



How to identify **LEGAL BARRIERS** to women's participation in agriculture

What is the gender gap in agriculture, and how do legal barriers perpetuate it?

The gender gap in agriculture—women's lower productivity and earnings compared to men's—has crippling effects on producers and consumers alike, from the household to the national level. Figure 1 shows why it is imperative to close the gap. When women gain better access to productive assets, resources, and pathways to participate fully in agriculture, yields on women's farms will increase, along with total agricultural output, and fewer people will suffer from hunger. Another important consideration is that greater numbers of women are becoming the power behind agriculture, because greater numbers of men are moving to urban centers to pursue a livelihood. Agricultural projects will be substantially more successful if they ensure that women have full scope to wield that power.

When the conditions are right, women farmers, agricultural entrepreneurs, and workers are as productive and earn as much as their male counterparts. Legal systems heavily influence those conditions in a country. Legal barriers can deny or reduce women's access to agricultural assets (land, livestock, human capital), inputs (seed, fertilizer, labor, finance), and resources (extension, insurance). The legal barriers that constrain women's choices and restrict their opportunities must be lifted to equalize women's and men's access to productive resources in agriculture and unleash their full potential.

How can project teams respond to this imperative?

This guidance note helps project teams to recognize and address the legal barriers to women's full and equal participation in agriculture and to achieve better results in imple-

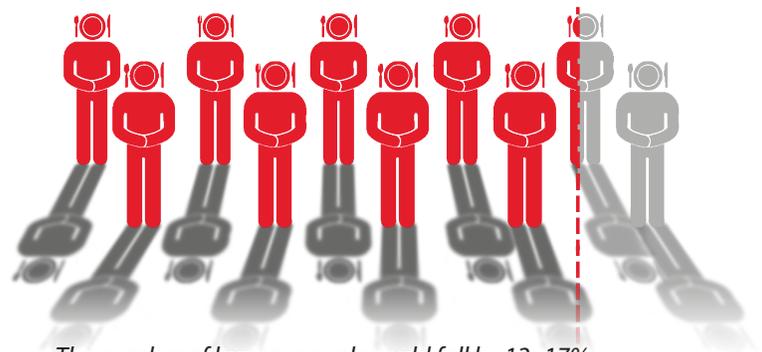
Figure 1: What happens when we close the gender gap in agriculture?



