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Past Achievements and Remaining Challenges**

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# LAND GOVERNANCE, GENDER EQUALITY AND DEVELOPMENT: PAST ACHIEVEMENTS AND REMAINING CHALLENGES

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**Abstract:** Most land governance reforms seek to enhance tenure security, encourage investments and thereby promote economic growth. Increasingly, land reforms attempt to secure women's and other vulnerable groups' access to land. This article reviews the extent to which gender equality in land tenure has been pursued in these reforms and examines the role played by donor cooperation. Despite significant progress in developing land legislation that upholds gender equality, implementation often does not follow suit, and women still face discrimination. Based on country case studies, the article identifies six challenges, which should be addressed to achieve gender equality in land tenure. © 2016 UNU-WIDER. *Journal of International Development* published by John Wiley & Sons, Ltd.

**Keywords:** land tenure; gender equality; customary; statutory; legal; development cooperation

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## 1 INTRODUCTION

A new wave of land reforms has swept across a large number of developing countries since the end of the Cold War. Whereas previous waves of land reform often had an explicit redistributive focus and had the state as a prominent actor (Berry, 2009; Dorner, 1971; Sikor & Müller, 2009; World Bank, 1975), the focus of this new wave of land reforms is on land governance, albeit also having distributive consequences, mediated through

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the market rather than directly through the state (e.g. Borras & Franco, 2010; Deere & León, 2001). Underpinning the new wave of land reforms is the assumption that land tenure security favoured through individual ownership and titling would encourage investments, and that a free land market would lead to land being allocated among the most efficient users, and thus promote to economic growth (e.g. de Soto, 2000; Lipton, 2009; Sikor & Müller, 2009). More recently, this initial focus has been expanded to also include the recognition of customary tenure and customary authorities and, in a number of countries, towards the registration—and thus formalisation—of customary rights both on a collective and on an individual basis (e.g. EU Task Force on Land Tenure, 2004; Knight, 2010; Lipton, 2009; USAID, 2013).

Alongside the increasing attention given to customary land tenure, attention has also been drawn to women's land rights (e.g. Deere & León, 2001; Wily, 2003). Thus, many of the recent land governance reforms have been hailed as a key element in efforts to ensure gender equality with respect to land rights. Aid agencies have been instrumental in promoting this attention to gender equality. Publications such as the *Gender in Agriculture Sourcebook* (World Bank, 2009) and the *Toolkit for Integrating Gender-Related Issues in Land Policy and Administration Projects* (World Bank, 2013a) testify to this growing attention. Also, the World Bank-initiated Land Governance Assessment Framework contemplates the development of a specific gender module (Deininger *et al.*, 2012). While in some cases, women's land rights are promoted as an end in itself, driven by concerns with achieving gender equality, in other cases, attention to women's land rights is promoted on the basis of utilitarian arguments that tie gender equality with development efficiency (Doss, 2011). In this context, reference is often made to the discrepancies, which exist between women's contribution to agricultural labour and their prominence, or rather lack hereof, as agricultural land owners. According to estimates from FAO (2011), and bearing in mind that considerable variations exist among and within countries (e.g. Doss, 2011; Ravnborg *et al.*, 2013), women constitute close to half of the agricultural labour force in sub-Saharan Africa and Asia (45 per cent and 42 per cent, respectively) and just over one-fifth in Latin America, at the same time as they constitute only around 18 per cent of landowners in Latin America, 15 per cent in sub-Saharan Africa, and 11 per cent in Asia.

This article provides a cross-continent and cross-donor overview of the progress made and the challenges ahead with respect to promoting gender equality in land tenure as part of the new wave of land governance reform during recent decades and of the effectiveness of development aid in contributing to these efforts. It does so based on a review of the land governance reforms in 15 countries in sub-Saharan Africa, Latin America and Asia, and an analysis of data available on development cooperation focused on land governance, and through case studies of women's access to land in the context of recent land governance reforms and development cooperation conducted with respect to Ghana, Tanzania, Uganda, Zambia and Nicaragua.

Pursuing gender equality in land tenure, however, requires a focus beyond land governance. Women's access to land and to holding land rights does not only depend upon land legislation but also upon family law such as laws regulating marriage and inheritance (Deere & León, 2001; Odgaard, 2006; Yngstrom, 2002). In many places, women obtain access and rights to land upon marriage through their husband's family or clan, by some referred to as secondary land rights, and this access may be lost upon divorce or the death of the husband. Hence, it is increasingly recognised that efforts to

promote gender equality with respect to land tenure through land governance reforms have to be accompanied by similar efforts with respect to statutory as well as customary family law.

