



# INVISIBLE AND EXCLUDED: RISKS TO INFORMAL WIVES AND PARTNERS FROM LAND TENURE FORMALIZATION AND TITLING CAMPAIGNS IN LATIN AMERICA

By: Jen Duncan, Laura Bermudez, Kevin Barthel

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**Authors:**

**Jennifer Duncan**; Lead Author, [jduncan@landallianceinc.org](mailto:jduncan@landallianceinc.org)

**Laura Bermudez**, [lbermudez@landallianceinc.org](mailto:lbermudez@landallianceinc.org)

**Kevin Barthel**, [kbarthel@landallianceinc.org](mailto:kbarthel@landallianceinc.org)

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**Contact Information:**

Global Land Alliance  
One Thomas Circle NW  
Suite 700  
Washington, DC 20005  
United States of America

Christen Corcoran  
+1 240-343-4860  
[ccorcoran@globallandalliance.org](mailto:ccorcoran@globallandalliance.org)  
[www.globallandalliance.org](http://www.globallandalliance.org)

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## ACRONYMS

CBO	Community-Based Organization
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CIFOR	Center for International Forestry Research
CMP	Peruvian Women’s Centre
CSO	Civil Society Organization
FISO	<i>Formulario de Inscripción de Sujetos de Ordenamiento</i>
GLA	Global Land Alliance
GR	Guiding Resolution
IDB	Inter-American Development Bank
PETT	<i>Programa Especial de Titulación de Tierras</i>
REDDOM	Rural Economic Development Dominicana
UNICEF	United Nations Children’s Fund
UN Women	United Nations Entity for Gender Equity and the Empowerment of Women
USAID	United States Agency for International Development
UTEFDA	<i>Unidad Técnica Ejecutora de Proyectos de Desarrollo Agroforestal</i>
WRI	World Resources Institute

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### **The risks to informal spouses**

*El riesgo para los cónyuges informales como resultado de los procesos de formalización de los derechos de tierra es grave y es compartido en muchos países y contextos culturales de todo el mundo. Esta es una situación bastante común en que el sector de la tenencia de la tierra no ha prestado suficiente atención como comunidad global. Si bien se ha identificado generalmente como un riesgo, la falta de política y mecanismos salvaguardias operativas incluidas en los proyectos de formalización y titulación de tierras proporciona la consecuencia involuntaria de que un cónyuge informal podría estar en una situación de menor seguridad de tenencia como resultado de un proceso sistemático de de titulación de tierras.*

[The risk to informal spouses as a result of land rights formalization processes is grave and it is shared in many countries and cultures worldwide. The global community has not given this common situation in land tenure sufficient attention. Even if the risks are raised, the lack of policy and operational safeguards included in formalization and titling projects may still unintentionally leave informal spouses with less tenure security than they had before.]

Excerpt from study on risk of impoverishment and displacement from land titling efforts in Hondo Valle, Dominican Republic, 2019 (UTEFDA and IDB)

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# EXECUTIVE SUMMARY

Latin American countries have pursued rural land titling and registration campaigns over the past several decades with a broad range of social and economic goals. These efforts represent a permanent or long-term legal recognition of rights to land as a primary economic asset for agricultural communities and a source of family subsistence, security, and social and cultural wellbeing. Land rights can provide multi-generational benefits to recipients.

An increasing body of evidence demonstrates gender bias in land rights formalization campaigns, and gender disparity in landholding in Latin America remains acute despite decades of policies, laws, and regulations supporting gender equality. One reason for this disparity appears to be the high prevalence of marriage informality in areas of land rights formalization. Even where laws provide equal land rights to informal spouses, claiming these rights is far from easy in the context of a land rights formalization campaign, where implementers may never even know that an informal spouse exists or has a co-ownership claim to a particular parcel of land. Women themselves often do not know they have rights as informal spouses, and in many cases do not view themselves as “informal spouses” at all, but rather as partners who may not have any spouse-like rights. Women often lack access to justice to make a timely claim if their rights have not been recognized, social norms may discourage informal spouses from making a claim, and data metrics and feedback loops are inadequate to catch problems as they arise during implementation.

This paper is a response to the urgent need project implementers have highlighted in several Latin American countries for further attention to the challenges of marriage informality that results in the exclusion of rural women in land tenure formalization campaigns. Authors present recent evidence from the Dominican Republic and Colombia against a backdrop of regional and global trends, discuss policy implications, and explore practical ideas for mitigating risks to informal wives in land rights formalization campaigns.

Recommendations provided at the end of the paper fall into seven categories:

- 1) Improve legal and regulatory frameworks.
- 2) Strengthen capacity development in implementing institutions and provide support through project design.
- 3) Improve awareness of women’s land rights, with a focus on rights of informal wives.
- 4) Enhance women’s access to justice at the community level.
- 5) Foster changes in gender norms at the community level.<sup>1</sup>
- 6) Generate better data and the ability to coordinate data between agencies to locate informal spouses.
- 7) Pursue research to better understand the issue of gender-based exclusion from land rights formalization campaigns because of marriage informality.

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<sup>1</sup> For more information on social and gender norms related to land rights, see USAID, 2021.’

# INTRODUCTION

Land rights formalization and titling campaigns in Latin America have improved land tenure security for many rural people over the past decades.<sup>2</sup> These efforts represent a historic transition of land-based wealth, likely to benefit recipients of registered rights for generations to come.

While many have gained, however, others have been left out, and risks are often highest for women. With growing global recognition of women's land rights as a central factor in achieving social development goals, many countries have adopted gender equitable policies in land rights formalization, requiring, for example, joint spousal registration for land held by married couples or for any couple living in a long-term "marriage-like" relationship. However, the Latin American region has one of the highest rates of marriage informality<sup>3</sup> in the world, and emerging evidence points to the **risk that land rights formalization efforts may exclude rural women who live with partners in informal marriages, despite legal safeguards. Formalization programs that fail to recognize and include these "invisible" wives risk leaving them worse off than they were before**, in some cases permanently transferring rights to the land on which they live and work to male partners.

The purpose of this paper is to raise awareness among national governments, multilateral and bilateral development agencies, civil society, and researchers about the risks to rural women's land rights related to marriage informality in the context of land tenure formalization campaigns in Latin America. The paper draws on the experience of Global Land Alliance (GLA), along with its national and international partners, in ongoing tenure formalization efforts in Colombia and the Dominican Republic. The paper is not based on quantitative data collection, as data on marriage formality and many gender-based aspects of land tenure regularization programs does not yet exist or is incomplete in most cases. It is rather based on implementers' observations and qualitative data gathered in the course of project implementation, through one-on-one conversations and focus group discussions.

The paper is organized into the following parts:

- 1) Summary of facts, trends, and why this issue matters;
- 2) Causes of exclusion based on marriage informality;
- 3) Country-based variations and issues; and
- 4) Conclusions and recommendations.

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<sup>2</sup> Land rights formalization campaigns have taken place in many Latin American countries over the past 30 years, including Brazil, Bolivia, Colombia, the Dominican Republic, Guatemala, El Salvador, Honduras, Nicaragua, and Peru. This paper does not address important questions about overall fairness or outcomes of formalization efforts outside of the particular issues related to informal spouses. See Guereña 2016 for a broader discussion.

<sup>3</sup> "Informal, *de facto* or common law unions refer to arrangements in which the parties involved cohabit over a period of time without formalizing their relationship..." UN Women et al., 2018, p. 9.