Women's yields on farms could increase by 20–30%



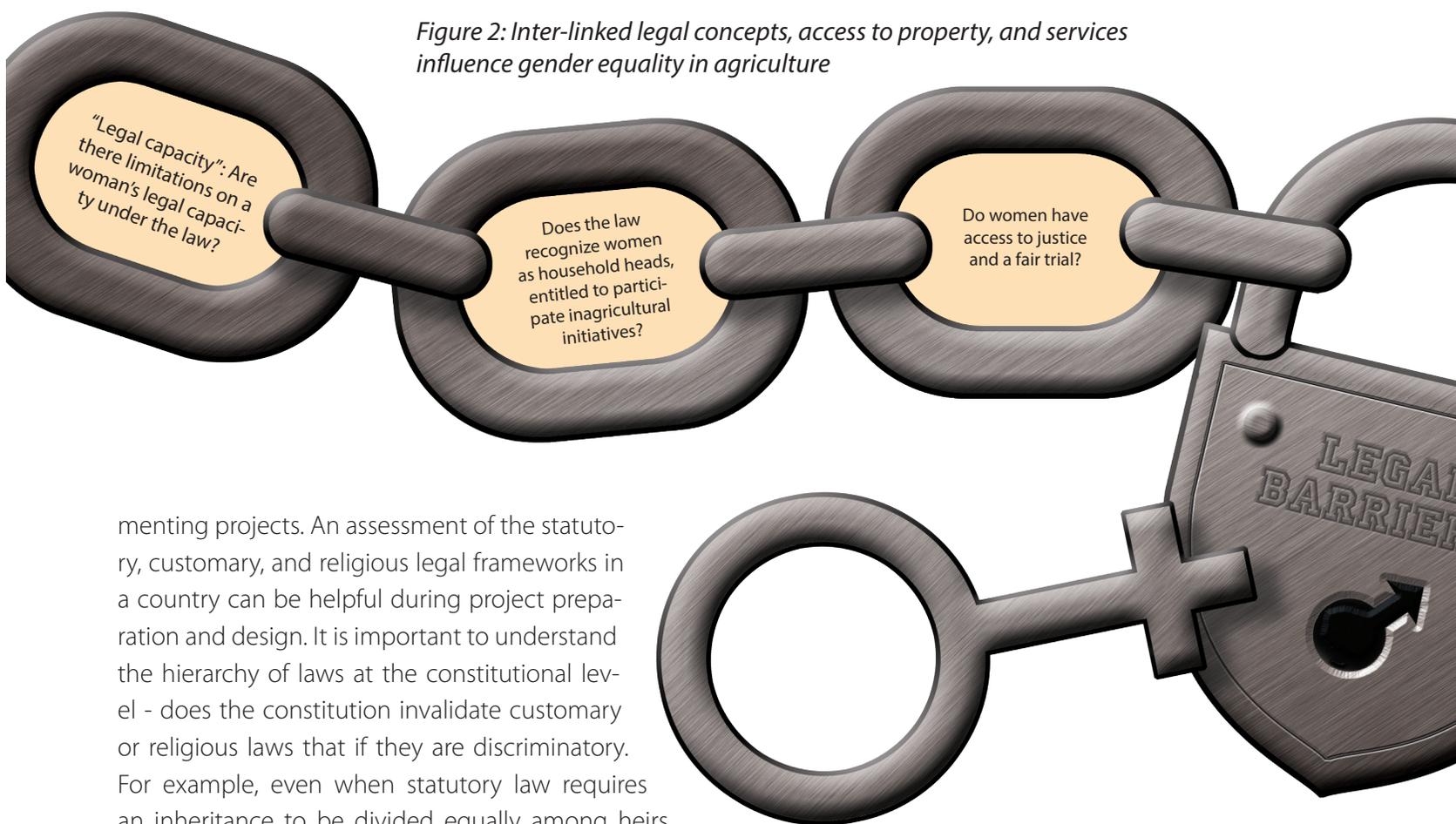
Total agricultural output could rise by 2.5–4.0%



The number of hungry people could fall by 12–17%

Source: FAO 2011b.

Figure 2: Inter-linked legal concepts, access to property, and services influence gender equality in agriculture



menting projects. An assessment of the statutory, customary, and religious legal frameworks in a country can be helpful during project preparation and design. It is important to understand the hierarchy of laws at the constitutional level - does the constitution invalidate customary or religious laws that if they are discriminatory. For example, even when statutory law requires an inheritance to be divided equally among heirs, customary arrangements may require women to give up their inheritance in favor of male relatives. More generally, women's familial relationships often determine their access to productive resources, so the legal concepts of marriage, marital property, divorce, and inheritance can be an important lens for identifying discriminatory practices against women.