Development organisations and particularly the World Bank have played an important role in promoting and supporting the formulation and implementation of the legal and policy reforms at core of this new wave of land reforms (e.g. Deininger & Binswanger, 1999; Deininger *et al.*, 2012; Gibbon *et al.*, 1993; Manji, 2006). In addition to supporting such national-scale land governance interventions, development organisations have also supported a wide range of civil society-based initiatives, seeking to advocate in favour of and improve land tenure security through rights-based approaches, in many cases with an explicit focus on gender equality and strengthening women's land rights.

The article is structured in five sections. Following this introduction, Section 2 describes the sources of data upon which the review of achievements and the identification of remaining challenges are based. Section 3 provides a cross-continent and cross-donor assessment of the progress made with respect to putting in place land legislation that ensures and promotes gender equality in land tenure and of the extent and the ways in which development cooperation has contributed to these achievements during recent decades, while Section 4 identifies remaining challenges with respect to achieving gender equality in land tenure. Section 5 concludes and points to the way forward for governments and their development partners in pursuing gender equality in land tenure.

## **2 METHODS AND DATA**

The article uses three different types of data to allow for an analysis of the efforts and achievements made and the challenges ahead for governments and their development partners with regard to gender equality within land governance. First, it combines information from two existing databases (FAO's Gender and Land Rights Database and USAID's Land Tenure and Property Rights Portal) for the elaboration of an overview of achievements with respect to gender equality in land tenure in 15 countries.<sup>1</sup> Assessments made as part of the emerging Land Governance Assessment Framework have also been drawn upon, although available only for five<sup>2</sup> of the 15 countries. The 15 countries were selected as a cross-continent sample of developing countries that represent diverse experiences with respect to addressing gender as part of land governance reform processes and which, moreover, had been Danida partner countries during the past two decades. Second, it analyses available information on development cooperation focused on land governance from AidData to identify trends over time in the focus of land-related development activities. Lastly, it uses fieldwork carried out in five of the 15 countries included in the overview, to complement with contextualised grounded analysis of the role that development cooperation has played in promoting changes towards gender-equal land governance, as well as identifying the challenges that remain.

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<sup>1</sup>Bolivia, Burkina Faso, Cambodia, Côte d'Ivoire, Ethiopia, Ghana, Mali, Mozambique, Nicaragua, Niger, Tanzania, Uganda, Vietnam, Zambia and Zimbabwe.

<sup>2</sup>Tanzania formed part of the pilot assessment activities, while proper land governance assessment reports have been developed for Burkina Faso, Ghana, Uganda and Vietnam.

## 2.1 Data on Land Governance Achievements

The FAO Gender and Land Rights Database<sup>3</sup> focuses on women's land rights in 79 countries and provides country-level information on different aspects related to women's access to land such as the national and international legal framework, customary law, land-tenure institutions, civil-society organisations and land-tenure statistics. The USAID Land Tenure and Property Rights Portal<sup>4</sup> contains country-level information related to property rights and resource governance in 65 countries. Although the focus of the USAID portal is not explicitly on women's land tenure, the country profiles contain a section on intra-household rights to land and gender differences, and sets land issues in a larger context than the FAO database, as it also contains sections on water, forest and mineral resources.

## 2.2 Data on Land and Gender as a Focus in Development Cooperation

The AidData database<sup>5</sup> is based on the reporting made by development agencies to the Organisation for Economic Co-operation and Development (OECD) Development Assistance Committee (DAC) Creditor Reporting System according to a set of pre-defined purpose codes<sup>6</sup> and subsequently further improved by the AidData project (AidData, 2010; Tierney *et al.*, 2011). Despite the improvements made, the database reflects the uneven quality of the reporting made among development agencies as well as over time. As a case in point, in 2005, only nine out of 24 DAC countries used the so-called 'gender marker' in their reporting to the OECD DAC database, whereas in 2012, all of them did (O'Neill, 2012). Not all development engagements have been reported, and many engagements are only incompletely or inconsistently reported with respect to content as well as with respect to the monetary value of the donor commitment. As our primary concern is the content of land governance focused development cooperation, we use the number of aid activities as our proxy indicator of the contribution of development cooperation to promote gender equality with respect to land.

Following a first selection of aid activities, being committed during the period from 1990 to 2009, based on land, gender and governance related purpose codes,<sup>7</sup> <sup>8</sup> text-searches were made in project titles and descriptions<sup>9</sup> to identify activities dealing with land governance, characterise these according to their thematic focus (see Figure 2, below) and as part of this, identify those incorporating a gender perspective.

<sup>3</sup><http://www.fao.org/gender/landrights/en/>, last consulted 20 September 2013.