# PART 1: SUMMARY OF FACTS, TRENDS, AND WHY THIS ISSUE MATTERS

## *First—Securing Women’s Land Rights is Critical to Achieving Development Goals*

In the past decade, a clear international consensus has emerged that women’s land rights are a critical aspect of equitable rural development and poverty alleviation, and are linked closely to social and economic objectives, including women’s equal decision-making authority within the household; women’s economic, social, and political empowerment at the community level; household income and food security; women’s and children’s health and educational needs; women’s economic resilience; environmental and climate change sustainability; and reductions in gender-based violence (Salcedo-La Viña, 2020; UN Women, 2020; Landesa, 2016; Landesa, 2019). The UN Sustainable Development Goals feature women’s land rights indicators for Goal 1 (poverty eradication), Goal 2 (ending hunger), and Goal 5 (gender equality).

Women’s land rights are important both within a marriage or marriage-like union, and during key life changes. Within a marriage or union with a partner, women who have secure land rights often have a greater role in decision making about land and the income derived from it, which in turn fosters higher levels of wellbeing for the household, and progress toward development goals at multiple levels (UN Women, 2020; Landesa, 2016).<sup>4</sup> Women with secure land rights are also more likely to participate fully in decisions about land transactions. During family transitions, such as separation, divorce, or death of a husband/partner, a woman’s secure rights to land can serve as a life raft, providing her and her children with a place to live and a productive economic asset to use, sell, mortgage, or lease (Salcedo-La Viña, 2020; Landesa, 2016; UN Women, 2020). This is of high relevance and concern in Latin America, where divorce and separation rates continue to rise (UN Women, 2020) and male-dominated inheritance patterns for land constrain women’s choices upon divorce (see Guereña, 2016, p. 17).

### **Box 1. When women have greater control over economic resources within the household, they...**

- Have a more equal status vis-à-vis men within their intimate relationships;
- Have greater negotiating power in the family;
- Are more able to leave an unsatisfactory or violent relationship; and
- Have greater control over their own income and an adequate level of wellbeing

United Nations Entity for Gender Equity and the Empowerment of Women (UN Women) 2020, p. 3

Secure land rights are often a **threshold condition** for women farmers and other rural residents to live, work, and participate in their households and communities on a par with men. For women’s land rights

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<sup>4</sup> Authors of a 2019 Center for International Forestry Research (CIFOR) report summarize why it is critical in the land rights sector to distinguish gender interests within the household. “Gender differences are sometimes ignored, or it is assumed that a household head can and will speak for the interests of all. History suggests this is not always the case and raises red flags for anyone working on land and resource tenure rights, including land demarcation, and rule setting and enforcement. Failing to clearly understand these differences can lead to loss of rights for women, and potentially other vulnerable groups, and to food insecurity for their families.” Larson et al., 2019, p. 7.



to be secure and equal to those of men, they must not just be legally prescribed, but also socially legitimate, durable, and enforceable (Hannay & Scalise, 2014).

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*For rural women, land is life; [land rights are] vital for the family's land ownership, and inputs to make it productive are closely linked to women's economic empowerment, to decision-making about food production, to the preservation of our environment and to ensuring food security and protecting our native seeds...*

Matilde Rocha, Vice-President *Federación Agropecuaria de Cooperativas de Mujeres Productoras del Campo de Nicaragua* (FEMUPROCAN), Nicaragua, as quoted in Da Silva (FAO, 2016)

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Although women without secure land rights have little chance of fair return from land-based activities, secure land rights may not in themselves be enough. Evidence shows that other complementary goods and services are often necessary for women to benefit equally from their investments of labor and resources in the land. Women may also need access to credit, agricultural extension and training in small business management and climate-resilient practices, along with development of local market infrastructure and greater opportunity to participate in agricultural supply chains. When women in Latin America do not hold secure land rights, however, they are less able to access inputs like credit and technical assistance (Guereña 2016, p.27).

Finally, although this paper focuses on the urgent need to include informal spouses as joint landholders in land rights formalization campaigns, evidence demonstrating gains to women through joint titling or certification is less well-established than it is for women having individual titles or certificates to the land. This is likely related to negative beliefs and norms about women's co-ownership of land, and in some cases lack of awareness by both women and men, as well as local officials, about co-ownership rights, as further discussed below. Guereña (2016, p. 27) makes the point that joint titling is not in itself enough to guarantee women equal rights to land in Latin America, without specifically targeted gender policies that support the recognition of women's role in agri-food production both at household and community levels. While evidence on benefits to women from joint titling is nuanced and still emerging, most would agree that the alternative to including women's names on titles or certificates in the process of systematic land rights formalization—that is, the permanent or long-term exclusion of women from recognized rights to the land on which they live, work, and depend—is not acceptable.

The challenges that some women face in obtaining joint title to their land rights also point to another question that is fundamental to this paper: would it be possible for more rural women to claim land in their own names, independently of their husbands or male partners, in the context of land rights formalization campaigns? As discussed below, in many cases women in current or past unions with men meet the qualification requirements for land rights allocation/formalization **in their own right**, based on their occupation and contribution to productive use of the land over some period of years. *Our inquiry into the effect of marriage informality on ensuring rural women benefit equally from land rights formalization campaigns should not be limited to informal spouses' rights **through** their male partners' claims but rather include all of the ways that rural women should be able to claim their rights, regardless of civil status* (GLA, 2016)

**Second—ensuring women’s equal opportunity to benefit from land rights formalization campaigns requires the identification and inclusion of informal wives**

Given the prevalence of spousal informality in Latin America, including informal wives in land rights formalization campaigns is essential to ensuring that women have equal opportunity to men to benefit from these campaigns. Marriage informality is a widespread phenomenon with deep roots in Latin America, including in areas of prominent land rights formalization campaigns, and rates in most countries continue to either hold steady at high levels or increase (Deere & León, 2021; UN Women, 2020; Esteve et al., 2016). According to the authors of a 2016 study examining the historic causes and trends of consensual (informal) unions in Latin America, the rise began in the 1960s (Esteve et al., 2016). Prior to that time, some countries already had high levels, as formally recognized marriage was viewed mostly as an institution of white Europeans and the elite classes and was not prevalent among Indigenous Peoples.

According to the most recent data (in most cases, the 2010 censuses), the following percentages of 30-34-year-old women in unions with men (marriage and cohabitation) were cohabitating:

**Diagram 1: Percentage cohabitants among women aged 30-34 who are in unions/marriages with men (Esteve et al., 2016)**



Marriage informality in Latin America is linked with increased vulnerability and marginalization for women and girls. While informal unions are the norm in many areas for women and men of all ages, child and early marriages are more frequently informal than formal, and women and girls in child and early marriages are most often Indigenous, do not speak Spanish, and live in rural areas (UNICEF, 2019, p. 4). According to a 2019 report from the United Nations Children’s Fund (UNICEF), one-quarter of young women in Latin America and the Caribbean are married—formally or informally—before they are 18, a ratio that has stayed the same for 25 years (UNICEF, 2019; see also Taylor et al., 2019; Taylor et al., 2015). Women who entered informal unions when they were children or very young, or who are still children when land formalization occurs, are likely to be less empowered within the household. They are less likely to have completed their education, less likely to know their rights, less likely to have strong support networks, and less likely to be confident and vocal with their partners.

In some cases, high rates of informal marriage also correspond with areas of conflict or post-conflict. In Colombia, for example, decades of armed conflict caused long-term disruption and change to the social fabric that supported marriage formality (see Deere & León, 2021). By 2010, the rate of women aged 25-29 in consensual unions, among all women in unions with men, was 76.8 percent (Deere & León, 2021). Informal marriages were prevalent in Nicaragua, Peru (nearly 70 percent by 2010), and in other countries that have embarked on large-scale land rights formalization campaigns as a step toward reestablishing socio-economic stability. In these areas, risks are particularly high of gender exclusion from land rights recognition based on spousal informality at the outset.

