



Food and Agriculture  
Organization of the  
United Nations



# Realizing women's rights to land in the law



A guide for reporting on SDG indicator 5.a.2



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## Abbreviations and acronyms

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
FAO	Food and Agriculture Organization of the United Nations
GLRD	Gender and Land Rights Database
LAT	Legal Assessment Tool for gender-equitable land tenure
SDGs	Sustainable Development Goals
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security

## Disclaimer

This guide includes a glossary of terms in the Key definitions section. Although grounded in official texts, these definitions have been developed strictly for the purposes of the indicator 5.a.2 methodology only and should not be read to provide a comprehensive or official definition of the term referred to. The guide also cites existing legal and policy examples, with the intention of providing concrete guidance to countries reporting under Sustainable Development Goal (SDG) indicator 5.a.2 as to the type of provisions that reflect the indicator 5.a.2 proxies. These examples reflect versions of the law and policy framework that were available in the FAOLEX until 7 April 2017.

While every effort has been made to attain complete accuracy herein, users of this guide are advised to consult the respective legal or policy instrument and legal dictionaries should they wish to use the information contained herein for a purpose beyond reporting on SDG indicator 5.a.2.

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## Key definitions

**Consent:** the requirement that the other spouse or partner (in an unmarried couple) agree to the land transaction prior to the land transaction taking place.

**Control over land:** the ability to make decisions over land. It may include rights to make decisions about how the land should be used, including what crops should be planted, and to benefit financially from the sale of crops.

**Customary land tenure:** the bodies of rules and institutions governing the way land and natural resources are held, managed, used and transacted within customary legal systems.

**Customary legal systems:** systems that exist at the local or community level, that have not been set up by the state, and that derive their legitimacy from the values and traditions of the indigenous or local group. Customary legal systems may or may not be recognized by national law.

**Deceased spouse's estate:** the legal rights, interests and entitlements to property of any kind (not only land) that the deceased spouse or partner enjoyed at the time of death, less any liabilities. Depending on the legal system, marital property may be excluded fully from the calculation of deceased's estate, or the deceased's 50 percent share in the marital property will be included.<sup>1</sup>

**Equal inheritance rights for sons and daughters:** when the lines of succession in the legal and policy framework governing inheritance states equality of rank and equality of shares between brothers and sisters or between daughters and sons, or are gender neutral.

**Family home:** the house that is or has been the main residence of the family. This can be property registered in the name of one or both spouses and may or may not constitute marital/joint property. This term is frequently used interchangeably with the "family residence" or "matrimonial home" in legal and policy frameworks.

**Inheritance:** property passing at the owner's death to the heir or those entitled to succeed.

**Jointly owned property:** property that is collectively owned by a married or unmarried couple.<sup>2</sup> In some cases this may be ownership as an undivided share (known as tenancy by entirety, joint tenancy or common ownership),<sup>3</sup> in other cases this may be ownership divided by specific shares (known as tenancy in common or co-ownership by proportion)<sup>4</sup> or a variation of these two. In systems where all land is state-owned, jointly owned property is sometimes referred to as jointly occupied, or co-occupied property.

**Joint registration:** where the names of both spouses, or both partners in an unmarried couple, are entered into the land registry as the owners or principal users<sup>5</sup> of the land being registered. Joint

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<sup>1</sup> The deceased's estate usually excludes any jointly owned property as jointly owned property is automatically 100 percent inherited by the surviving spouse, or in cases of co-ownership, 50 percent will automatically be inherited by the surviving spouse, while the remaining 50 percent will be allocated among the deceased heirs.

<sup>2</sup> To note, joint property is also a term that can describe the property rights of people in a non-intimate relationship, where each has an interest in the property (i.e. business partners). However, for the purposes of this methodology it **only** refers to property collectively owned by a married or unmarried couple.

<sup>3</sup> Joint tenancy is an undivided share. This means that the land cannot be alienated without the consent of the other partner. Upon death the land is entirely owned by the surviving spouse.

<sup>4</sup> Tenancy in common usually allows one partner to alienate their share of the property without the consent of the other partner. Upon death their share of the property is distributed to their inheritors.

<sup>5</sup> See definition of "land ownership" for an understanding of how this applies in countries where land is owned by the state.

registration signifies a form of shared tenure over the land – usually either a joint tenancy/occupancy or a tenancy in common). In legal systems that include a framework for land titling, joint registration is commonly referred to as joint titling.

**Land:** all immovable property – for instance the house, the land upon which a house is built and land that is used for other purposes, such as agricultural production. It also encompasses any other structures built on land to meet permanent purposes. Legal frameworks commonly use the terms “immovable property” or “real property” when referring to land.

**Land ownership:** a legally recognized right to acquire, to use and to transfer land. In private property systems, this is a right akin to a freehold tenure. In systems where land is owned by the state, the term land ownership refers to possession of the rights most akin to ownership in a private property system – for instance, long-term leases, occupancy, tenancy or use rights granted by the state that are transferrable and are granted to users for several decades (for instance 99 years).

**Land transactions:** major land transactions, specifically the sale and encumbrance (mortgage) of land.

**Legal and policy framework:** the Constitution, policy, primary legislation and secondary legislation. The legal and policy framework includes customary legal systems where they have been recognized by statutory law.

**Marital property:** property jointly owned by the spouses following their marriage. The content of this property will depend on the marital property regime applying to the marriage. The term is sometimes used interchangeably with “matrimonial property”.<sup>6</sup> In legislation, marital property can be referred to using the umbrella terms “common”, “community” or “joint” property or the “joint estate”.

**Marital property regime:** the regime of property ownership between spouses providing for the creation or absence of a marital property, and if created, what properties are included in that estate, how and by whom it is managed, and how it will be divided and inherited at the end of the marriage. The term can be used interchangeably with “matrimonial regimes” or marital property “systems”.

**Marriage/Married couples:** couples that are recognized as being validly married under the marriage law(s) of the country being assessed. Although requirements for a valid marriage vary between countries, in many countries they require the government to preside over the marriage ceremony, for the marriage to be conducted at a particular location or for certain documents to be signed. Couples married under religious or customary law may be considered “a married couple”, if the formal marriage law recognizes such marriages. Further, where polygamy is legal, second wives and subsequent wives will be included in the definition of a married couple, taking into account any maximum number of wives permitted in the legislation.

**National constitution:** the fundamental source of law of a country. It usually includes basic principles and binding norms on the protection and promotion of individuals’ rights, the organization, the functions and competence of different branches of state power (legislative, executive, judiciary), and the nature and process of adoption of other sources of law. As such, any other legal instrument enacted within the state should not contradict and must be interpreted in a way that is compliant with the constitutional

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<sup>6</sup> To note, in some jurisdictions this term may be used more widely to refer to the assets to be divided when the marriage dissolves. For the purposes of this methodology, the term is used in the above cited narrow sense.

provisions. The amendments to the constitution shall follow a special procedure, which is more articulated than the one for the adoption of ordinary laws.

**National policy:** a document proposed by a national body (usually one that has an executive power such as a Ministry or a Department) that identifies a certain plan of action with regards to a specific matter and that has gained official status, meaning that the required government procedure for finalization has concluded. It is usually adopted by the executive power (e.g. the competent governmental department or ministry at a national level). Contrary to a law, a policy does not have legally binding effects. It defines a course of action as well as the principles and methods necessary to achieve certain long-term objectives. The broad nature of its content helps distinguish policies from plans and programs. For the purposes of this assessment, a national policy also includes a national strategy, defined as a comprehensive plan to achieve specific national goals.

**Personal laws:** a set of codified rules and norms applying to a group of people sharing a common religious faith with regard to personal matters. These laws usually cover family relations, marriage and inheritance. The term can be used interchangeably with “religious laws”.

**Primary legislation:** (i) acts or statutes that have been formally adopted at the national level following the official parliamentary procedure for the passage of laws (in parliamentary systems); (ii) other acts at the national level with the force of law, such as decree-laws and legislative decrees and otherwise (in parliamentary systems); (iii) other legal instruments that have been formally endorsed by a law-making body, for instance presidential and royal orders or presidential and royal decrees (in non-parliamentary systems or systems where law-making power lies in an additional institution to the parliament). In all cases, primary legislation must have the force of law, and therefore be binding. For the purposes of this assessment, primary legislation also includes the Constitution.

**Productive resources:** the means of production. They include natural resources (i.e. land, forests and water), technology, machinery, tools and equipment, buildings and other structures, financial resources, training and membership in production-related associations. It also includes credit, inputs such as high-quality varieties of seeds and inorganic fertilizers, farming equipment, and extension services.

**Proxy:** a variable that is not directly relevant but serves in the place of unmeasurable or unobservable data.

**Secondary legislation:** subsidiary, delegated or subordinate legal instruments that have the force of law, are binding and shall not be in contradiction with primary legislation. They are usually passed by the executive, such as national regulations, rules, by-laws, determinations, directions, circulars, orders and implementing decrees.

**Tenure security:** the certainty that a person’s rights to land will be protected. People with insecure tenure face the risk that their rights to land will be threatened by competing claims, and even lost as a result of eviction.

**Unmarried couples:** couples who live together (cohabit) in an intimate relationship, but who are not married in accordance with the marriage law of the country. Often this will refer to couples who were married under custom or religious laws, where such marriages are not recognized or do not comply with the requirements of the formal law. It may also refer to relationships that are recognized by the state but that are not considered a marriage – for instance a civil partnership and a de facto relationship that is registered with the state. The term “unmarried couples” is often used interchangeably with “de facto unions”, “consensual unions” or “irregular unions”. The members of an unmarried couple are referred to as “partners”.

## 1. Introduction

Goal 5 of the Sustainable Development Goals (SDGs) “achieve gender equality and empower all women and girls”, known as the stand-alone gender goal, recognizes the fundamental role of women in achieving poverty reduction, food security and nutrition. Goal 5 refers to governments’ commitments to end discrimination across the spectrum. More specifically, Goal 5 is broken down into the following nine targets.

### SDG 5: Achieve Gender Equality and Empower Women and Girls

- 5.1 End all forms of discrimination against all women and girls everywhere
- 5.2 Eliminate all forms of violence against all women and girls
- 5.3 Eliminate all harmful practices
- 5.4 Recognize and value unpaid care and domestic work
- 5.5 Ensure women’s full and effective participation and equal opportunities for leadership
- 5.6 Ensure universal access to sexual and reproductive health and reproductive rights
- 5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws**
- 5.b Enhance the use of enabling technology, in particular information and communications technology
- 5.c Adopt and strengthen sound policies and enforceable legislation for the promotion of gender equality and empowerment

*Figure 1: Women’s land rights in the 2030 Agenda for Sustainable Development*

Target 5.a, for which the Food and Agriculture Organization of the United Nations (FAO) has been designated the custodian agency, aims to “Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws”.

### Importance of target 5.a

Rigorous evidence shows that many women farmers, entrepreneurs and workers across countries of all regions are less productive than men because they have more limited access to and control of economic resources. Evidence also suggests that women are as efficient as men in production when given access to the same productive resources. Long-lasting inequalities in the gender distribution of economic and financial resources have positioned women at a disadvantage relatively to men in their ability to participate in, contribute to and benefit from broader processes of development.

Women’s equal access to and control over economic resources, including land and natural resources, is critical for the achievement of gender equality and empowerment of women and for equitable and sustainable economic growth and development. Greater gender equality in the distribution of economic resources contributes to economic efficiency and has positive multiplier effects for the achievement of a range of key development outcomes, including poverty reduction, food security and the welfare of households, communities and countries.

Target 5.a is designed to track progress on how countries undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources.

The overarching and broad nature of this target required the definition of indicators acting as proxy

measures and only addressing part of the target. The two indicators monitoring achievements under target 5.a focus on ownership and/or control over land, for the reasons provided below.

## Why focus on land?

The focus on land in target 5.a reflects the recognition that land is a key economic resource inextricably linked to access to, use of and control over other economic and productive resources. In rural and peri-urban areas, it is a key input for agricultural production; it can be used as collateral to access financial resources and extension services or join producer organizations; in both rural and urban areas, it can generate income directly, if rented or sold. Further, the focus on land is an explicit acknowledgement that ownership of and/or control over land is critical for poverty reduction, food security, inclusiveness and overall sustainable development objectives in both rural and urban settings.

Women's land ownership and control has been linked to important gains in women's welfare, productivity, equality and empowerment. Ownership and/or control over land, especially in post-conflict and agricultural societies, is one of the few mechanisms in which women can guarantee their economic security and avoid falling into poverty, especially in the absence of safety nets and an inclusive and equitable labour market. Development practitioners recognize that secure control and ownership of land have a strong empowering effect on women: it reduces their reliance on male partners and relatives, increases their bargaining power within the household and improves their chances of accessing a wide variety of productive resources, including extension services and credit. The confidence gained from increased tenure security can further encourage women to undertake or expand their entrepreneurial activities, and to join producer organizations and/or cooperatives.

Finally, gender equality in land ownership and control is a human right. For example, Article 3 of the International Covenant on Civil and Political Rights (ICCPR) guarantees equality between women and men, and prohibits discrimination based on sex in Article 2. Article 26 of the treaty enshrines equality before the law, and can be applied to defend women's right to non-discrimination and equality, not only with respect to civil and political rights, but also with regard to economic and social rights.

However, solid evidence shows that deep gender inequalities persist in ownership and control over land across all regions. For instance, the [FAO Gender and Land Rights Database](#) shows that the number of women landholders is significantly less than the number of male landholders in all countries for which information is available. Moreover, when it comes to agricultural land, current statistics show that women who hold land generally have smaller plots, of lower quality and with less secure rights.

## What are the indicators for target 5.a?

Achievements under target 5.a are monitored through two land indicators. While the former focuses on land-related statistics, the latter is a legal indicator:

- Indicator 5.a.1

- (a) *Percentage of people with ownership or secure rights over agricultural land (out of total agricultural population), by sex; and*

- (b) *Share of women among owners or rights-bearers of agricultural land, by type of tenure.*

- Indicator 5.a.2:

- Percentage of countries where the legal framework (including customary law) guarantees women's equal rights to land ownership and/or control.*

Although different in nature, both indicators are closely interrelated. Indicator 5.a.1 is a *de facto* or *output* indicator, in that it examines the actual situation in a given country in terms of women and men's

land rights and tenure security, with a focus on agricultural lands. By contrast, indicator 5.a.2 is a *de jure* or process indicator, in that it monitors reforms in the legal and policy framework that support women's equal rights to economic resources, ownership and control over land, with a focus on the adoption of legal reforms to promote women's land rights. It considers all land, both urban and rural land.

The collection of statistical data on land ownership or secure rights over land disaggregated by sex is crucial to monitor the effectiveness of countries' legal framework on women's equal rights to land and the progress towards women's de facto equality in land ownership or control. However, it should be noticed that sex-disaggregated information available in terms of land ownership and/or control is still limited and mostly refers only to agriculture land. The type of adjustments to the countries' legal framework on women's equal rights to land should be determined to the extent possible using the evidence provided by statistical data.

## **Purpose and structure of the indicator 5.a.2 methodological guide**

This methodological guide only provides information and guidance for the reporting on indicator 5.a.2. It provides step-by-step guidance to countries on the "how" of reporting and measuring progress on indicator 5.a.2. It covers all the relevant information needed for the collection of information on the legal and policy framework, conducting the assessment for each of the proxies, and reporting under the indicator.

The guide is structured as follows. Chapter 2 introduces indicator 5.a.2, describing the methodology for reporting on progress and introducing the proxies. Chapter 3 presents general guidelines for the completion of the assessment under 5.a.2, applicable to all proxies. Chapter 4 is devoted to providing specific guidance for data collection under each of the six proxies.

# 1. Methodology for reporting progress under indicator 5.a.2

## Scope and coverage

Indicator 5.a.2 builds on the FAO's [Legal Assessment Tool \(LAT\) for gender-equitable land tenure](#). The LAT involves assessing the extent to which a country's policy and legal framework support gender-equitable land tenure arrangements by testing that framework against 26 indicators drawn from international consensus, in particular the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and internationally accepted good practices, including the Voluntary Guidelines.<sup>7</sup>

As indicator 5.a.2 is not directly measurable, six proxies<sup>8</sup> have been identified to assess progress under indicator 5.a.2.

- **Proxy A:** Is the joint registration of land compulsory or encouraged through economic incentives?
- **Proxy B:** Does the legal and policy framework require spousal consent for land transactions?
- **Proxy C:** Does the legal and policy framework support women's and girls' equal inheritance rights?
- **Proxy D:** Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land?
- **Proxy E:** In legal systems that recognize customary land tenure, does the legal and policy framework explicitly protect the land rights of women?
- **Proxy F:** Does the legal and policy framework mandate women's participation in land management and administration institutions?

These proxies help to tackle some of the principal constraints women face in ensuring the protection and security of their land rights, and in particular some of the challenges that arise for pervasive gender bias. Collectively, they will track progress on provisions based in good practices or innovative measures included in national legal frameworks to enable *de facto* gender parity in ownership and control over land. Table 1 below provides a condensed overview of the basis upon which these proxies were selected, while section three of this guide provides more detailed information on the rationale for the selection of each of the proxies to monitor indicator 5.a.2.

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<sup>7</sup>The LAT uses 26 indicators, divided under seven clusters of key elements for targeted policy intervention, to measure gender equity in land tenure. The indicators draw from international good practice and consensus (recognized in hard and soft law instruments developed in multilateral negotiations) on the key legal provisions or legal reforms required to embrace gender equality in land tenure and address discrimination. To date, a LAT has been undertaken by FAO of 25 countries. The rating system included in the LAT is used to assess progress within a given country, as well as between countries in terms of progress in supporting gender-equitable land tenure arrangements. More information is available at the FAO Gender and Land Rights Database (GLRD): <http://www.fao.org/gender-landrights-database/en/>.

<sup>8</sup> A proxy variable is a variable that is not directly relevant but serves in the place of unmeasurable or unobservable data.

Proxy	Category of women's land rights covered by the proxy	Enjoys universal or significant relevance or feasibility?	Tackles principal constraints women face in accessing land ownership and/or control?
<b>A</b>	√ Rights held in marriage or intimate relationships (shared tenure) Right to land when the marital home changes (divorce or abandonment)	√ Universal	√ (i) social constraints that prevent women from requesting joint registration; (ii) uncooperative registries or conflicting laws that undermine principles of joint ownership and preference head of household or male ownership; (iii) the financial and social barriers that impede the claiming of statutory co-ownership rights in court
<b>B</b>	√ (Management) Rights over land in marriage/intimate relationships	√ Universal	√ (i) inequality in the management of household assets, with the consequence risk of dispossession or abandonment
<b>C</b>	√ Right to receive land through inheritance	√ Universal	√ (i) customary or cultural practices that deny women's right to inherit on an equal basis with men or widow's rights to continue to remain on land after the death of her husband
<b>D</b>	√ Right to purchase land	√ Universal	√ (i) lack of resources to implement gender-equitable laws and policies; (ii) financial barriers women may face entering the land market
<b>E</b>	√ Cross-cutting	√ Relevant to a significant number of countries	√ (i) legal pluralism impacting on the implementation and/or security of women's access to statutory or customary land rights
<b>F</b>	√ Land governance	√ Universal	(i) dominance of men in the management and administration of land undermining gender sensitivity of land laws

Table 1: Basis for the selection of the indicator 5.a.2 proxies



## Reporting process for indicator 5.a.2

As with all the SDG targets and indicators, the reporting process for target 5.a is global in scope and country-led. The following steps will be taken for the purpose of standardized reporting under indicator 5.a.2.

### *Step 1: Identification of a responsible national entity*

National governments should nominate a national entity responsible for the collection of data and monitoring for indicator 5.a.2. The concerned indicator has three important features that should guide the Government's decision in the selection of the institution that will have the responsibility for monitoring this indicator: the legal nature of the indicator, land tenure aspects and gender/women's rights. In view of this, the most adequate national institutions that could be designated for having this responsibility are land-related institutions (i.e. Ministry of land or the national institution governing land matters) or a national gender institution (i.e. Gender Equality Commission, Women's Affairs or Gender Ministries). Alternatively, a national institution with responsibility for upholding the rule of law such as the national Ministry of Justice or Humans Rights Commission also would be appropriate.

### *Step 2: Identification of a national legal expert*

Considering the legal nature of indicator 5.a.2, the responsible entity should consider appointing a national legal expert to perform the 5.a.2 legal assessment. The national legal expert should have knowledge and experience in issues related to property rights in his or her country and legal research skills, including being able to locate relevant policy and legal material pertaining to land and property rights.

### *Step 3: Expert assessment of the policy and legal framework*

The assessment under indicator 5.a.2 should take place every two years, using a questionnaire. The questionnaire requires the national legal expert, applying the guidance provided in Chapters 3 and 4, to identify where in the legal and policy framework, if at all, each proxy is found, citing the relevant provision(s) and referencing the legal or policy instrument.

The questionnaire is organized as follows:

- ✓ **A checklist of policy and legal instruments relevant for the assessment** in order to guide the expert in the identification of the proxies in the policy and legal framework of the country analysed.
- ✓ **Form 1 “Policy and legal instruments including provisions for Proxy (x)”**. This form is composed of a set of questions to be answered (YES or NO) to understand if the proxy is present. The details of the instrument containing the Proxy are to be provided in this form.
- ✓ **Form 2 “Results of Assessment -Proxy (x)”**. This form summarizes the results of the assessment for each proxy.

The national expert shall then compute the total number of proxies found in the legal framework, and use this number to determine which classification band the country fits into (see “Computation of results”).