<sup>4</sup><http://www.usaidlandtenure.net>, last consulted 20 September 2013.

<sup>5</sup>Version 1.9.1, released February 2010 (<http://www.aiddata.org/content/index>, last consulted 14 September 2012). A version 2.1 of AidData database was released February 2013 after the consultations made for this study were conducted.

<sup>6</sup><http://www.oecd.org/dac/aidstatistics/aidstatisticsanddatabasesallaboutnumbers-whospendswhatwhere.htm>.

<sup>7</sup>Purpose codes from AidData datasets related to land and/or gender: 15110, 15130, 15140, 15150 for government and civil society; 16030 for housing policy; 31110, 31120, 31130 for agricultural policy, development and agricultural land resources; 42010 for women in development; 43040 for rural development; and 92000, 92005, 92010, 92020, 92030 for support to non-governmental and governmental organisations.

<sup>8</sup>Even if AidData contains some more precise and narrower codes, these were not applied throughout the period 1990–2009, and therefore, only general codes deemed to cover issues related to land administration have been used in selecting projects.

<sup>9</sup>Using the following search terms: land, property, gender, woman, women, fonci\* (for the French terms foncier(s) or foncière(s)), terri\*, mulher, mujer, femme.

### **2.3 In-depth Case Studies**

Finally, the article draws on case studies conducted in five countries that all have made considerable achievements with respect to legal provisions for gender equality in land tenure but face different types of challenges with respect to turning these legal provisions into practice, namely, Ghana, Tanzania, Uganda, Zambia and Nicaragua. The case studies examine the ways in which women's land rights have been addressed in recent decades, with special emphasis on the role played by development aid in promoting these changes and identify the challenges that remain in order to achieve gender equality with respect to land tenure. In addition to reports from development agencies, including evaluations searched through the DAC Evaluation Resource Centre database<sup>10</sup> and a review of the gender equality and land tenure literature (Pedersen *et al.*, 2012), the case studies are based on in-country interviews with donor representatives, government officials and NGO staff in Nicaragua (Broegaard, 2013), Tanzania (Pedersen & Haule, 2013; Pedersen, 2015), Uganda (Burke & Pedersen, 2013; Ravnborg *et al.*, 2013) and Zambia (Spichiger & Kabala, 2014; Spichiger, 2015), while in the case of Ghana, expert consultations were undertaken (Spichiger & Stacey, 2014).

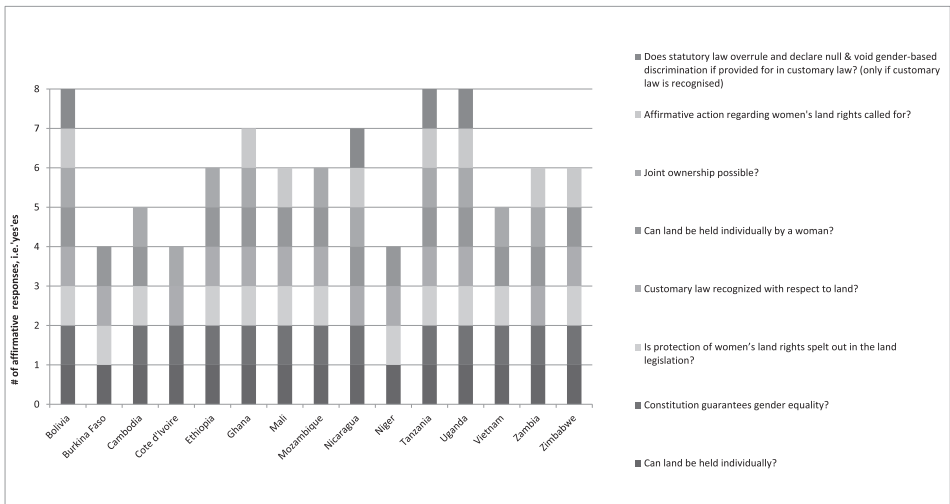
## **3 PURSUING GENDER EQUALITY THROUGH LAND GOVERNANCE REFORM**

While previous land policies and legislation were characterised by gender-blind language and analysis, which assumed that the entire household would benefit equally when the household head was given land,<sup>11</sup> recent policies have started to look specifically at the protection of women's rights to land (Wily, 2003). In many countries, women's groups have fought fiercely to obtain protection for women's rights to land inscribed in the land laws both because such provisions are important in themselves, and because they are seen as vehicles for further efforts to strengthen women's ability to fight for their rights (Goetz & Hassim, 2003; Tsikata, 2003). During past decades, most (13) of the 15 countries examined have passed legislation, which contains provision for equal opportunities for men and women in terms of land rights, and today, many countries allow—and in some cases even actively promote—joint land ownership of husband and wife. Moreover, several countries (four out of the 13 countries, which recognise customary law with respect to land) have passed legislation that formally abolishes discriminatory practices, including on the basis of gender, under customary as well as under statutory land tenure. These achievements in terms of legal provisions for women's land rights and their protection are summarised in Figure 1.