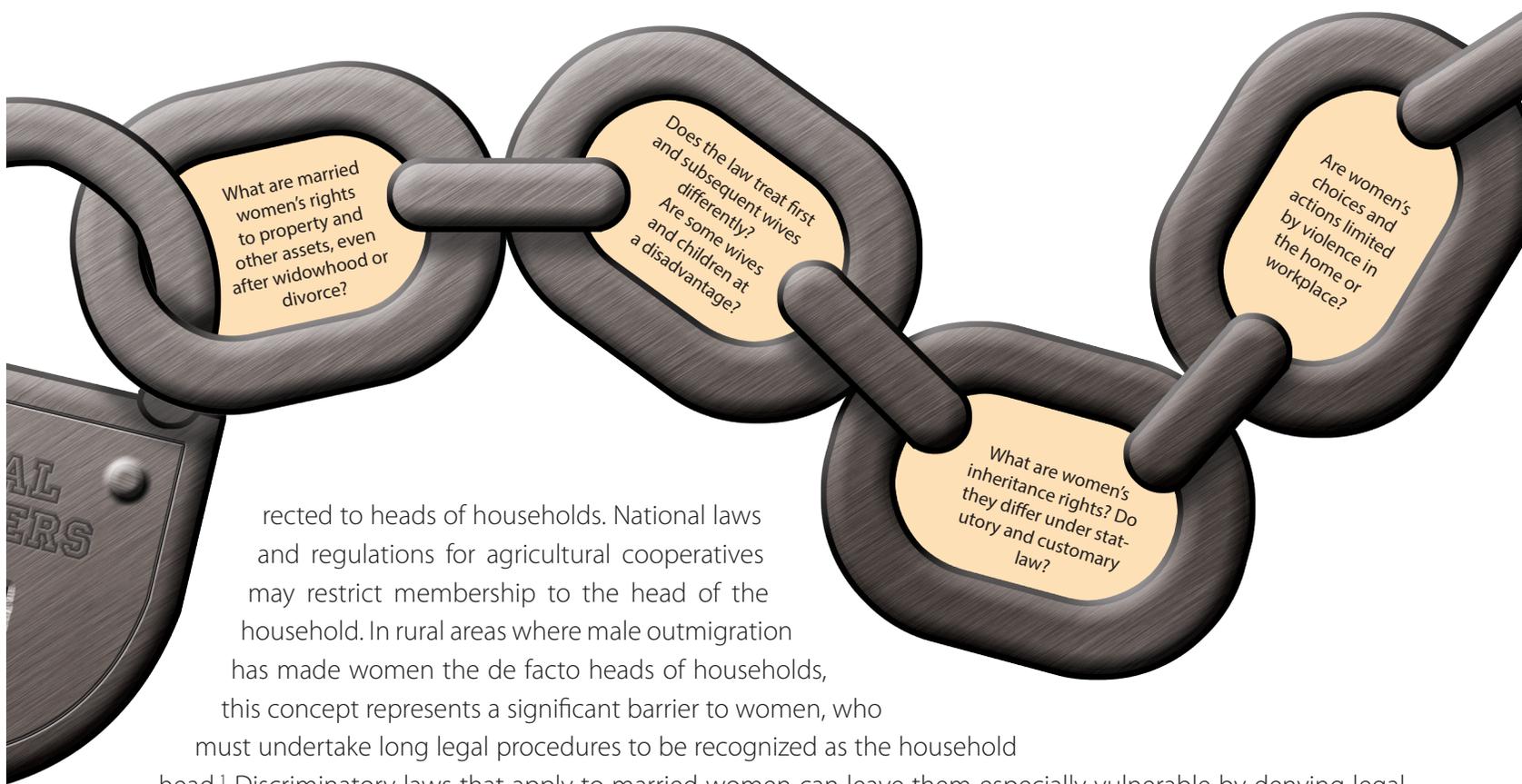
This guidance note begins by discussing the general legal dimensions of gender equality in the agricultural sector. It then looks at specific legal barriers affecting women's access to resources and participation. Throughout the discussion, the note provides recommendations for project teams to explore when designing an agricultural project. Additional resources on legal barriers are listed at the end.

General legal dimensions of gender equality in agriculture

The legal dimensions of gender equality in agriculture have a strong bearing on individuals' agency, empowerment, and capacity to participate in agriculture, including agricultural interventions. Project teams should consider how a number of interrelated legal concepts, regimes, and services might influence how women and men participate in and benefit from an intervention (Figure 2).

Concept of "legal capacity." Some countries, on the basis of women's marital status or merely their sex, do not recognize women as persons before the law, meaning that women have restricted legal capacity. In these cases, a woman cannot control own property or enter into contracts without her husband's consent.

Concept of "head of household." Legal definitions of this concept also have distinct implications for gender equality and participation in agriculture. The head of a household is often a man, as designated by statute or tradition. Many agricultural interventions—land redistribution programs, input subsidies, extension programs, and so on—are di-



rected to heads of households. National laws and regulations for agricultural cooperatives may restrict membership to the head of the household. In rural areas where male outmigration has made women the de facto heads of households, this concept represents a significant barrier to women, who must undertake long legal procedures to be recognized as the household

head.¹ Discriminatory laws that apply to married women can leave them especially vulnerable by denying legal recognition of their status as the head of the household following divorce and widowhood.