### *Step 4: Validation of the results by the responsible entity*

The results of the assessment and computing will be checked and validated by the responsible entity, prior to communication to FAO. It is recommended that this is a transparent process, open to the participation of civil society and a cross-section of government institutions.

### *Step 5: Communication of the results to FAO*

After checking and validating the results, the responsible entity communicates the questionnaire to FAO. It is highly recommended that at this stage the responsible entity also informs the SDGs coordination body, usually the national statistical authority, which will have overall responsibility in organizing the SDGs reporting at the national level. Results must be communicated in English, Spanish or French.

**Step 6: FAO quality check and submission to UN SDGs Secretariat**

Upon receipt of the submitted questionnaire, FAO or supporting partners will undertake a quality check, and revert to the national responsible institution in case clarifications or revisions are needed. FAO will reconfirm the result with the national institution to seek final confirmation before compiling all the national results and reporting progress on the indicator at the global level to the UN SDGs Secretariat.

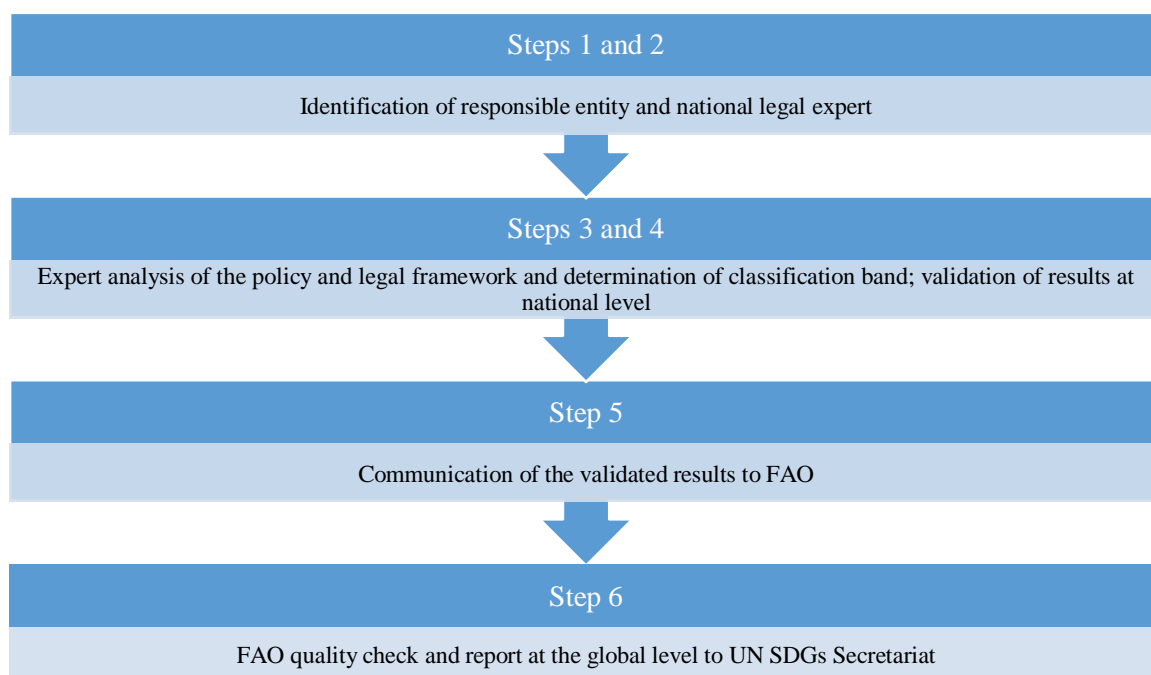


Figure 2: Reporting process under indicator 5.a.2

## **2. General guidelines for the indicator 5.a.2 assessment**

To complete the indicator 5.a.2 assessment, national legal experts must examine the national legal and policy framework and complete the questionnaire. This involves four steps.

1. Collect all the relevant policy and legal documents for the relevant proxy, using the checklist of the policy and legal instruments contained in the questionnaire as a guide.
2. Using the detailed instructions provided in Chapters 3 and 4 of this methodological guide, determine whether the proxies exist in the legal and policy framework and in which instruments.
3. Complete Form 1 and 2 for each of the 6 proxies, citing the instrument and the relevant provisions where the proxy was located. Include a hyperlink to the text of the legal and policy instrument.
4. Calculate the number of proxies present in primary and/or secondary legislation and determine which band the country is in.

When these four steps have been undertaken, the indicator 5.a.2 assessment is complete.

### Key rules when completing the indicator 5.a.2 assessment

- All relevant provisions should be cited in Form 1 of the questionnaire, using the copy and paste function, especially if provisions need to be read together to construct the proxy. In cases where the policy or legal instrument is not available electronically, the relevant information should be copied and inserted from the hard copy of the instrument, without any interpretation from the national legal expert.
- If the instrument “hints” at the proxy but does not meet the methodological threshold, it should be cited only in the “additional information” section in Form 2. It should not be cited on Form 1.
- The forms must be completed in English, French or Spanish. If the legal or policy instrument is only available in the national language, and this is not English, French or Spanish, it will need to be translated to one of these languages.
- If legal provisions in different instruments or within the same instrument appear to conflict, with one provision suggesting the proxy exists and others contradicting this, reference all such provisions on Form 2 in the “additional information” section (using copy and paste). In this case, the proxy does not exist.
- In case of doubt whether the proxy applies, include the provision.
- Provisions representing the proxy should be referenced wherever they are found in the legal and policy framework. This means that if the proxy is repeated in different legal and policy instruments, reference should be made to each of the instruments where it is found.
- With regard to Proxies A, B and C, if different laws or policies apply to members of different religious groups (i.e. personal laws), it is necessary only to check the situation for members of the two main religions in the country for the existence of the proxy. The two main religious groups are determined by the groups that have the two largest populations in the country. The proxy will only be present if the proxy is included in laws and policies concerning both these groups. If the law or policy excludes the second largest group, or the personal law that covers the issue is silent in regards to that proxy, the proxy is not present.
- Nonetheless, where the provision representing the proxies A, B and C
  - explicitly exclude members of particular religious groups;
  - are not included in the separate law/policy governing a particular religious group (see previous bullet point);
  - explicitly exclude certain types of land or land transactions (Proxy B);
  - are not included in the separate law/policy governing that type of land (for instance customary land),the provision representing the proxy should still be cited in the “additional information” section in Form 2. The relevant provision that excludes certain information, or that is silent on the proxy, should be cited or noted. In all these cases the proxy is not present, however, it is still important to collect the data on which groups, land and transactions are covered by the proxy.
- With regard to Proxy D, if the legal and policy framework does not provide for the allocation of financial resources, the proxy will still be considered present if official national statistical data showing the achievement of at least 40 percent of women’s ownership and/or control over land (e.g. data on SDG 5.a.1, or 1.4.2.) is provided.
- With regard to Proxy F, if the legal and policy framework does not include a provision on mandatory representation of women, the proxy will still be considered present if official national statistical data showing the achievement of at least 40 percent of women’s representation at all levels in land management and administration institutions is provided.
- Where there has been an amendment to the law, or law reforms, and the law does not apply retroactively, the proxy will generally still be present, even if some individuals will not be able to benefit from the provision due to the lack of retrospective application of the law.

## Data sources

The data sources that should be assessed for the indicator 5.a.2 assessment are policies, primary law and secondary legislation. Definitions for each of these categories are found in the terminology section of this guide. To note, any legal or policy provision or instrument referred to must be publicly available and be an official version. For primary and secondary legislation this usually means that the instrument is contained in the parliament gazette or another official source.

Information about the policy and legal framework found in secondary sources, for example, in a Minister’s speech, in social media or in a brochure, is not relevant. Only the legal and policy framework should be referenced when completing the questionnaire.

This means that customary and religious laws are only to be included to the extent that they are incorporated into the legal and policy framework.

It follows that national legal experts should not consider judicial decisions or advisory opinions of courts or official bodies when determining whether a proxy exists in the legal or policy framework. The proxy must be found in the framework itself, not through judicial interpretation. Similarly, data from the decisions of quasi-legal or administrative bodies, or interregional courts, should not be considered unless the same can be found specifically in national legal or policy instruments.<sup>9</sup> While the exclusion of jurisprudence from the assessment is a significant limitation, it is necessary to ensure that data can be standardized and that the indicator 5.a.2 assessment process is efficient.

Project documents, memorandums of agreements or donor-funded programs do not fall within the legal and policy framework and therefore should not be considered, unless they have been incorporated into the legal framework. Equally, situations where a given proxy has been “piloted” in one geographic area of the country, for instance a registration program with incentives for women to jointly title, should not be referenced in the questionnaire unless a corresponding legal or policy basis can be found that specifically includes the proxy (namely, a reference to encouraging joint registration in a policy, primary legislation or secondary legislation). The ONLY exception to this rule is Proxy D. A ‘national-wide and long term program’ aiming at increasing women’s land ownership and/or control may be considered for the Proxy’s assessment only if it is – also in general terms – directly based in a law.

It should be recalled that externally funded land programs, reflecting the national land policy, are often incorporated into the legal and policy framework through the passage of primary legislation (including laws on budget allocations).

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<sup>9</sup>This rule applies regardless of constitutional provisions that provide that international or regional treaties are directly applicable.

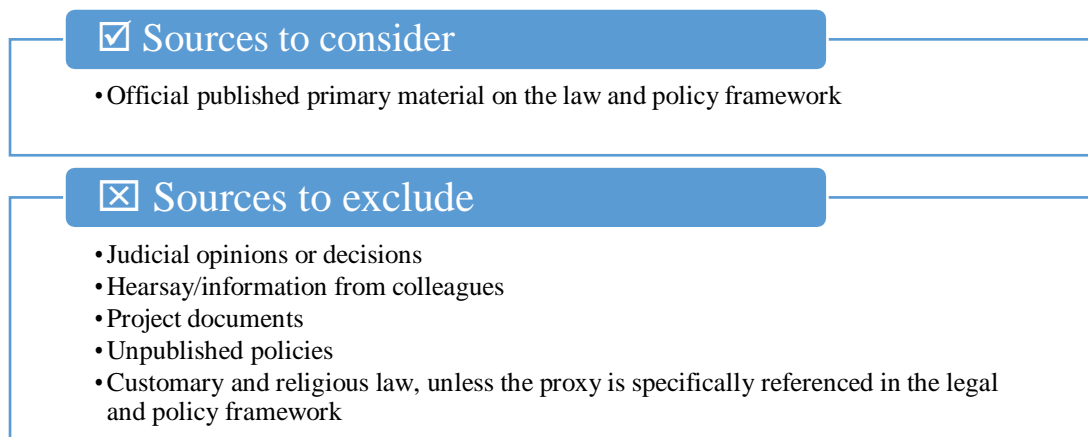


Figure 3: Summary: data sources for the assessment

## Time limitations

It is important to restrict the research to the most recent legal or policy instrument and to the legal and policy situation at the time of the assessment. This means that only a policy that is in force, or primary legislation or secondary legislation that is in force and binding (i.e. not expired), on the day of the assessment should be cited in the forms.

In the case of a policy, it should be a policy that has been finalized and that is applicable at the time of the assessment. It may be the case that in many countries a policy might continue to be valid, despite the passing of the policy's written expiry date, if it has not been replaced by a newer version.

The national legal expert should be aware of the country's rules for the finalization of a policy or the entry into force of a law, to avoid any errors when completing the forms in terms of determining where in the legal or policy instrument the proxy is found.

## Geographical scope

The data collected for the SDG indicators is collected at the national level to ensure that it is representative of the country situation. This means that the 5.a.2 assessment to determine the existence of the proxies should focus on legal and policy instruments that have nationwide authority.

In countries where the law-making power for land or gender matters is not within the authority of the national government (or is shared between the national government and a sub-national government level), there may be a number of different state/provincial or county laws and policies that can be analysed. Further, there may be inconsistencies between these different sub-national laws in terms of the presence of a proxy and the degree of its integration in the legal and policy framework.

The assessment of the proxies is conducted within the legal framework of the most populated federal states or entities – as many as to cover at least 50 percent of the population of a country. The proxy should be located in all of the legal and policy frameworks relevant to these locations. If this is not the case (i.e. one proxy is missing in one state), the proxy is not present. Where a federal state is being considered, the national legal expert should mention the name of the states/provinces/counties etc. when citing the relevant instruments and provisions in Form1.

## Computation of results, consolidation and global reporting

The computation of results involves two different exercises: (1) classification of the country according to the number of proxies located in primary and/or secondary legislation, and (2) consolidation of all country results for global reporting.

### Step 1: Classification categories of country

The country will then be classified according to the total number of proxies found in primary legislation or primary and secondary legislation. A separate scale is needed for countries where Proxy E is applicable, because in this case they will be assessed out of six proxies instead of five. The choice of calculating five or six proxies in the same band (very high levels of guarantees) is due to the necessity of making universal the calculation of the component of customary law – a component of the indicator which in itself is not universal to all countries.

#### *Why collect information on the presence of the proxies in policies if only primary and secondary legislation count for the purpose of the indicator 5.a.2 assessment?*

As noted above, the indicator 5.a.2 assessment collects information on the stage of each of the proxies in the legal and policy framework. This means that it will also collect information on policies that contain the proxies. This information is **not** included in the global SDG assessment results, **which only** looks at whether the proxies are found in primary legislation or primary legislation and secondary legislation.

The reason why data on policies is collected is to track progress on each of the proxies. This data is collected to assess whether there have been developments at the national level to incorporate the proxies into the legal and policy framework, even if the proxy did not yet reach the level of primary legislation. Collecting information on the presence of proxies in policies is also potentially useful for national level reporting.

The table below describes the six classifications.

Result of assessment Where Proxy E is <u>applicable</u>	Result of assessment Where Proxy E is <u>not</u> <u>applicable</u>	Classification
None of the six proxies are present in the primary or primary and secondary legislation	None of the five proxies are present in the primary or primary and secondary legislation	<b>Band 1:</b> No evidence of guarantees of gender equality in the land ownership and/or control in the legal framework.
One of the proxies is present in primary or primary and secondary legislation	One of the proxies is present in primary or primary and secondary legislation	<b>Band 2:</b> Very low levels of guarantees of gender equality in land ownership and/or control in the legal framework.
Two the proxies are present in primary or primary and secondary legislation	Two of the proxies are present in primary and secondary legislation	<b>Band 3:</b> Low levels of guarantees of gender equality in land ownership and/or control in the legal framework.
Three of the proxies are present in primary legislation or primary and secondary legislation	Three of the proxies are present in primary legislation or primary and secondary legislation	<b>Band 4:</b> Medium levels of guarantees of gender equality in land ownership and/or control in the legal framework.
Four of the proxies are present in primary legislation or primary and secondary legislation	Four of the proxies are present in primary legislation or primary and secondary legislation	<b>Band 5:</b> High levels of guarantees of gender equality in land ownership and/or control in the legal framework.
Five or six proxies are present in primary legislation or primary and secondary legislation	All five proxies are present in primary legislation or primary and secondary legislation	<b>Band 6:</b> Very high levels of guarantees of gender equality in land ownership and/or control in the legal framework.

Table 2: Classification categories

Having equal weights for each proxy implies that each dimension of rights to land covered by the proxies have equal value: no dimension is more important than another in terms of supporting gender parity in land ownership and/or control.

The overall classification of the country, will be communicated by FAO to the national entity prior to submission to the UN SDGs Secretariat.

### **Step 2: Consolidation of country results**

FAO will consolidate the results and compute the global statistics to be submitted to the UN SDGs Secretariat. Information on the reporting process to the SDG Secretariat can be found in the document “Consolidation of Country Results and Reporting under SDG Indicator 5.a.2”.



### 3. Detailed guidance on the proxies

#### Proxy A – Is the joint registration of land compulsory or encouraged through economic incentives?

##### Rationale

Over the preceding decades, many countries have engaged in land tenure registration programs with the aim of increasing the tenure security of landholders. In this context, priority has been given to providing landholders with documentary proof of their rights, as well as to establish systems for recognizing and recording these rights.

Land registration programs have been criticized for weakening women’s land tenure security by ignoring the different “bundles” of land rights (access, use, control) over a given plot of land, and vesting exclusive rights in one “owner”, who is very frequently a man.<sup>10</sup> While property registration laws are usually gender neutral, in reality women are often discriminated against in property registration programs due to gender-biased social and cultural norms and practices.

Sometimes men are registered as owners or titleholders even if the marital regime provides for joint ownership of all property acquired post-marriage. Without the inclusion of women’s name and rights on the land registration document, women’s property rights remain insecure. This is particularly the case for married women who separate, divorce, are abandoned or become widows.

One measure adopted by states to overcome these risks and ensure the recognition and protection of women’s land and property rights is to include provisions on joint registration in the legal and policy framework. In some cases this requirement applies only to limited situations – for example agricultural lands, or lands that are being privatized. While these are not comprehensive, the methodology considers these limited actions appropriate as they show progress on protecting women’s land rights, even if not in all situations. Some states have limited these provisions to married couples, while others have extended them both to married and unmarried couples. Although the latter approach is more progressive, as it protects a broader category of women, Proxy A is present if either scenario is found in the legal and policy framework.

##### Scope and definitions

This proxy aims to identify any policy objectives, existing legal provisions and implementing legislation that:

1. Make joint registration of land compulsory for married and/or unmarried couples; or
2. Encourage joint registration of land for married and/or unmarried couples through economic incentives.

Joint registration: where the names of both spouses, or both partners in an unmarried couple, are entered into the land registry as the owners or principal users<sup>11</sup> of the land being registered. Joint registration signifies a form of shared tenure over the land – usually either a joint tenancy/occupancy or a tenancy

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<sup>10</sup> Bina Agarwal, “A Field of One’s Own: Gender and Land Rights in South Asia” , (Cambridge University Press, 1994).

<sup>11</sup> See definition of “land ownership” for an understanding of how this applies in countries where land is owned by the state.

by entirety). In legal systems that include a framework for private land ownership, joint registration is commonly referred to as joint titling. In legal systems where all land is owned by the state, joint registration can include the process for registering a property right that is most akin to private ownership (sometimes referred to as a “long-term lease”, “occupancy”, “tenancy” or “use” rights).

Land for the purposes of this assessment refers to immovable property – i.e. the house, the land upon which a house is built and land that is used for other purposes, such as agricultural production. It also encompasses any other structures built on land to meet permanent purposes. Buildings and structures are considered immovable property if they cannot be used for non-temporary purposes when they are separated from the land. Legislation frequently refers to “immovable” or “real property” rather than land.

***A marriage recognized under this Act shall be either -***

- *Civil marriage*
- *Customary marriage*
- *Religious marriage*
- *Marriage by repute or permanent cohabitation*

***All marriages recognized under this Act shall have the same legal status.***

*Box 1: Example of a Law on Marriage*

Married couples refers to couples that are recognized as being validly married under the marriage law(s) of the country being assessed. Although requirements for a valid marriage vary between countries, in many countries they require the government to preside over the marriage ceremony, for the marriage to be conducted at a particular location or for certain documents to be signed. Couples married under religious or customary law may be considered “a married couple” if the formal marriage law recognizes such marriages. Further, where polygamy is legal, second wives and subsequent wives or husbands will be included in the definition of a married couple, taking into account any maximum number of wives permitted in the legislation.

Unmarried couples: couples who live together (cohabit) in an intimate relationship, but who are not married in accordance with the marriage law of the country. Often this will refer to couples who were married under custom or religious laws, where such marriages are not recognized or do not comply with the requirements of the formal law. It may also refer to relationships that are recognized by the state but that are not considered a marriage – for instance a civil partnership and a de facto relationship that is registered with the state. The term “unmarried couples” is often used interchangeably with “de facto unions”, “consensual unions” or “irregular unions”. The members of an unmarried couple are referred to as “partners”.

## Detailed guidance on how to conduct the assessment for Proxy A

### Provisions to be located

Under this proxy, the legal and policy framework is assessed to check for the existence of any of the following **four scenarios**:

1. Specific reference is made to compulsory joint registration for married couples only in the registration of land;
2. Specific reference to compulsory joint registration for both married and unmarried couples in the registration of land;
3. Joint registration of land for married couples only is encouraged through economic incentives; or

4. Joint registration of land for both married couples and unmarried couples is encouraged through economic incentives.

In some cases, more than one scenario may exist in the legal and policy framework (specifically Scenarios 1 and 3, 1 and 4, 2 and 3 or 2 and 4).

**Proxy A** will exist **if any one** of the four scenarios can be located in the legal and policy framework. Nonetheless, it is important for national legal experts to pay close attention to which scenarios are present. All provisions relevant to these issues should be cited, following the rules established in the [General guidelines](#).

The results submitted to the UN SDGs Secretariat will provide information on whether joint registration of immovable property is compulsory and/or encouraged through economic incentives in the primary legislation, regardless of whether the relevant provisions cover only married couples or both married and unmarried couples. Notwithstanding this approach, recording information on the different scenarios is essential for tracking progress towards a policy and legal framework that promotes women's land rights.

## Rules and tips

**Joint registration** can also include the registration of land that is allocated by the national government in a land consolidation, redistribution, agrarian reform or transition to private property program. If registration rules for different categories of land are found in different legal or policy instruments, **they all should be scanned for the proxy**.

Further, **general provisions that imply joint registration are usually insufficient to determine whether joint registration is mandatory or encouraged**. Examples of such generic provisions include:

- Provisions referring to the property regime that applies to marriage (for instance, community or partial community);
- Rules for determining what constitutes marital property and presumptions that certain types of property are jointly owned; and
- Rules on how property should be dealt with upon divorce or death.