The fact that many African countries are under dual tenure systems makes ensuring legal coherence a challenge, as there are often discrepancies between statutory and customary law. This is most visible in countries where statutory law allows for customary law to be applied, such as Ghana and Zambia, even when the latter is entrenching discriminatory practices. In other words, there is a balance to strike between recognising customary rights

<sup>10</sup><http://www.oecd.org/derec/>, last consulted 19 September 2013.

<sup>11</sup>For example, the World Bank sector policy on land reform from 1975 does not mention 'women', 'female' or 'gender' at all, but does go into detailed discussions regarding the provision of land to 'family' or 'household', including 'household heads and other members of the family' (World Bank, 1975).



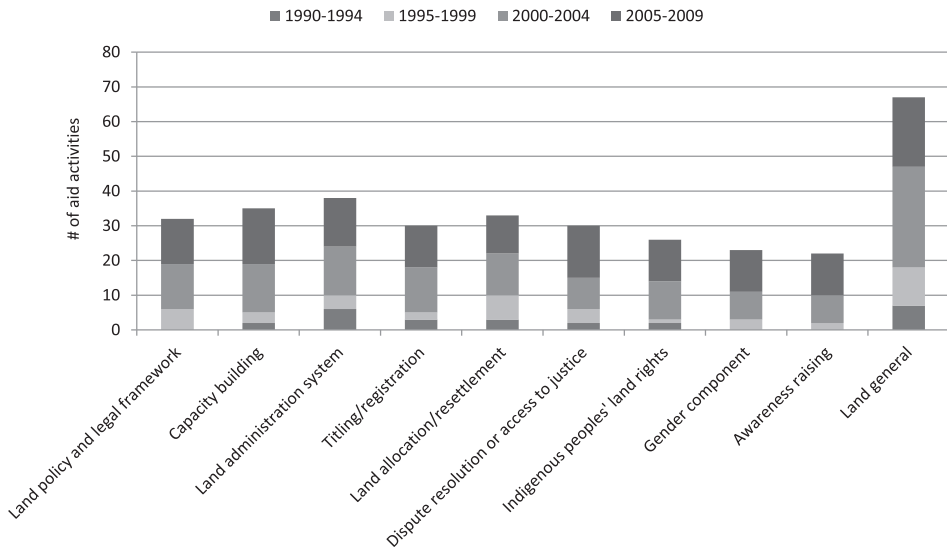
Sources: Own elaboration based on FAO Gender and Land Rights Database, the USAID Land Tenure and Property Rights Portal, and Spichiger et al. (2013:30-31).

Figure 1. Legal provisions with respect land tenure and gender equality, 15 countries.

and laws while protecting against the discrimination they may entail. Yet as pointed out by Knight (2010), in many cases, the statutory recognition of customary law is a significant achievement because it entails the recognition of the customary land tenure, which in many parts of the world is the predominant form of land tenure.

As illustrated in Figure 1, Bolivia, Nicaragua, Tanzania and Uganda have come far in ensuring gender equality with respect to land rights, for example, by abolishing customary discriminatory practices and making legal and administrative provisions for affirmative action to strengthen women’s rights to land. In Tanzania, this includes efforts to include women in administrative arrangements and vesting the local land authorities with the responsibility for protecting women’s rights to land (Pedersen, 2015), while in Uganda, the 1998 Land Act outlaws land transactions without spousal consent and contains provisions to reinforce the land rights of women, children and orphans. Other countries lag behind in these respects. In Zambia, the 1995 Lands Act does not mention gender, and while the stipulation from its gender policy to allocate 30 per cent of the land to women has been included in its draft land policy, at the time of writing, this draft land policy is still on hold. At the other end of the scale, a country like Ivory Coast guarantees gender equality in its constitution but still lacks legal provisions that recognise women’s rights to land tenure.

Development agencies, particularly the World Bank, have played an important role in pushing for and supporting the formulation and implementation of the legal and policy reforms that are at core of this new wave of land reforms and often also in raising the issue of gender equality in this context. This support has been provided either directly to government agencies, for example, through programmes such as Property Administration Project in Nicaragua, Land Administration Project in Ghana, the Business Environment Strengthening in Tanzania and now the Private Sector Competitiveness projects in Tanzania and Uganda, respectively, or indirectly through support to civil society organisations advocating for women’s land rights, for example, in Tanzania (TAWLA,



Source: Own elaboration based on a selection of land-related aid activities from the AidData database.

