



SIAP Training Program for Supporting the Monitoring of Sustainable Development Goals (SDGs) 2030 in the Asia Pacific Region

SDG Indicators under FAO Custodianship

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GOAL 5. ACHIEVE GENDER EQUALITY AND EMPOWER ALL WOMEN AND GIRLS



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.a.1 (a) Proportion of total agricultural population with ownership or secure rights over agricultural land, by sex; and (b) share of women among owners or rights-bearers of agricultural land, by type of tenure (Tier II)
- 5.a.2 Proportion of countries where the legal framework (including customary law) guarantees women’s equal rights to land ownership and/or control (Tier II)

They provide complementary information on the efficiency and sustainability of water use

ROLE OF WOMEN IN AGRICULTURE

- Women account about half of labour force in agriculture in developing countries
- Women own much less share of land and other assets than men
- Rights of women to own land and other assets are limited in some developing countries
- If women had the same access to resources and opportunities as men, the number of poor and hungry would fall significantly (see FAO SOFA report “[Women in Agriculture Closing the gender gap for development](#)”)

WHY FOCUS ON LAND?

- Land is a key economic resource inextricably linked to access to, use of and control over other economic and productive resources
- Women’s land ownership and/or control is fundamental because:
 - ✓ guarantees economic security and avoid falling into poverty;
 - ✓ reduces women’s reliance on male partners and relatives;
 - ✓ increases women’s bargaining power within the household;
 - ✓ improves women’s chances of accessing extension services and credit;
 - ✓ encourages women to undertake or expand their business investments, and, in rural areas, to join producer organisations

SDG 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

METHODOLOGY

- This is a legal, means of implementation-type indicator
- Progress indicator 5.a.2 is measured by testing the legal and policy environment against **six proxies**:
 - A. Mandatory joint registration of land, or economic incentives for joint registration of land
 - B. Spousal consent for land transactions
 - C. Equal rights for sons and daughters to inherit and for surviving spouses to receive an inheritance share
 - D. Budgetary commitments to strengthen equal rights for women regarding both ownership and/or control of land
 - E. Where **customary systems** are recognized in the legal and policy framework, women's land rights are protected
 - F. Mandatory participation of women in land institutions

TERMINOLOGY

- **Land** – is all immovable property – for instance the house, the land upon which a house is built and land which is used for others purposes, such as agricultural production. It also encompasses any other structures built on land to meet permanent purposes.
- **Land ownership** - is 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.
- **Control over land** - is 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.
- **Legal and policy framework** - encompasses the Constitution, policy, primary legislation and secondary legislation. The legal and policy framework includes customary legal systems where they have been recognised by statutory law or the Constitution.

PROXY A: IS JOINT REGISTRATION OF LAND COMPULSORY OR ENCOURAGED THROUGH ECONOMIC INCENTIVES?

- Rationale: Many women throughout the world don't have rights to ownership and control of their family land
- Without inclusion of **women's name and rights** on the land registration document, women's property rights can be insecure. This is often because of gender biased norms and practices.
- Women's property rights are particularly at risk when women separate, divorce, are abandoned or become widows
- One measure that countries can adopt to address these risks is to include in their legal framework provisions that establish **mandatory joint registration** of land for married couples, or which encourage joint registration through economic incentives.
- More women are protected when countries also include unmarried couples in the provision on joint registration

PROXY A: IS JOINT REGISTRATION OF LAND COMPULSORY OR ENCOURAGED THROUGH ECONOMIC INCENTIVES?

- Any of the four scenarios can exist to meet the threshold:
 1. Specific reference to **compulsory joint registration** of land for married couples **OR**
 2. Specific reference to **compulsory joint registration** of land for married and unmarried couples **OR**
 3. Joint registration of land for married couples is **encouraged through economic incentives** **OR**
 4. Joint registration of land for both married couples and unmarried couples is **encouraged through economic incentives**

PROXY B: DOES THE LEGAL OR 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.
- Property management rights include the power to mortgage, lease or sell property. When such action are taken unilaterally by a husband or male partner, especially when they concern the family home or other critical assets, they can leave a woman and any children homeless, and without means of subsistence.
- The include of **consent requirement** in a country's legal framework is therefore an important way to protect women from arbitrary or unfair actions of the spouse or partners, and ensure more equal control over the family home.

PROXY B: DOES THE LEGAL OR POLICY FRAMEWORK REQUIRE SPOUSAL CONSENT FOR LAND TRANSACTIONS?