**Only** when these rules **also include a specific statement** that such property **must be registered jointly, or provides that specific economic benefits are to be granted for the joint registration of such property** will Proxy A be present in the legal and policy framework.<sup>12</sup> This means that a stand-alone statement providing that “ownership rights shall be registered in the name of all joint owners” is **not sufficient** to meet the threshold of the proxy.

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<sup>12</sup>The reason why implicit provisions are not included is that experience demonstrates that in themselves such provisions rarely result in the joint registration of immovable property – it is only with specific directives or mandates requiring joint registration that joint registration actually takes place.

The proxy is still present if the legal or policy provisions refer to the mandatory joint registration or encourage, through economic incentives, the joint registration of **only certain types of land** – such as the “family home”, “the land the family depends on to survive”, “agricultural lands” or “all land” or land that is allocated, leased or privatized (for example, squatter lands) by the government. This approach has been adopted because the proxy is intended to track progress, even if that progress does not cover all land in the country. It is important, however, that the provision does **not** exclude **customary land or ancestral lands**. Where such land is explicitly excluded the proxy is **not** considered present. **However, the registration processes for community land are not relevant** for this proxy.

The proxy is also present if it includes **other types of property beyond land, so long as land or more generally immovable property is included**. For instance, where the statute provides for the joint registration of “moveable, immovable, present and future property” the proxy is present.

If there is no default marital property regime or no presumptions around marital property, and spouses can decide to **“opt-in” to a community marital property regime**, the proxy is **not** present if there are only provisions for joint registration **for the land that the couple has elected to form part of the marital property regime**. The rationale for this is that joint registration must be the standard.

Conversely, the proxy **is** present if the **default marital property regime is community** (with joint registration mandatory for jointly owned property), although couples can **“opt-out” of this regime**.

As noted in the [General guidelines](#), in cases where joint registration rules do not cover customary lands, it is **still necessary to cite the provisions that provide for joint registration, and to note the exclusions or exceptions on the requisite forms. To repeat, in these cases the proxy is not present in the legal and policy framework for the purposes of computation.**

Where the law provides that property registered in the name of one spouse is considered to be registered in the name of both, the proxy **is not** present. The reason for this is that such provisions imply that registration in the name of one spouse is permissible. Where the law only provides that ownership rights shall be registered in the name of all joint owners, the indicator **is not** present.

However, where the law states that joint registration **is required and** also includes a provision that registration in the name of one spouse is deemed to be in the name of both, the proxy **is present**.

## **Unmarried couples**

When assessing whether the joint registration provisions cover **unmarried couples**, the national legal expert should check the following aspects of the legal or policy framework:

- Are non-formal types of marriages (traditional, customary, religious) included in the definition section of “marriage” **in the legal instrument on tenure registration or the policy instrument on tenure registration (i.e. not in the law on marriage)?**
- Does the legal or policy framework extend the same legal regime on joint registration prescribed for married couples to unmarried couples?

- Is there a separate provision in the land registration act providing that couples who live together are property co-owners as distinct from joint property owners *and* must be registered as such?<sup>13</sup>

If the response to any of these questions is “yes”, unmarried couples are covered by the proxy. Where joint registration is offered to unmarried couples only when the relationship **is registered, or fulfils certain eligibility criteria** (for instance, a requirement that they lived together for a particular period of time), Proxy A is still present in the legal or policy framework. Note this does **not** include situations where the law or policy framework presumes that if two people live together their land is **jointly owned**. As noted above, it is necessary that joint registration is specifically required or encouraged through economic incentives, and not implied through provisions such as these for the proxy to be present.

As noted above, whether mandatory or encouraged joint registration of **second and subsequent wives** are considered as provisions covering married or unmarried couples will depend on the legality of polygamy in the national marriage law(s) and the maximum number of wives permitted. It should be recalled that if the couple married through a customary or religious marriage, and customary and religious marriages are recognized by the formal law, they are considered a married couple in this methodology.

Where polygamy **is legal** and:

- The law or policy provides for mandatory registration of second and subsequent wives with their husband over the property they are living in, Scenario 1 **is** present;
- The law or policy **only** provides for joint registration only of first wives, Scenario 1 is **not** present;
- The law or policy requires that all wives are registered on a single certificate, Scenario 1 **is** satisfied.

**NB:** If the law provides for “spouse” or “wife” in the singular, as opposed to “spouses” or “wives”, the scenario is still satisfied.

Finally, as per the [General guidelines](#), the practice of joint registration **must be specifically provided for in a national legal or policy instrument**, with relevant provisions cited in the forms. It is not sufficient for national legal experts to simply provide the location of a pilot area where it is known that joint registration is mandatory or encouraged through economic incentives.

### **Steps to be followed in the Proxy A assessment and recording of the information**

- 1. Identify and collect all relevant sources of policies and laws.** Provisions concerning joint registration will usually be found in the land law, family law or the land registration act and related regulations. However, all the policies and laws mentioned in the checklist of the questionnaire should be identified and collected, as well as any other relevant policies or laws not included on the list. Where provisions are found in primary legislation implying joint registration, it is important to check if there is any relevant secondary legislation giving force to those provisions.
- 2. Screen all the relevant documents collected in Step 1 and assess if the joint registration of land is compulsory for married and unmarried couples (Scenarios 1 and 2)** following the [Rules and](#)

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<sup>13</sup> As noted above, for the purposes of this assessment, co-ownership is included as it can offer an important degree of protection to unmarried couples.

**tips and Definitions** mentioned above. The following table provides examples of situations that will help the national legal expert to answer this question.

**BOX 1: Support for identifying Scenarios 1 and 2: Is joint registration of land compulsory?**

<b>Provision IS PRESENT and will be recorded in Proxy A</b>	<b>Provision IS NOT PRESENT and will be excluded from Proxy A</b>
<ul style="list-style-type: none"> <li>✓ The legal and policy framework provides that the default position is joint registration “unless the couples prefer not to” or the couple decides for “only one name” to be included (opt-out provisions).</li> <li>✓ The national law provides that the rights of spouses in joint property must be registered in the register of immovable and other appropriate registers under the names of both spouses.</li> <li>✓ The legal and policy framework makes joint registration optional and secondary legislation at the sub-national level (of the most populated states representing at least 50% of the total population) provides that certain types of land must be registered jointly for married and unmarried couples.</li> <li>✓ The national government directs state governments in a policy document to integrate mandatory joint registration processes (in federal systems).</li> <li>✓ A national land policy states that “all future government-issued land will be jointly titled” or joint registration “is a requirement for all registration programs from X year onwards”.</li> </ul>	<ul style="list-style-type: none"> <li>✗ The legal and policy framework state only that joint registration is “optional”, “authorized”, “permissible” or “should be encouraged”.</li> <li>✗ The legal and policy framework include a presumption of joint ownership or joint tenancy (for any land obtained for use by both spouses) and no corresponding references to registration (or titling).</li> <li>✗ The model certificate includes space for two names but there is no accompanying legislation concerning joint registration for immovable property.</li> <li>✗ The legal and policy framework provide that a land certificate can be issued individually or in the name of several people.</li> <li>✗ The legal and policy framework only outlines that transactions involving specific types of land (i.e. family land) require the consent of both spouses.<sup>14</sup></li> <li>✗ The legal and policy framework provide that the couple should manage the household’s property together and that they have common responsibility for children.</li> <li>✗ The legal or policy instrument qualifies the mandatory quality of the rule “as far as possible” or “to the extent possible” joint registration should be encouraged.</li> <li>✗ The national legal framework provides that ownership rights shall be registered in the name of all joint owners.</li> <li>✗ The national legal framework provides that if one spouse is entered in the register of immovable and other appropriate registers as the owner of the joint property, it should be considered that the entry was made on behalf of both spouses.</li> </ul>

<sup>14</sup> Rules on the management of immovable property are considered **in Proxy B**.

Regardless of whether a provision concerning mandatory joint registration for married couples only and unmarried couples is located in the law and policy framework, the national legal expert should proceed with Step 3.

**Reporting on Proxy A - if mandatory joint registration was located in the policy and legal instruments**

✓  Form 1: Policy and legal instruments including provisions for Proxy A. Please recall that in this form all the relevant references supporting the assessment should be cited (using the copy and paste tool).

✓  Form 2: Results of Assessment - Proxy A.

Proceed to Step 3.

**3. Screen all the relevant documents collected in Step 1 and assess if joint registration of land is encouraged through economic incentives for married couples only or for married and unmarried couples (Scenarios 3 and 4).**

*BOX 2: Support for identifying Scenarios 3 and 4: Is joint registration of land encouraged through economic incentives?*

Provision IS PRESENT and will be recorded in Proxy A	Provision IS NOT PRESENT and will be excluded from Proxy A
<ul style="list-style-type: none"> <li>✓ The legal and policy framework provides for a waiver of registration fees for joint registration.</li> <li>✓ The legal and policy framework provides for reduced registration fees for joint registration.</li> <li>✓ The legal and policy framework provides for exemptions from paying registration taxes or reduced taxes generally for jointly titled property.</li> <li>✓ The legal and policy framework provides for small price subsidies in unplanned settlements for jointly titled properties.</li> <li>✓ The legal and policy framework provides for access to free agricultural training or financial services following the proof of jointly registered land.</li> <li>✓ The legal and policy framework provides for economic benefits when land is registered <b>jointly</b>.</li> <li>✓ The legal and policy framework provides for economic benefits when land is registered in the name of a woman, without specifying whether this must be individual or joint.</li> </ul>	<ul style="list-style-type: none"> <li>✗ The legal and policy framework provides for a public awareness component or education schemes as to the positive impact of joint registration.</li> <li>✗ The legal and policy framework is silent on joint registration.</li> <li>✗ The legal and policy framework provides for land to be titled in the name of the household head or the customary owner.</li> <li>✗ The legal and policy framework provides for economic incentives to register community land or land in the name of the <b>sole</b> female owner.</li> </ul>



**Reporting on Proxy A - if provisions encouraging joint registration through economic incentives were located in the policy and legal instruments**

✓  Form 1: Policy and legal instruments including provisions for Proxy A. Please recall that in this form all the relevant references supporting the assessment should be cited (using the copy and paste tool).

✓  Form 2: Results of Assessment – Proxy A. Please add any further information on joint registration is mandatory or encouraged through economic incentives for married and/or unmarried couples.

If no provisions could be found, the expert should mark “Proxy was not found” in Form 2.

After completing the forms, the legal expert should proceed with the assessment for Proxy B.



## Useful examples

Country	Provision(s)	Scenario
<p><b>Tanzania</b>  <a href="#">Article 161.-(I) Land Act, 1999</a></p>	<p>Art 161.-(I) Where a spouse obtains land under a right of occupancy <b>for the co-occupation, and use of both spouses or where there is more than one wife</b>, there shall be a presumption that, unless a provision in the certificate of occupancy or certificate of customary occupancy clearly states that one spouse is taking the right of occupancy in his or her name only or that the spouses are taking the land as occupiers in common, the spouses will hold the land as occupiers in common and, unless the Presumption is rebutted in the manner stated in this subsection, <b>the Registrar shall register the spouses as joint occupiers accordingly.</b></p>	<p>Scenario 2</p>
<p><b>Philippines</b>  <a href="#">Executive Order 209, The Family Code of the Philippines, 1998</a>   <a href="#">Presidential Decree (1978) no. 1529 Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes</a>   <a href="#">Republic Act no. 9710, The Magna Carta of Women, 2009</a></p>	<p>Art 147: When a <b>man and a women who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of the marriage or under a void marriage</b>, (.....) the property acquired by both of them through their work or industry <b>shall be governed by the rules on co-ownership.</b></p> <p>In the absence of proof to the contrary, property acquired while they lived together <b>shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares.</b> For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.</p> <p>Sec 14: The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives...</p> <p>(4) Where the land is owned in common, <b>all the co-owners shall file the application jointly.</b></p> <p>Sec 45: <b>Every certificate of title shall set forth the full names of all persons whose interests make up the full ownership in the whole land</b>, including their civil status, and the names of their respective spouses, if married, as well as their citizenship, residence and postal address. <b>If the property covered belongs to the conjugal partnership, it shall be issued in the names of both spouses.</b></p> <p>Section 23 (...)</p> <p>B. Right to Resources for Food Production</p> <p>1. Equal status shall be given to women and men, <b>whether married or not</b>, in the titling of the land and issuance of stewardship contracts and patents. Further:</p> <p>a. The Department of Agrarian Reform (DAR) <b>shall issue</b> the Emancipation Patent (EP) and <b>Certificate of Land Ownership Award (CLOA)</b>, to all qualified beneficiaries regardless of sex, <b>civil status</b>, or physical condition. <b>In order to protect the rights of legally married spouses where properties form part of the conjugal partnership of gains or absolute community property, the names of both shall appear in the EP and CLOA preceded by the word</b></p>	<p>Scenario 1 and Scenario 2</p>

	<p><b>“spouses.” In unions where parties are not legally married, the names of both parties shall likewise appear in EP and CLOA with the conjunctive word “and” between their names.</b></p>	
<p><b>Nepal</b></p> <p><b>Land Policy 2017</b></p> <p><a href="#"><u>Agriculture Development Strategy (2015-2035) 2014</u></a></p> <p><b>Finance Act 2016/1714, 2016</b></p> <p><b>Procedure Relating to the Issuance of Joint Land Registration Certificate 2017</b></p>	<p>Section 7.2.6, policy 7.2.6: Women’s access to and ownership over land shall be increased.</p> <p><b>Strategy and Policy</b></p> <ol style="list-style-type: none"> <li><b>1. Concession shall be given in registration fee when ownership is transferred in the name of a woman.</b></li> <li><b>2. Provision of joint registration of property with minimum fee</b> shall be ensured in case of husband and wife who intend to register their property jointly.</li> </ol> <p>Any property that a family may receive as a part of land reform program shall only be transferred as joint property of the family.</p> <p>Paragraph 328: Raise awareness on women’s rights to land. ADS will support legal literacy and pro-GESI mechanisms to communicate with women and excluded groups. Mechanisms will include <b>joint ownership</b>, establishment of incentives such as tax rebate policy if the land is registered under women’s name, equal inheritance rights for women.</p> <p>Section 11 (Annexure 4, Miscellaneous heading, paragraph 10 (b)): <b>Rupees one hundred</b> shall be imposed as <b>the registration fee</b> in case husband and wife wish to execute a document <b>bringing under their joint ownership any land or houses</b> built on such land and owned by either the husband or the wife.”</p> <p>Section 2 (a): Joint Land Registration Certificate shall mean registration certificate issued by Land Revenue Office that provides details of the land including the names of both husband and wife and their respective photos.</p> <p>Section 6: After the Office has completed its investigation and verified the details submitted along with the application as per section 5, the office <b>shall</b> approve the joint land registration and issue a joint land registration certificate.</p> <p>Section 7: <b>The Office shall charge registration fee as per the applicable Finance Act.</b></p>	

## Proxy B – Does the legal and policy framework require spousal consent for land transactions?

### Rationale

Rules for the management of commonly held land can be just as important as formally owning it, because property management rights include the power to mortgage, lease or sell property. When such actions are taken unilaterally by a husband or male partner, especially when they concern the family home or other critical assets, they can leave women and any children homeless and without means of subsistence.

There are four main systems for the management of property (both moveable and immovable), depending on the marital property regime applicable.<sup>15</sup> In separate property regimes,<sup>16</sup> the spouse who owns the property (i.e. has legal title) manages it according to his or her will. Nonetheless, in some cases, even if property is not jointly owned or marital property, the law often includes a requirement that the consent of the non-owner spouse is necessary for major transactions for certain land, usually transactions concerning the family home.

In community property regimes (partial or full), the rules for the management of common property fall into three categories.<sup>17</sup> Sole management systems allow only one spouse the power to manage jointly held property. Equal management systems give either spouse the power to manage the whole of the property that is jointly owned or marital property, without requiring the consent of the other spouse.<sup>18</sup> Joint management systems provide that the consent of the other spouse is required for major transactions concerning joint property. **This final rule is regarded as the optimal regime for women, as it makes very clear to both spouses that they have equal rights over the property during the relationship and offers unequivocal direction to land bureaus that major land transactions involving spousal property require consent.** Consent requirements for the family home in separate property regimes can also serve this purpose, and act as an important protection for women against capricious actions by their spouse.

Proxy B examines the extent to which states have incorporated into their legal and policy framework a requirement of spouse or partner consent for land transactions. As with Proxy A, some states have limited those measures for married couples, while others have extended these provisions to both married and unmarried couples. Although the latter approach is more progressive, as it protects a broader category of women, **Proxy B is present if either scenario is found in the legal and policy framework.**

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<sup>15</sup> These three categories are not strictly defined. Many countries have different variants on these three principle regimes.

<sup>16</sup> All property acquired by the spouses prior to and during their marriage remains the separate property of the spouse who acquires it.

<sup>17</sup> Community property regimes provide for an automatic sharing of the marital property of each of the spouses. Marital property can include all the property owned by the spouses, including those brought into the marriage (full community of property) or the property acquired by the spouses following the marriage (property acquired after the marriage).

<sup>18</sup> UN Habitat, "Policy Makers Guide to Women's Land, Property and Housing Rights across the World" (2007) 4-5 [http://www.globalprotectioncluster.org/assets/files/tools\\_and\\_guidance/housing\\_land\\_property/By%20Themes/Womens%20HLP%20Rights/Policy\\_Makers\\_Guide\\_to\\_Women's\\_Land\\_2007\\_EN.pdf](http://www.globalprotectioncluster.org/assets/files/tools_and_guidance/housing_land_property/By%20Themes/Womens%20HLP%20Rights/Policy_Makers_Guide_to_Women's_Land_2007_EN.pdf), accessed 9 February 2017.

By supporting equality in the marriage and the joint administration of important property, such provisions directly contribute to the achievement of indicator 5.a.2, particularly with regard to gender equality in the control over land.

## Scope and definitions

This proxy aims to identify any policy objectives, existing legal provisions and implementing legislation that:

- Require consent of partners or spouses for transactions involving land.

Land transactions refer to major transactions concerning land, specifically the sale and encumbrance (mortgage) of land. Refer to the [Key definitions](#) and Proxy A for a detailed explanation of what constitutes land for the purpose of this assessment. As is explained below in [Rules and tips](#), the land for which consent is required can encompass a precise type of property, such as the family home, or all jointly owned property. For the proxy threshold to be met, it must, **at a minimum, encompass the family home**.

The family home is the house that is or has been the main residence of the family. This can be property registered in the name of one or both spouses or partners. It may or may not constitute marital property. This term is frequently used interchangeably with the “family residence” or the “matrimonial home” in legal and policy frameworks.

Consent refers to the requirement that the other spouse or partner (in an unmarried couple) agree to the land transaction prior to the land transaction taking place.

As with Proxy A, the proxy concerns consent requirements for spouses in a married couple, and partners in an unmarried couple. Refer to the [Key definitions](#) and Proxy A for a detailed explanation of what constitutes a married couple and unmarried couple for the purposes of this assessment.

## Detailed guidance on how to conduct the assessment for Proxy B

### Provisions to be located

Under this proxy, the legal and policy framework is assessed to check for the existence of any one or more of the following **two scenarios**:

1. Specific reference is made to the requirement of spousal consent for land transactions; or
2. Specific reference is made to spousal and partner consent for land transactions.

**Proxy B** will exist **if either of the two scenarios** can be located in the legal and policy framework. Nonetheless, it is important for national legal experts to pay close attention to which scenario applies. All provisions relevant to these issues should be cited in the questionnaire.

The results submitted to the UN SDGs Secretariat will provide information on whether consent is required for immovable property transactions, regardless of whether the relevant provisions cover only married couples or both married and unmarried couples. Notwithstanding this approach, recording information on the different scenarios is essential for tracking progress towards a policy and legal framework that promotes women’s land rights.

## Rules and tips

In making the assessment, provisions that **imply** spousal consent are usually insufficient to determine that the proxy has been satisfied. For instance, a generic reference to the operation of a community of property regime does not satisfy the proxy. **Indeed, it is important to recall that not all community marital property regimes provide for joint management** – in some cases, the law may provide for the husband or head of household to be the sole manager of joint property. In this case, the proxy is **not** present.

Similarly, provisions stating that marriage is “an equitable union” or requiring “cooperation in the management of family affairs” or that the couples have “equal rights to dispose or administer the estate” are insufficient to demonstrate that the proxy exists in the legal and policy framework. Further, provisions that undermine the impact of the provision, for instance, by providing that **marital power rests with the husband**<sup>19</sup> or that **the husband has the power to manage the joint estate**, exclude the presence of the proxy in the legal and policy framework.

Generally, the form of consent **need not be spelled out in the text**. In some cases, however, the law may specify that **informal or oral consent** is sufficient and that written consent is not required. In these cases, the proxy threshold has **not** been met. The proxy is still present if there are procedures to apply to court or a specific authority for consent requirements to be waived.

**Consent requirements** need not encompass all types of land. Usually what is covered will depend on the marital property regime that applies under national law (i.e. separation, partial or full community of property). Nonetheless, Proxy B will only be satisfied if, at a **minimum**, spousal consent is required for transactions concerning the family home. In legal systems with a **separate marital property regime**, consent requirements are usually restricted to land that fulfils certain criteria, for instance “the land upon which the household depends for its survival” or the “family home”. The proxy is **not** present if the requirement of spousal consent is conditioned upon the fulfilment of specific steps (e.g. registration of the family home or other types of property).

In community marital property regimes (full or partial), consent requirements may be applicable only to “commonly” or “jointly” owned property. As these terms usually encompass the family home, they are sufficient to reach the threshold of the proxy. Nonetheless, it is important to check that consent is required **regardless of the origins or original purchaser of that property**.