Figure 2. Number of aid activities according to thematic focus.<sup>12</sup> <sup>a</sup> Each aid activity may have more than one thematic focus. Thus, the total number of components/thematic focuses ( $N=336$  entries) exceeds the total number of aid activities ( $N=270$  aid activities).

2012), in Uganda, where women’s groups supported by donors were instrumental in pushing for the spousal consent clause in the Uganda Land Act (Joireman, 2011), and Zambia (Spichiger & Kabala, 2014). Thus in Nicaragua, the push from the World Bank and FAO is considered to have been instrumental for making joint titling compulsory for the state’s land allocations to couples (Broegaard, 2013).

Figure 2 shows that aid activities related to land policies and legal frameworks started to emerge around the mid-1990s, as did land-related aid activities with an explicit gender focus. Overall, a significant increase in the number of land-related aid activities took place in the period after year 2000. Moreover, whereas aid activities focusing on land policy and legal framework, as well as titling and land administration were most prominent up until 2004, around half or more of the aid activities focussing respectively on capacity building, dispute resolution and access to justice, indigenous peoples’ land rights, awareness raising as well as activities that entail an explicit gender component were committed in the period from 2005 to 2009. This suggests a certain degree of sequencing in the land-related donor support from initially focussing upon the legal and administrative framework as such and then gradually moving towards issues of implementation. Despite the recent tendency to take gender equality more explicitly into consideration, only a fraction (23) of the 270 land-related aid activities identified through AidData committed to the 15 countries had

<sup>12</sup>Activities were classified under ‘Land general’ when project title and description provided was too vague to allow more detailed classification. Projects with ‘land’, ‘land tenure’ or ‘land management’ in title or brief description were characterised as dealing with ‘land general’. The category ‘Land administration systems’ includes any project having to do with cadastre, registry, surveying, mapping, recording of boundaries, land information systems or land monitoring systems. ‘Titling/registration’ also includes projects aimed or in part aimed at ‘formalisation of rights’ (when clearly stated).



an explicit gender (equality) focus in combination with its other thematic focus areas. Similarly, although the recent effort to develop a Land Governance Assessment Framework (Deininger *et al.*, 2012) entails indicators that are relevant from a gender equality perspective, such as the recognition of rights, the way in which concerns with gender equality has been included in these assessments shows significant variation. It is on this background that the development of a specific gender module as part of the framework is contemplated (*ibid.*), in this way, echoing the observation made by Giovarelli and Lastarria-Cornhiel (2006:13) that ‘to not consider gender [explicitly] is almost always to discriminate against women in land projects’.

## 4 REMAINING CHALLENGES TO ACHIEVE GENDER EQUALITY IN LAND TENURE

While acknowledging the achievements made with respect to ensuring legal recognition of men and women’s equal rights to land in many countries, our review of existing legislation and our five case studies, as well as our review of the literature (e.g. Pedersen *et al.*, 2012; Spichiger, 2015), reveal that a number of challenges remain. Addressing these should be central not only to governments but also to development agencies in their efforts to promote gender equality with respect to land tenure as part of ongoing land governance reform.

### 4.1 Family Law is Pivotal for Women’s Access to Land

Despite the fact that a significant part of rural women across a wide range of countries in Asia, sub-Saharan Africa and Latin America enjoy access to land, it is equally clear that women are much less likely than men to inherit land or to acquire land in their own name. Instead, women access land through their male relatives, most often their husband. This makes their land rights ‘secondary’ or ‘contingent’ upon the land rights that their male relatives hold and, therefore, and importantly, upon their relationship to their male relatives and their husband’s family (e.g. Spichiger, 2015). In consequence, women’s access—and rights—to land is often shaped through statutory and customary law—and practices—on marriage and inheritance and through family relations rather than being provided for and protected directly through land legislation. Discriminatory practices persist despite considerable efforts made, for example, by women’s groups, often supported by development organisations in bringing customary law in line with principles of non-discrimination, which today are inscribed in most countries’ constitution (e.g. Pedersen & Haule, 2013; Spichiger & Kabala, 2014). In Nicaragua, for instance, the law still places children and other relatives before the spouse as heirs. This implies that upon the death of her husband and in case no written will exists, a woman depends upon her children, because children as well as parents, grandparents and siblings of the deceased rank higher in the order of heirs than does the spouse (Tijerino *et al.*, 2008). Only assets, which the woman herself has brought into the marriage or has obtained through inheritance or acquired in her own name during the marriage, will remain with her. In a context where property such as land and cattle is typically acquired by men, this implies that women tend to *de facto* be further discriminated against as property obtained by the man during marriage, even if acquired by the fruits of the common efforts of the couple, stays separate unless arranged otherwise. Moreover, common-law relationships, which are commonplace in rural areas in Nicaragua, are not recognised by statutory law, which implies that widows

