's family to live, they may lose – or never be granted – rights in their natal village because they are no longer there to use the land. In matrilineal systems and where men move to the wife's home, women may have more influence, even if they do not own the land. Similarly, it may be inappropriate for women to speak on matters relating to land because that is traditionally seen as men's business and women's involvement in land matters is seen as indicating that the men are weak. More generally, the extent to which women are viewed as farmers rather than helpers, as producers rather than homemakers, or as contributors rather than dependents all shape their ability to interact with others regarding land issues.

In addition, social norms influence how families distribute their wealth. This extends substantially beyond bequests that occur at the time of the death of a family member, to include *inter vivos* transfers, made while the person is still living. Quisumbing, Estudillo, and Otsuka (2004) document the importance of considering the range of potential transfers, noting that land and schooling are different ways to provide resources to children. Where dowry is practiced, the norm may be for daughters to receive movable property like cash or jewelry, while sons receive land.

Gender norms can affect the extent to which the various dispute mechanisms are perceived as fair and socially legitimate. Social norms in rural and peri-urban areas may discourage the use of formal systems, as this may be perceived as discussing private matters in public spaces. Traditional or customary dispute resolution mechanisms may be perceived as legitimate/acceptable middle ground. These mechanisms may be seen as advantageous to particular groups based on their social status, wealth, ethnicity, or gender.

Finally, the understanding of whose duty it is to ensure that women's land rights are upheld is determined by social norms. It may be the responsibility of a male relative to ensure that women have land to farm or the responsibility of the traditional leaders to enforce laws regarding women's land rights. However, with the increasing scarcity of land and changes in local governance structures, some of these patterns are breaking down.

Community

Women's relationships are embedded in the communities to which they belong. These communities may be based on location, social class, religion, or ethnicity, among others. Whether they – and their husbands – are recent migrants to the area or have a longstanding claim to the local community may affect their tenure security. Women may have claim to communities through their natal family and through their husbands. These various communities may overlap fully or only to a limited extent and women may gain or lose these communities as their status changes (e.g. as they transition from single to married, or the reverse).

We may first think about the spatial community in which they live. It may be a city or a collection of a few houses. It may be homogeneous or heterogeneous in terms of ethnicity and religion.

If it is heterogeneous, there may be harmony or tension among the groups. The levels of income and wealth may also be homogeneous or there may be substantial inequality. Everyone's livelihoods may be based on agriculture or livelihoods may be diversified across households.

In the section above on women, we explored the family structure of the women in question. But the family structure patterns within the community are also important. People may live in nuclear households or extended families. Polygamy, divorce, and outmigration of household members will all impact women's tenure security. Communities may be primarily matrilineal or patrilineal. Households which do not participate in the community norms will face different challenges regarding women's land rights than those who do.

Land may be a key indicator of social status within a community or status may be derived from education or a public sector job. When land is the source of social status, it may be more difficult for women to acquire individual land rights.

Communities are facing numerous challenges. The extent to which these challenges are related to land will influence tenure security. Land scarcity may be a growing concern. Land degradation decreases the amount of productive agricultural land. It may be that migration – either migration in or migration out – is changing the composition of the community. Climate change may be affecting the livelihood opportunities, particularly in crop agriculture and livestock. Large-scale land-based investments (LSLBI) may put additional pressure on land. Many of these challenges affect both women and men, but can play out in gender-differentiated ways. For example, land scarcity may make it more difficult for young men to acquire land to establish their own households, but also pressure widows to forfeit their land to their sons. Male emigration leaves women with additional responsibilities in agriculture, but without recognized land rights they may not be able to access some services.

Finally, there may be a variety of for a within the communities where land issues are discussed and conflicts are resolved. As noted above, the physical and social accessibility of these for a will affect whose voices are heard and recognized. Local and international NGOs may be involved in the community. They may be working directly on women's land rights issues or they may affect these relationships indirectly through work in other sectors.

Threats and Opportunities

The catalysts of change are the threats and opportunities regarding women's land rights. They are the factors that stimulate change, whether for better or worse. By identifying the potential threats, it is possible to consider how best to mitigate them, and by identifying potential opportunities, new openings for projects and interventions may be found to effectively intervene. Again, this list is not expected to be exhaustive, but illustrative.

Legal and Policy Reform

Reform of the laws that discriminate against women with regard to property rights is a key step in strengthening women's tenure

security. Many such legal reforms take place after extensive organizing and advocacy from women's rights groups. International conventions (e.g. CEDAW) or regional declarations do not automatically translate into national laws and policies, but they can provide pressure or leverage for national reforms or implementation.