***Third—project-based evidence from several Latin American countries indicates a very high risk that informal wives have been and continue to be excluded in land rights formalization***

Given how important women’s land rights are to an array of critical development goals, ensuring that women benefit equally from land rights allocation and formalization programs is not only a desirable goal (or box to check), but **must be considered an absolute threshold issue for the success of the program**. This is both because of the “good things” that can ensue when women have secure rights to land, and because *not* including women risks increasing entrenched bias and marginalization of rural women and children from economic opportunity for generations to come. Land rights formalization programs that do not fully incorporate the rights of both formal and informal spouses risk leaving a legacy of socio-economic disempowerment for women within their households, communities, and countries, characterized by:

- Decreased ability to pursue economically independent livelihoods, increasing vulnerability to exploitation;
- Exclusion from decisions about the sale, lease, and use of land and property;
- Greater vulnerability to dispossession, land grabbing, and displacement;
- Denial of inheritance rights in case of divorce or spouse death;
- Higher levels of poverty and lower socio-economic status;
- Lack of a safety net in times of financial crises and life changing events; and
- Greater vulnerability to enter and remain in abusive relationships and experience gender-based violence.<sup>5</sup>

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<sup>5</sup> USAID, 2022. Systematic denial of land right amounts to a form of economic gender-based violence against women. This kind of violence puts women at risk of other kinds of violence such as sexual or physical violence,

Despite the urgent need to prioritize gender inclusion, the global land rights sector has also learned over the past decade that full and equitable inclusion of women in land rights formalization programs is far from easy, even when legal rights are in place and there is political will at the national level. In fact, land formalization programs in Latin America have a mixed history of gender inclusion (Fuentes & Wiig, 2009; Broegaard, 2013; Guereña, 2016; UN Women et al., 2018). Despite some of the strongest legal protections for women in the world, such as laws that mandate joint titling of land for couples in both formal and informal marriages, implementation challenges persist, resulting in gender-biased results. **“Without exception” women still have fewer landholdings than men in Latin America, ranging from 8% of total landholdings in Guatemala to 30% in Peru**” (Guereña, 2016). Women who do hold land have on average smaller, less secure and worse quality plots than men (Guereña, 2016).

The current status of land rights in most Latin American countries reflects a deep bias toward males in inheritance, in marriage, in land distribution programs by both community and state programs, and in land markets (Deere & Magdalena, 2003). Land rights formalization campaigns that merely recognize this status quo risk exclusion of large numbers of women, especially those within marriages and unions with men.

Women who are in informal marriages or partnerships with men are often most at risk of exclusion in land formalization campaigns. Much importance has been placed on gross percentages of women’s names on registration documents in large-scale, donor-supported formalization campaigns. But even when these numbers are considered to be “good,” they often reflect provision of land rights to high numbers of single women heads of households (often widows), while masking much lower numbers for jointly titled land between spouses in formal/informal marriages.

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*Women in informal or common law unions or polygamous marriages, particularly when these are not legally recognized, also face significant disadvantages. These women are more likely to be left out of titling or certification processes. Although many countries now legally recognize consensual unions, the process of recognition can be so costly and cumbersome that poor, rural couples do not go through with it.*

Salcedo-La Viña (World Resources Institute [WRI]), 2020

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**Risks appear to be highest for women within informal marriages—the invisible spouses. These women may not only emerge from land rights formalization campaigns without their own name on a title, certificate, or registry, but in a worse place than they were before, as the rights to land they have lived on, contributed to, and farmed for family food needs or income now shift legally to somebody else.** Even when laws protect the rights of informal spouses to community property in their “marital” union, the reality is that an informal spouse will almost never be able to claim her rights if her name is not on the registration document.

Among informal wives, one subset appears to be at an even higher risk: women who are “second” (or can include third or fourth) wives or partners, forming part of a man’s second family, who may have worked and lived on land that will now be formally transferred to either the man alone, or to the man and his first,

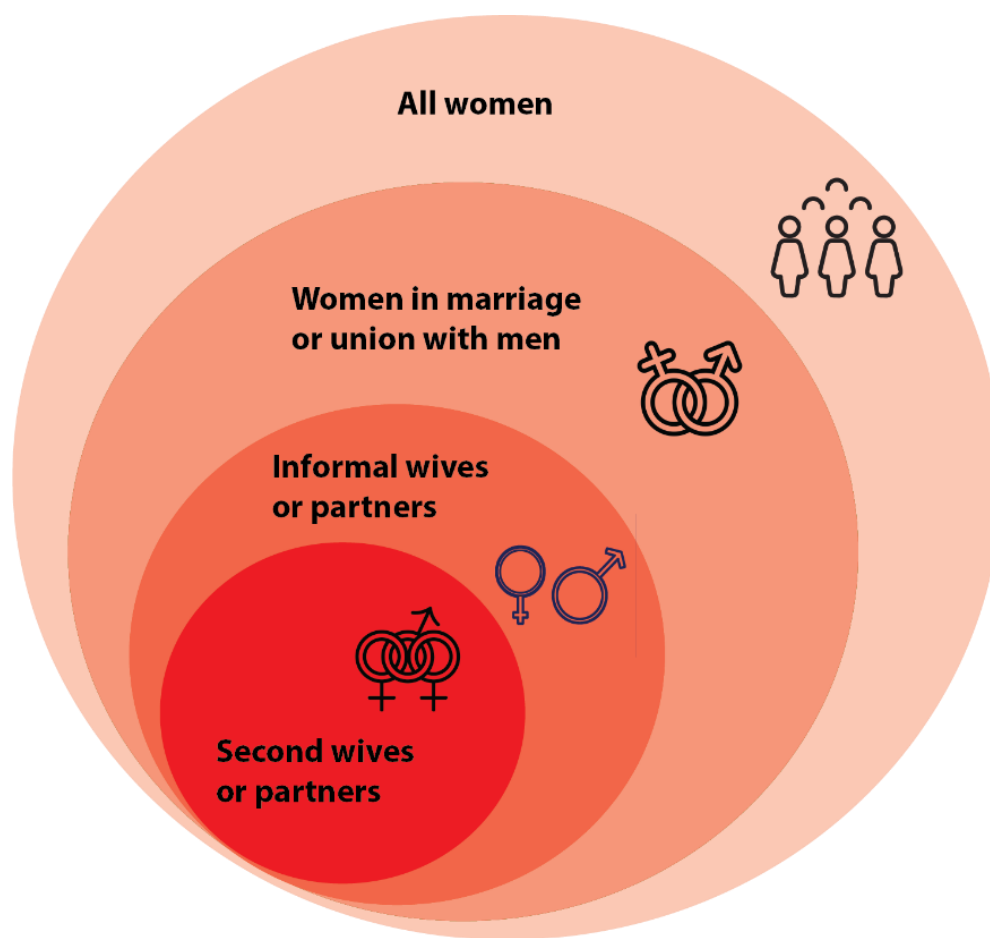
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because they lack the economic power to escape from their violent partners/sons/family members. See Bessa & Malasha, 2020, for further discussion on the multiple aspects of gender-based violence to consider in the context of women’s land rights.

socially and/or legally recognized wife. In some countries and regions in Latin America, social norms permit parallel families, wherein one man maintains multiple informal wives and families, each living on a separate, distinctive parcel of land.<sup>6</sup> Land formalization programs risk missing these “second” wives, and may jeopardize traditional social norms that have provided some level of protection to these wives, such as the right to remain on the land and in the house if the informal husband/partner dies. This may also deprive the children of the second wives from inheriting the land, depending on applicable laws of succession.

Another risk among informal spouses arises in the case of subsequent partners: an initial partner who may have worked on and occupied land for many years with a male partner may be passed over completely in a land rights formalization campaign if they have since been divorced or separated and she no longer lives on the land.

**Diagram 2: Concentric circles of risk for women in land rights formalization programs**



<sup>6</sup> Parallel family arrangements in Latin America are not recognized by law, or formally recognized in most social and cultural settings, and in this way differ from open polygamous marriage practices and norms in many parts of the world. None-the-less, these parallel families exist in many Latin American countries, and many communities show some level of acceptance/tolerance for a man having extra-marital relationships and forming a second or third family separate (and often hidden) from his first.