usually cannot inherit property from her deceased (common-law) husband. In Ghana, a woman's inheritance rights depend upon her ability to prove her contribution to the acquisition of property within the marriage. However, as the Matrimonial Causes Act lacks guidelines to help courts determine the extent to which a spouse has contributed to the acquisition of property, it is difficult for rural women to 'prove' how much they have contributed, particularly when their primary contribution has been in terms of time and labour. Hence, upon a change of marital status, that is, in situation of divorce or becoming a widow, women risk losing access to land and property, which was previously guaranteed by their relationship to their husband. In Zambia, the 1989 Intestate Succession Act aimed to counter discriminatory practices and to enable women to inherit 20 per cent of a deceased husband's land. Customary land, however, which by far is the most widespread tenure form in Zambia, is excluded from the laws governing inheritance. Although women's organisations have called for attention to these sources of discrimination, also in the context of land rights, significant challenges remain with respect to bringing family law—whether statutory or customary—in line with principles of non-discrimination on the basis of gender. Efforts to promote gender equality with respect to marriage and inheritance law and practice therefore merit continued attention and support from governments and their development partners in their own right as well as an avenue to promote gender equality with respect to land.

#### **4.2 Comprehensive Implementation and Enforcement of Land Reform are Crucial**

While legal and institutional reform often catches the attention both from aid agencies and national stakeholders, the long-haul and continuous—and therefore also more costly—efforts that are needed to ensure the implementation and enforcement of legal and institutional reform are crucial. No matter how comprehensive the legal and institutional framework, their partial or incomplete implementation and enforcement often mean that, in practice, women remain discriminated against. The presence of land administration and land dispute settlement institutions at the local level is important; however, they need legitimacy and local support in order to apply anti-discrimination laws. Resources—including in the form of training and capacity building in general, and specifically with respect to gender issues—are crucial. The implementation of land reforms in Ghana and Tanzania has been hampered by lack of adequate funding as well as by a lack of qualified staff (Karikari *et al.*, 2005; Pedersen, 2010), and in Uganda, many of the land administration and land dispute settlement institutions prescribed by the Land Act do not even exist (Mwebaza & Ziwa, 2005; Rugadya, 2009). Also, the implementation of Ghana's legislation on inheritance, hailed as very progressive given that it stipulates that in the absence of a will, two-thirds of the estate of the deceased passes to the spouse and children, has been hampered because of the lack of broad dissemination of its provisions, the persistence of traditional inheritance norms, as well as the costs related to its enforcement. Thus, its impact with respect to women's ability to have these inheritance rights recognised has been limited.

Moreover, in many countries, implementation of the land legislation has been primarily project-led and thus had a sporadic character both in temporal and geographic terms, depending on the availability of donor funding. This obviously could serve as an indication of the lack of national political ownership to these reform processes. As an example, donor-financed land titling interventions to promote joint land titling (to couples) have

been decisive for the implementation of more gender-progressive land policies in Nicaragua, without, however, influencing titling practices outside of the project scope or duration (Broegaard, 2013). Moreover, ministries and development organisations often show preference for land titling interventions, while they are less willing to take on responsibility for establishing and maintaining the full range of national as well as sub-national institutions, including courts and other statutory and customary institutions related to dispute resolution that are necessary for upholding land rights of men and women over time. This highlights the need for a long-term and cross-sectoral commitment both on the part of national government and on the part of cooperating donor organisations that reaches beyond legal land reform and partial titling interventions, as a precondition for genuinely successful land governance reform.

### **4.3 Addressing Cultural Practices Hampering Women's Access to Land**

Increasing pressure on land entails the risk of cementing cultural practices, and of further weakening women's land rights, which are often secondary land rights obtained through male relatives (e.g. Adoko & Levine, 2008; Daley, 2011; Peters, 2004; Spichiger, 2015).