Key openings or threats may also arise from happenings within the policy world that were not initiated by efforts around women's land rights. Efforts to title or register land are occurring in Africa and elsewhere, in order to secure land rights more generally, open up land markets, or encourage investment. Without clear attention to women's land rights, these changes may substantially worsen women's tenure security (Lastarria-Cornheil, 1997); however, when women's land rights are prioritized, some women may improve their tenure security through these processes.

Legal reform in other areas may also affect women's land tenure security. In particular, reforms regarding family and inheritance law offer both threats and opportunities. Similarly, changes in legal definitions of the "head of household" or restrictions on women's ability to sign contracts without a father or husband will affect land rights. Changes regarding the relationship of customary and statutory law change the legal landscape for women's tenure security, for example when statutory law takes steps to recognize or codify customary laws. A change in the relative importance of religious law can affect women's tenure security. Vague laws, "gender-neutral" laws, or laws that do not take into account gender differences can have an impact on women. For example, decentralization policies that gives communities the right to self-govern can be problematic for women if they do not define membership in the community in a way that expressly includes married-in women.

State policies to redistribute land may reduce or exacerbate women's tenure insecurity. If explicit attention is not paid to women's land rights, then history suggests that land will be distributed to household heads, especially male household heads, without consideration of the rights of women or others in those households.

Agricultural Programs and Policies

Rarely do agricultural policies take women's tenure security into consideration, whether in the design, implementation, or evaluation. Yet anything that changes the productivity of agricultural land, and thus the value of that land, will have implications for tenure security.

Interventions that provide agricultural inputs, such as seed and fertilizer subsidies, extension services, or other advisory services, may also increase agricultural productivity with a resulting increase in the demand for land. Without attention to gender issues, these interventions may negatively affect women twice. First, unless women are active participants in the projects and obtain the resources, gender gaps in agricultural productivity are likely to grow. Second, women's tenure security may weaken as demand for land increases.



Policies to promote large scale land acquisitions for agricultural enterprises or infrastructure projects by either domestic or international elites will certainly impact women's tenure security. Similarly, large scale investments in agriculture through out-grower schemes or leasing may change tenure security and the local agricultural economy. The impact on women will depend, in part, on whether they have an effective voice at the table and whether their interests are among those counted as losing or benefiting from the change in land use. Improved transportation infrastructure, such as new roads, will increase the market access for farmers, thus rendering their land more valuable. Those with less secure tenure, such as women, may lose out against those who are more powerful and can take advantage of the increased potential from the land after the improvement.

Legal Education and Support Projects

Projects may be designed to strengthen women's tenure security by first providing them with information about their

property rights. Legal literacy programs can help improve people's understanding of what rights and protections the law provides. In addition, projects may provide support for women who are engaging with the statutory or customary legal systems on a property rights issue. Paralegal or legal aid programs and alternative dispute resolution would fall into this category.

State Power and Conflict

The capacity of the state to enforce land rights and to do so in a consistent and transparent manner is key to having secure tenure. Many conflicts and civil wars are attributed, at least in part, to issues regarding land. Conflicts then render tenure much more insecure, at least in the short run, and can have long-term destabilizing effects on communities and tenure. The impacts of such conflicts is experienced differently for men and women, and the concurrent breakdown in state and family institutions can present threats and opportunities for women's tenure security.

Transformation of the Rural Economy

Broader changes in the rural economy, particularly urbanization and migration out of rural areas, may affect women's tenure security. Women may be left behind in rural areas as men migrate, either seasonally or more permanently, to urban areas to find work, yet women may continue to lack rights to or to be excluded from decision-making on land that they are responsible for. In other areas, women themselves may seek work in cities and towns.

More generally, economic growth will tend to expand markets and increase land values. This tends to benefit owners with secure tenure, while disadvantaging those who rely on the market or social exchange to access land. While women tend to be more disadvantaged when land acquisition occurs through inheritance rather than markets, women's lower returns in the labor market makes it more difficult for them to accumulate the money to purchase or rent land (Deere & Leon, 2003).

Land expropriation by the state or acquisition by a company that involves resettlement or compensation will have a different impact on men and women. Often women are not fully compensated for their losses because they have only interests and not rights and because their losses are not necessarily commercial. For example, water and wood collection may be more difficult to value for compensation. It is also critical to build in consideration of women's land rights on resettlement land or to ensure that the land acquired using compensation includes rights for women.

Action Arena

The action arena is where the actors involved mobilize their action resources to influence change. This can be thought of at multiple levels—from the household or community to the country and global levels.