Access to justice and fair trial. Women's access to courts might be constrained by norms limiting their legal capacity and preventing them from bringing judicial disputes, such as land disputes, to court on their own. Project teams should also assess women's and men's access to traditional or customary justice and the relationship between the traditional or customary judicial system and the formal, statutory judicial system. Formal courts and magistrates are typically absent in rural areas or understaffed, and traditional or customary courts may be the main option for settling disputes.²

Marital property regime. In some countries, married women may face more discriminatory legal provisions than unmarried women. The marital property regime determines a married woman's right to own and control property and governs the distribution of assets among spouses in the event of a death or divorce. The marital regime also reflects the legislative colonial history. The marital property regime determines a woman's right to own property and governs the distribution of assets among spouses in the event of a death or divorce. Each country's default marital property regime reflects the social norms shaping women's property ownership rights. The link between marital property regimes and inheritance rights is critical: for example, in a statutory community of property regime, a widow is entitled to half of the joint estate, and this statutory law can circumvent customary and personal religious laws, where the constitution considers statutory law to be superior.

Polygamy. Statutory law in many countries prohibits polygamy, but it can still be practiced under customary or religious law. Although the statutory legal system may protect the first wife's access to and ownership of productive

1 Hallward-Driemeier and Hasan (2012).

2 The United Nations Development Programme has developed a method to analyze linkages between formal and customary justice systems. See <http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/EwaWojkowska.pdf>.

resources and related benefits, it may not recognize other wives as spouses, which can have serious consequences for their dependents. Polygamy can severely affect women farmers and their productivity if they are secondary wives who cannot assert their marital property and inheritance rights (to land, for instance).

Inheritance. One way for women to acquire productive assets is through inheritance. As noted, in certain countries women cannot inherit under customary law but can inherit under statutory law. Sometimes the law regards a widow as part of the deceased husband's property, to be administered by his relatives. In other countries, usually where Shari'a law is practiced, sons and daughters might not have equal inheritance rights.

Bodily integrity and freedom from violence. Women who are subject to violence in the home or workplace have less capacity to make choices and act upon them. For instance, women abused by their partners might be restricted from working outside the house, starting their own businesses, or pursuing education. This form of control has significant macroeconomic impacts. It results in lost productivity and increases public spending on healthcare and the justice system.

General legal dimensions of gender equality in agriculture: Recommendations for project teams

- Examine legislation on women's legal capacity. Assess whether married women have the same legal capacity as unmarried women and as married men.
- Examine whether there is a head of household concept. Does it discriminate against women and cause productive resources to be allocated men?
- Examine to whom and how customary law applies.
- Improve awareness of women's rights by engaging with village chiefs, religious leaders, and local civil society partners and women's legal networks.
- Improve women's awareness of their rights by establishing links with organizations working with legal issues.
- Assess norms and prevalence of gender-based violence (GBV) in the project area as a part of the gender/social analysis.
- Prepare and disseminate a list of stakeholders and institutions with GBV expertise in the project area. Link with them while planning the project's activities.
- Assess the likelihood that the project's activities might increase GBV.
- Ensure women's physical safety during project activities. For example, are the working conditions safe? Is it safe for women to travel to training and work sites?



Legal barriers to women's participation in agriculture, with recommendations for project teams



ACCESS TO AND CONTROL OVER LAND

Land tenure reflects a continuum of land rights encompassing ownership, rental agreements, collective rights, leasehold rights, or informal settlement.

↳ Do not assume that legal ownership allows a woman to exercise effective control over her property.

Provisions limiting women's access to land can be found in customary and religious legal frameworks as well as in statutory frameworks — usually in laws governing inheritance, marital residence, marital property regime, divorce, and land rights. Customary norms in some rural areas link women's rights to land to their relationship with a man (husband, son, brother). Those rights can be endangered by widowhood or domestic violence.