In rural areas, women involved in agricultural activities often depend on family and kin not only for land but also for labour to perform certain tasks. Therefore, they may be reluctant to claim individual rights to land if this engenders a risk of losing this support or upsetting family relations, upon which their supply of labour and general well-being depend. In some places individual, female land ownership or even joint ownership is not in line with customary practices. Women are often not supposed to—and do not pretend themselves—to claim land rights, as this would be a sign of disrespect for their husbands, for customary institutions, or even, disrespect for God. In such settings, efforts to promote women's land rights are confronted with resistance to the very idea of female ownership of land. As a local participant in an NGO-led project aiming to promote women's land rights in rural Zambia put it, the slow pace at which the programme was implemented was due to the fact that '*some community members are deep-rooted in anti-women land rights belief*'. Overcoming such cultural barriers takes time, and laws and sensitization workshops alone are not sufficient.

### **4.4 Barriers for Women's Access to Land Institutions should be Lifted**

Institutions meant to administer and back land rights, even when they are represented at the local level, tend to be less accessible to women than to men and in particular to poor women (e.g. Doss *et al.*, 2014). There are several facets to this differentiated access. First, women may not be as aware as men of land registration possibilities, nor have the legal literacy necessary to claim the enforcement of their rights. Second, the costs related to both registration and dispute resolution processes often means that such services are out of reach of poor women. As an example, in Zambia, where land governance is not decentralised below the district level, registering land is costly and time-consuming. Likewise, in cases of disputes over land or land inheritance, women are found to shy away from using state courts for practical, financial and cultural reasons (Spichiger, 2015). Third, women and in particular poor women often feel intimidated in official proceedings such as those of legal courts (Crook *et al.*, 2010; Daley, 2008) and, as mentioned earlier, they may feel that they are not even entitled to have their rights enforced.

In countries where customary law applies, the role and accessibility of customary institutions with regard to women's ability to access land or to have their rights enforced has been debated, and the evidence is mixed. Often hailed as being 'closer to the people' and thus more accessible, customary institutions have also been shown to be discriminatory to women (e.g. Peters, 2004, 2006, 2009; Varley, 2007; Whitehead & Tsikata, 2003). However, in Zambia among other places, engaging traditional authorities in working for women's land rights through donor funded NGO-led initiatives has yielded positive changes both with respect to the attitude towards women's land rights and, in practice, with respect to women's land access (Spichiger & Kabala, 2014; Spichiger, 2015). Development organisations may contribute to disseminate, up-scale and support such promising experiences.

In addition, not only customary but also statutory land institutions tend to be staffed with men and to address men rather than women when performing outreach activities. Efforts to establish sections to specifically attend to women's land concerns or to ensure a more equal representation of women among the staff of such institutions, including cadastral survey units, land registries and land tribunals, are important, though not sufficient, steps towards achieving non-discrimination on the basis of gender. In Nicaragua, successful efforts have been made to make legal institutions more accessible to women, for example, through the establishment of a Women's Commissariat at the Police, funded through development cooperation, including from the Swedish development agency, Sida. Thus, an evaluation of Sida support to the Nicaraguan police found that it had produced significant changes with respect gender-related cultural and organisational practices within the police (Mikkelsen *et al.*, 2002). However, despite such efforts, the police and the courts in Nicaragua are still dominated by men and a *machista* culture (Silvia Torres, Personal communication; Managua, January 14, 2013).

#### **4.5 Formalisation and Individualisation of Statutory and Customary Land Rights May Act as a Double-Edged Sword against Women's Land Access**

In contexts where women hold access to land primarily through secondary land rights, the focus on registration of existing land rights characterising the new wave of land reforms entails the risk of jeopardising women's access to land. Indeed, while on the one hand, it has been argued that the registration of individual rights to land, including to customary land, would enhance the tenure security of landholders, on the other hand, these processes may weaken women's rights. Knowing that secondary land rights may be registered and thus converted into primary land rights and subsequently formalised, make some male relatives hesitant to grant secondary land rights to women in the first place, as it would imply the risk of losing clan or family land to individuals from other clans or families. This reluctance is likely to be even more pronounced in cases where the land reform process fails to recognise the customary land authorities and where emphasis is exclusively on the registration of individual land rights at the expense of collectively held land rights.

#### **4.6 Attention to Gender Equality Tends to Evaporate Once Implementation of Land Governance Reform Begins**

While aid agencies have been instrumental in pushing for addressing gender equality as part of the formulation of land legislation and policies, there has been a tendency that this attention evaporates during implementation where support is provided, for example, for

titling projects. This may be caused by lack of commitment from the responsible authorities, as observed in Tanzania (Pedersen & Haule, 2013) or be due to reluctance from—male—beneficiaries of titling interventions to mention their spouse(s) and thus risk having to share ownership as observed in Uganda (Official from Ministry of Lands, Housing and Urban Development, Personal communication, January 28, 2012). Yet as a positive exception from this tendency, a recent evaluation report on the Property Administration Project in Nicaragua, supported, for example, by the World Bank and covering 33 of Nicaragua's 153 districts, documents that the intervention had surpassed its target of issuing 40 per cent of titles to women, as 51 per cent of the beneficiaries of land titles were women, either as individual or as joint title holders (World Bank, 2013b). This highlights the importance of maintaining a strong gender equality focus also during the implementation of land governance reform.