Risks are especially high for informal wives and partners where title conveys a right to transact land, and in areas with established land markets—in these cases, men who are solely named in registries and on titles or certificates can unilaterally sell, mortgage, or lease out the land without any approval from their spouse. Even if legal protections exist for spouses in this situation (e.g., laws establishing community of property for consensual unions or de facto marriages (*uniones maritales de hecho* in Colombia, or laws requiring spousal approval for transactions of family land), it is very difficult for registration officials and/or prospective buyers or mortgagors to find an unnamed informal wife if her name is not on the registration document. She is often, indeed, invisible. Similar risks would apply in the case of compulsory acquisition, whereby the government takes private land for public good, paying fair compensation to the (named) owner.

## PART 2: CAUSES OF EXCLUSION: WHY DOES THIS ISSUE PERSIST?

Factors causing the exclusion of informal spouses in land rights formalization campaigns include (1) gaps in the legal or regulatory framework (including implementation guidelines and data collection forms); (2) lack of capacity among implementers to identify and include informal spouses; (3) lack of awareness among women and men at the community level about the rights of informal spouses; (4) inaccessible or biased access to justice by women to claim their rights (low levels of legal literacy, lack of fair and accessible vetting processes for initial claims, and lengthy and expensive claims processes); (5) discriminatory social norms; and (6) lack of real-time data, information and feedback loops during land rights formalization campaigns about gender-related impacts, especially those related to spousal informality.

### *Gaps in the legal or regulatory framework*

For informal wives to have an equal opportunity to participate in and benefit from land rights formalization campaigns, a supportive legal and regulatory framework must be in place. Deere and León (2021) provide a four-part framework for assessing relative equality of rights for women in marriages versus women in consensual unions: (1) same registration of property regime governs the union (e.g., the property of the couple is considered “community property” or “separate property” whether in a marriage or consensual union); (2) right of partners to inherit from each other; (3) right of alimony, or spousal maintenance, in the event of divorce; and (4) right of children to inherit. Relevant components of the legal framework include:

- Legal and regulatory framework for land rights and (especially) formalization programs;
- Legal and regulatory framework for marriage and civil status (including legal recognition of marriage informality and accessible ways to “prove” the existence of an informal union, and recognition of the women’s domestic contribution to the spousal union (see discussion below); and
- Legal and regulatory framework for succession.

Latin American countries have some of the most gender-progressive laws in the world as related to joint titling of land and property rights (Deere & León, 2001, p. 333). Almost every country in Latin America has recognized consensual unions as equal to marriage in the four fundamental areas of rights listed above (Deere & León, 2021, p. 7). For partners in consensual marriages to realize their rights to property in most countries, however, they must show that they have been in a stable relationship for two to five years, and/or that they have a child together (Deere & León, 2021). The legal framework in most countries also requires that the consensual union/informal marriage be registered in a civil registry for partners to be able to claim their share of property rights held by the union (for example, upon divorce or death of one partner). But registration requirements can be both expensive and time-consuming, and registration in fact is rare. **In 2020 in Ecuador, for example, only an estimated 9% percent of consensual unions were registered; in Colombia, only 2.5 percent** (Deere & León, p. 20).

Many countries have specifically mandated joint titling for couples in informal marriages, in addition to formally married spouses (Deere & Leon, 2001, p. 333 naming Colombia, Costa Rica, the Dominican

Republic, Guatemala—as related to a new land bank—and Nicaragua; other countries have since joined that list).

### **Box 2: International law and property rights of informal spouses**

The international legal framework provides that spouses in informal marriages have the same rights to land and property as spouses in formally recognized marriages. The UN categorizes three primary kinds of marriage: statutory/civil, traditional/religious, and informal/de facto/common law unions. (UN Women et al., 2018, p. 9.) Spouses should have equal rights under any marital arrangement. “In particular, women in customary or de facto unions should enjoy the same property and inheritance rights as women married under civil law.” (UN Women et al., 2018, p. 19, citing OHCHR and UN Women, “Realizing Women’s Rights to Land and Other Productive Resources,” pp. 39-40; Art. 16; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Convention, see also CEDAW General Resolution (GR) 21 and CEDAW GR 29, which acknowledges that “women may be exposed to economic risks when a cohabiting relationship ends, including when they have contributed to maintaining a household and to building other assets.” (UN Women et al., 2018, p. 9.)

UN Women, 2020

One of the most important aspects of the legal framework supporting women’s secure rights to land in the context of land rights formalization, and in the case of divorce, separation, or death of the husband is recognition of women’s unpaid domestic labor contribution, known as the “*economía del cuidado*,” within farm households. In many rural areas in Latin America, women are not considered farmers, even if they form part and parcel of a farming household and contribute equally to production as men. (Guereña 2016, p. 27; interviews with land rights experts in Colombia and the Dominican Republic, 2021). Rural women may have critical roles in direct agricultural production, and their work may also consist primarily of tasks that support the direct farm work of household men and hired laborers, such as cleaning, providing food and water, washing clothes, and taking care of children or elderly household members. Women in Latin America spend on average one-third of their time contributing to the *economía del cuidado* (UN-Women, 2020, p. 5). According to the United Nations, women globally do three times the (unpaid) domestic and caretaking work as men, a ratio that is even higher in rural areas with less access to basic services (UN Women, 2020, p. 5). In Latin America, the average woman spends 103 minutes more per day on this type of work than the average man, and more in rural areas (UN Women, 2020, p. 5).

Some countries in Latin America have acknowledged contributions to the *economía del cuidado* in their legal framework for marriage and divorce or separation, and in designing qualification requirements for land rights formalization campaigns. For example, Colombian land rights formalization laws specifically recognize contributions to the *economía del cuidado* to count toward the five-year occupation and “exploitation” requirement for claiming a parcel of land. This means that a woman who has contributed to a farm household through the *economía del cuidado* for five or more years can establish an independent claim to the land. It is not necessary that she applies for this right through her relationship with her husband or male partner.

Despite a generally supportive legal and regulatory framework for informal spouses in land rights formalization campaigns in many Latin American countries, gaps have proven a key impediment to both



spouses and informal partners in past land rights campaigns. In the first phase of Peru's land titling project *Programa Especial de Titulación de Tierras (PETT)*, for example, "Women within marriages, and especially those within consensual unions, were largely excluded. PETT was 'gender neutral',<sup>7</sup> and legal or regulatory safeguards were not in place for gender-equitable implementation" (CIA, 2009, cited in Fuentes & Wiig 2009, p. 7). In Nicaragua's land rights formalization program, officials only began to issue joint titles in any significant quantity once the government issued a mandate in 2007 that no household application would be accepted unless it was for a joint title (Broegaard, 2013).

Some important gaps continue to exist. These include:

- Laws in some countries do not extend joint ownership rights to informal partners in the context of land rights formalization.
- Laws permit but do not mandate joint titling for informal couples.
- Laws mandate joint titling for informal couples but the requirements for proving that an informal marriage exists are laborious, requiring time and resources most women do not have (especially within the relatively small window of a land rights formalization program).
- Although laws may require joint registration of land for spouses, regulations or guidelines for a formalization program may not specifically mandate that officials identify and include informal spouses/ partners during the campaign.
- Laws may not clearly recognize contributions to the *economía del cuidado* by wives or informal partners in the context of land rights formalization campaigns, meaning that women partners are excluded from claiming rights to land independently or together with a partner, depending on the requirements of the program.