The actors involved will not only include women whose land tenure security is under analysis, but also anyone else whose actions affect

women's tenure security. It is critical to identify these people and institutions, such as families and land administration committees, the roles that they play or potentially play, their interests, the risks and opportunities that they present to women's tenure security, and what incentives they have to engage (or not) on improving women's tenure security. It is useful to think about both internal actors (those who are directly affected by the outcome of the action arena) and external actors (those who have an influence on the outcome, but are not directly affected by it). While it is not possible or appropriate to list everyone who may be involved here, broad categories of actors would include:

- The women and men of different ages and household positions
- Family, clan, or other kinship systems
- Local customary and religious authorities
- Local state agencies, particularly land administration, but also agriculture, urban development, or others who may affect land tenure
- NGOs, especially those working on legal empowerment or women's programs, but also agriculture, housing, or environmental protection programs
- Civil society, including organizations and social movements, such as women's movements and indigenous people's associations
- International development assistance programs
- Global institutions involved in agreements, such as CEDAW or the Voluntary Guidelines on the Responsible Governance of Tenure

The following discussion provides some examples to indicate who might need to be included.¹¹

The relevant action resources available to different actors will vary by context, but may include formal education, money, political power, use of force, and also personal mobility,



¹¹ Identification of the actors may lead to further attention to what should be included in the context analysis.

confidence, public speaking skills, personal networks, and social standing.

When interventions seek to strengthen the formal laws around women's land tenure security, those involved might include the legislature that enacts such reforms, the grassroots groups who support these reforms, and those who are organizing or speaking out against such efforts. The resources needed to effectively work within this arena might include organizing and speaking skills to address the legislature and mobilize large numbers of people in support of the reforms, and understanding what factors might influence political will in a positive direction.

When we consider the implementation of formal laws, we need to include those involved in the land registration system. For the enforcement of the formal laws, we need to include the duty bearers: the local judicial system, the police or enforcement, and customary or religious authorities. These are the people who adjudicate disputes and protect rights that are under threat.

Local NGOs who educate women about their rights might be important actors as well. In the statutory judicial system, the action resources might include lawyers to speak on behalf of a woman's rights. In a customary setting, it might include moral arguments regarding women's important role within the community and strong support from key members of the community.

When land rights are insecure owing to threats outside of the community, such as potential large-scale acquisitions of land by either domestic elites or international investors, the action arena may be the formal or informal forums where key consultations are held, where deliberations take place, and where decisions are made. For women, the key questions are whether women are meaningfully involved and whether women's interests are among those that are counted when analyzing costs and determining benefits.

Identifying the key players and what resources they mobilize provides important insights into the processes of and incentives for change. It can help identify what interventions might be needed, such as those to provide the resources to specific actors, for example, paralegals to support women going through the courts. This identification can also help identify whether efforts would best be spent changing the resources available to women or changing the system.

Outcomes: Women's Land Tenure Security

The key outcomes are the various dimensions of women's land tenure security as discussed above. The outcomes may be either stronger or weaker tenure security for women. These outcomes may vary across different groups of women.

These outcomes, in turn, feed back to affect the context for future women's land rights. For example, a well-publicized formal legal case that rules on behalf of women could affect even customary rules in the future.

Conclusions

This paper provides a conceptual framework to analyze and understand the factors that influence women's land tenure security. It is designed to be relevant to both researchers and practitioners.

To be better able to draw lessons across research studies and projects on women's land rights, it is important to have rich descriptive data on the context. Often, only the factors that seem salient in that context are discussed in papers and project reports, so it is difficult to know the other features of the context. Thus, the first step of any analysis is to identify the various elements of the context, considering those discussed here at a minimum. When considering the impacts of a projects or policy, having a rich description of the context also makes it easier to identify potential unintended consequences.

To understand women's tenure security in a rapidly changing world, considering the catalysts for change encourages us to consider and document the factors that may strengthen or weaken women's land rights. These may be directly linked to land tenure security, such as legal literacy or land certification interventions, or they may be factors only indirectly, but critically, linked to tenure security, such as economic growth and migration.

The action arena draws attention to everyone who may affect women's tenure security and the resources that may change the outcomes. It provides a framework to consider when we should be working to change the resources available to women through legal literacy, empowerment, or education programs, and when the systems themselves need to change, and how to do so. Researchers, policy-makers, and practitioners should consider both men's and women's tenure security; it is fundamentally different to develop ways to strengthen women's tenure security when the tenure for both men and women are insecure than when women are particularly disadvantaged based on their gender. By identifying both the conditions and the processes through which women's tenure rights are strengthened, we can better learn how to succeed in these goals.

Finally, the framework returns to where we started, with considering how we conceptualize and measure women's tenure security so that we can compare tenure security across contexts.

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Appendix: Using the Conceptual Framework:

The framework identifies a range of issues that should be considered in analyses of women's tenure security. While analyses may focus on different relationships or components within the framework, clearly identifying where they fit into the framework makes it possible for more robust comparisons.