Recommendations for project teams:

- Examine the types of rights that exist and how those rights are held, including whether women can hold property in their own names.
- Determine whether and how women are disadvantaged as property owners, tenants, or renters and how such disadvantages can be reduced.
- Assess the gender balance within land administration agencies and appoint a land registry staff member as a lead gender liaison.
- Introduce joint titling for spouses, and train registry staff accordingly. Ensure that titles are delivered simultaneously to both the male and female owners of property.
- Ensure that an outreach program informs women about their rights to obtain a title to their property, how to do so, and the benefits of land titling for women and men.
- Promote women's participation in land surveys.
- Establish women's information sessions as well as a hotline or advice service at the adjudication office.
- Verify that titles are correct and specify all property owners, including women.
- Confirm that the titling agency and the land registry are following the same regulations with regard to identifying the legal property owners.
- When designing the system for registering land transactions, incorporate procedures and facilities that protect women's tenure rights.
- Registry offices should offer extended services at least one night per week to enable women and men with time constraints to use those services.
- Make outreach offices available to women and men who cannot travel to a registry office.
- If the title to land is jointly held (for example, by a married couple), the consent of both rights holders should be required to sell the land or use it as collateral.
- Encourage the government to provide incentives for including women's names on land titles, such as reduced fees or stamp duty.

ACCESS TO FINANCE



Formal banking institutions may not lend to women who do not own collateral assets such as land. This barrier constrains women from starting and growing businesses.

With limited access to formal and informal credit, women farmers struggle to invest in seed and fertilizer, hire labor, and purchase new equipment to increase productivity and production.

Recommendations for project teams:

- Design financial regulations to ensure that women are not excluded based on definitions of ownership.
- Introduce quotas targeting women in national assistance programs such as rural savings and credit schemes, and provide corresponding capacity-building activities.
- Provide financial literacy training to women.
- Partner with the private sector (banks) and find innovative ways to include women. Options include using ICTs (such as mobile phones for remote banking) and biometric data (finger or face scans to access accounts).
- Explore alternatives for obtaining credit without traditional forms of collateral such as property or guarantees. For example, use women's microfinance repayment records to build a formal credit history.
- Agricultural banks can prioritize loan applications made by single women or jointly by husband and wife.
- Look for ways to strengthen the enabling environment for: (a) non-bank lending institutions (microfinance institutions and credit unions); (b) branchless banking (through agents or by allowing non-banks to issue e-money); and (c) lending based on moveable assets (warehouse receipt systems, secured transaction laws).

AGRICULTURAL LABOR



Labor laws regulate agricultural labor rights and contracts, but women often work in the informal sector **without a contract**, or as temporary or casual wage workers **with limited rights and no benefits** (FAO 2011a).



Women agricultural workers tend to be paid less than men for the same tasks (FAO (2011b, 16–20).

Many women simply provide unpaid, unregulated family labor.

Laws on **workplace safety and chemical exposure** usually are not applied in the agricultural sector. Often seasonal workers are excluded, de jure or de facto, from **maternity leave** provisions.



Women's seasonal, low-paid, unsecure employment can also lead to abuses such as sexual harassment in the workplace, safety risks, and health risks.

Recommendations for project teams:

- Ensure a supportive, non-discriminatory working environment with fair opportunities for men and women.
- Extend legislation on minimum labor standards to cover agricultural workers.
- Ensure that women have the right to enjoy special protection during pregnancy, to paid maternity leave, and to not be dismissed on the grounds of being pregnant.
- Trade unions are advised to negotiate the content of labor laws and company codes of conduct in ways that promote gender equality. Unions should also advocate for compliance with existing codes that advance women's rights.

ACCESS TO WATER AND



GROUND WATER

Many countries link water rights to land rights, and water use often is associated with permits, concessions, and other tenure systems.



Without land ownership, women can fail to obtain credit to secure water permits or purchase access to irrigated and rainfed land.

Water user associations (WUAs) may exclude women from membership and seriously impact their livelihoods. Women can be excluded when members are required to own land or irrigation equipment, or when membership is limited to one individual per household.

Perhaps most important, WUAs usually decide who has rights to groundwater and control its distribution. Rights may be contingent on ownership of equipment to extract groundwater or membership in the groundwater user group. Often only rights-holders decide how pumped water is allocated and distributed.