Any of the two scenarios should exist to meet the threshold:

- Specific reference to **spousal consent** for land transactions;

OR

- Specific reference to **spousal and partner consent** for land transaction.

PROXY C: DOES THE LEGAL AND POLICY FRAMEWORK SUPPORT WOMEN AND GIRLS' EQUAL INHERITANCE RIGHTS?

- Rationale: There are still many countries where the law discriminates against women as spouses and daughters, denying their right to inherit.
- Ensuring **equal inheritance** rights for women will be important in guaranteeing women's equal rights to land ownership and/or control.
- In many legal systems, inheritance is a crucial mechanism for women to acquire assets, given their limited ability to acquire property through the market. It is often a key channel through which women can secure independent land rights.

PROXY C: DOES THE LEGAL AND POLICY FRAMEWORK SUPPORT WOMEN AND GIRLS' EQUAL INHERITANCE RIGHTS?

Both of the two scenarios should exist to meet the threshold:

- Reference is made to a right to inherit for **sons and daughters**;

- ✓ Equal right to inherit for sons and daughters; **AND**

- ✓ Right of sons and daughters to inherit in equal shares;

AND

- Reference is made to **spousal or partner** right to inherit or use a share of the deceased's estate

- ✓ Equal right of male and female surviving spouse to inherit a share of the deceased's estate **AND/OR**

- ✓ Equal right of male and female surviving spouse to a lifetime user right to the family home

PROXY D: DOES THE LEGAL AND POLICY FRAMEWORK PROVIDE FOR THE ALLOCATION OF FINANCIAL RESOURCES TO INCREASE WOMEN'S OWNERSHIP AND CONTROL OF LAND?

- Rationale: Due to historical and ongoing discrimination, women face an unequal burden in accessing the rural property market.

- Some countries are allocating financial resources to support women's ownership and control over land, often in the form of credits and loans.

- Public credit systems, with flexible eligibility criteria, help to overcome the difficulties that women face when seeking a loan from private institutions. Unlike private institutions, public credit systems do not usually require possession of property or proof of formal income as a condition for obtaining a loan.



PROXY D: DOES THE LEGAL AND POLICY FRAMEWORK PROVIDE FOR THE ALLOCATION OF FINANCIAL RESOURCES TO INCREASE WOMEN'S OWNERSHIP AND CONTROL OF LAND?

The threshold is met if:

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

OR

- Allocation of financial resources for the **general purpose** of increasing women's access to a wide range of productive resources, **including land**.



PROXY E: DOES THE LEGAL AND POLICY FRAMEWORK SUPPORT WOMEN AND GIRLS' EQUAL INHERITANCE RIGHTS?

- In some parts of the world, customary tenure systems operate alongside the formal law.
- Often, in these customary contexts, women access land only through their relationship with a male relative. Statutory recognition of such customary land tenure systems can therefore reinforce discrimination and exclusion of women as landowners.
- To avoid such outcomes, **explicit provisions** for the protection of land rights of women should accompany any legal provisions recognizing customary land rights.

PROXY E: DOES THE LEGAL AND POLICY FRAMEWORK SUPPORT WOMEN AND GIRLS' EQUAL INHERITANCE RIGHTS?

- The Constitution recognizes customary law yet gives supremacy to provisions concerning gender equality and non-discrimination in case of conflict;
 - ✓ The Constitution recognizes customary law; AND
 - ✓ The Constitution provides for supremacy of gender equality and non discrimination on case of conflict with customary law.

OR

- Explicit protections of women's land rights within laws and policies recognizing customary land tenure.
 - ✓ Customary land tenure is recognized in the legal and policy framework AND
 - ✓ The law explicitly protects women's land rights in the legal and policy framework recognizing customary land

PROXY F: DOES THE LEGAL AND POLICY FRAMEWORK MANDATE WOMEN'S PARTICIPATION IN LAND MANAGEMENT AND ADMINISTRATION INSTITUTIONS?

- In many countries, 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 to common land.
- In this regard, it is important to foster women's participation in land management and administration institutions.

PROXY F: DOES THE LEGAL AND POLICY FRAMEWORK MANDATE WOMEN' S PARTICIPATION IN LAND MANAGEMENT AND ADMINISTRATION INSTITUTIONS?

