



# WOMEN AND LAND RIGHTS: LEGAL BARRIERS IMPEDE WOMEN'S ACCESS TO RESOURCES

SEPTEMBER 2013



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A woman's ability to own, inherit and control land and property is absolutely vital to her ability to access resources and participate in the economy. Yet many women do not have legal ownership rights to the land on which they live and work. This can increase women's dependence on husbands and male, land-owning relatives and limit their access to credit and productive inputs.

The Thomson Reuters Foundation and the World Bank partnered to better understand legal frameworks that affect women's ability to access resources, with a particular focus on the legal and cultural barriers to women's secure land rights. It covered both statutory and customary law, with a particular focus on how laws work in practice. This work should be seen as complementing other gender and law resources such as the World Bank's Women, Business and the Law Database: <http://wbl.worldbank.org/>. The work was carried out through the Thomson Reuters Foundation's global pro bono service, TrustLaw Connect, which brought the international law firm Latham & Watkins together with local firms in Bangladesh, Brazil, the People's Republic of China, India, Kenya, Nigeria, North Sudan and the Republic of Zambia (the **case study countries**). This work is part of a broader World Bank study exploring determinants of women's voice, agency and participation, and the implications for policies and programs.

This note highlights some initial findings, specifically those related to legal restrictions on women's right to own and control land and property in the seven case study countries. The full report will be available shortly at <http://www.trust.org/services/trustlaw-connect/>.

Constitutional protection of women's rights is widespread, yet laws continue to constrain women's rights in fundamental ways. 149 countries call for equal protection under the law, including all seven countries studied. Notwithstanding these constitutional protections, in all seven countries girls do not enjoy equal rights with their brothers and women do not enjoy equal rights with their husbands to own and control land and property.

Each of the countries investigated has its own nuances in the way gender equality is addressed under the law. In many countries statutory laws have not been amended or introduced to implement the protections afforded under the constitution. In North Sudan, for example, legislation has not been introduced, nor existing legislation amended to implement those women's rights enshrined in the Sudan Interim

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Constitution of 2005<sup>2</sup>. Elsewhere, positive steps have been taken to codify customary protections in statute, and the law is being used as one tool to drive women's rights and gender equality forward. In Kenya for example, when determining distribution of property upon divorce or separation, the court takes into account both monetary and non-monetary contributions, allowing women's care giving and other household related contributions to be valued in determining the appropriate allocations. Similarly China's Law on the Protection of Women's Rights and Interests contains, among other provisions, specific protections for women's and men's equal rights to succession of property through inheritance.

**Plural legal systems often disadvantage women.** Plurality is neither inherently good nor bad for women's rights, but rather depends whether the customary system follows patriarchal traditions and practices that discriminate against women, and the extent to which this is countered by effective statutory gender equality laws. In Bangladesh, India, Nigeria, North Sudan and the Zambia plural legal systems are formally recognised as legitimate sources of law under the constitution. In Kenya, the constitution provides that those equality provisions enshrined within it shall be qualified to the extent necessary for the application of Muslim law in Kadhis' courts, and recognizes the need for legislative recognition of customary marriages. Informal customary laws are also followed in many parts of China, particularly regarding land and property. In Nigeria and North Sudan, customary law is subject to constitutional provisions of non-discrimination or gender equality, and is enforced only to the extent it does not run contrary to any written law. In North Sudan, for example, the constitution explicitly directs the State to combat harmful customs and traditions which undermine the dignity and the status of women. While in Bangladesh on the other hand, notwithstanding that statutory laws provide men and women the equal right to purchase and own land, in practice this is limited by inheritance rules that are governed by Shariah Law and which disadvantage women and girls.

In practice, women are disadvantaged in many countries where customary or religious law prevails with regards property laws, marital property regimes and inheritance. In Zambia for example, while both women and men may acquire a registered land title under the Lands Act, customary land tenure is also recognized and administered by the Local Courts pursuant to customary traditions. The country has no comprehensive policy or national guidelines about standards to be applied when administering customary land, but it is generally administered pursuant to the widely held belief that the husband is the provider for the family, and accordingly there is no need for a woman to acquire land in her own right. As a result, married women are unlikely to be allocated land under the customary system without the husband's prior approval. Similarly in North Sudan, notwithstanding that women

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<sup>2</sup> <http://www.parliament.gov.sd/en/constit/dstor2005.php>

and men are treated equally under North Sudanese land law, in rural areas land issues are generally dealt with under customary laws which are rooted in patriarchy. Land tends to be owned and controlled by the male head of household, regardless of who lives on or contributes to working the land.