Related to this, provisions that require spousal/partner consent for “**jointly acquired**” property should **not** be included if that provision does not permit an assessment of non-financial contributions. If each spouse/partner **needs to prove that they financially** contributed to the purchase, the proxy is not present.<sup>20</sup> Provisions on what constitutes joint property should be cited with the provision concerning consent. Where the law provides for separate marital property regime and there is no explicit statement on consent, the proxy is not present. Provisions in the civil law or other legislation governing consent requirements for jointly owned property not specific to marital relationships are not relevant.

If there is no default marital property regime or no presumptions around marital property, and spouses can decide to “**opt-in**” to a **community marital property regime**, the proxy is **not** present if there are

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<sup>19</sup> Such provisions have the legal effect that a woman is under the tutelage of her husband or male partner.

<sup>20</sup> It is wholly uncertain, for example, if such language would be interpreted to include property acquired by one spouse for the purpose of use by both during the marriage.

only provisions for spousal consent **for the land that the couple has elected to form part of the marital property regime**. Consent must be the standard. Conversely, as with Proxy A, the proxy is present if the **default marital property regime is community** (with consent requirements), although couples can “**opt-out**” of this regime. This rule is subject to the observations made above about **how such land is identified** (i.e. joint property should not be based on financial contributions and should implicitly include the family home).

The proxy is also present if it includes **other types of property beyond land, so long as land is included**.

Finally, for the proxy to be present, it is important to confirm that the provision covers **land transactions**. This term refers to two **major** transactions (**mortgages and sales**). Such transactions may not be explicitly mentioned. They may be covered by general statements prohibiting the “encumbrance” and “disposal” or “alienation” of the estate. In some cases, the law may **restrict such land transactions to a certain value** or to certain types of property. In these cases, the proxy is still present.

Further, in situations where land is owned by the state, land may not be capable of being sold or mortgaged. In these contexts, where there is a user or occupancy right to the land, the national legal expert should look for general provisions preventing “transfer” or “disposition” of immovable property without consent.

As noted in the [General guidelines](#), where:

- customary land is excluded;
- a major transaction (i.e. sale or mortgage) is not covered;
- one of the two major religious groups are excluded from spousal consent requirements;
- a restrictive definition of marital property or jointly owned land applies (i.e. the spouse or partner needs to provide financial contribution); or
- there is “opt-in” spousal/partner consent

it is still important to cite the provisions that indicate some kind of spousal consent requirements, and to note these exclusions in the “additional information” section of Form 2. **In all these circumstances, the proxy is not present.**

### **Steps to be followed in the Proxy B assessment and recording of the information**

- 1. Identify and collect all relevant sources of policies and laws.** Provisions concerning spousal/partner consent will usually be found in the same laws and policies as for Proxy A – the land law, family law, or the land registration act and related regulations. It may also be included in the civil code. However, all the policies and laws mentioned in the Checklist of the questionnaire should be identified and collected, as well as any other relevant policies or laws not included on the list. Where provisions are found in primary legislation implying consent requirements, it is important to check if there is any relevant secondary legislation giving force to those provisions.
- 2. Screen all the relevant documents collected in Step 1 and assess if the consent is required for married and unmarried couples (Scenarios 1 and 2)** – either by mandating spousal consent (Scenario 1); and/or requiring spousal consent and partner consent (Scenario 2), following the **Rules and tips and Definitions** mentioned above. To determine whether partner consent is covered, **follow the guidance provided in Proxy A on unmarried couples**. The following table provides examples of situations to help the national legal expert to determine if the proxy is present in the legal and policy framework.

**Reporting on Proxy B - if provisions requiring spousal/partner consent prior to immovable property transactions were located in the policy and legal instruments**

✓  Form 1: Policy and legal instruments including Provisions for Proxy B. Please recall that in this form all the relevant references supporting the assessment should be cited (using the copy and paste tool).

✓  Form 2: Results of Assessment – Proxy B. Please note that this records the information regardless of whether spousal and partner consent (Scenario 2) or only spousal consent (Scenario 1) applies.

If no provisions could be found, the expert should mark “Proxy was not found” in Form 2.

After completing these forms, the legal expert should proceed with the assessment for Proxy C.

***BOX 1: Support for identifying Scenarios 1 and 2: Is spousal consent required for land transactions?***

<b>Provision IS PRESENT and will be recorded in Proxy B</b>	<b>Provision IS NOT PRESENT and will be excluded from Proxy B</b>
<ul style="list-style-type: none"> <li>✓ The legal and policy framework provides that the consent of both spouses is mandatory for the transfer of “common” or “joint” property, and the rules for determining such property do not depend on proof of financial contribution.</li> <li>✓ The legal and policy framework provides that a wife and husband have equal rights to use, obtain benefits and manage joint property and that joint property may only be sold, mortgaged or given away with the consent of both spouses. <b>NB:</b> the rules for determining such property should not depend on financial contribution.</li> <li>✓ The legal and policy framework provides that spousal consent is necessary for transactions concerning land “that may affect the other spouse’s rights.”</li> <li>✓ The sale and mortgage of land such as a family home (or “communal” house) has to be approved by both spouses.</li> </ul>	<ul style="list-style-type: none"> <li>✗ The legal and policy framework states only that spouses have equal marital powers and capacity to (a) dispose of the assets of the joint estate; (b) contract debts for which the joint estate is liable; and (c) administer the joint estate, if they are married in a community of property regime.</li> <li>✗ The legal and policy framework provides that a spouse married in a community of property may perform any juristic act with regard to the joint estate without the consent of the other spouse.</li> <li>✗ The legal and policy framework only provide that husband and wife have equal status within marriage and that property is shared equally between spouses.</li> <li>✗ The legal and policy framework states only that marriage is an equitable union between equal partners.</li> <li>✗ A spouse has presumptive power to manage the property if that spouse has a recorded title.</li> <li>✗ Provisions requiring cooperation in the management of family affairs or that the spouses/partners have equal rights to dispose or administer the estate.</li> </ul>



## Useful examples

Country	Provision(s)	Scenario
<p>Democratic Republic of Congo</p> <p><a href="#">Loi modifiant et complétant la loi n°87-010 du 1er aout 1987 portant Code de la Famille</a></p>	<p>Art. 499 : <b>Quels que soient le régime matrimonial et les modalités de la gestion de ce régime, l'accord des deux époux est nécessaire pour:</b></p> <ol style="list-style-type: none"> <li>1. transférer une concession foncière commune ou propre, ordinaire ou perpétuelle ou la grever d'un droit d'emphytéose, de superficie, d'usufruit, d'usage, d'habitation, d'hypothèque ou d'une servitude ;</li> <li>2. aliéner, par incorporation, un immeuble commun ou propre ou le grever d'un droit réel d'emphytéose, de superficie, d'usufruit, d'usage, d'habitation, d'hypothèque ou d'une servitude et d'un bail de plus de neuf ans ;</li> <li>3. aliéner un immeuble commun dont la valeur est supérieure à 650.000 francs congolais ou des titres inscrits de cette valeur au nom du mari et de la femme ;</li> <li>4. contracter un emprunt de plus de 150.000 francs congolais sur les biens communs ou propres de l'autre époux ;</li> <li>5. faire une donation de plus de 650.000 francs congolais ou cautionner la dette d'un tiers pour un montant supérieur à 650.000 francs congolais, sur les biens communs ou propres de l'autre époux.</li> </ol>	<p>Scenario 1</p>
<p>Argentina</p> <p><a href="#">Código Civil y Comercial de la Nación, 2014</a></p>	<p>Art 456. Actos que requieren asentimiento Ninguno de los <b>cónyuges puede</b>, sin el <b>asentimiento del otro, disponer de los derechos sobre la vivienda familiar</b>, ni de los muebles indispensables de ésta, ni transportarlos fuera de ella. El que no ha dado su asentimiento puede demandar la nulidad del acto o la restitución de los muebles dentro del plazo de caducidad de seis meses de haberlo conocido, pero no más allá de seis meses de la extinción del régimen matrimonial.</p> <p>Art 522. Protección de la vivienda familiar: Si la <b>unión convivencial</b> ha sido <b>inscripta</b>, ninguno de los convivientes puede, sin el <b>asentimiento del otro, disponer de los derechos sobre la vivienda familiar</b>, ni de los muebles indispensables de ésta, ni transportarlos fuera de la vivienda. El juez puede autorizar la disposición del bien si es prescindible y el interés familiar no resulta comprometido. [...]</p>	<p>Scenario 1 and 2</p>



## Proxy C – Does the legal and policy framework support women’s and girls’ equal inheritance rights?

### Rationale

Because of the persistence of gender inequalities in employment and income generation, as well as in access to other productive resources and services, women’s ability to acquire property through the market is more limited than that of men. Opportunities to acquire land independently through national land redistribution programs are also constrained due to the tendency of such programs to allocate land to the household heads, usually men, or, in the best-case scenario, to the couple.

Further, women frequently enter marriage with few assets. They also assume the bulk of unpaid labour throughout the marriage, limiting their opportunity to acquire new assets. In these circumstances, women will have weak rights over household property. This can have serious consequences if, during the marriage, her husband abandons her, or takes risks with household property, with the potential that she and her children become impoverished or landless. In some cases, inequality in assets ownership or control during the marriage creates dependency on the husband and can act as a barrier to leaving situations of abuse.

It follows that inheritance is often one of the main channels through which women can secure independent land rights. Cultural and legal norms denying daughters and spouses their right to inherit have a significant impact on women’s opportunity to acquire land independent of their civil status.

Inheritance is also an important mechanism for women who remain unmarried, or who are divorced to acquire assets, to have access to collateral, to enjoy a degree of financial security.

However, in many countries, inheritance practices discriminate against women, as spouses and as daughters. In some cases, the written law itself precludes daughters from being able to benefit from inheritance practices on an equal footing with sons, while in other cases spouses are not first in rank in terms of the succession order, meaning there is no statutory basis for them to receive inheritance where the deceased’s children, siblings or parents are still alive. While the latter scenario can affect male and female widows equally, in practice in many contexts, women are more likely to suffer due to unequal access to other channels of land and other asset ownership, as well as deeply rooted biases against women owning land or other productive resources. Such direct or indirect discriminatory inheritance rules often have their origins from colonial, religious or customary systems.

Legal and policy measures to support women and girls’ inheritance rights and to tackle discriminatory inheritance norms, alongside effective implementation and enforcement measures, are therefore a key mechanism to ensure women’s equal ownership and control over land. Laws should prohibit discrimination against women and girls in inheritance, and explicitly provide for spousal rights to inherit the deceased spouse’s estate, independent of any co-owned property. Such protections should also extend to unmarried couples. For these reasons, Proxy C examines the extent to which states have incorporated into their legal and policy framework **a requirement for equal inheritance rights over land to surviving children and a requirement for spousal or partner inheritance**. Such provisions directly contribute to the achievement of indicator 5.a.2 by improving the prospects of women owning or having use rights to land, regardless of their civil status.

## Scope and definitions

This proxy aims to identify any policy objectives, existing legal provisions and implementing legislation that:

- Provide that sons and daughters have equal inheritance rights; *and*
- Provide that male and female surviving spouses and/or partners are entitled to an equal share of the deceased spouse's/partner's estate.

Inheritance refers to property passing at the owner's death to the heir or those entitled to succeed.

Sons and daughters have equal inheritance rights means that the lines of succession in the legal and policy framework governing inheritance states equality of rank and equality of share between brothers and sisters or between daughters and sons, or are gender neutral. The proxy is not concerned with the rules as to which any type of children can inherit (blood descendants – of the father or mother or both, adopted children, children born out of wedlock/rules on marital status of parents) so long as there are no differences between sons and daughters.

Deceased spouse's estate refers to the legal rights, interests and entitlements, to property of any kind (not only land) that the deceased spouse or partner enjoyed at the time of death, less any liabilities. Depending on the legal system, marital property may be excluded fully from the calculation of the deceased's estate, or the deceased's 50 percent share in the marital property will be included.<sup>21</sup>

Equal share of the deceased spouse's/partner's estate refers to a first-rank right for a surviving spouse/partner to inherit a portion of the deceased's estate in the default order of succession or a lifetime user right to the family home, without any difference between male and female surviving spouses/partners.

Male and female surviving spouses/partners refers to the spouse/partner who was married to the deceased in a manner recognized by the marriage law(s) of the country or the surviving partner in an unmarried couple. Please refer to the [Key definitions](#) for an explanation of what constitutes a married and an unmarried couple.

## Detailed guidance on how to conduct the assessment for Proxy C

### Provisions to be located

Under this proxy, the legal and policy framework is assessed to check for the existence of **both** of the following **two scenarios**:

- Scenario 1: Reference is made to sons' and daughters' equal inheritance rights;
  - 1(A): An equal right to inherit for sons and daughters; **AND**
  - 1(B): A right of sons and daughters to inherit equal shares; **AND**

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<sup>21</sup> The deceased's estate usually excludes any jointly owned property as jointly owned property is automatically 100 percent inherited by the surviving spouse, or in cases of co-ownership, 50 percent will automatically be inherited by the surviving spouse, while the remaining 50 percent will be allocated among the deceased heirs.

- Scenario 2: Reference is made to male and female surviving spouses/partners entitlement to an equal share of the deceased spouse's/partner's estate:

2(A): An equal right of male and female surviving spouses/partners to inherit a share of the deceased spouse's/partner's estate;

**AND/OR**

2(B): An equal right of male and female surviving spouses/partners to lifetime use of the family home.

- Unlike Proxy A and B, Proxy C only exists if both scenarios can be found in the legal and policy framework (i.e. that there is equality for sons and daughters and equal protections for male and female surviving spouses).
- It is very important for national legal experts to pay close attention if only one scenario applies. In this case, the proxy threshold is not met. All provisions relevant to these issues should be noted.

## **Rules and tips**

### ***General tips for Proxy C***

The rules concerning personal laws stated in the [General guidelines](#) should be followed. This means that the two scenarios should be located in the legal and policy framework covering the inheritance regimes for the two principle religious groups in the country. As with Proxy A and B, and as noted in the [General guidelines](#), where the second major religious groups are excluded from benefiting from the provisions, it is still necessary to cite the relevant provisions, and to note these exclusions or exceptions on the form. Nonetheless, in these circumstances the proxy is **not** present.

The scenarios must be **specifically** stated in the legal and policy framework – it is not sufficient if the law or policy is silent on the issue or simply provides that a certain religious law applies to inheritance of individuals of a particular faith, or states only that “the customary inheritance rules of the area where the land is located will apply”. In such circumstances the proxy is **not** present.

It is **not relevant** if national **courts** have declared certain statutory provisions invalid on the basis that they conflict with the Constitution or on other grounds. As per the [General guidelines](#), the national legal researcher should only look at the legal and policy framework as it exists at the time of the assessment to determine if the proxy exists in the legal and policy framework.

Related to this, general **constitutional provisions concerning gender equality and non-discrimination** should not be included in the Proxy C assessment as these are dealt with in Proxy E. This means that constitutional provisions that provide, for example, that civil laws shall have supremacy over customary laws and practices that discriminate against women, or that there “should be no discrimination in women’s access to land or on women’s right to inherit land” do **not** meet the proxy threshold. Such provisions should only be included in the “additional information” section of the forms for background information.

Nonetheless, where constitutional provisions provide **details on the specific inheritance rules applicable to certain lands, religious groups or women**, these can be cited to show the presence/absence of the scenarios relevant to this proxy, or as an exception to the scenario.

**With the exception of use rights** (which may be applicable only to land subject to customary law), the provision(s) representing the scenarios **must not exclude any specific categories of land or immovable property**. This means “customary land”, “agricultural land”, “family land” or “lineage land” must be included. It is not necessary that this is explicitly stated – it is only a requirement that these types of property **are not excluded** in the relevant provision(s), or that the scenarios are provided for in separate legislation dealing with the inheritance of customary lands or lands subject to a particular religion. For example, **if there is a separate inheritance regime for individuals married under customary law** and this regime, alongside the civil regime, provides for equal rights to inheritance for surviving spouses and children, such provisions **must** also be cited to support the existence of the two scenarios in the legal framework. If the customary inheritance rules spelled out in the legislation do not provide for **equal** rights to men and women in relation to inheritance, they should be cited as an exception. In such circumstances the scenario (or proxy) is **not** present.

If the law provides that men **and** women surviving spouses inherit an equal share in cases of non-customary land (Scenario 2(A)) and only an equal **user** right for customary land (Scenario 2(b)), **the proxy is present** for both scenarios. However there should be **no** different treatment of men and women under both scenarios.

Rules on the separation of property in the event of divorce, child alimony or marital property are **not** relevant for determining if this scenario is present in the legal and policy framework. The right to apply for maintenance from the deceased’s estate should also not be referenced in this proxy.

Finally, Proxy C is still present in circumstances where the applicable legal or policy provisions apply only in cases of **intestate succession (i.e. where the deceased dies without a will)**. This means that it is not necessary that Scenario 1 and 2 are mandatory (commonly known as “forced heirship”) (i.e. that they are applicable regardless of the existence of a will). The proxy is also present in circumstances where the scenarios exist in conjunction with a provision stating that the estate can be distributed differently “in circumstances where all participants agree.” Further, it is sufficient if the scenarios are crafted as “guiding principles” for an executor who is responsible for developing an inheritance plan in the absence of a testament.

***Tips for Scenario 1: Reference is made to sons’ and daughters’ equal inheritance rights***

- **Scenario 1** entails two steps. **Step A** involves assessing if there is an equal right of sons and daughters to inherit and **Step B** involves assessing if sons and daughters have a right to inherit in **equal shares**.
- **Scenario 1** exists only if Scenario 1(A) **AND** Scenario 1(B) can be found in the legal and policy framework. It is important for national legal experts to pay close attention to which situation applies. All provisions relevant to these issues should be cited on Form 1.

### *Scenario 1, Step A: Equal right to inherit for sons and daughters*

In making the assessment, general provisions that **imply equal rights to inheritance** are usually insufficient to establish that **sons and daughters** inherit equally under the legal framework. Examples of such generic provisions include:

- Provisions stating that there shall be general rights to non-discrimination and equality in property rights;
- Provisions stating that a particular religious law or customary practices will determine inheritance rights.

**Only** when these general statements **also** include a **specific statement that daughters and sons or “children” have a right to inherit** is Scenario 1(A) present. This means the scenario **is present** if children are referred to as “**equal heirs**” (with or without surviving spouses or parents) or if the law provides for **equality of rank for “children”** (i.e. it is gender neutral). An equal **right** to inherit exists even if the shares that are granted to sons and daughters are different sizes.

This also means that if there is **no** law on succession or simply a provision that states that succession is governed by customary laws or religious laws, without any further details, the scenario is **not** present.

**Finally, there should be no conditions attached to daughters that do not apply to sons.** This means that if a provision in the legal or policy framework requires a daughter to remain unmarried, reach a certain age, produce male children or heirs, or that her rights are terminated upon certain actions (marriage/divorce), Scenario 1(A) is **not** present. As with the [General guidelines](#), any such provisions should be cited and noted in the “additional information” section in Form 2.

#### *BOX 1: Support for identifying Scenario 1(A): Do sons and daughters have an equal right to inherit?*

Country	Provision(s)
<b>Azerbaijan</b> <a href="#">Law n. 779-IG, The Civil Code of the Azerbaijan Republic, 1999</a>	Art 1159.1: During intestate succession, following are considered as <b>equal heirs</b> . Art 1159.1.1: First of all <b>children of decedent, child born after testator</b> (testatrix)’s decease, wife [husband], parents [adoptive parents].
<b>Peru</b> <a href="#">Art 818, Código Civil- Decreto Legislativo No. 295, 1984</a>	Art 818: <b>Todos los hijos tienen iguales derechos sucesorios</b> respecto de sus padres.
<b>Morocco</b> <a href="#">Art 36-, Dahir n° 1-04-22 du 12 Hija 1424, Code de la Famille 2004</a>	Art 360 : Lorsqu’il y a, avec <b>les frères et sœurs germains</b> , des frères et sœurs consanguins, les premiers font entrer l’aïeul en ligne de compte avec les seconds pour éviter que l’aïeul ne reçoive une trop forte part de la succession. Ensuite, si, dans le groupe des frères et sœurs germains, figurent plus d’une sœur, ces héritiers prennent la part des frères et sœurs consanguins. S’il ne s’y trouve qu’une sœur germaine, elle reçoit l’intégralité de sa part de Fardh, et le reste de la succession est partagé entre les frères et sœurs consanguins, <b>l’héritier recueille le double de la part de l’héritière</b> .

### *Scenario 1, Step B: A right of sons and daughters to inherit equal shares*

The national legal expert should also check if there is a right for sons and daughters to inherit **equal** shares. There **is** a right to **equal shares** for sons and daughters where the legal or policy framework provides:

- A right of “**sons and daughters**” to inherit “equal shares”;
- A right of “**all children of the deceased**” or “**all descendants**” to inherit “equal shares”; or
- A right to an “**equal percentage share of the estate**” for “**all children of the deceased**”.

To note, this scenario is not concerned with the **size** of the share granted to the **children vis-à-vis others entitled to inherit**. It is only concerned that the **shares that are granted to sons and daughters are of the same size**. It does not matter if they share their right to the estate with surviving parents or grandparents or others.

As with Scenario 1(A), the provision(s) must not exclude any specific categories of land or immovable property or impose conditions that apply only to daughters and not to sons.

**NB:** It is possible that the provision reflecting Scenario 1(B) is the same as the provision representing Scenario 1(A).