The threshold is met if:

- There is a law or policy that establishes a mandatory quota for women's representation in land administration and management institutions

METHODOLOGY

- The computation of results involves two main exercises:
 - assignments of a “stage of incorporation” for each proxy
 - classification of country according the number of proxies located in primary and/or secondary legislation and

METHODOLOGY

Stage	Legal or policy situation	Examples of legal or policy instruments
Stage 0	Proxy is absent / could not be located	The legal and policy framework is silent on the proxy
Stage 1	A policy is in place, including the proxy	Policy, National Program, Lettre Politique, National Plan, Strategy
Stage 2*	Primary legislation includes the proxy	Statute, Act, Code, Loi de Cadre/Orientation, Proclamation, Executive, Presidential/Royal Decree, Decision by Council of Ministers, Constitution
Stage 3*	Secondary legislation contains the proxy	Regulation, Ministerial Order, Rules, By-Law, Circular, Directive, Sub-Decree, Presidential Proclamation, Resolution
Non-Applicable (NA)	The proxy does not apply	Only the case for Proxy E in circumstances where customary land tenure rules do not exist in the country or customary law is not recognised

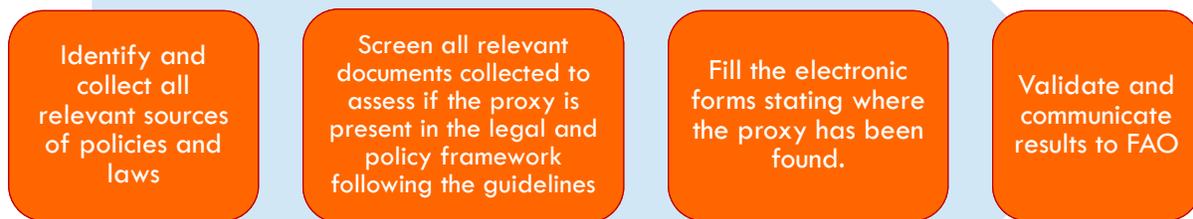
KEY RULES FOR THE ASSESSMENT

- **Data sources:** Official published primary material on the law and policy framework: not de facto status, i.e. customary law needs to be incorporated in the legal framework to be considered.
- **Religious laws:** in systems with multiple religious laws, focus on situation for two largest religious groups.
- **Customary law:** only relevant when recognized in legal framework (i.e. no measuring of de facto incidence).
- **Policies:** the assessment analyses policies because they are foundations for laws. However, the results regarding the policies will not be included in the global SDG assessment results

KEY RULES FOR THE ASSESSMENT

- Countries to identify and designate a **national entity** with a mandate related to land, gender and law (*Ministry of Land, Ministry of Justice, Ministry of Gender*) and a **national legal expert** for conducting the legal assessment.

National Legal Expert:



KEY RULES FOR THE ASSESSMENT

- To complete the indicator 5.a.2 assessment, national legal experts must examine the national legal and policy framework and complete the electronic survey. This involves three steps that must be repeated **for each proxy**
 - ✓ Collect all the relevant policy and legal documents, using the checklist (Form 1) contained in the electronic survey as a guide as to the instruments to check for the concerned proxy.
 - ✓ Using the detailed guidelines provided, determine whether the proxy exists in the legal and policy framework and in which instruments.
 - ✓ Complete checklist (Form 1) and list of instruments (Form 2) for that proxy on the electronic survey, citing the instrument and the relevant provisions where the proxy was located and the relevant parts of Form 3 (questionnaire), citing the instrument where the proxy was located. Include a hyperlink to the text of the legal and policy instrument (even if this is in a foreign language).

FORM 1: CHECKLIST OF POLICY AND LEGAL INSTRUMENTS

Relevant policies/legal instruments	Instrument	Checked for proxy A	Sub-national
Draft policies (not formally adopted)	Draft national land policy or strategy	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft national agriculture policy or strategy	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft national gender policy or strategy	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Other relevant draft policies	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
Policies formally adopted	National land policy or strategy; national land administration program	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	National agriculture policy or strategy	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	National gender policy or strategy	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Other relevant policies	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
Draft legislation (submitted for formal adoption)	Draft amendment of the Constitution / draft Constitution	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to / draft family law	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to / draft civil code	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to / draft law on land legislation	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to / draft law on land registration	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to / draft law on agriculture	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Other relevant draft amendments / draft laws	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to personal law I / draft personal law	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to personal law II / draft personal law	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes
	Draft amendment to personal law III / draft personal law	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Instrument does not exist	<input type="checkbox"/> Yes