#### CHINESE LAND AND PROPERTY RIGHTS: WOMEN UNDER THE COLLECTIVE SYSTEM

China is an interesting case of overlapping legal systems. While property such as houses can be owned by title deed, the land itself is not owned by private individuals but rather belongs to the state or collectives who allocate land use rights. Chinese women's property rights are specifically protected under the Law on the Protection of Rights and Interests of Women, which provides for equal rights to property and protection of women's property rights in the case of marriage or divorce.

In rural areas women tend to be disadvantaged through the process of allocating use rights to state-owned land. The local collectives (comprised predominantly of males) charged with administering land contracts generally apply the custom that if a woman marries outside of her village, the land that had been allocated to her would be redistributed to other members of the village. She would also be at risk of being excluded from land allocation in her new village if she missed the timing of the land allocation in that village.

In urban areas the challenge is different. Most houses or apartments tend to be registered under the head of the household, who is typically the male, even though specific provision exists for joint registration of property titles. As a result just over one third of Chinese women own property compared to more than two thirds of men. Recent changes have sought to remedy this by eliminating the taxes otherwise due on registering a second name on a title deed. Time will tell whether this reform promotes wider joint ownership by married couples.

Customary marriage laws also have a significant, and often negative effect, on women's access to resources. The practice of child marriage, for example, continues to be accepted under the constitution in some countries: both Nigeria and Zambia recognize customary law marriages of girls under the age of 10 and 16 respectively. In Bangladesh it is legal under customary law to marry a girl once she has attained puberty, the only requirement being her parent's permission, notwithstanding that customary laws are formally subject to constitutional provisions of non-discrimination. In North Sudan women and men are subject to different rules

for divorce under the Sudanese Personal Affairs Act 1991. Women can only seek divorce in certain circumstances, such as where there has been physical harm, while the husband can divorce his wife at any time with no conditions.

**Beyond the law: lack of awareness, cultural attitudes and gender norms impact women's rights.** Women in all seven case study countries face barriers to the full enjoyment of their statutory or constitutional rights. In addition to the challenges created by prevailing customary laws and traditions, women's rights are also compromised due to limited awareness of rights – by women themselves and also often by those responsible for implementing and upholding them. In Nigeria for example, women often encounter degrading treatment when seeking redress for sexual or domestic abuse, and it is reportedly not uncommon for the police to refer to them as stubborn women deserving of such treatment. In some instances these attitudes are condoned by the law – as in Northern Nigeria where the customary practice of “wife correction” via physical force is condoned by the Northern Nigeria Penal Code and is lawful under customary law. Prevailing gender roles and social norms are also important. In Bangladesh, notwithstanding the 1986 Government ordinance that provided for equal distribution of certain lands between spouses, in practice land is most commonly titled only in the name of the male household head and women rarely purchase land because of prevailing gender norms.

**Conclusion: a matrix of disadvantage.** Understanding the way that these laws interact in the context of women's access to resources is vital. Discriminatory marriage and divorce laws, when combined with laws on inheritance and land rights compound underlying disparities in access to education, social status, economic power and vulnerability to abuse. Discriminatory divorce laws, such as those in North Sudan, when combined with property regimes that reduce women's share of land or other assets through inheritance or divorce, limit women's options for building their own financial security and for exiting an unhappy or abusive relationship. Put another way – these laws interact to create a complex overlapping web of rules, regulations and practices that can severely disadvantage women's opportunities.

Legal systems that ostensibly guarantee gender equality but simultaneously enforce customary laws that disadvantage women highlight the need to address plural legal systems as a whole. There is a need to deliberately legislate in a way that overrides discriminatory customary laws and social norms. For such legislation to be effective it needs to be coupled with strong constitutional oversight and an emphasis on awareness-raising and other implementation and enforcement measures. Strengthening land and property rights for women can increase girls' and their parents' aspirations, which can result in increased education and postponement of marriage. While improving women's legal rights around land ownership and control is not a panacea, it is a crucial step in improving access to resources and removing the compounding disadvantages facing women.