### ***Lack of capacity among implementers and faulty project design***

Historically, implementing teams who staff government and donors' land formalization programs in Latin America and beyond can be the deciding factor in whether or not gender equity mandates—like joint titling for spouses and informal partners—actually succeed. In some cases, the implementing teams have thwarted central gender-related objectives because they do not agree with them and/or want to avoid conflict with local community leaders who may disagree with them in principle. But more often, implementing teams are unable to uphold gender mandates or objectives because (1) they lack training on gender inclusion, and particularly on gender norms and informal unions; (2) they know about these issues but do not have the necessary knowledge and skills to implement them at the community level; (3) the mandates take extra time and effort to implement, which creates tension with teams' prescribed timelines for numbers of titles/certificates issued at the household level; and (4) it is harder for implementers (especially men) to reach women within the household.

Some of the most difficult challenges for implementers are baked into project designs and success metrics. Even implementers who do their best to execute joint titling requirements have little chance to succeed without **adequate time and resource allocation** for this. There is a huge incongruity between the time is

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<sup>7</sup> As legal frameworks often provide for equality in land documentation, "systematic land registration efforts often adopt '**gender-neutral**' approaches, i.e. 'one size fits all' that seemingly [do] not exclude anyone. Although well-intentioned, a 'gender-neutral' process can inadvertently reinforce power structures and biases that are detrimental to women and other marginalized groups like youth, the elderly, people with disabilities, non-residents/migrants, and others." USAID, 2022.

takes to have inclusive systematic formalization and the pressure on field teams/enumerators to formalize a high number of parcels in a short period of time. Implementing mandates like joint titling—especially for informal spouses—slow down the campaign, often forcing implementation teams to miss key programmatic target metrics for numbers of certificates/titles.

Furthermore, gender quotas and objectives (such as a stated goal of 60 percent of titles in women’s names) may actually provide disincentives to implementing teams to include spouses or informal partners fully. If, for example, 20 percent of this number could be accounted for by widows who are living as single women heads of household, and if it is assumed that nearly all of the remaining households comprise man-woman couples (single male heads of households being unusual in most rural areas in Latin America), then such targets could be met by including only *half* of all formal/informal wives in a given area, **excluding 40 percent of total women—or 50 percent of the wives or informal partners**—from the campaign.

### ***Lack of awareness and legal literacy among women, men, and community leaders***

In land rights formalization programs, women may be less likely than men to realize they have a valid claim to land during the course of the campaign. This can happen, for example, if women live in isolated areas; if they do not speak or read the dominant language (Spanish or Portuguese); if they are discouraged by husbands, male partners, or other community members from attending meetings because of their gender and/or age, or are socially marginalized as second wives; or if they previously lived and worked on the land but have since divorced or separated with their husband or male partner and live in a location outside of the campaign focus area. Additional obstacles to women’s participation in land rights campaigns include high levels of responsibility for childcare, housework, etc. (as discussed above), duties that often conflict with pre-formalization and campaign meetings and events.

Local officials and leaders may also be unaware of key aspects of women’s land rights during a formalization campaign, and unable to guide women toward claiming these rights (and men toward accepting these rights by their spouses and partners). In many countries in Latin America, people are not aware that women in informal marriages have the same rights to property as women in formal marriages, despite long-standing laws to this effect (Deere & León, 2021). Even if people in the community know that women may be entitled to land rights, they may not be aware of important aspects of these rights and claims, such as legal recognition of the contributions of the *economía del cuidado* that would serve as the independent basis for many women to qualify for land rights under “occupation and exploitation” requirements.

In Peru, for example, experts have pointed to a lack of awareness and gender bias among land rights formalization officials as primary reasons for exclusion of informal spouses in multiple program phases. According to authors Fuentes and Wiig (2009), a research campaign led by the Peruvian Women’s Centre (CMP) on the effects of PETT on women in rural areas revealed that “One of the biggest concerns was the situation of women living in consensual unions, a way of living together which is very common in Peru (CIA, 2009).” Fuentes and Wiig noted that “CMP found that PETT officials had little awareness of gender issues and gender-sensitive practices and that women in consensual unions lost out compared to their married sisters due to gender bias in project implementation itself.”

### ***Faulty access to justice for rural women***

For women to claim and realize the benefits of their land rights, they must have access to timely, fair, and low-cost dispute resolution, whether through administrative or judicial procedures. But some

formalization campaigns lack transparent community vetting processes for preliminary land rights allocations, as well as avenues for women to seek justice through administrative processes if legitimate claims go unacknowledged. Women may not have an adequate chance to see and understand what rights men in their household are claiming to family land, and whether or not they are included as joint owners, before these rights are finalized. If women are unfairly or illegally left out of the claims process, it is often difficult for them to access justice to remedy this, even leaving aside the question of social pressures that might discourage them, as discussed below. Program mechanisms for disputed claims may be inadequate or expensive, conducted only in Spanish or Portuguese rather than local languages or dialects, and not possible for most rural women to access without transportation and lawyers they cannot afford. Links from the campaign to formal judicial processes may be inadequate or non-existent, and barriers to rural women are even higher for court claims. Also, in many cases, lawyers and first-level judges and arbitrators are not aware of the legal rights of informal spouses and how these should be applied in a land rights formalization context.

### ***Gender norms and dynamics prohibit women from claiming or realizing their land rights***

For women’s legal rights to land to be secure and of value, they must also be considered socially legitimate and supported by relevant gender norms.

#### **Box 3: Social and gender norms related to women’s land rights**

**Social norms** are the unwritten or informal rules about what is typical or appropriate in a setting. They are embedded in communities, systems, and structures and can promote equitable or harmful behaviors and practices.

A type of social norm, **gender norms**, are unwritten rules based on biological sex and/or social perceptions of gender. As gender is itself a social construct, gender norms describe which behaviors are appropriate and which are not appropriate according to one’s gender and include expectations of how people of different genders and gender identities should relate and interact. Through power dynamics and sanctions, harmful gender norms normalize and reinforce gender inequality and can limit women’s access to resources and their decision-making power.

USAID, 2020 (verbatim)

In many parts of Latin America, however, gender norms in rural areas undermine equitable land rights for women, particularly for women as joint owners of land with their husbands or, especially, informal partners. This bias is often rooted in patrilineal, patrilocal marriage traditions, where family land passes through male lineages. Wives may be viewed as “strangers” to their husband’s community for many years or even for life, and a wife’s joint ownership right to the land may be viewed as complicating or undermining the patrilineal, patrilocal marriage paradigm of land succession. This in turn fuels bias against joint ownership by spouses, and even more so by informal partners.<sup>8</sup> Even in areas like the Hondo Valle in the Dominican Republic, where acceptance of primary spouses—whether formal or informal—as

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<sup>8</sup> “Regardless of lineage, marriage can result in an automatic subordination of the status of the woman to that of the man, primarily because it is common for a woman to migrate from her lineage to join her husband’s lineage or place of residence. As a ‘stranger’ to her husband’s lineage, a wife does not acquire absolute user rights to her husband’s lineage land or to his personal property.” UN Women et al., 2018, pp. 20-21.

joint landowners is relatively high, the same is not true for second spouses, who are not considered by most to have a rightful claim to the land on which they live and depend.

Harmful social norms can pervade every step and influence every stakeholder's action in a land rights formalization campaign. When implementation officials do not believe that informal wives should have rights to land, they may be less likely to identify and include them, especially when rules or guidelines are ambiguous. In Nicaragua, implementers found ways to comply with a specific government mandate for joint titles within a household by naming two men, such as brothers, on the application, rather than a woman and man couple (Salcedo-La Viña 2020, also noting that the lack of timely data collection and feedback loops prevented this practice from surfacing until years later). Social bias against joint ownership by informal wives may also influence the institutions that are charged with enforcing women's land rights, including the judiciary.

#### **Box 4: Role of social norms bias in Peru's Land Titling Program, Phase 1**

The Peruvian government (through PETT) did not collect comprehensive data on how many titles were issued to partners in consensual unions. Researchers and program staff found that "PETT officials had little awareness of gender issues and gender-sensitive practices and that women in consensual unions lost out compared to their married sisters due to gender bias in project implementation itself." Rural women faced additional impediments to participating in PETT, including requirements for identification documents, use of Spanish only by program officials, and assumptions of literacy.