Finally, the current inadequacy of gender-disaggregated data both in development cooperation and in national statistics, for example, on issues related to land tenure hampers efforts to pursue gender equality. The importance of such gender-disaggregated data cannot be overstated, as it is only through such data that it is possible to make women's situations visible, both with regard to the disadvantages that they face and the importance that they have in contributing to the income and well-being of their families, as well as to production in society. While this is not a new insight, several of the evaluations of donor organisations' interventions highlight the need to address the gender effects of development interventions specifically and lament that this need is rarely met (e.g. Ahikire & Kassim, 2012; Byron & Örnemark, 2010; Gosparini *et al.*, 2006). Consequently, the international development organisations themselves contribute to the lack of gender-disaggregated data, and thus allow the lack of visibility of gender inequalities (or the importance of results obtained where conditions between genders are more equal) to continue. As observed by Giovarelli and Lastarria-Cornhiel in a study prepared for USAID, 'to not consider gender is almost always to discriminate against women in land projects' (Giovarelli & Lastarria-Cornhiel, 2006:13).

## 5 CONCLUSION

Today, most of the 15 countries examined in this article have put in place land-related legislation, which contains provision for equal opportunities for men and women in terms of land rights and also allows—and in some cases even actively promotes—joint land ownership of husband and wife. Moreover, most of the 15 countries have passed general legislation and constitutional amendments that formally abolishes discriminatory practices, including on the basis of gender, under customary as well as under statutory law, including in matters that relate to land tenure. Aid agencies have actively contributed to and supported these legal reform processes in land governance in general, and with respect to promoting gender equality with respect to land rights in particular. The case studies show that sometimes the push has been appreciated, while at other times, it has been met with lack of national ownership of legal reforms promoting gender equality. The case studies also show that donor support has at times been ambiguous, supporting advocacy of gender equality, on the one hand, while supporting titling projects where only men benefited, on the other hand. This speaks to the often too weak mainstreaming of the principle of gender equality within aid agencies, as well as to the fact that aid agencies, like governments, do not always put into practice the commitments they declare in policies.

Land legislation is important to pursue gender equality with respect to land. However, it is not sufficient. Gender equality with respect to land does not only depend upon the legal ability to hold land rights provided through land legislation but also upon family law, regulating marriage and inheritance, which, to a large extent, determine women's—and men's—access to land. Often loopholes in laws, ambiguities, contradictions between statutory and customary law or a lack of implementation guidelines mean that laws are not able to redress gender-based inequalities. Thus, in further pursuing gender equality with respect not only to land rights but also to land access, there is a need to ensure that provisions ensuring non-discrimination in family law and customary law accompany recent provisions for gender equality in land legislation. Donor-supported as well as government-led efforts to strengthen land governance should ensure to address this need.

Given that gender-sensitive (land) legislation has been put in place in many developing countries, in many cases through the joint efforts of governments and aid agencies, it is not legal changes that should be the main item on the 'to-do list' of governments and aid agencies, but rather efforts to establish and effectively run national and sub-national institutions necessary to implement existing land legislation. Hence, there is a need to strengthen the comprehensive implementation and enforcement of land legislation. In doing so, important lessons may be drawn from civil society-led and often aid-funded efforts to promote gender equality in land administration and dispute resolution, working with statutory as well as customary institutions and addressing legal as well as cultural practices.

Land rights are constantly negotiated, claimed and contested—or concerted and cemented. Therefore, women's access to land-related national and sub-national institutions—whether statutory or customary—which can help enforce those rights is important. Beyond the mere existence and physical and economic accessibility of such institutions, also women's literacy, and particularly their legal literacy, as well as the gender sensitivity of officials, have been found to be important to ensure women's effective access to land-related institutions. Hence, there is a need to explore and institutionalise ways to enhance the effective accessibility to women—irrespective of their social and economic status—of land governance and dispute resolution institutions at all levels.

Finally, the focus on gender equality in the recently adopted 2030 agenda for sustainable development, and on gender-based monitoring of actual tenure, including of the extent to which women and men perceive their land rights are recognised and protected, is encouraging. As the new global sustainable development framework is envisaged to entail a 'data revolution', such data-generating and monitoring efforts are strongly needed and should be fully supported, including through development aid.

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