***BOX 2: Support for identifying Scenario 1(B): Do sons and daughters have a right to inherit in equal shares?***

Country	Provision(s)
<b>Colombia</b>  <a href="#"><u>Código Civil Colombiano, 1887 as amended</u></a>	Art. 1045 Los hijos legítimos, [...], excluyen a todos los otros herederos y recibirán entre ellos iguales cuotas, sin perjuicio de la porción conyugal.
<b>China</b>  <a href="#"><u>Law of Succession of the People's Republic of China, 1985</u></a>	Art 10: The estate of the decedent shall be inherited in the following order: First in order: <b>spouse, children</b> , parents. Second in order: brothers and sisters, paternal grand-parents, maternal grand-parents. When succession opens, the successor (s) first in order shall inherit to the exclusion of the successor (s) second in order. The successor(s) second in order shall inherit in default of any successor first in order. (...) Art 13: (1) Successors same in order shall, <b>in general inherit in equal shares</b> . [...] (4) Successors may take unequal shares if an agreement to that effect is reached among them.

***Tips for Scenario 2: Reference is made to male and female surviving spouse’s/partner’s entitlement to an equal share of the deceased spouse’s/partner’s estate:***

*Scenario 2, Step A: An equal right of male and female surviving spouses/partners to inherit a share of the deceased spouse's/partner's estate;*

- **Scenario 2** entails two steps. **Step A** involves assessing if an equal right for the spouse or partner to inherit a portion of the deceased's estate exists, and **Step B** involves assessing if the surviving spouse or partner has a lifetime user right to the family home.
- **Scenario 2 will exist if Scenario 2(A) AND/OR 2(B) can be found in the legal and policy framework.** It is also possible that both situations apply. It is important for national legal experts to pay close attention to which scenario applies. All provisions relevant to these issues should be noted.
- As noted above, if the law provides that men and women surviving spouses inherit an equal share in case of non-customary land (Scenario 2(A)) and only a **user** right for customary land (Scenario 2(B)), both Scenario 2(A) and Scenario (2)(B) **are** present. However, there should be **no** different treatment of men and women under both scenarios.

For Scenario 2(A), it is necessary to track whether the **spouse or partner in an unmarried couple** has an automatic right to inherit a share of the deceased's estate and this is equal for male and female surviving spouses. It is important to indicate if the law and policy framework **only** covers a surviving spouse or if it covers surviving spouses *and* surviving partners in an unmarried couple (this should be explained in the "additional information" section of Form 2). While all relevant provisions should be stated, **the scenario is present** in cases where the law or policy **at a minimum** provides for female and male **surviving spouses** to inherit a share of the deceased spouse's estate, on an equal footing.

For the purposes of assessing if the spouse or partner has a right to inherit a **share** of the deceased's estate, the **order of succession** matters. The spouse or partner should be among the **first order** of inheritors. This means the threshold for the scenario is **not** met if she or he only inherits in circumstances where there are no surviving parents, children or siblings of the deceased.

This means that Scenario 2(A) **is** present if the spouse or partner shares their status as a first-rank heir with children or parents of the deceased. This also means that if the legal framework provides that only surviving spouses with children inherit in first rank, it is important to assess if these laws **also** guarantee the spouse a portion of the estate in the absence of children. If the answer is yes, the proxy is still present. It does not matter if the estate of the deceased is divided between them and other relatives of the deceased.

In addition to the right of the surviving spouses to inherit a share of the deceased spouse's estate, it is also necessary that male and female surviving spouses or partners **have the same and equal rights** to inherit a share of the deceased estate. The scenario does **not** exist if the law and policy framework **only** covers a male or female surviving spouse or partner, or if the share allocated for male and female surviving spouses or partners is unequal or different. This means the scenario does not exist if **the amount or type of share differs depending on whether the surviving spouse is male or female**. For equal rights to inheritance to exist, a male and female surviving spouse must be treated exactly the same in the legal or policy framework. Any exceptions should be noted in the "additional information" section of Form 2.



**In addition, there must not be any conditions or restrictions attached to the right** – for example, a requirement that a spouse or partner has to prove they contributed to the property financially to benefit from the provision, or that she or he does not have alternative means to survive, or that the spouse or partner must have born children or male heirs, or that the spouse has not remarried to benefit from the provision. **It is not relevant if these conditions are gender neutral (i.e. if they apply to both male and female surviving spouses equally).** If these conditions exist, the proxy is **not** present. If these exist **only** for the female spouse, the proxy is also **not** present.

In countries where **polygamy is legal**, Scenario 2(A) is present **if the law provides that legally recognized second and subsequent wives inherit a portion of the estate.** The size of their share does not have to be the same as the first wife, however, it must be a “first rank” right (i.e. they must inherit a share). It is not relevant if the content of the portion is specified – i.e. that they inherit only the house in which they are living, or must divide the entire estate between them. If the law or policy only refers to “spouse” in the singular, the proxy is satisfied, on the basis that in countries where polygamy is legal, all wives are considered a “spouse”.

***BOX 3: Support for identifying Scenario 2(A): Do surviving male and female spouses or partners have an equal right to inherit a share of the deceased’s estate?***

Country	Provisions	Spouses or partners covered
<p><b>Azerbaijan</b></p> <p><a href="#"><u>Law n. 779-IG, The Civil Code of the Azerbaijan Republic, 1999</u></a></p>	<p>Art 1159.1 During intestate succession, following are considered as <b>equal heirs</b>:</p> <p>Art 1159.1.1: <b>First of all</b> children of decedent, child born after testator (<b>testatrix</b>)’s <b>decease, wife</b> [husband], parents [adoptive parents].</p>	<p>Spouses only</p>
<p><b>China</b></p> <p><a href="#"><u>Law of Succession of The People's Republic of China, 1985</u></a></p>	<p>Art 10: The estate of the decedent shall be inherited in the following order:</p> <p><b>First in order: spouse</b>, children, parents. Second in order: brothers and sisters, paternal grand-parents, maternal grand-parents. When succession opens, the successor (s) first in order shall inherit to the exclusion of the successor (s) second in order. The successor(s) second in order shall inherit in default of any successor first in order.</p> <p>(...)</p>	<p>Spouses only</p>
<p><b>Cambodia</b></p> <p><a href="#"><u>The Civil Code of Cambodia, 2011</u></a></p>	<p><b>Art 1161: Succession by spouse</b></p> <p><b>(1) The spouse of the decedent shall become a successor in every case.</b></p> <p><b>(2) If a person other than the spouse of the decedent is to become a successor under the provisions of Section I in addition to the spouse, the spouse shall rank equally with such other person.</b></p> <p>Art 1162: Shares in succession in case of succession by spouse The shares of the successors shall be as follows where there are other successors in addition to the spouse:</p> <p>a) If the successors are the spouse and lineal descendants, <b>the spouse and each of the descendants shall succeed in equal shares.</b></p>	<p>Spouses only</p>



	<p>b) If the successors are the spouse and the decedent's parents, the spouse shall succeed to a one-third share and the parents to a two-thirds share; provided that, if only one of the parents of the decedent is still alive, such parent and the spouse shall succeed in equal shares.</p> <p>c) If the successors are the spouse and lineal ascendants other than the decedent's parents or siblings or their successors by representation, the <b>spouse shall succeed to a one-half share</b> and the lineal ascendants other than the decedent's parents or siblings or their successors by representation shall succeed to a one-half share.</p>	
<p><b>Mexico</b></p> <p><a href="#"><u>Código Civil Federal, 1928</u></a></p>	<p>De la Sucesión del <b>Cónyuge</b></p> <p>Art. 1624.- El cónyuge que sobrevive, concurriendo con descendientes, tendrá el derecho de un hijo, si carece de bienes o los que tiene al morir el autor de la sucesión, no igualan a la porción que a cada hijo debe corresponder. Lo mismo se observará si concurre con hijos adoptivos del autor de la herencia.</p> <p>Artículo 1625.- <b>En el primer caso del artículo anterior, el cónyuge recibirá íntegra la porción señalada; en el segundo, sólo tendrá derecho de recibir lo que baste para igualar sus bienes con la porción mencionada.</b></p> <p>Artículo 1626.- <b>Si el cónyuge que sobrevive concurre con ascendientes, la herencia se dividirá en dos partes iguales, de las cuales una se aplicará al cónyuge y la otra a los ascendientes.</b></p> <p>Artículo 1627.- <b>Concurriendo el cónyuge con uno o más hermanos del autor de la sucesión, tendrá dos tercios de la herencia, y el tercio restante se aplicará al hermano o se dividirá por partes iguales entre los hermanos.</b></p> <p>Artículo 1628.- <b>El cónyuge recibirá las porciones que le correspondan conforme a los dos artículos anteriores,</b> aunque tenga bienes propios.</p> <p>Artículo 1629.- A falta de descendientes, ascendientes y hermanos, el cónyuge sucederá en todos los bienes.</p> <p>Art 1635: <b>La concubina y el concubinario tienen derecho a heredarse recíprocamente, aplicándose las disposiciones relativas a la sucesión del cónyuge,</b> siempre que hayan vivido juntos como si fueran cónyuges durante los cinco años que precedieron inmediatamente a su muerte o cuando hayan tenido hijos en común, siempre que ambos hayan permanecido libres de matrimonio durante el concubinato.</p> <p>Si al morir el autor de la herencia le sobreviven varias concubinas o concubinarios en las condiciones mencionadas al principio de este artículo, ninguno de ellos heredará.</p>	<p>Spouses and partners</p>

*Scenario 2, Step B: An equal right of male and female surviving spouses/partners to lifetime use of the family home*

Scenario 2, Step B of Proxy C tracks whether the spouse or partner has an automatic right to **use** the deceased's estate. It is important to indicate if the law and policy framework **only** provides the use right to a surviving spouse or if it covers surviving spouses *and* surviving **partners** in an unmarried couple. If surviving partners are not covered, this should be explained in the "additional information" section of Form 2. While all relevant provisions should be stated, this scenario exists if the provision **at a minimum covers surviving spouses**. To note, Scenario 2(B) is still present in circumstances where the unmarried couple needs to have lived together for a prescribed period to benefit from the provisions.

The family home is the house that is or has been the main residence of the family. This can be property registered in the name of one or both spouses or partners. It may or may not constitute marital property. "Family residence" or the "matrimonial home" is frequently used as a substitute for "family home" in legal and policy frameworks.

The term user rights refers to the right to live in the family home and to use it according to the needs of the surviving spouse. Typically any subsequent transactions by the legal owner must be subject to the consent of the surviving spouse or partner. This must be a **lifetime right** for the surviving spouse or partner. Nonetheless, if the provision is **silent** on the duration of the right, the scenario **is still present**. It is only necessary that the legal and policy framework does not explicitly state that the user rights are **limited in time**. In these cases, Scenario 2(B) is **not** present.

To determine if the spouse or partner in an unmarried couple has a **user right** to the family home, the provision must also be **explicit and automatic**. If there is no explicit provision, the scenario is **not** present. For instance, if the legal or policy framework only mentions the **possibility** for the surviving spouse to be granted user rights to the matrimonial house and that he or she needs to apply, ask for, or claim the right through a specific process, the scenario is **not** present.

Further, for Scenario 2(B), it is also necessary to track whether male and female surviving spouses or partners have the **same and equal rights** to use the family home. Where the right **only** covers a **male** surviving spouse or partner the scenario is **not** present. In the spirit of special measures, the proxy still exists if the user right **only** applies to female surviving spouses/partners and does not extend to male spouses, however, in these scenarios **Scenario 2(A) must also be satisfied** (i.e. the user right to the family home for the surviving spouse is in addition to an equal right to inherit a share of the estate). **Where the user right for female surviving spouses is the only right available to her, whereas surviving males are entitled to inherit a full portion of the estate (Scenario 2(B)), neither Scenario 2(A) nor Scenario 2(B) are present.**

**In addition, subject to the exceptions below, there must not be any conditions or restrictions attached to the right** – for example, a requirement that a spouse or partner has to prove they contributed to the property financially to benefit from the provision, or that she or he does not have alternate means to survive, or that the spouse or partner must have born children or male heirs to benefit from the provision. **It is not relevant if these conditions are gender neutral (i.e. if they apply to both male and female surviving spouses equally).**

Only **two** qualifications on the user right are acceptable. First, it is **sufficient** if the legal and policy framework provides that the user right to the family home is **only** applicable to customary, ancestral or

chieftaincy lands, or to those couples who were married under customary law. Second, it is acceptable that the user right **terminates upon remarriage of the spouse**. However, these provisions are **only** acceptable **if they apply equally to male and female spouses**. If the provision **only** refers to widows (female surviving spouses) and makes no reference to male surviving spouses, then the proxy is **not** present.

*BOX 4: Support for identifying Scenario 2(B): Do surviving male and female spouses or partners have an equal right to use the family home?*

Country	Provision(s)	Spouses or partners covered
<p><b>Sierra Leone</b></p> <p><a href="#"><u>The Devolution of Estates Act, 2007</u></a></p>	<p>Art 2: “spouse” means: [...]</p> <p>(b) an unmarried woman who has cohabited with an unmarried man as if she were in law his wife for a period of not less than five years immediately preceding the death of the intestate or testate.</p> <p>(c) an unmarried man who has cohabited with an unmarried woman as if he were in law her husband for a period of not less than five years immediately preceding the death of the intestate or testate;</p> <p>Art 15: (1) For the avoidance of doubt, but subject to subsection (2), under customary law, family property, chieftaincy property or community property or any part thereof is vested in the intestate under customary law, such property shall not form part of his estate and notwithstanding any other provision of this Act, the rules of succession under customary law in respect of such property shall prevail.</p> <p><b>(2) A surviving spouse shall have the right to reside during his lifetime</b> in any family property, chieftaincy property or community property in which he cohabited with the deceased as their matrimonial home.</p>	<p>Spouses and partners</p>
<p><b>Zimbabwe</b></p> <p><a href="#"><u>Administration of Estates Amendment Act, 1997</u></a></p>	<p>Part IIIA- Estates of Persons subject to <b>Customary Law</b></p> <p>Section 68F Resolution of dispute over inheritance plan</p> <p>(2) The Master shall be guided by the following principles, to the extent that they are applicable:</p> <p>[...]</p> <p>(d) <b>where the deceased person is survived by one spouse and one or more children, the surviving spouse should get-</b></p> <p><b>(i) ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person’s death,</b> together with all the household goods in that house; and</p> <p>[...]</p> <p>(g) <b>where the deceased person is survived by one spouse but no children-</b></p> <p><b>(i) the surviving spouse should get-</b></p> <p>A. <b>ownership of or, if that is impracticable, a usufruct over, the house in which the spouse lived at the time of the deceased person’s death,</b> together with all the household goods in that house; and</p> <p>B. half the remainder of the net estate;</p>	<p>Spouses only – covered under customary law regime</p> <p>(Scenario 2(A) is also present for spouses covered under both the customary and civil law)</p>

[Deceased Estates Succession Act, 1997](#)

Section 3 Entitlement of **spouse** of deceased who [...] dies either wholly or partly intestate is hereby declared to be an intestate heir of the deceased spouse according to the following rules—

(a) if the spouses were married in **community of property** and if the deceased spouse leaves any descendant who is entitled to succeed ab intestato, the surviving spouse shall—

**(i) be entitled to receive from the free residue of the joint estate, as his or her sole property, the household goods and effects in such estate;**

(ii) succeed in respect of the remaining free residue of the deceased spouse's share of the joint estate to the extent of a child's share or to so much as, together with the surviving spouse's share in the joint estate, does not exceed the specified amount, whichever is the greater;

(b) if the **spouses** were married **out of community of property** and the deceased spouse leaves any descendant who is entitled to succeed ab intestato, the surviving spouse of such person shall—

**(i) be entitled to receive from the free residue of the deceased spouse's estate, as his or her sole property, the household goods and effects in such estate;**

(ii) succeed in respect of the remaining free residue of the deceased spouse's estate to the extent of a child's share or to so much as does not exceed the specified amount, whichever is the greater;

(c) if the spouses were married in or out of community of property and the deceased spouse **leaves no descendant who is entitled to succeed ab intestato** but leaves a parent or a brother or sister, whether of the full or half blood, who is entitled so to succeed, the surviving spouse shall—

**(i) be entitled to receive from the free residue of the joint estate or the deceased spouse's estate, as the case may be, as his or her sole property, the household goods and effects in such estate;**

(ii) succeed in respect of the remaining free residue of the deceased spouse's share of the joint estate or the deceased spouse's estate, as the case may be, to the extent of a half share or to so much as does not exceed the specified amount, whichever is the greater;

(d) in any case not covered by paragraph (a), (b) or (c), the surviving spouse shall be the sole intestate heir.

**3A Inheritance of matrimonial home and household effects**  
**The surviving spouse** of every person who, [...] dies wholly or partly intestate **shall be entitled to receive** from the free residue of the estate—

**(a) the house or other domestic premises in which the spouses or the surviving spouse, as the case may be, lived immediately before the person's death;**

and

(b) the household goods and effects which, immediately before the person's death, were used in relation to the house or domestic premises referred to in paragraph (a); [...]

[Steps to be followed in the Proxy C assessment and recording of the information](#)

1. **Identify and collect all relevant sources of policies and laws.** The national legal expert should begin by collecting law and policies relevant to inheritance. It is likely that relevant provisions, if they exist, are found in the Constitution, the family code, the civil code, and the law on succession or a law on the administration of estates. Nonetheless, **all policies and laws mentioned in the checklist of the questionnaire** should be identified and collected, as well as any other relevant policies or laws not included on the list.
2. **Screen all the relevant documents collected in Step 1 and assess if the law provides for an equal right to inherit (Scenario 1, Step A)** following the **Rules and tips and Definitions** mentioned above.
3. **Determine if the provisions meet the threshold for Scenario 1(A).** The threshold is **not** met in the following circumstances which should always be noted in the “additional information” section of Form 2:
  - ✗ The law and policy framework is silent on the content of succession rules, and simply provides for customary law or religious rules to apply;
  - ✗ The law and policy framework provides that the right of daughters to inherit is limited, and these exceptions do not apply to sons – for instance, the daughter has to remain unmarried.
  - ✗ The law and policy framework provide that the right to equal inheritance and equal shares does not cover certain types of property – for instance, customary or chieftaincy lands.

Where the threshold **is** reached, tick YES for **Scenario 1(A) in Form 1 and fill in the requisite details.**

1. **Assess whether the law *also* provides for the right for daughters and sons to inherit in equal shares (Scenario 1, Step B),** taking into account the thresholds mentioned above. Where the threshold is reached, tick YES for **Scenario 1(B) on Form 1 and fill in the requisite details.** The provision cited may be the same as the results for Scenario 1(A).
2. **Screen all the relevant documents collected and assess if the law provides for an equal right for males and females to inherit from their deceased partner’s estate (Scenario 2, Step A)** following the **Rules and tips and Definitions** mentioned above.
3. **Determine if the provisions meet the threshold for Scenario 2(A),** taking into account the Scenario 2 thresholds outlined below. Where the threshold is reached, tick YES for **Scenario 2(A) on Form 1 and fill in the requisite details.** It is important to mark in the “additional information” section of Form 2 the situation for surviving partners in an unmarried couple.
4. **Assess whether the law provides for a user right for spouses and partners to the family home (Scenario 2, Step B),** taking into account the Scenario 2 thresholds listed below. Where the threshold is reached, tick the YES for **Scenario 2(B) on Form 1 and fill in the requisite details.** It is important to mark in the “additional information” section of Form 2 the situation for surviving partners in an unmarried couple.

#### **Scenario 2 thresholds:**

The provisions will **not** reach the threshold in the following circumstances:

- ✗ A requirement that the surviving spouse or partner proves they contributed to the property financially to benefit from the provision, or that she or he does not have alternate means to survive;

- ✦ A requirement that the surviving spouse or partner must have born children or male heirs to benefit from the provision;
- ✦ A time limitation on the condition of the right (“until the children attain majority”);
- ✦ A requirement that the surviving spouse or partner must remain unmarried to benefit from the provisions (**NB: this rule is applicable only to Scenario 2(A) and not Scenario 2(B)**);
- ✦ The provision does not apply to customary lands or specific categories of immovable property (**NB: this rule is applicable only to Scenario 2(A) and not Scenario 2(B), where the provision can only apply to customary lands/property**).
- ✦ Any conditions that treat males and females differently (*subject to Scenario 2(B) where use rights only for female surviving spouses can be classified as a “special measure”, including where female surviving spouses have only a use right to the family home (Scenario 2(B), while male surviving spouses only have a right to full inheritance right (Scenario 2(A).*

As per the [General guidelines](#), if the thresholds are not met, the relevant provisions should be cited in the “additional information” section of Form 2.

### **Reporting on Proxy C - if provisions supporting equal inheritance were found in the legal and policy framework**

✓  Form 1: Policy and legal instruments including provisions for Proxy C. Please recall that in this form, all the relevant references supporting the assessment should be cited (using the copy and paste tool).

✓  Form 2. Please note that this records the information only when sons and daughters are granted equal shares (Scenario 1(A) and (B)) and male and female surviving spouses are granted equal inheritance rights (Scenario 2(A)) or equal user rights to the family home (Scenario 2(B)). In cases where only Scenario 1 or only Scenario 2 is present, or only Scenario 1(A) is present and not Scenario 1(B), the proxy is not present in the legal and policy framework. It is sufficient to tick “Proxy was not found” and explain in the “additional information” section why this is the case – i.e. that part of the proxy that is missing.

**After completing the forms, the legal expert should proceed with the assessment for Proxy D.**

## Proxy D – Does the legal and policy framework provide for the allocation of financial resources to increase women’s ownership and control over land?

### Rationale

Many states have recently adopted legal reforms to support gender equality in access to land and other productive resources. While these reforms are important, they have not always translated into an increase in women’s land ownership and control over land *de facto*. One of the many reasons for this is the insufficiency of national financial resources devoted specifically to the implementation of women’s land rights, and ongoing social and cultural barriers that prevent women from entering the land market or exercising their legal rights to land.