There are at least two ways in which the framework can be used as a research tool. First it provides the key dimensions that need to be analyzed and discussed in any paper on women's tenure security. Whether the research is ex ante formative research on the state of women's land rights, ex post analysis of a change that has occurred, or includes both baseline and endline data, paying attention to these dimensions will facilitate broader lessons being learned and may provide new insights.

In addition, the framework may be used to develop action research, where the research accompanies the process of designing and modifying interventions. The conceptual framework may be used as a diagnostic tool, to identify potential challenges and opportunities. Interventions can thus be designed to address the needs identified.

What is the context?

The first step is to provide a rich description of the context. This will allow for a deeper comparison across case studies. In addition, it may raise issues that are needed to understand why changes occur differently in some places than in others and the myriad dimensions which may affect women's tenure security. It is useful to think about key questions under different categories, including:

Women

- Who are the women and what are their demographic and socioeconomic characteristics?
- What are the relationships of the women with their families, communities, and other groups?
- Through what channels do women within the community have a voice?

Land and Land Tenure

- What are the physical characteristics of the land?
- What is/are the current tenure system(s)? How are the boundaries identified?
- Where is the land situated?
- What are the various social understandings around land? Is it ancestral land, family land, private property, or something else?
- What are the common ways that land was acquired (inheritance, purchase, government allocation, etc.)?
- Are the property rights held individually or collectively? Within households, is land owned individually or jointly?
- To what extent is there formal or informal documentation of land rights?
- What are the current dynamics around land? Are there active land markets?

Laws and social norms

- What are the statutory and customary laws that affect land tenure security? This includes land law and family law. Among the relevant factors in family law are marital property, inheritance, dowry, bride-price, and divorce.
- What are the marriage practices? Are marriages formalized and registered? Are divorce rates high?
- Do the social norms view women as legitimate property owners?
- How do families distribute their wealth? Through inheritance, inter vivos transfers, dowry, etc.?
- Are the dispute mechanisms perceived as fair and socially legitimate?
- Whose duty is it to ensure that women's land rights are upheld?

Community

- What are the relevant local communities? They may be defined spatially, in terms of ethnicity and religion, in economic terms, or in terms of local organizations and institutions.
- Is there increasing pressure on land availability, e.g. owing to loss of land to degradation?
- To what extent are the communities changing due to migration?
- How are land disputes resolved?

Threats and Opportunities

The second step is to identify the threats and opportunities within a particular context. These may be the particular policies or interventions that are being evaluated, or they may be external changes that are occurring. Important categories of threats and opportunities include:

- Legal and policy reform on land issues and on other related issues such as family law
- Agricultural policies and programs
- Legal education and support programs
- State power and conflict
- Transformation of the rural economy, especially urbanization, migration, and economic growth

Action Arena

The action arena is where all of the people involved mobilize the appropriate resources to influence change (whether for more or less secure land tenure for women). These will vary depending on the particular context and threats and opportunities.

Who are all of the actors or stakeholders? Broad categories of actors could include:

- The women and men of different ages and household positions
- Family, clan, or other kinship systems
- Local customary and religious authorities

- Local state agencies, particularly land administration, but also agriculture, urban development, or others who may affect land tenure
- NGOs, especially those working on legal empowerment or women's programs, but also agriculture, housing, or environmental protection programs
- Civil society, including organizations and social movements, such as women's movements and indigenous people's associations
- International development assistance programs
- Global institutions involved in agreements such as CEDAW or the Voluntary Guidelines on the Responsible Governance of Tenure.

What risks do they pose? What opportunities do they present?

What are their incentives to behave in a particular way? What influences their behavior?

What resources do they need to mobilize to be effective?

Outcomes: Women's Land Tenure Security

The outcomes that we are interested in are women's tenure security, and particularly in changes to women's tenure security. Thus, we need good indicators of tenure security at various points in time.

- Who initially has land rights?
- Who holds which rights?
 - These rights include *usus* (the right to use), *abusus* (the right to change), *usu fructus* (the right to profit), transfer (the right to transfer the right, either temporarily or permanently) and future interest (the right to inherit).
- How secure are the rights?
 - These should be examined along the dimensions of completeness of the bundle, duration, robustness, and whether the rights are individual or shared within the household, user group, or community.

RESEARCH CONSORTIUM

The Research Consortium, by Resource Equity, is a hub for the collection, sharing, and exchange of knowledge on how to effectively advance women's land rights. Through the hub, we identify gaps in knowledge and help develop a common agenda for research so that learnings can more easily be compared, shared, and applied. Additionally, by fostering a community of researchers and practitioners, we increase the quantity and quality of research while providing opportunities for further research with the goal of overcoming barriers to women's secure land and resource rights around the world.

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