Recommendations for project teams:

- The team should assess whether WUAs have asset or collateral requirements for members. Land, tubewell, or pump ownership should not be a requirement for membership.
- WUAs could recognize forms of tenure other than ownership to determine eligibility for membership. They can also recognize multiple types of water users, such as gardeners, livestock owners, or fishers.
- Assess whether women participate in decisions about the allocation and distribution of water. Assess whether women occupy leadership positions in WUAs.
- Support equal employment opportunities in WUAs.
- Remove obstacles so that water services can meet multiple types of water needs (obstacles can include a narrow focus on type of water use in water service mandates or financing streams). Instead, prioritize water development and allocation addressing poor women's and men's domestic and productive needs.
- Examine the access and use rights to groundwater once it has been pumped. Who defines those rights? Who has the right to dispose of the right? Who adjudicates disputes?

ACCESS TO NATURAL



RESOURCES

Collective forest tenure includes several types of ownership: state, private, and customary/community (whether the owner is a village, a traditional local authority, forest user group, or community-based organization).

Rights to forest resources extend beyond property and ownership titles to include **rights to access, manage, or harvest those resources** for fuelwood, fodder, food, and other purposes. These access and use rights are **seldom defined in statutory law** and enforced.

Women can be discriminated against through customary law that does not recognize their rights to forest resources and through rules excluding them from the forest community. Typically men have de jure ownership rights. **Women have a major role in collecting and marketing non-timber forest products yet typically have de facto or land-use rights**, which are rarely documented and do not confer secure access.

Recommendations for project teams:

- Land registered for collective use should clearly include the names of all female and male community members.
- Legislation should distinguish between tree ownership and land ownership to enable women who plant trees to become owners of those trees.
- Project teams need to define which communities and which members of those communities have access to benefits from carbon sequestration.



For smallholders especially, the multiple **advantages of membership** in producer organizations include better access to inputs, productive resources, extension information, finance, and training. Producer organizations also provide an avenue for collective action (in negotiating better contract terms, for instance) and increased social capital (such as the provision of free legal advice).

Women often face direct and indirect barriers to membership in producer organizations (cooperatives, agricultural producer organizations, or farmer associations). Membership criteria requiring land ownership or full-time farm employment, or restricting membership to heads of household or to one member per household, can have a tendency to limit women's access to member-based institutions. (World Bank 2017). Given the key roles these organizations play in the agriculture sector and in policy-making, women's concerns will not be voiced if they are excluded by legislation or customary practices from membership.

Recommendations for project teams:

- Introduce realistic quotas coupled with capacity building for women at all organizational levels
- Encourage organizations to consider setting slightly lower membership fees for women in the short-term or to divide fee payment into instalments
- Build awareness in the whole community on the benefits of women's participation in organizations and economic activities in general
- Offer incentives for men & women to come together to meetings
- Create women-only associations, if appropriate, to encourage the entry of more women into new economic areas.
- Make time, locations and knowledge of agenda of meetings feasible for both men and women

Additional resources

CARE: [Guidance for Gender-Based Violence Monitoring and Mitigation within Non-GBV Focused Programming](#)

FAO: [Gender-Based Violence and Livelihood Interventions](#)

FAO: [Gender and Land Rights Database](#)

FAO: [Gender and law: Women's rights in agriculture](#)

IFPRI: [Women's Empowerment in Agriculture Index](#)

LANDESA: [LandWise Centre for Women's Land Rights](#)

UNWomen: [Constitutional Database](#)

USAID: [Toolkit for Integrating GBV Prevention & Response Into Economic Growth Projects](#)

WORLD BANK: [Enabling the Business of Agriculture](#)

WORLD BANK: [Gender-Based Violence Prevention: Lessons from World Bank Impact Evaluations](#)

WORLD BANK: [Toolkit: Gender Issues in Monitoring and Evaluation in Agriculture](#)

WORLD BANK: [Women, Business and the Law 2016](#)

WORLD BANK: [Women Business and the Law Database](#)

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