One measure adopted by states to overcome these challenges is to establish specific funding mechanisms to support women’s ownership and control over land. One example of this is the allocation of financial resources, such as the provision of credits or loans, specifically to support women’s ownership and control of land. Public credit systems, with flexible eligibility criteria, help to overcome the often insurmountable hurdles women face when seeking a loan from private institutions, which frequently demand collateral or (formal) evidence of regular income.<sup>22</sup>

Sometimes resources are allocated more broadly, with the goal to address the interrelated and reinforcing challenges women often face when they attempt to enter the commercial land market.<sup>23</sup> Such difficulties include: lack of savings, sometimes linked to exclusion from the formal labour market that usually offers higher wages, inability to access extension facilities and skill training to increase farm profits, accumulate savings, or begin a business and enter into larger supply chains, and a lack of bank account. Where a state has allocated funds that aim at increasing women’s ownership and control over land *or* that have an integrated funding approach with the broader aim to address women’s access to productive resources, including *inter alia*, land, Proxy D is satisfied.

### Scope and definitions

This proxy aims to identify any policy objectives, existing legal provisions and implementing legislation that:

- Allocate financial resources for the purpose of increasing women’s ownership and control over land.

Allocation of financial resources refers to situations where the law and policy framework contains a budgetary commitment, a funding allocation or establishes a fund with the specific objective to increase

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<sup>22</sup> Mayra Gomez, “Good Practices in Realizing Women’s Rights to Productive Resources, with a Focus on Land”, Background paper for the UN-Women/OHCHR Expert Group Meeting (Geneva, 25-27 June 2012) 36.

<sup>23</sup> As the CEDAW Committee has observed, land budget investment strategies rarely take into consideration the needs and priorities of rural women, and do not devote sufficient resources to the implementation of their rights. Development partners also need to focus on women’s land rights. CEDAW, General Recommendation No. 34 on the Rights of Rural Women (2016) UN Doc CEDAW/C/GC/34 paras. 11, 14.



women's ownership and/or control over land or to increase women's ownership and control over land *and* productive services in an integrated approach.

Land ownership and control over land: refer to the [Key definitions](#).

## Detailed guidance on how to conduct the assessment for Proxy D

### Provisions to be located

Under this proxy, the legal and policy framework is assessed to check for:

- Allocation of financial resources for the purpose of increasing women's ownership and control over land

### Rules and tips

The allocation of financial resources may appear in general or specific forms. Under the latter, specific reference is made to the allocation of financial resources **for the general purpose of increasing women's access to a set of productive resources, including land**. This refers to the situation where a specific amount of funds have been reserved by the government for the purpose of **increasing women's access to a wide range of productive resources**, in accordance with the meaning of productive resources provided in the [Key definitions](#). In this situation, the fund or funding adopts an integrated approach to women's empowerment or rural women's empowerment, addressing a broad spectrum of issues, in recognition that the obstacles women face are interlinked and bundled interventions are needed. Nonetheless, **the provision must include as a stated objective the increase in women's access to a set of productive resources, ultimately affecting also women's ownership and/or control of land**. This objective should be cited on the forms.

Alternatively, the legal and policy framework may make reference to funding **for the sole purpose of increasing women's ownership and control over land**. This could include the situation where a specific amount of funds have been set aside by the government for the **primary purpose of increasing the number of women able to enjoy their right to control or own any type of land**. This must be specifically stated in the legal or policy instrument.

In both situations, the threshold for Proxy D is met where the government has committed a specific budget or financial resources on a **long-term basis** to support women's access to land or women's access to land and productive services. The **origins of the funds** (for instance, funding coming from international donors) are not relevant for the assessment, however, it must be referenced in the policy and legal framework to meet the threshold.

The assessment under indicator 5.a.2 should be nationally representative. To this end, the proxy refers to funds of a **significant value** that reach **a considerable number of beneficiaries**.

The legal and policy framework must contain a budgetary commitment, make a funding allocation or establish a fund with the objective to increase women's access to land or increase women's access to land and productive services in an integrated approach. This means that **generic provisions supporting women's land ownership, without reference to a specific funding commitment, are insufficient**. Examples of such generic provisions include:



- References to “facilitating women’s acquisition of land” or “resolving historical injustices around land” **without reference to a specific funding commitment**;
- Provisions that **give priority to improving access to land for women without earmarking specific funds, for example**, a commitment to prioritize female heads of households in determining the allocation of unclaimed land;
- Provisions that **only** provide for government scholarships for women to study in agriculture;
- Provisions providing public allocations simply for gender equality and women’s empowerment, without reference to land ownership or control over land or an integrated program with a subgoal of women’s land ownership and control over land.<sup>24</sup>

The proxy is present **even if the provisions allocating the financial resources provide additional criteria for women to access the funding**. For example, earmarked funds to increase access to land for a specific subset of women (for instance, eligibility to access the fund is based on income, ethnicity or location) will still meet the threshold for the scenario. Nonetheless, **women must be the sole or principle beneficiaries for the proxy to exist in the legal framework**.

Where a fund is proposed by the legal and policy framework **but is not yet operative**, the provision will still meet the threshold and should be referenced in the forms. Further, a generic commitment to gender budgeting is not sufficient for the proxy to exist.

In some cases a state may have allocated funds through a **national wide long term** program that aims at increasing women’s ownership and control over land *or* that have an integrated funding approach with the broader aim to address women’s access to a set of productive resources, including *inter alia*, land. In some countries these programs might be based on a legal instrument (e.g. a law, a regulation) which defines the budget and its objective. For the proxy to be present, it is necessary to cite the relevant legal basis upon which the program and the allocation of funds is based, as well as the relevant extract of the program.

If the legal and policy framework provide for a fund of **limited duration**, and at the time of the assessment, **that time limit has expired**, the proxy is not present in the legal framework and should not be referenced in the forms.

If there are provisions **waiving fees for registration or recognizing tax exemptions for registering land in the name of a woman solely** with the purpose to increase women’s ownership of land, then the proxy will be considered present. If the waiving of fees for registration or tax exemptions are provided for joint registration of land for married and unmarried couples it will not count for this Proxy, but only for Proxy A.

As noted in the [General guidelines](#):

- The allocation of financial resources to support women’s access to land **in one specific area of the country** should only be included in the forms if the provision is found in the **national** legal and policy framework and meets the criteria of a significant number of beneficiaries and funds.

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<sup>24</sup> This is covered by SDG indicator 5.c.1.

- If land matters are **decentralized** and the proxy is found in decentralized legislation, it must be found in the legal framework of the **most populated federal states or entities – as many as to cover at least 50 percent of the population** of a country.
- If multiple funds or funding allocations are found, all of these should be cited on the forms.

### Steps to be followed in the Proxy D assessment and recording of the information

- 1. Identify and collect all relevant sources of policies and laws.** Common sources where Proxy D may be found include the national gender strategy, the national land policy or law, and the national land administration program. Nonetheless, **all policies and laws mentioned in the Checklist of the questionnaire** should be identified and collected, as well as any other relevant policies or laws not included on the list. Where provisions are found in primary legislation implying the existence of a fund or government financial commitment to support women’s ownership and control of land, it is important to check if there is any relevant secondary legislation giving force to those provisions. **Secondary legislation is likely to be very important for this proxy.** For instance, a large land redistribution program may earmark funds in the implementing documents to support women’s ownership and control over land. The type of provisions may be found in regulations, budgets or ministerial decrees.
- 2. Screen all the relevant documents collected in Step 1 and assess if the government has allocated funding with the objective to increase women’s ownership and control over land** following the **Rules and tips** mentioned above. The following table provides examples of situations that will help the national legal expert to answer this question.

***BOX 1: Does the legal and policy framework provide for the allocation of financial resources for the purpose of increasing women’s ownership and control over land?***

<b>Provision IS PRESENT and will be recorded in Proxy D</b>	<b>Provision IS NOT PRESENT and will be excluded from Proxy D</b>
<ul style="list-style-type: none"> <li>✓ A fund for women’s development that includes technical assistance to guarantee ownership rights.</li> <li>✓ A long-term government credit program that explicitly prioritizes credit to rural women with one of its objectives to improve women’s land ownership.</li> <li>✓ A fund designed to provide specific subsidies to support women’s land ownership.</li> <li>✓ Allocated funding for (rural) women’s development that includes technical assistance to protect ownership rights.</li> <li>✓ A provision providing that funds targeting women’s access to financial services, credit and insurance products are to be earmarked from a particular budget, and these funds also have the objective to increase women’s access or ownership/control over land.</li> <li>✓ Where a legal provision does not exist, a land redistribution program that gives priority to women, for example, distributing unclaimed land to female heads of households.</li> </ul>	<ul style="list-style-type: none"> <li>✗ Generic provisions to “facilitate women’s acquisition of land” or “resolving historical injustices around land” without reference to a specific funding body.</li> <li>✗ Waiving of fees for registration or tax exemptions for registering land jointly.</li> <li>✗ A fund to support the implementation of women’s rights without specific reference to land rights or women’s land ownership.</li> <li>✗ Provisions directing funding towards a women’s specific government department or gender focal point within a Ministry.</li> <li>✗ A fund to support women entrepreneurs or women business organizations without the specific objective of supporting women’s ownership of land.</li> </ul>

<p>✓ waiving fees for registration or recognizing tax exemptions for registering land in the name of a woman solely with the purpose to increase women’s ownership of land.</p>	
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3. If Proxy D does not exist in a policy or legal instrument(s), provide official national statistical data showing the achievement of at least 40 percent of women’s ownership and/or control over land (e.g. data on SDG 5.a.1, or 1.4.2.) for the proxy to be considered equally present.

**Reporting on Proxy D – if reference is made to the allocation of financial resources for the purpose of increasing women’s access to a set of productive resources, including land (Scenario 2)**

✓  Form 1: Policy and legal instruments including provisions for Proxy D. Please recall that in this form, all the relevant references located supporting the assessment should be cited (using the copy and paste tool).

✓  Form 2: Results of Assessment – Proxy D. Please add any further information regardless of whether there is funding for access to land specifically or access to a set of productive resources, including land, more generally.

If no provisions could be found, the expert should mark “Proxy was not found” in Form 2.

Once the forms are completed, move to the assessment for Proxy E.

## Useful examples

Country	Provision(s)
<p><b>Paraguay</b> <a href="#">Law No. 1863/02</a></p>	<p>Art 2: El Desarrollo Rural como producto de la Reforma Agraria comporta asimismo: [...] (b) <b>promover el acceso de la mujer a la propiedad de la tierra</b>, garantizando su arraigo a través del <b>acceso al título de propiedad, al crédito y al apoyo técnico oportuno</b>.</p> <p>Art 49: Orden de preferencia para la <b>adjudicación</b>. Las adjudicaciones serán realizadas tomando en consideración el siguiente orden de preferencia: a) a los que se encuentran en posesión pacífica y registrada de la tierra que cultivan; y, b) a los demás beneficiarios de la presente ley que reúnan las calificaciones más altas, en consideración a los siguientes factores: 1. <b>mujer</b>, cabeza de familia; 2. técnicos egresados de escuelas agrícolas; y, 3. calidad de repatriado, en cuanto acredite calidad y antecedentes de productor rural.</p> <p>Art 52.- <b>Facilidades de pago</b>. El Organismo de Aplicación podrá conceder <b>facilidades de pago en cuotas de hasta diez anualidades. En caso en que el titular del lote sea una mujer, este plazo podrá prorrogarse por cinco años más</b>. Los que paguen al contado tendrán un descuento de hasta el 30% (treinta por ciento). Los compradores podrán en cualquier momento efectuar amortizaciones extraordinarias. El Organismo de Aplicación reglamentará lo dispuesto en este artículo.</p>
<p><b>Nicaragua</b> <a href="#">Law 717 of 2010;</a> <a href="#">Decree No. 52 of 2010.</a></p>	<p>Art 1: La presente <b>Ley tiene como objeto crear un fondo para compra de tierra con equidad de género para mujeres rurales</b>, con el fin de otorgar <b>apropiación jurídica y material de la tierra a favor de las mujeres rurales</b>, lo que permitirá, además de mejorar la calidad de vida del núcleo familiar, el <b>acceso a los recursos financieros, priorizando a aquellas mujeres cabezas de familia, de bajos recursos económicos</b>.</p> <p>Art 2: Este Fondo tendrá como objetivos: (1) <b>Financiar la adquisición de propiedades</b> en el sector rural, con el objetivo de establecer un <b>banco de tierras</b>, para ser adjudicadas en carácter de venta con <b>garantía hipotecaria</b> y con <b>enfoque de género</b>, a las mujeres pobres del sector rural, tomando en consideración su especial estado de vulnerabilidad económica. (2) <b>Promover el empoderamiento de la mujer</b> en el sector rural al convertirse en propietaria de un medio de producción que <b>garantice la soberanía económica y alimentaria</b> de ella y su núcleo familiar. (3) <b>Fortalecer</b> y ampliar <b>el sistema productivo rural</b>, coadyuvando con ello a los esfuerzos para reducir la pobreza y pobreza extrema que se expresan especialmente en el campo.</p> <p>Art 3(1): Créase el "Fondo para Compra de Tierra con Equidad de Género a favor de mujeres Rurales" cuyo <b>capital inicial será establecido en la Ley Anual de Presupuesto General de la República</b>. El monto destinado para crear esta partida dependerá de las disponibilidades de recursos presupuestarios existentes en los correspondientes ejercicios anuales. (2) El capital inicial del Fondo podrá ser incrementado por medio de <b>aportes presupuestarios</b>, recursos provenientes de <b>donaciones privadas, agencias de cooperación y organismos multilaterales</b> avalados por el Estado. No obstante, el Fondo deberá capitalizar sus recursos para garantizar su sostenibilidad.</p>

## Proxy E – In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?

### Rationale

In some parts of the world, customary tenure systems operate alongside the formal law. Customary tenure arrangements fall under the broader umbrella of customary law, a system of norms, usually unwritten, that derive their legitimacy from the values and traditions of the indigenous or local group. Customary rules, including land tenure customary rules, are often more persuasive to local communities than statutory laws that may provide for women's land ownership.

A number of governments, particularly in sub-Saharan Africa and Asia, have sought to incorporate customary land tenure rights into the formal legal system, in effect “formalizing” them. The recognition of customary land tenure systems by states takes different forms, from the broad recognition of customary law as a valid source of law, to the acknowledgement of community use and management rights to specific state forests.<sup>25</sup> A common measure is for the legal and policy framework to provide that customary land interests have legal weight (i.e. to declare that customary land interests are valid, and constitute a category of land rights alongside formal, state-issued land rights). Provisions permitting the recording of such rights on the land register or in land records or their registration are also usually included. The customary land rights recognized in the policy and legal framework may belong to individuals, to families or to whole communities.

The recognition of customary land tenure has been criticized for weakening women's land rights. There are two primary reasons for this. First, in many customary contexts, women access land only through their relationship with a male relative, such as a father, husband, brother or brother-in-law. Statutory endorsement of such customary land tenure systems can therefore reinforce discrimination and the exclusion of women as landowners.<sup>26</sup>

Second, due to its unwritten status, elites and power holders may manipulate customs to improve profits or access to land, leaving vulnerable or marginalized groups, including some women, at risk of dispossession in the name of “custom”. The legal recognition of customary land tenure, and gender-neutral provisions for its formalization, can reinforce these new “customs” by accepting retrogressive interpretations of women's customary rights to individual or community land, ignoring long-standing cultural obligations for maintenance or use rights or prioritizing the rights of (male) power holders in the community.

To avoid such outcomes, provisions securing the protection of the land rights of women should accompany any legal provisions recognizing customary land rights. Mention of women's land rights is important because gender-neutral language has, in practice, been associated with a lack of protection

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<sup>25</sup> Establishing new administrative bodies that take over the management of customary land rights; incorporating customary leadership structures into the community-level management of the land administration; making customary dispute resolution bodies the lowest rung of the national court system (with state involvement in the selection of leaders).

<sup>26</sup> Land registration processes for customary land may perpetuate these inequities by focusing only on primary rights holders within the household, potentially eroding the tenure security of women who may hold secondary land rights. In Kenya, the land registration program was carried out during a time when gender was not part of the development agenda. At that time, land adjudication committees were dominated by men and lacked the skills and time to carry out their duties properly, which included registering all rights (primary and secondary) to land. Women's secondary rights often went unregistered. World Bank, FAO and IFAD, *Gender in Agriculture Sourcebook* (World Bank 2009) 144.

altogether of women’s rights. Explicit protections for women’s rights also provide a more robust foundation to enforce women’s statutory land rights in court. As is explained below, such provisions can appear in a variety of forms. Proxy E is satisfied if these provisions represent meaningful safeguards of women’s land tenure in the legal or policy framework, in accordance with the guidelines issued below.<sup>27</sup> Under the methodology, the proxy exists even if only one instrument (for instance, the constitution or a statutory instrument) recognizes customary law and includes the protections of women’s rights. Any other instruments that recognize customary law (and the relevant provisions), however, should be cited in the forms, even if they do not include protections for women’s rights.

**NB:** The inclusion of this proxy in assessing national and global progress under indicator 5.a.2 does not constitute an endorsement of the practice of legally recognizing customary land tenure. While there is a growing body of evidence suggesting that providing options, linkages with the formal system, and improved security of tenure for customary rights is preferable to the alternative of ignoring such systems entirely, there is no universal consensus on how to govern the relationship between customary land tenure systems and the formal land system. Some analysts observe that “formalizing” customary land has the side effect of creating a rigidity in customary land rules that prevents their organic modification and flexible use. Proxy E reflects international good practice and rules on the type of provisions that should be included when states recognize customary land tenure arrangements in the law.

## Scope and definitions

This proxy aims to identify any policy objectives, existing legal provisions and implementing legislation that:

- protect the land rights of women in legal systems that recognize customary land tenure.

Customary land tenure refers to “the bodies of rules and institutions governing the way land and natural resources are held, managed, used and transacted”<sup>28</sup> within customary legal systems. While there is no universally accepted definition of customary legal systems, for the purposes of this assessment, they describe systems that exist at the local or community level that have not been set up by the state, and that derive their legitimacy from the values and traditions of the group.<sup>29</sup> Customary legal systems may or may not be recognized by national law. National legal experts need to make an assessment as to whether customary law and customary land tenure have been recognized in the legal framework in accordance with this definition (Step 1(A) and Step 2(A)).

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<sup>27</sup> As with the other proxies for indicator 5.a.2, the challenges to women’s land rights associated with legal pluralism will not be resolved through the inclusion of such provisions in the legal and policy framework. It is critical that such provisions are followed up with rules for oversight, effective implementation and judicial enforcement. While insufficient on their own, getting the right legal and policy provisions in place is an important first step to ensuring the protection of women’s land rights in any processes aimed at formalizing customary land tenure systems.

<sup>28</sup> Lorenzo Cotula, “Land and Water Rights in the Sahel: Tenure Challenges of Improving Access to Water for Agriculture”, (IIED 2006) 9.

<sup>29</sup> Although customary justice systems are often referred to as “informal” or “non-state”, they do not exist unrelated to, and function independently from, state legal systems. On the contrary, customary and state legal systems define each other in their many interactions. Janine Ubink and Benjamin Rooj, “Introduction” *Customary Justice: Perspectives on Legal Empowerment* (IDLO, Rome) 25, available at: <http://www.idlo.int/sites/default/files/Customary%20Justice%203%20-%20Perspectives%20on%20Legal%20Empowerment.pdf>.

Recognition of customary land tenure refers to situations where the legal or policy framework provides that the land rights established under customary tenure systems have legal weight, alongside formal, state-issued land rights (for example, freehold land). The land rights recognized may belong to individuals, families or whole communities. This recognition may also appear in a very general form, for example, as a statement providing that customary law applies or is a source of law in the country.

Recognition of customary law means the incorporation of customary law into the legal framework, through constitutional provisions.

Protection of the land rights of women refers to a reference or references that have as their objective the protection of the land rights of women within the context of recognizing customary justice systems or customary land tenure. Such provisions can come in a number of forms and may focus on the protection of women's rights in cases of conflict between statutory and customary land rights, or may be process-based, ordaining that administrators take into account women's land rights in making decisions on who receives customary titles.

## Detailed guidance on how to conduct the assessment for Proxy E

### Provisions to be located

Under this proxy, the legal and policy framework is assessed to check for the existence of one of the following **two scenarios**:

1. The Constitution recognizes customary law yet gives supremacy to provisions concerning gender equality and non-discrimination in case of conflict; **OR**
2. Reference is made to the protection of women's land rights within the context of legislation or policy recognizing customary land tenure.

Proxy E will exist **if either of the two scenarios** can be located in the legal and policy framework. Nonetheless, it is important for national legal experts to pay close attention to which scenario applies. All provisions relevant to these issues should be cited in Form 1.

**NB:** It is possible for **both** Scenario 1 and Scenario 2 to apply.

### Rules and tips

*Tips specific for Scenario 1: The Constitution recognizes customary law yet gives supremacy to provisions concerning gender equality and non-discrimination in case of conflict*

**Scenario 1** entails two steps. **Step A** involves assessing if there is recognition of customary law in the Constitution and **Step B** involves assessing if the recognition of customary law is subject to Constitutional protections for non-discrimination on the basis of sex or gender.

#### *Scenario 1, Step A: The Constitution recognizes customary law*

Statutes, acts and secondary legislation are not relevant for the purposes of this scenario: national experts should screen only the provisions of the Constitution.