Fuentes & Wiig, 2009

At the community level, harmful social norms may prevent informal spouses from seeking their rights. As one rural Colombian woman explained, "*Si le pido a mi marido que ponga mi nombre en el título, se me acaba el matrimonio,*" or "**If I ask my husband to put my name on the title, my marriage will be over.**" Both actual social bias and perceived social bias may impede women from seeking joint ownership with their husband or partner. For many women, the idea of even raising the subject of joint ownership with their husband or informal partner seems too risky, as women who do so may be perceived as aggressive, opportunistic, or greedy by men, in-laws, or others in the community. They may also face retaliation by spouses or sons with threats or acts of physical and/or psychological violence. Prevailing gender norms in Colombia and in many other countries may also normalize gender-based violence, and land formalization processes can and in some cases do lead to gender-based violence (see Bessa & Malasha, 2020).

#### ***Lack of timely data and feedback loops***

One of the reasons that risks to women's land rights related to marriage informality have not risen to the fore among land rights formalization program designers, implementers, social scientists, and others is a **pronounced lack of data that would provide for a clear understanding of the nature and extent of the problem.** Governments and programs have not generally kept data on the civil status of land rights recipients, especially not in regard to informal spouses. In many cases, governments do not have accurate, updated data on marriage informality at national, regional, or community levels. Donor programs and projects often, as mentioned above, set metrics, and collect data only on total numbers of women's names on certificates or titles as a percentage of all beneficiaries, which may mask the exclusion of large groups of women such as those within marriage or informal partnerships. For many formalization

programs and projects, it is actually impossible to tell from data collected how many spouses or informal partners in a community have been excluded.

Without data that can indicate whether and to what extent land rights campaigns include informal spouses, the risk of exclusion goes up, as does the risk that the project will cause harm to this large group of people—often representing more than half of rural women—who will emerge from the campaign and programs having permanently lost out on some if not all of the benefits of long-term land rights security. In Peru, for example, experts look back at PETT as a program that, although considered to have gained gender equity through its three phases, may have systematically excluded informal spouses.<sup>9</sup> Since no data was collected on the inclusion of informal spouses during project implementation or evaluation, the full extent of this exclusion and its socio-economic impact on rural development may never be known.

When feasibility assessments, and baseline, midline, and endline studies do not collect data on marriage informality, the risk that the program will exclude “invisible” spouses is striking. In countries like Colombia, Nicaragua, and Peru, where sweeping land rights formalization efforts followed long periods of violent conflict, government data (where it existed) indicated very high levels of marriage informality in formalization project areas, and yet no assessments were conducted prior to project implementation to better understand this issue, and how it could affect project processes or outcomes. If issues arise in the middle of project implementation, appropriate and effective feedback loops may not be in place for course correction.

One of the primary challenges to land rights formalization implementation teams is how to identify whether the applicant for rights to a parcel has an informal spouse/partner who also lives and depends on the land. The campaigns are rarely coordinated with governmental databases holding residential data, which would at least help to indicate who lives in a particular household on a particular parcel of land.

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<sup>9</sup> As experts Fuentes and Wiig summarize in their 2009 report on the gendered effects of land titling in Peru: “Joint titling is said to be a privilege only for married individuals, however, and not for couples living in consensual unions (Herrera, 2002). PETT has been accused of granting titles mostly to men, and especially for men living in consensual unions. It is still common to assign men the Household Head label, and if they undertake the administrative proceedings to acquire the titles without having a ‘formalized’ marital status on their identification card, the land title might as well be given to them alone. According to the National Survey of Rural Households (ENAH0) survey for 2001, almost one-quarter of Peru’s population lived in consensual unions (Deere and León, 1998b). This might then imply that a large portion of unmarried women living in partnerships are much less secure in terms of acquiring land rights than their married sisters.”

## PART 3: COUNTRY-BASED VARIATIONS AND ISSUES

### COLOMBIA: CHALLENGES IN IMPLEMENTATION<sup>10</sup>

#### **Background**

In Colombia land rights formalization efforts followed decades of armed conflict, which caused displacement, death, and social fragmentation that led to rising rates of marriage informality throughout the country. Nearly 77 percent of women aged 25-29 in long-term relationships with men are in informal unions, according to 2018 census data (Deere & Leon, 2021; see also Esteve, 2016). In rural Colombia, it is fairly common for men to have multiple wives and families (Deere & León 2021; interviews with GLA and implementation project staff). One wife is generally considered primary, while the other wife and family are considered second. This practice is not legally provided for, but socially well-known and in many ways accepted. The man usually provides housing and a parcel of land for the second wife at some distance from the primary wife/household, but distances may vary, and the source of the land for the second wife also varies (land the man purchases or leases, land that has been traditionally considered part of his or his family's land, etc.).

#### **Legal and regulatory framework**

Colombia has a well-established legal and regulatory framework recognizing and protecting the rights of informal or de facto spouses, and specifically provides for their right to jointly hold land in the context of the country's land rights formalization efforts. Law 54 of 1990 established the equal rights of partners in informal marriages to a body of community property (including land) that is created between them during the course of the union, called the *sociedad patrimonial*. This comes into play upon divorce or separation, when the partners have the right to an equitable division of community property by a judge. In this context, the law also recognizes contributions to the community property made to the *economía del cuidado*, including women's unpaid work in caring for children and the elderly, cooking, cleaning, clothes washing, and providing water. Despite these legal protections and for reasons discussed below, it is very unlikely that two individuals in an informal marriage will go through a formal dissolution procedure for the community property.

There are three different legal pathways to land rights formalization in Colombia—adjudication of state lands, formalization of private claims to land, and restitution—each with its own qualification factors and requirements. A woman in an informal marriage has several potential pathways to land rights under these programs, including through her own independent claim to the land, and jointly through her marital union. Under the adjudication of state lands, for example, an applicant's right is based on five years' occupation and "exploitation" (productive use) of at least two-thirds of the parcel (see GLA, 2016, citing Law 160, 1990, Art. 69). Contributions to the *economía del cuidado* can be counted toward the five-year productive use requirement. Many rural women who have lived and worked on farmland, either now or in the past, would thus qualify in their own right as claimants under the adjudication program. A

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<sup>10</sup> Source of information unless otherwise noted: GLA, 2016. GLA's 2016 series of reports for USAID on *Uniones Maritales de Hecho* in the context of Colombia's land rights formalization programs, which explores findings related to marriage informality within the context of project implementation, is one of the only reports/report series dedicated to this topic to date in the land rights sector.

woman can also qualify as a joint rights holder along with her male partner under joint titling mandates for spouses or partners in a de facto marriage.

Legally, the challenges for informal wives to claim land rights arise in at least two important scenarios, and both are related to proving the existence of their informal marriage. The first is initial land rights formalization under any of the government's three pathways. The second is the context of divorce or separation, where a wife can only receive a fair division of the community property if she can prove the existence and time frame of her union. The Civil Code requirements for proof can be difficult for women to meet, especially within the limited window of time allowed in a land rights formalization process. Proof requires birth certificates of the partners to the informal marriage as well as any children, issued within the past month, and citizenship identification (*cédula*). In addition, a partner must procure proof for when the union began and how long it lasted. Complying with these documentary proof requirements requires time, money, travel, and literacy/language skills that many rural women lack.

A second legal challenge in Colombia is that the law does not provide for the case of multiple wives, or for subsequent wives who may each have a separate claim to the land on which they have lived and worked with their (at the time) husband/partner.