FORM 2: LIST OF POLICY AND LEGAL INSTRUMENTS

Relevant policies/legal instruments	Full name of instrument*	Date of submission/adoption	Relevant Article, Section or Paragraph**	Scenario 1 (compulsory for married couples) Scenario 2 (compulsory for married and unmarried couples) Scenario 3 (economic incentives for married couples) Scenario 4 (economic incentives for married and unmarried couples)***	If sub-national, name of state (largest)	Exceptions?	Explanations / Notes / Exceptions (cite) / Contradictions (cite)****
Draft policies				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
Policies formally adopted				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
Draft legislation (bills)				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
Primary legislation				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
Secondary legislation				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	
				<input type="checkbox"/> Scenario 1 <input type="checkbox"/> Scenario 2 <input type="checkbox"/> Scenario 3 <input type="checkbox"/> Scenario 4		<input type="checkbox"/> Yes	

FORM 3: QUESTIONNAIRE

1. Is the joint registration of land compulsory or encouraged through economic incentives?

- Proxy was not be found
- In draft policy document
- In formally adopted policy document
- In draft legislation (bill)
- In primary legislation
- In secondary legislation (order, rule, regulation)

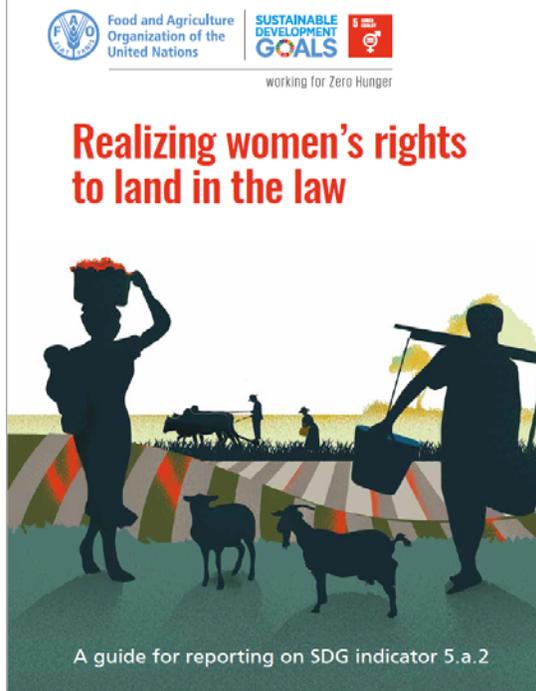
Policy or legal instruments where the proxy/proxies was/were located:

.....

METHODOLOGY

Result of assessment: Number of proxies that are present in the primary and/or secondary legislation		Classification
Where Proxy 5 is applicable	Where Proxy 5 is not applicable	Levels of guarantees of gender equality in land ownership and/or control in the legal framework
<u>None of the six</u>	<u>None of the five</u>	No evidence
<u>One</u>	<u>One</u>	Very low
<u>Two</u>	<u>Two</u>	Low
<u>Three</u>	<u>Three</u>	Medium
<u>Four</u>	<u>Four</u>	High
<u>Five or six</u>	<u>All five</u>	Very high

REALIZING WOMEN'S RIGHTS TO LAND IN THE LAW



A recent publication by FAO provides a full methodological account of SDG indicator 5.a.2 and comprehensive guidelines for how to complete the legal assessment:

<http://www.fao.org/policy-support/resources/resources-details/en/c/1111215/>

CAPACITY DEVELOPMENT

- A global training workshop took place in Turin, Italy, in March 2018, with parallel sessions for 5.a.1 and 5.a.2
- Two Asia Pacific country took part: **Thailand** and **Laos**
 - Thailand:
 - Ms. Somkid Thumwong, National Statistical Office
 - Ms. Cheera Thongkrajai, Ministry of Social Development and Human Security
 - Laos:
 - Mr. Phonesavanh VANHMIXAY, Ministry of Agriculture and Forestry
 - Mr. Anongsone Phommachanh, Ministry of Natural Resources and Environment (MONRE)
- E-learning course for 5.a.2 also available since February 2018
- Ad-hoc on-demand technical assistance to support countries in the 5.a.2 assessment

EFFECTIVE COUNTRY REPORTING ON 5.A.2

- On ...November 2018, FAO sent a letter to NSO SDG focal points (or NSO Heads in case no focal point is identified) requesting their support in facilitating the reporting of 5.a.2
- The letter explains that reporting on this legal indicator requires the official designation of the responsible institution and the nomination of a legal expert on land and gender issues
- The legal expert should proceed with the assessment, equipped with the three forms and the methodological guidelines

THANK YOU

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For more detailed information please see:

- <http://www.fao.org/sustainable-development-goals/indicators/5a2/en/>