The **recognition of customary law** may appear in a very general form, for example, as a statement providing that customary law applies to certain matters, or is a source of law in the country; or as a provision referring to customary justice that states that courts or other judicial bodies apply customary law with regards to certain conflicts. It may also appear in a specific form, for instance through the recognition of customary land tenure, where the Constitution provides that the land rights established under customary tenure systems have legal weight, alongside formal, state-issued land rights. If customary law is not recognised in the Constitution, skip Scenario 1, Step B and proceed to Scenario 2, Step A.

**BOX 1: Support for identifying Scenario 1, Step A: Does the Constitution recognize customary law?**

Customary law is recognized	Customary law is not recognized
<ul style="list-style-type: none"> <li>✓ The Constitution provides that customary law applies to inheritance and family matters.</li> <li>✓ The Constitution provides that custom is a source of law within the country.</li> <li>✓ The Constitution recognizes customary judicial system/bodies.</li> <li>✓ The Constitution provides that the courts shall enforce customary law.</li> <li>✓ The Constitution recognizes the existence of customary lands.</li> </ul>	<ul style="list-style-type: none"> <li>✗ The Constitution includes a preamble recognizing the traditional practices, customs and values of the country.</li> <li>✗ The Constitution states that a particular religion is the source of law in the country.</li> </ul>

**Scenario 1, Step B: The Constitution provides for the supremacy of gender equality and non-discrimination in case of conflict with customary law**

In determining if **the recognition of customary law is explicitly subject to the principle of non-discrimination based on the grounds of “gender” or “sex”**, it is necessary to check if there are provisions providing for **non-discrimination on the grounds of sex or gender or “any ground”**. It is sufficient that the principle of non-discrimination is **formulated in a general clause**. For example, the Constitution may guarantee women’s right to equality, right to equality before the law, or equal enjoyment of rights, or prohibit discrimination based on gender or a combination of these. It is sufficient that there is a qualified right to non-discrimination, for instance when its enjoyment is subject to respect the rights and freedoms of others, or to e.g. safety, health, public order. The table below provides guidance on whether the Constitution prohibits discrimination based on gender or sex.

**BOX 2: Support for identifying whether the Constitution prohibits gender- or sex-based discrimination**

The Constitution prohibits gender- or sex-based discrimination	The Constitution does not explicitly prohibit gender- or sex-based discrimination
<ul style="list-style-type: none"> <li>✓ The Constitution explicitly prohibits any form of discrimination based on sex and/or gender.</li> <li>✓ The Constitution states that men and women have equal rights and duties.</li> <li>✓ The Constitution provides for the principle of equality before the law for men and women or for all persons without reference to non-discrimination.</li> </ul>	<ul style="list-style-type: none"> <li>✗ The Constitution includes in the preamble a commitment to combat every form of discrimination.</li> </ul>

It is then necessary to determine whether the Constitution provides for the supremacy of gender equality and non-discrimination in case of conflict with customary law. For this purpose there must be a statement that the recognition of customary land tenure and the non-discrimination clause is subject to rights of non-discrimination on the basis of sex or gender. This could appear in the form of a provision



to the effect that customary rules are void in the case of conflict between customary rules and rights to non-discrimination; or a statement that simply provides that the recognition itself of customary land tenure is “**subject to the Constitution**” and the Constitution provides in a separate section of a right to non-discrimination on the basis of gender or sex.

If the Constitution **recognizes customary law**, but does not provide that the principle of non-discrimination prevails upon customary law, the scenario is **not** present. Similarly, where the Constitution recognizes customary land tenure, and separately recognizes the right to non-discrimination on the basis of sex or gender, but is silent on the relationship between the two provisions, the scenario is **not** present.

For the purpose of Scenario 1, it is necessary **that discrimination is prohibited in all areas where custom has been recognized in the Constitution**. This means that it is necessary to check if there are any exceptions and to record this in the “additional information” section of Form 2.

Similarly, where the prohibition on gender-based discrimination is qualified – for instance “no one may be discriminated against...without a reasonable and objective justification” or there is an exclusion of non-discrimination in certain areas – for instance a clause that provides “no law shall make provision which is discriminatory...except with respect to marriage, divorce or personal laws”, Scenario 1 is not present.

***BOX 3: Support for identifying Scenario 1, Step B: Does the Constitution provide for the supremacy of gender equality and non-discrimination in case of conflict with customary law?***

Provision IS PRESENT and will be recorded in Proxy E	Provision IS NOT PRESENT and will be excluded from Proxy E
<ul style="list-style-type: none"> <li>✓ The Constitution provides that the courts shall enforce customary law that is not contrary to a law in force, and there are laws in force that provide for non-discrimination on the basis of gender.</li> <li>✓ The Constitution provides that if a law or custom is inconsistent with any of the Constitution’s provisions, the Constitution shall prevail, and that other law or custom shall, to the extent of its inconsistency, is void (and the constitution provides for non-discrimination on the basis of sex or gender).</li> <li>✓ The Constitution stipulates that in case of conflict with customary rules, the principle of non-discrimination prevails.</li> <li>✓ The Constitution provides that the courts shall enforce customary law that is not contrary to a law in force, and the constitution provides for non-discrimination on the basis of gender.</li> <li>✓ The Constitution prohibits customs which are discriminatory against women.</li> </ul>	<ul style="list-style-type: none"> <li>✗ The Constitution provides that customary law is a source of law so long as it is not “repugnant to the principles of justice”.</li> <li>✗ The Constitution provides that the country shall recognize and protect traditional values that conform to democratic principles, human rights and the law.</li> <li>✗ The Constitution provides that signed international treaties are automatically part of the national law.</li> <li>✗ The Constitution provides that the state has an obligation to promote policies aimed at eliminating all forms of discrimination against women in the access to ownership and inheritance of land.</li> </ul>

Like Scenario 1, **Scenario 2** entails two steps. **Step A** involves assessing if there is recognition of customary land tenure in the legal and policy framework and **Step B** involves assessing if such instruments protect women’s land rights.

*Tips specific for Scenario 2: Protection of women’s land rights within laws and policies recognizing customary land tenure*

**Scenario 2, Step A: The legal or policy framework recognizes customary land tenure**

In assessing **whether the legislation or policy framework recognizes customary land tenure**, it is necessary to consider whether there are procedures for registering or recording customary land, or if there is a category of land rights that derives its authority from custom in the legal and policy framework.

*BOX 3: Support for identifying Scenario 2, Step A: Is customary land tenure recognized in the legal and policy framework?*

Customary land tenure is recognized	Customary land tenure is <u>not</u> recognized
<ul style="list-style-type: none"> <li>✓ A law providing for the registration of customary lands.</li> <li>✓ A law or policy providing for the group or community registration of land governed by customary rules.</li> <li>✓ Legal provisions for the management of community land, where these refer to indigenous or customary practices.</li> </ul>	<ul style="list-style-type: none"> <li>✗ Where the legal system only recognizes the right of customary leaders or administration systems to preside over land disputes and/or where the legal system provides for the application of customary law to property disputes of a particular gravity.</li> <li>✗ Where customary rules on land acquisition are implicitly brought within the formal law, for instance, statutory rules regarding succession, the division of property upon divorce or marital property.</li> <li>✗ Where there are legal provisions concerning land rights in inheritance or divorce procedures for specific religious groups.</li> <li>✗ Where the legal system implicitly provides for the possibility of recording customary rights by applying traditional civil or common law concepts of property to such property (trust, encumbrances, usufructs rights, squatter rights or leases).</li> </ul>

If **multiple instruments** recognize different customary land rights,<sup>30</sup> each of these is relevant and should be scanned for the existence of the proxy and the results recorded on the forms. In some cases, primary legislation recognizing customary land rights may be neutral on women’s rights. In all cases, it is important to **check secondary legislation** to ascertain if these provide protections to women’s land rights in the context of recognizing customary land tenure systems. **If customary land tenure is not recognized skip Scenario 2, Step B and proceed to Proxy F.**

**Scenario 2, Step B: The law protects women’s land rights in the legal and policy framework recognizing customary land tenure**

<sup>30</sup> For instance if there is a law on land that includes references to customary land rights, and a law on community lands based on customary practice.

**Provisions that protect women’s land rights** must be situated within **the context of the legislation recognizing customary land tenure**. This could be by qualifying the scope of customary rights or drawing decision-maker’s attention to the protection of women’s land rights in determining customary title. It could also be a provision recognizing customary land tenure while requiring its compliance with the non-discrimination clause (including the principle of gender equality) enshrined in the Constitution. Accordingly, this means that the following measures or provisions in the legal and policy framework **are insufficient** to demonstrate the existence of the proxy in the legal and policy framework:

- A stand-alone reference to the protection of women married under customary law;
- References to compulsory quotas for women on land boards (see Proxy F);
- Provisions protecting women’s land rights that are not linked to customary justice specifically (such as joint registration provisions or provisions determining what constitutes marital property).

If these are the **only** relevant provisions, the provisions **do not** meet the Proxy E threshold and **should not** be referenced on the form.

***BOX 3: Support for identifying Scenario 2(B): Does the legal and policy framework recognizing customary land tenure protect women’s land rights?***

Provision IS PRESENT and will be recorded in Proxy E	Provision IS NOT PRESENT and will be excluded from Proxy E
<ul style="list-style-type: none"> <li>✓ A category of land rights derives its authority from customary law and there are provisions holding that the registration of customary land rights should be done in a manner that respects the principle of gender equality.</li> <li>✓ Within legislation/policy providing that customary land rights are valid for registration, there is an explicit reference to the necessity of registering women’s customary land rights in the registration process.</li> <li>✓ Within the instrument recognizing customary law, there is reference to women’s equal right to inheritance, or non-discrimination in inheritance and the acquisition of land.</li> </ul>	<ul style="list-style-type: none"> <li>✗ Reference in the instrument to women and men’s equal right to occupy and use land.</li> <li>✗ Within the instrument recognizing customary land rights, there are provisions mandating family member’s joint or derivative rights in customary land are recorded.</li> <li>✗ Mandatory training of officials to ensure the protection of vulnerable groups in the registration process for customary land or generally.</li> </ul>

### **Steps to be followed in the Proxy E assessment and recording of the information**

This assessment involves identifying whether the legal and policy framework protects the land rights of women in circumstances where the customary land tenure has been legally recognized.

1. Screen the Constitution to assess if **customary law is legally recognized (Scenario 1, Step A)**, following the **Rules and tips** mentioned above. Where the result of Scenario 1, Step A is that there is no recognition of customary law in the Constitution, tick “NO” for Scenario 1, Step A in Form 1. Proceed to **Step 3** below to assess if Scenario 2 exists in the legal and policy framework.

2. Screen the **Constitution** and assess **if the Constitution recognizes the right to non-discrimination on the basis of gender, and gives priority to gender equality and non-discrimination in the case of conflict with customary law (Scenario 1, Step B)** following the **Rules and tips and Definitions** mentioned above.

**Reporting on Proxy E - if provisions providing for the supremacy of gender equality and non-discrimination in case of conflict with customary law are found in the Constitution (Scenario 1)**

✓  Form 1: Policy and legal instruments including provisions for Proxy E. Answer “YES” to Q.E2 and complete by citing the relevant provisions for Scenario 1.

✓  Form 2: Results of Assessment – Proxy E. Please tick the box “In primary legislation”.

If customary law is recognized in the Constitution (Scenario 1, Step A), however, there is no supremacy for gender equality in case of conflict (Scenario 1, Step B) or exceptions are made for customary or particular types of matters, Scenario 1 is not found.

**Reporting on Proxy E - if provisions protecting the land rights of women are found in the legal or policy framework recognizing customary land tenure**

✓  Form 1: Policy and legal instruments including provisions for Proxy E. Answer YES to Q.E4 and complete by citing the relevant provisions for Scenario 2. Please recall that in this form all the relevant references located supporting the assessment should be cited (using the copy and paste tool).

✓  Form 2: Results of Assessment – Proxy E. Please tick the boxes (i.e. policies/primary legislation/secondary legislation) to identify where Scenario 2 was located.

If customary land rights are recognized in the policy and legal framework (Scenario 2, Step A), however, there are no provisions protecting the land rights of women (Scenario 2, Step B), Scenario 2 is not present.

3. Scan the legal and policy framework to assess if customary land tenure is recognized (Scenario 2, Step A). If customary land tenure is recognized, proceed to Step 4. If the legal and policy framework does **not** recognize customary land tenure, tick “NO” for Scenario 2, Step A on Form 1. Where neither the Constitution nor legal and policy framework recognize customary law, tick the box “Customary Law (and/or customary land tenure) does not exist/has not been recognized (NA)” on Form 2 and proceed to the next proxy.
4. Screen the legal or policy instrument recognizing customary land tenure and assess if the law or policy protects women’s land rights (Scenario 2, Step B) following the **Rules and tips and Definitions** mentioned above.

## Useful examples

Country	Provision(s)	Scenario
<p><b>Peru</b>  <a href="#">Constitución Política del Perú, 1993</a></p>	<p>Art 149: <b>Las autoridades de las Comunidades Campesinas y Nativas</b> [...] pueden ejercer las funciones jurisdiccionales dentro de su ámbito territorial de conformidad con el derecho consuetudinario, <b>siempre que no violen los derechos fundamentales de la persona.</b></p> <p>Art 2: Derechos fundamentales de la persona            Toda persona tiene derecho:            [...]</p> <p>(2) A la igualdad ante la ley. Nadie debe ser discriminado por motivo de origen, raza, <b>sexo</b>, idioma, religión, opinión, condición económica o de cualquiera otra índole.</p>	<p>Scenario 1</p>
<p><b>South Africa</b>  <a href="#">Constitution of the Republic of South Africa, 1996</a></p>	<p>Art 39 (3): The Bill of Rights does not deny the existence of any other rights or freedoms that are recognized or conferred by common law, <b>customary law</b> or legislation, <b>to the extent that they are consistent with the Bill.</b></p> <p>Art 211 (1): The <b>institution, status and role of traditional leadership, according to customary law, are recognized, subject to the Constitution.</b></p> <p>(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.</p> <p>(3) The courts must apply customary law when that law is applicable, <b>subject to the Constitution</b> and any legislation that specifically deals with customary law.</p> <p>The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, <b>gender</b>, sex [...].</p>	<p>Scenario 1</p>
<p><b>Tanzania</b>  <a href="#">Village Land Act, 1999</a></p>	<p>Art 20-(2): Any <b>rule of customary law</b> and any decision taken in respect of land held under <b>customary tenure</b>, whether in respect of land held individually or communally, shall have regard to the customs, traditions, and practices of the community concerned to the extent that they are in accordance with the provisions of sections 9 and 9A of the Judicature and Application of Laws ordinance and of any other written law and subject to the foregoing provisions of this subsection, <b>that rule of customary law or any such decision in respect of land held under customary tenure shall be void and inoperative and shall not be given effect to by any village council or village assembly or any person or body of persons exercising any authority over village land or in respect of any court or other body, to the extent to which it denies women, children or persons with disability lawful access to ownership, occupation or use of any such land.</b></p> <p>Art 23-(2): In determining whether to grant a customary right of occupancy, the village council shall [...] (c) <b>have special regard for the respect of the equality of all persons</b>, such as: (i) <b>treat an application from a woman or a group of</b></p>	<p>Scenario 2</p>

	<p><b>women no less favourably</b> than an equivalent application from a man, a group of men or a mixed group of men and women. [...]</p> <p>Art 35-(2): Surrender of land under customary rights of occupancy <b>that has purpose or the effect of depriving or impeding women from occupying law, shall not operate and shall be of no effect to prevent woman from occupying that land.</b></p>	
<p><b>Uganda</b> <a href="#">Land Act, 1998</a></p>	<p>Art 5-(1): On receipt of an application for a certificate of customary ownership the committee shall [...](d) record that if any person has, or two or more persons have, exercised rights under customary law over the land the subject of the application that should be recognized as ownership of that land, that person or those persons, as the case may be, shall, prima facie, be entitled to be issued with a certificate of customary ownership and in the case of two or more persons, the shares of each person and the nature of their ownership; [...](g) <b>safeguard the interests and rights in the land which is the subject of the application of women</b>, absent persons, minors and persons with or under a disability.</p> <p>Art 27: <b>Any decision taken in respect of land held under customary tenure</b>, whether in respect of land held individually or communally, shall be in accordance with the customs, traditions and practices of the community concerned, <b>except that a decision which denies women or children or persons with a disability access to ownership, occupation or use of any land or imposes conditions which violate articles 33, 34 and 35 of the Constitution on any ownership, occupation or use of any land shall be null and void.</b></p>	<p>Scenario 2</p>

## Proxy F – Does the legal and policy framework mandate women’s participation in land management and administration institutions?

### Rationale

Progress in the passage of land laws and policies that uphold gender equality is not always followed by effective implementation. This is often due to weaknesses in land governance. Land governance refers to the rules, processes and structures through which decisions are made with respect to access, use and control of land, as well as the manner in which the decisions are implemented and enforced, and the way that competing interests in land are managed.<sup>31</sup> Institutions responsible for land administration and management are ultimately responsible for the implementation of policies and the translation of laws into practical improvements.

Evidence demonstrates that land governance institutions are frequently male dominated. Women are often excluded from participating in the day-to-day processes of land governance at all levels, and have limited capacity to influence decision-making. A lack of women’s representation in land governance tends to lead to biased outcomes in land recording and registration processes, hinder women’s land claims, and overlook women’s rights on common lands.

The importance of women’s participation in land governance institutions is underscored in the CEDAW and the VGGT. CEDAW promotes the maximum participation of women on equal terms with men in all fields.<sup>32</sup> In this spirit, the national legal framework of State Parties should provide for their meaningful representation in land management and administration institutions, as well as in dispute resolution institutions. The CEDAW Committee has consistently supported the use of temporary special measures to achieve gender equality of participation, specifically in the General Recommendation 25 on Temporary Special Measures,<sup>33</sup> and more generally the latest CEDAW General Recommendation 34 on Rural Women.<sup>34</sup> One of the various measures considered is the setting of numerical goals and quotas and targeting women for appointment to public positions such as the judiciary or other professional groups that play an essential part in the everyday life of all societies.<sup>35</sup> Further, the VGGT

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<sup>31</sup> David Palmer *et al.*, Towards Improved Land Governance. Food and Agriculture Organization of the United Nations, United Nations Human Settlements Programme, 2009, [www.fao.org/3/a-ak999e.pdf](http://www.fao.org/3/a-ak999e.pdf), accessed 25 April 2017.

<sup>32</sup> Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, Preamble.

<sup>33</sup> CEDAW Committee, General recommendation No. 25: Article 4, paragraph 1, of the Convention (temporary special measures), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1\\_Global/INT\\_CEDAW\\_GEC\\_3733\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3733_E.pdf), accessed 25 April 2017.

<sup>34</sup> As noted in paragraph 20 of the General Recommendation 34 “Article 4, paragraph 1, provides for the adoption of temporary special measures by States parties to accelerate substantive equality. Such measures may include redistributing decision-making roles and resources. General recommendation No. 25 emphasizes that, where necessary, those measures should be directed at women subjected to multiple discrimination, including rural women. 21. States parties should develop and implement temporary special measures to accelerate the achievement of substantive equality for rural women in all areas in which they are underrepresented or disadvantaged, including in political and public life, education, health and employment.”

<sup>35</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 23: Political and Public Life*, 1997, A/52/38, available at: [www.refworld.org/docid/453882a622.html](http://www.refworld.org/docid/453882a622.html), accessed 25 April 2017, para 15.



strongly recommend gender-equitable land institutions at all levels.<sup>36</sup> For these reasons, Proxy F examines whether the law mandates women’s participation in land management and administration institutions.

Experience has also shown that women’s participation in land governance strengthens women’s land rights as well as improves land governance overall.<sup>37</sup> When women are represented in land management and administration institutions, those institutions are more likely to create new rules (or strengthen the existing ones) to protect women and minority groups’ rights, promote alignment of local rules with national and international laws that protect women’s and minority groups’ land rights,<sup>38</sup> and improve management of common lands and natural resources.<sup>39</sup> Moreover, women managers, when well positioned in land administration and management institutions, are more able to influence the decision-making process so that women’s land rights can be strengthened.

## Scope and definitions

This proxy aims to identify any policy objectives, existing legal provisions and implementing legislation that:

- Establish a quota for women’s participation in land management and administration institutions.

Land management and administration institutions refers to formal institutions responsible for land governance (i.e. land management and land administration). Land governance institutions usually exist at the national level, at the provincial, county or district level, and at the local level. Land governance bodies may include ministries or agencies responsible for land, Lands and Deed Registries, Cadastral Offices, Titling Agencies, Land Commissions, Land Boards, District Councils, Land Use Administration Committees, Adjudication Committees, Community Land Boards, and other local boards and bodies. Such institutions may also include community-level bodies that have a statutory or constitutional responsibility to manage and administer customary land, including resolving land disputes or ascertaining land rights. The formal court system is not included in this assessment.

Quotas for women’s participation refers to provisions in the legal and policy framework establishing mandatory minimum percentage or number of women to be represented in institutions managing and administering land. For the purposes of this assessment, there is no minimum percentage. While it is proposed that meaningful participation requires at a minimum 30 percent participation,<sup>40</sup> the widespread

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<sup>36</sup> Committee on World Food Security, Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (FAO 2012), [www.fao.org/docrep/016/i2801e/i2801e.pdf](http://www.fao.org/docrep/016/i2801e/i2801e.pdf), accessed 25 April 2017, para. 5.3

<sup>37</sup> Knight *et al.*, 2012. Agrawal, 2009.

<sup>38</sup> Knight *et al.*, Protecting Community Lands and Resources: Evidence from Liberia, Mozambique and Uganda, Namati and the International Development Law Organization, 2012.