### ***Challenges in implementation***

In Colombia, the primary challenge to the legal rights of informal wives to land appears to lie in the low levels of social acceptance for the rights of married women to jointly hold land with their husbands, which appear to be even lower vis-à-vis the rights of informal wives, let alone second wives. A standard practice for Colombia's National Land Agency (*Agencia Nacional de Tierras*), in creating local land management plans and registering individual parcels, is to hold comprehensive one-day land rights recognition events, called *Jornadas de Captura Formulario de Inscripción de Sujetos de Ordenamiento* (FISO). At these events, officials set up a large tent with many different stations, each representing a different step in the formalization process, and invite people from the surrounding community to come with their documents and finalize the application process within a day. Few women, however, attend these events. It is not possible for officials to verify whether or not a man applying for land as an individual in this kind of event has an informal partner who shares the land with him (although it is unusual for men in rural Colombia to live without a female partner). By the time the application has been submitted at the end of the day, there is little practical recourse for an informal (or even formal) spouse who has been excluded. Strategies to address these issues at the one-day registration events could include offering daycare services to ensure women attend, as well as going house by house delivering invitations to the event, and including a form that requests the partner's information and ID number and a paper copy to ensure both are included, no matter who shows up to the event.

**In reality, the burden of proof for showing that an informal marriage exists in rural Colombia falls entirely on an informal wife who wants to jointly claim land.** To fulfill this requirement, a woman must be able to access the necessary documentation (including proof of at least 2.5 years of cohabitation), and to overcome what is often intensive social pressure *not* to pursue her right. It is also reported that state officials who receive an application file from a man and woman without adequate proof of an informal marriage will sometimes erase the name of the woman to avoid difficulty in following-up or processing the application.

## ***Risks and efforts to address the challenges***

A minimum of 50 percent of women in relationships with men in project areas for Colombian land rights formalization, and likely many more, are estimated to be informal wives. Many of these women live on, farm, and otherwise depend on the land for food and income, and many bear primary responsibility for the wellbeing of the next generation. The long-term socio-economic costs of excluding informal wives from equal participation in land rights formalization efforts could be staggering.

Recommendations from the 2016 GLA report on *uniones maritales de hecho*, as well as those gathered from recent interviews with Colombian gender and land experts, are included in the recommendations section below.

## **DOMINICAN REPUBLIC: FOCUS ON SECOND WIVES IN HONDO VALLE<sup>11</sup>**

### ***Background***

In the Hondo Valle, where the government of the Dominican Republic has worked to formalize land rights to those who have occupied for decades, marriage informality is estimated to be upward of 70 percent. The high rates of informality are a historic factor for this area, attributed in part to the relatively low presence of Catholic or Evangelical Christian churches until recently.

Although polygamy is not sanctioned under the law, it is common in the Hondo Valle area. For the generation that is now upward of age 50, it has been common for a man to have multiple wives on separate parcels of land. Customary practices have offered some protection for multiple wives. For example, upon death of a husband, each wife was allowed to remain in/on her respective house and land.

In the communities of focus for land rights formalization, joint titling among spouses is the norm, due in part to years of socialization work on social gender norms by women's organizations, the Agrarian Women's Conference (COMUCA), which held county and community-level awareness-raising meetings, and the Women's Office of the Ministry of Agriculture (interview with Hondo Valle project staff, October 2021). In the project area, it was broadly accepted by men and women that primary spouses—whether wives or informal permanent companions—should be jointly named on titles. However, joint titling is only a norm for first, socially recognized wives (formal or informal), leaving those who do not enjoy this primary position and social status in a position of heightened vulnerability.

### ***Challenges with second wives***

With the opportunity to formalize land rights in the Hondo Valle, gaps in the legal framework and social bias have raised the risk that second/multiple wives will not only be left out of the formalization processes, but will in fact emerge with new and serious levels of land rights insecurity. Under the law, land rights officials are only allowed to recognize the joint titling rights of one spouse, and even if the rights of the second wife were identified, there is no legal mechanism for granting her some portion of the rights to land jointly held by the man and his primary spouse. Implementation practices and norms reinforce these risks. During the stage of community engagement and identification of claims, a man will seldom publicly declare that he has a second (or multiple) wife and family. During this stage, women have

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<sup>11</sup> Source of information unless otherwise noted: GLA and REDDOM, 2019.



the right to make claims to land based on their contribution to production, but second wives may not know about this opportunity, or may not feel socially empowered to come forward with a claim. Finally, implementation officials often conduct due diligence on the primary parcel of land claimed by the man, but not on other smaller parcels, and so may not in fact ever see evidence of the “invisible” second wife and family.

As GLA and REDDOM (Rural Economic Development Dominicana) note in their 2019 report, informal wives have an elevated risk of exclusion from land titling in Hondo Valle, and of in fact losing their traditionally recognized rights that would allow them to stay safely on their land following the death of their husbands. This could in turn lead to long-term socio-economic harm not just to the informal wives, but also to their children.

This problem of second wives in the context of land rights formalization is elusive and difficult to address, but the associated risks for many of the poorest and most marginalized women in rural areas urgently justify a deeper investigation into the subject matter. Report authors recommended further study as part of the social safeguard framework for the Inter-American Development Bank’s (IDB) *Program Desarrollo Agroforestal* (PDA), including specific components as included below in the Recommendations section. GLA’s own review of IDB’s social and environmental safeguards also points to the importance of further researching the phenomenon of informal and second wives.<sup>12</sup>

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<sup>12</sup> "Consultoría de análisis de salvaguardias ambientales y sociales en operaciones de titulación de tierras," December 2021.

## PART 4: CONCLUSIONS AND RECOMMENDATIONS

The purpose of this paper has been to elevate the issues arising from high levels of marriage informality in places undergoing land rights formalization campaigns. In Latin America, where marriage informality in many rural areas is upward of 50 percent, the risks are very high that land rights registration efforts will exclude many if not most women within informal unions. This could have severe long-term social and economic repercussions on shared development goals such as alleviating poverty, ending hunger, and empowering women.

The issues and challenges associated with marriage informality are not easy ones to tackle. We are still missing basic data that will help us to understand the extent and nature of the problem. Fixing laws and regulations could be a first step, but as illustrated in the case of Colombia, the greater challenge may be in raising awareness and shifting harmful social norms in a timeframe relevant to program implementation. The issue of second wives in the Dominican Republic raises the sobering question of whether land rights formalization programs, despite best intentions of improving conditions for rural men and women, may leave large groups of the most marginalized women even worse off and less empowered than they were at the outset.

As an overall approach to addressing the barriers to land rights recognition among informal wives, it will first be crucial to ensure that women who have lived and worked on farmland have a right to it as individuals equal to that of men, regardless of their civil status, and that women can exercise this right whether they are single or in a marriage-like partnership. Second, efforts should focus on ensuring that women who are in informal marriages/partnerships have a clear legal pathway to establish rights to land jointly with their partner.

The following possible recommendations are based on ideas from GLA's work with government officials and donor projects in Colombia and the Dominican Republic, as well as those garnered from second experience mostly pertaining to Nicaragua and Peru. We offer them here to spark further ideas and conversation about next steps.

### 1) Improve legal and regulatory frameworks

#### Land rights laws:

- Ensure that laws mandating joint title for spouses extend to informal marriages/spouses.
- Ensure that laws establishing safeguards for spouses in the context of land transactions extend to informal marriages/spouses. (Best practice—see Colombia, where FISO forms even include line item for “*uniones libres*” category regarding an applicant’s civil status.)
- Ensure that laws establishing rights of adjudication/allocation and registration of state land to individuals, when based on occupation and exploitation or productive use of land for a specific number of years, include the *economía del cuidado* in the type of work that qualifies applicants. In this way, women who have contributed to the productive use of land with their husband or informal partner through caring for children, cooking for the family and laborers, tending garden plots, and doing similar kinds of work, can establish their own right to land regardless of civil status.
- Ensure that land laws require approval of both spouses/informal spouses for transaction of jointly held land.