<sup>39</sup> Gender and forest conservation: The impact of women’s participation in community forest governance, Bina Agarwal, Ecological Economics 68 (2009) at 2785–2799.

<sup>40</sup> “The target of having 30 percent of women in positions at decision-making levels was endorsed by the Economic and Social Council in 1995. The figure of 30 percent forms the so-called “critical mass” believed to be necessary for women to make a visible impact on the style and content of political decision-making.” Programme of Work, Expert Group Meeting, “Equal participation of women and men in decision-making processes, with particular emphasis on political participation



lack of any type of quotas globally means that the inclusion of any required number of women to participate in land institutions should be considered a progressive development towards a gender-equitable legal framework. It is sufficient if the quota is expressed in general neutral terms – i.e. “quotas must be instituted if representation of the less represented sex is under 30 percent” or that “no elected or appointed body may be made up of more than two-thirds members of one gender.”

## Detailed guidance on how to conduct the assessment for Proxy F

### Provisions to be located

Under this proxy, the legal and policy framework is assessed to check if there are quotas for women’s participation in any land administration and management institutions.

### Rules and tips

**Quotas for women’s participation** may be expressed in the form of a minimum number of women staff, or a minimum percentage of women who must be elected or appointed to serve on a committee, board, commission or legal body responsible for land governance, administration or management. If the quota mandates the inclusion of a certain number or percentage of “**women and other vulnerable groups**” in an institution responsible for land governance, **the threshold is still met**. The threshold is also met when the provision states that **no institution may be composed of “more than x percent of members of one gender.”**

If the law provides a description of what constitutes equal gender representation – for instance, it may be the case that the law provides that “equal representation constitutes at least 40 percent of each of the sexes in all state institutions” and subsequently provides that temporary special measures or affirmative action measures **must** be taken if the percentage of one sex or gender falls below this threshold, the proxy **is present**, so long as the action **is mandatory**.

It is not relevant if the provision containing the quota concerns the **gender composition of technical staff** employed in a given land agency, or if the provision concerns the gender composition at the **management level** of the land institution (those taking management decisions or setting management priorities). For the purpose of this proxy, it is sufficient **if there is a quota either for staff and/or for the management level** in an institution responsible for land governance.

Thus, at the national or state level, the quota may refer to a **requirement** that a certain percentage of **staff** (usually civil servants) in a given land institution or agency (for instance, in a land registry or in a district land institution) must be women. Alternatively, or additionally, the quota may refer to the gender composition of the **management board** of a given land institution (for instance a Land Registration Board with oversight functions over the land registry or other land administration agencies, such as those addressing surveying, valuation and regulated spatial planning). The quota may also refer to the gender of the people **occupying key positions** in government land institutions (for instance, the Chief Register and Deputy Register). Usually, but not always, the members of such boards and the holders of key management positions are appointed by the relevant Minister or a group representing the executive body. In these cases, the relevant legal provisions may **require a minimum number of women and/or**

**members of a minority group or that the Chief and Deputy Register are not of the same gender.** In these cases, the proxy **is still present.**

For **local land committees**, it may be that the law provides for a certain percentage of women to be represented on that committee. To note, it is not relevant if these women are chosen through election by the local population or by Ministerial/government appointment. However, it is important to check if the quota refers **only to a minimum number of women running for election** in the local committee. If this is the case and there are no additional provisions on participation, the proxy threshold is **not** met. The provision must also refer to women's compulsory **representation** on such committees – for instance, by providing reserved seats for women to actually participate in such committees.

In some countries, **the Constitution or gender equality legislation may include a** specific quota for the participation of women in *all* government institutions, and even at all levels of government (state/provincial etc.). In these circumstances, the proxy is considered present, given that land institutions are governmental bodies.

The provision must apply to institutions whose **core function and central mandate is land governance, management or administration, including the resolution of land disputes.** This means that mandatory women's **participation on governing bodies that regulate the use of specific natural resources** – such as water committees, forest management groups, environmental committees or rural organizations – **are not relevant for this proxy.**

It is **not** sufficient if the body is a local council, for instance, that has only peripheral responsibility for land management and administration. It is important to cite the provisions showing the institution's responsibility to land administration and management, and not only the quota itself, unless **a provision within a legal or policy instrument** provides for “all government bodies” to include a certain percentage of women participants. The provision indicating the land responsibility of the institution should be cited next to the relevant provisions on Form 1, unless this is obvious from the title of the institution, or the legislation/policy is so broad that it is clear that state land management/administration bodies would be required to comply with the quota.

As per the General guidelines, where **customary land institutions** have been **recognized** in the formal law (either through policy, statutory or constitutional provisions) **and** such institutions have a role in land administration or management, the law and policy framework covering their operation should be assessed for the existence of quotas for women's participation. It is **not** relevant if customary land institutions exist *de facto* but have no formal recognition in the legal framework.

Proxy F will also be considered present if a country provides official national statistical data showing the achievement of at least 40 percent of women's ownership and/or control over land (e.g. data on SDG 5.a.1, or 1.4.2.) in case of absence of a mandatory quota in the legal and policy framework. This is because temporary special measures are not deemed necessary if gender equality in representation has substantially been achieved.

**BOX 1: Support for identifying Proxy F: Does the legal and policy framework provide quotas for women’s participation in land administration and management institutions?**

Provision IS PRESENT and will be recorded in Proxy F	Provision IS NOT PRESENT and will be excluded from Proxy F
<ul style="list-style-type: none"> <li>✓ A Constitutional provision stating that no elected or appointed body may be made up of more than X/Y members of one gender.</li> <li>✓ A provision stating that at least X number of the members of the District Land Board shall be women.</li> <li>✓ A provision stating that X percent of the staff within each ministry must be women.</li> <li>✓ A provision prescribing that a statutorily endorsed customary land committee must include X number of women.</li> <li>✓ A provision proscribing that a land institution be composed of more than X percent of members of one gender.</li> <li>✓ A provision mandating that X percent of the elected members of a community land adjudication body must be female.</li> <li>✓ Where customary justice bodies are statutorily endorsed, and these bodies are mandated to deal with land management or land disputes of a certain level, and there are provisions stating that at least X number of decision-makers within such an institution must be women.</li> <li>✓ Provisions requiring that all state bodies at each level of decision-making shall ensure that women hold at least 30 percent of the positions.</li> </ul>	<ul style="list-style-type: none"> <li>✗ The legal or policy framework is silent on the percentage of women and men to be represented in land governance, administration and management entities.</li> <li>✗ A generic provision establishing non-gender specific quotas in administrative bodies.</li> <li>✗ A provision “encouraging” a state to assure a percentage of women are represented on land administration or management bodies without establishing a mandatory minimum percentage or number.</li> <li>✗ Provisions requiring that a certain number of women be nominated for positions, but failing to establish quotas for women’s election onto the bodies they were nominated for.</li> <li>✗ If the formal court system provides a system for women’s representation on the judiciary.</li> <li>✗ Provisions establishing women’s desks in rural areas.</li> <li>✗ Provisions requiring that affirmative action measures should be implemented when the less represented sex in management positions is under X percent.</li> <li>✗ Provisions requiring that the Government shall “promote and apply” the principles of gender equality, including the principle of gender-balanced representation and proposing that special measures for ensuring and promoting gender equality “can be undertaken”.</li> </ul>

**Steps to be followed in the Proxy F assessment and recording of the information**

This assessment involves identifying whether the national legal and policy framework provides for mandatory quotas for women’s participation in land management or administration institutions.

1. **Identify and collect all relevant sources of policies and laws.** Legal mandates for women’s participation in land governance, administration and management may be found in the Constitution, gender equality laws, land policies, land laws, land use laws, land registration laws, communal land laws, local governance or decentralized governance laws, and any implementing regulations or technical annexes that accompany land-related legislation. **All policies and laws mentioned in the Checklist of the questionnaire** should be identified and collected, as well as any other relevant policies or laws not included on the list.
2. Screen the **legal and policy instruments collected and assess** if quotas exist for women’s participation in land governance institutions, following the **Rules and tips** mentioned.
3. If Proxy F does not exist in the policy or legal instrument(s), provide official national statistical data that confirm the achievement of at least 40 percent of

women's ownership and/or control over land, for the proxy to be considered equally present.

As per the [General guidelines](#), **all** examples of provisions representing the proxy should be provided. The proxy will be present if **any** institution, at any level of government, with a responsibility for land management has the quota. Following the computation process outlined in the [General guidelines](#), where there are multiple provisions representing the proxy, the country will be measured according to the legal or policy instrument that represents the highest level of incorporation.

**Reporting on Proxy F - if quotas for women's participation in land administration and management**

✓  Form 1: Policy and legal instruments including provisions for Proxy F. Please recall that in this form, all the relevant references located supporting the assessment should be cited (using the copy and paste tool).

✓  Form 2: Results of Assessment – Proxy F. Please add any further information on women's participation in land administration and management

~After filling in these forms, the indicator 5.a.2 assessment is completed~

## Useful examples

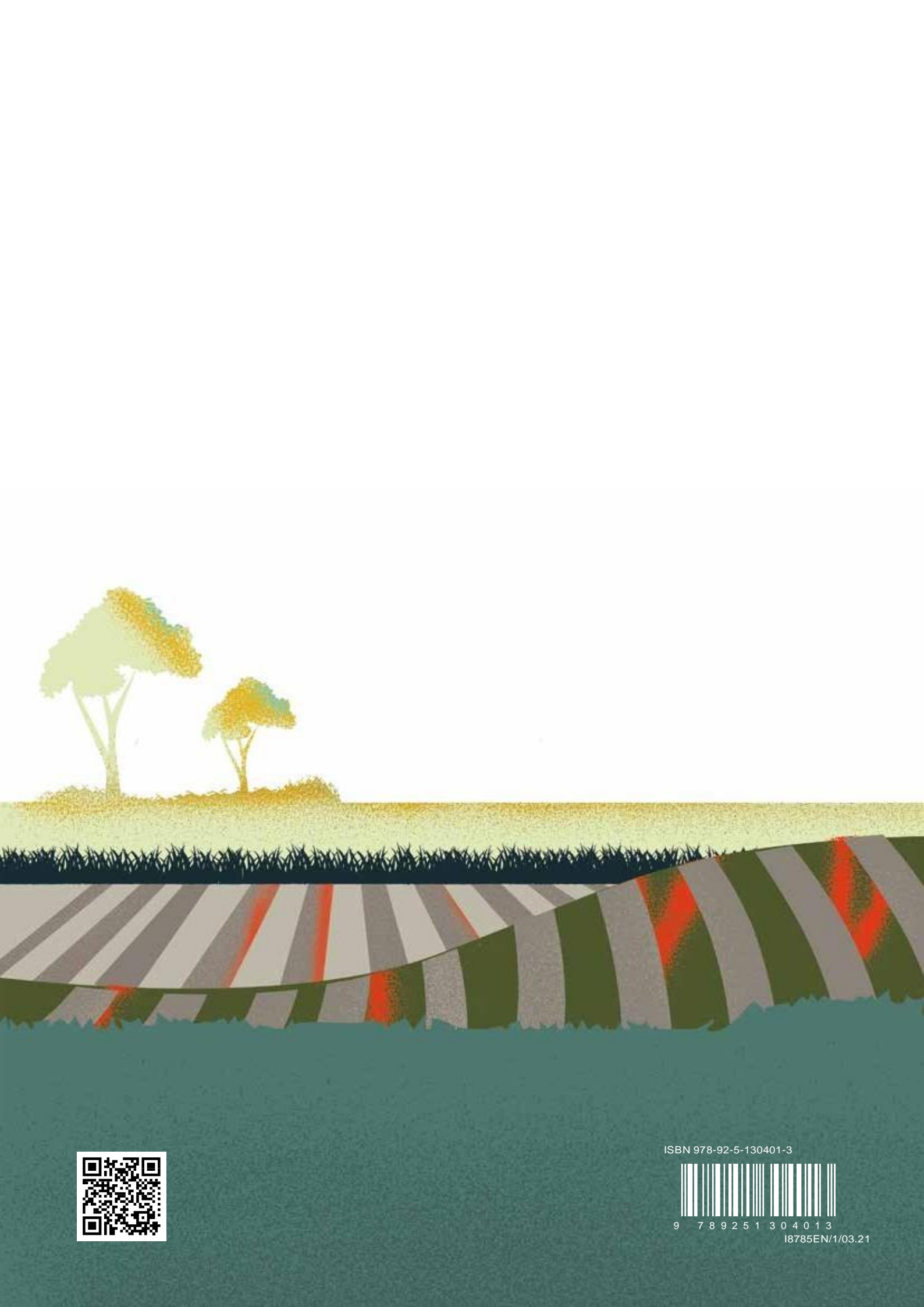
Country	Provision(s)
<p><b>Uganda</b></p> <p><a href="#">Arts 56-57, Land Act, 1998</a></p> <p><a href="#">Arts 2-4(1), Communal Land Reform Act, 2002</a></p>	<p>Art 56: There shall be for each district a <b>district land board</b>.</p> <p>Art 57 (1) Subject to a minimum membership of five, a board shall consist of the following persons— [...]</p> <p>(2) <b>At least one-third of the members</b> referred to in subsection (1) shall be <b>women</b>.</p> <p>Art. 2: [...] the Minister must establish <b>Communal Land Boards</b> [...]</p> <p>Art. 3: [...] The functions of a board are:</p> <ul style="list-style-type: none"> <li>(a) to exercise control over the allocation and the cancellation of customary land rights by Chiefs or Traditional Authorities under this Act;</li> <li>(b) to consider and decide on applications for a right of leasehold under this Act;</li> <li>(c) to establish and maintain a register and a system of registration for recording the allocation, transfer and cancellation of customary land rights and rights of leasehold under this Act;</li> <li>(d) to advise the Minister, either of its own motion or at the request of the Minister, in connection with the making of regulations or any other matter pertaining to the objectives of this Act; and</li> <li>(e) to perform such other functions as are assigned to a board by this Act.</li> </ul> <p>Art 4: (1) Subject to section 5, a board consists of the following members to be appointed by the Minister –[...]</p> <p>(d) <b>four women</b>, of whom - (i) two are women engaged in farming operations in the board’s area; and (ii) two are women who have expertise relevant to the functions of a board. [...]</p>
<p><b>Tanzania</b></p> <p><a href="#">Village Land Act (1999)</a></p>	<p>Section 53(1) Where a village assembly adjudication which has approved a recommendation that a village adjudication process shall take place, the village council shall establish a village adjudication committee, the members of which shall be elected by the village assembly.</p> <p>(2) A village adjudication committee shall consist of not more than nine persons of whom <b>not less than four persons shall be women</b>, who shall serve for a term of three years and shall be eligible to be re-elected for one further term of three years.</p> <p>Section 60.(1) For the purposes of this Part, every village shall establish a Village Land Council to mediate between and assist parties to arrive at a mutually acceptable solution <b>on any matter concerning village land</b>.</p> <p>(2) Where a village council establishes a village land council that council shall consist of seven persons, <b>of whom three shall be women who shall be: (a) nominated by the village council; and (b) approved by the village assembly</b>.</p>

<p><b>Philippines</b></p> <p><a href="#"><u>Comprehensive Agrarian Reform Law (Republic Act No. 6657) 1988, as amended by the Republic Act No. 9700 in 2009</u></a></p>	<p>SEC. 41. <b>The Presidential Agrarian Reform Council.</b> The Presidential Agrarian Reform Council (PARC) shall be composed of .... <b>at least twenty percent (20%)</b> of the members of the PARC shall be women but in no case shall they be less than two.</p>
<p><b>Kenya</b></p> <p><a href="#"><u>Constitution of Kenya, 2010</u></a></p>	<p>Article 27. Equality and freedom from discrimination.</p> <p>(1) Every person is equal before the law and has the right to equal protection and equal benefit of the law....</p> <p>(6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.</p> <p>(8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.</p> <p>Article 81. General principles for the electoral system.</p> <p>The electoral system shall comply with the following principles (a) freedom of citizens to exercise their political rights under Article 38; (b) not more <b>than two-thirds of the members of elective public bodies shall be of the same gender.</b></p> <p>Article 175. Principles of devolved government.</p> <p>County governments established under this Constitution shall reflect the following principles:</p> <p>(a) county governments shall be based on democratic principles and the separation of powers;</p> <p>(b) county governments shall have reliable sources of revenue to enable them to govern and deliver services effectively; and</p> <p>(c) <b>no more than two-thirds of the members of representative bodies in each county government shall be of the same gender.</b></p> <p>Article 177. Membership of county assembly.</p> <p>(1) A county assembly consists of (a) members elected by the registered voters of the wards, each ward constituting a single member constituency, on the same day as a general election of Members of Parliament, being the second Tuesday in August, in every fifth year; (b) <b>the number of special seat members necessary to ensure that no more than two-thirds of the membership of the assembly are of the same gender;</b> (c) the number of members of marginalized groups, including persons with disabilities and the youth, prescribed by an Act of Parliament; and (d) the Speaker, who is an ex officio member.</p> <p>Article 197. County assembly gender balance and diversity.</p> <p>(1) <b>Not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender.</b></p>

	<p>(2) Parliament shall enact legislation to (a) ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee; and (b) prescribe mechanisms to protect minorities within counties.</p> <p>Art 185: Legislative authority of county assemblies</p> <p>(1) The legislative authority of a county is vested in, and exercised by, its county assembly.</p> <p>(2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.</p> <p>(3) A county assembly, while respecting the principle of the separation of powers, may exercise oversight over the county executive committee and any other county executive organs.</p> <p>(4) A county assembly may receive and approve plans and policies for—</p> <p>(a) <b>the management and exploitation of the county’s resources;</b> and</p> <p>(b) the development and management of its infrastructure and institutions.</p>
<p><b>Namibia</b></p> <p><a href="#">Communal Land Reform Act, 2002</a></p>	<p>Section 4. Composition of [Communal Land] Boards</p> <p>(1) Subject to section 5, a board consists of the following members to be appointed by the Minister -</p> <p>(a) one representative from each of the Traditional Authorities within the board’s area, nominated by each such Authority;</p> <p>(b) one person to represent the organized farming community within the board’s area;</p> <p>(c) the regional officer of the regional council concerned, and, if the board’s area extends over the boundaries of two or more regions, the regional officer of each such region;</p> <p><b>(d) four women, of whom -</b></p> <p>(i) <b>two are women engaged in farming operations in the board’s area; and</b></p> <p>(ii) <b>two are women who have expertise relevant to the functions of a board;</b></p> <p>(e) four staff members in the Public Service, of whom -</p> <p>(i) one must be nominated by the Minister responsible for regional government;</p> <p>(ii) one must be nominated by the Minister responsible for land matters;</p> <p>(iii) one must be nominated by the Minister responsible for environmental matters; and</p> <p>(iv) one must be nominated by the Minister responsible for agriculture; and</p> <p>(f) if any conservancy or conservancies, declared under section 24A of the Nature Conservation Ordinance, 1975 (Ordinance No. 4 of 1975) exist within the board’s area, one person nominated by the conservancy concerned or, where applicable, by the conservancies concerned jointly.</p>
<p><b>Rwanda</b></p> <p><a href="#">Constitution of Rwanda, 2003</a></p>	<p>Article 9. The State of Rwanda commits itself to conform to the following fundamental principles and to promote and enforce the respect thereof:</p> <p>(4) building a state governed by the rule of law, a pluralistic democratic government, equality of all Rwandans and between women and men reflected by ensuring that women are granted at least <b>30 per cent of posts in decision-making organs.</b></p>

<p><b>South Africa</b>  <u><a href="#">Art 2(a)-(b), 4, Traditional Leadership and Governance Framework Amendment Act, 2003</a></u></p>	<p>Art 2: (a) A <b>traditional council</b> may have no more than 30 members, depending on the needs of the traditional community concerned.</p> <p>(b) <b>At least a third of the members</b> of a traditional council <b>must be women</b> [...].</p> <p>Art 4 (1) A traditional council has the following functions:</p> <ul style="list-style-type: none"> <li>(a) <b>administering the affairs of the traditional community in accordance with customs and tradition;</b></li> <li>(b) assisting, supporting and guiding traditional leaders in the performance of their functions;</li> <li>(c) supporting municipalities in the identification of community needs;</li> <li>(d) <b>facilitating time involvement of the traditional community in the development or amendment of the integrated development plan of a municipality in whose area that community resides;</b></li> <li>(e) recommending, after consultation with the relevant local and provincial 45 houses of traditional leaders, appropriate interventions to government that will contribute to development and service delivery within the area of jurisdiction of the traditional council;</li> <li>(f) participating in the development of policy and legislation at the local level;</li> <li>(g) participating in development programmes of municipalities and of the 50 provincial and national spheres of government;</li> <li>(h) promoting the ideals of cooperative governance, integrated development planning, <b>sustainable development</b> and service delivery;</li> <li>(i) promoting indigenous knowledge systems for sustainable development and disaster management;</li> <li>(j) alerting any relevant municipality to any hazard or calamity that threatens the area of jurisdiction of the traditional council in question, or the well-being of people living in such area of jurisdiction, and contributing to disaster management in general;</li> <li>(k) sharing information and cooperating with other traditional councils; and</li> <li>(l) <b>performing the functions conferred by customary law, customs and statutory</b></li> </ul> <p>(2) Applicable provincial legislation must regulate the performance of functions by a law consistent with the Constitution. [...]</p> <p>(d) Where it has been proved that <b>an insufficient number of women are available</b> to participate in a traditional council, the Premier concerned may, in accordance with a procedure provided for in provincial legislation, determine <b>a lower threshold</b> for the 30 particular traditional council than that required by paragraph (b).</p>
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