- Establish a clear regulatory mandate for joint titling of spouses and informal partners in land formalization campaigns.
- Consider ways to legally recognize the rights of second wives or partners to land that is the basis of their home, work, and/or income and wellbeing—it is not enough to recognize the succession rights of the children.
- Consider ways to legally recognize the rights of previous wives to land that they have occupied and worked to make productive, even if they have been separated or divorced from the man that currently occupies the land.

#### **Civil and family laws:**

- Ensure that laws recognize informal marriages, and that laws/regulations provide a clear and simple pathway for proving the existence of an informal marriage.
- Ensure that laws recognize inheritance rights (to property including land) of informal spouses and children, and equal rights of each spouse to property held/acquired—including through contributions to the *economía del cuidado*-- during the informal marriage upon dissolution.

#### **2) Strengthen capacity development in implementing institutions and provide support through project design**

One of the most resource-efficient ways to bridge the gap between gender-progressive laws and women’s ability to exercise their rights to land at the community level is to focus on those in charge of implementing land rights campaigns.

Focusing on capacity development of implementing teams on gender equity issues and implementation of gender mandates has been effective in a number of countries, including in Colombia, the Dominican Republic, Nicaragua, and Peru. Implementers can be incredibly valuable spokespeople for gender equity in the campaign, responding to questions about women’s land rights—including rights of formal and informal spouses—and engaging communities in constructive dialogue on the same. Cultivating gender champions on implementation requires that they acquire expertise both in terms of the law and in terms of socioeconomic benefits of women’s land rights, and ensuring they have the technical competence to ensure implementation of gender mandates.

A rigorous gender analysis at project inception is critical to capture gender inequality, barriers, and opportunities for project implementation. Specific actions may include:

- 1) Appoint clear leadership/point person(s) for gender equity, who are both male and female;
- 2) Develop simple, practical tools for implementation teams with concrete guidance on gender and social inclusion that they can apply at different stages of the land rights formalization process;
- 3) Adopt proactive requirements for implementation teams to ensure identification and inclusion of women during community rollout (e.g., changing relevant forms to include *economía del cuidado* categories and complete names of all household members, requiring implementers to name women within the household first on the land rights application,<sup>13</sup> and requiring teams of both men and women to visit all land plots within an application;

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<sup>13</sup> This requirement helped to address exclusion of women in Bolivia during the *Programa de Saneamiento de Tierras y Catastro Legal*.

- 4) Improve gender metrics and data collection, which in turn implies the ability to collect and analyze gender-disaggregated data early and often during the project—not just at its completion—to flag issues and design course corrections where needed;
- 5) Conduct rigorous gender norms training (including broader gender equality training, women’s land rights, and gender-based violence issues);
- 6) Ensure gender balance among implementers, especially for small groups working at the community level; and
- 7) Train those responsible for collecting, inputting and analyzing project data to understand gender-related data requirements—especially applicable laws/regulations/project mandates regarding joint titling for spouses (both formal and informal).

**The most important thing that can be done in project design and implementation is to allow enough time for implementers to effectively identify and include informal spouses on joint titles**, as well as for partner civil society organizations (CSOs) and community-based organizations (CBOs) to facilitate constructive dialogues on gender bias at the community level.

Also, to support better implementation related to informal spouses, project design must be based on an initial comprehensive gender assessment, including aspects of marriage informality and “invisible spouses” at both project feasibility and design stages. The assessment should include research into applicable legal and regulatory frameworks (e.g., land, civil, and family laws and regulations for informal marriages); incidence of marriage informality within proposed project geography; social norms and views on marriage informality and spousal rights to land; risks of social/gender exclusion from the proposed land rights project related to marriage informality; and stakeholder perspectives on how to address issues. Based on the assessment findings, project designers could include a list of “safeguards”—a checklist for project implementers to ensure inclusion of informal spouses.

Finally, project design should include prompt and effective feedback loops to identify and address issues and risks related to exclusion of informal spouses as they may arise.

### **3) Improve awareness of women’s land rights, with a focus on rights of informal wives**

- Increase gender-responsive awareness for both women and men in campaign areas of rights of informal spouses. Awareness-raising should respond to women’s needs, limitations to social and physical mobility, and time constraints due to caring responsibilities. This needs to happen *before* implementation staff arrives for fast-track registration/titling.
- Establish a gender desk and hotline (focus on rights of rural women to land both independently of partner and together with partner/spouse).
- Ensure project outreach at community level includes ways to reach women within households, whether or not they are literate. Explore alternative outreach strategies that are effective to reach women, including one-on-one sensitization meetings, use of community radios, etc.

### **4) Enhance women’s access to justice at the community level**

- Create transparent, low-cost access to vetting processes and claims during the formalization process, and impartial, gender-fair mechanisms for alternative dispute resolution, including within customary/cultural, administrative, and judicial systems.
- Establish private and safe mechanisms allowing women to ask questions or register complaints, such as hotline numbers of gender desks.

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*The intervention must also ensure that dispute resolution mechanisms are in place and accessible by women, taking into consideration their lower levels of literacy, time and mobility constraints, and social norms that inhibit them from pursuing justice. Including female members in the local dispute resolution bodies and instituting a gender desk or gender focal point can help support women's access to justice.*

Salcedo La-Viña, WRI, 2020

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- Conduct activities to improve women's legal literacy at the community level. Liaise with women's rights groups in key geographies of land rights campaigns, and collaborate on paralegal support to raise legal literacy among women and to help them to claim their rights.
- Conduct trainings on the rights of informal spouses to joint land holding with lawyers and members of the judiciary, as well as others involved in informal or administrative dispute resolution mechanisms for land rights formalization claims.

#### **5) Foster social norms change at the community level**

Changing social and gender norms can take more time than is possible in the course of a land rights formalization campaign. However, shifting harmful norms at the community level is also critical for longer-term recognition of women's land rights, underlying the social legitimacy that allows women to realize benefits of their land rights in practice, justifying intensive program investment. It is also possible for change to happen more quickly than anticipated upon creation of a critical mass of gender champions, especially among local leaders.<sup>14</sup>

Partnering with local nongovernmental organizations (NGOs) and CBOs is essential for effective social norms change. Organizations with in-depth knowledge of women's land rights and local social conditions and norms are usually best positioned to facilitate constructive community dialogues on issues like joint ownership rights by spouses and informal partners; heighten awareness and legal literacy of rights among rural women, men, and community leaders; and nurture male champions for women's land rights within communities.

Proactive measures to increase women's participation in land governance can also help to encourage and hasten gender norms change. Government regulations and project procedures can require that women and men be equally represented on land committees and associations formed as part of the formalization process, and then work to reinforce the equal participation of women members on these local bodies.

#### **6) Generate better data and the ability to coordinate data between agencies to locate informal spouses**

- Support collection of national data on marriage/spousal informality.
- Support timely collection and analysis of land rights formalization program data –gender-disaggregated at household level in every case, numbers of joint titles, numbers of formal versus informal spouses included on titles, etc.
- Encourage more effective ways to coordinate data among agencies to link individuals to the land via physical address records, so that land officials can ensure anyone living/occupying land knows about land rights/formalization campaigns, and to flag parcels that are occupied by at least two people/spouses/partners.

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<sup>14</sup> For an interesting example of community gender norm change related to constitutional and legal recognition of women's land rights and concerted project focus on gender equality, see USAID, 2013.

- Consider data systems where women in communities have key role in collecting and analyzing the data (see Salceda La Viña, 2020).

**7) Pursue research to better understand the issue of gender-based exclusion from land rights formalization campaigns because of marriage informality**

- Enhance monitoring, evaluation, and learning frameworks for national formalization programs and related donor projects to include gender-disaggregated data, as well as data on the civil status (married, single, informal partner, etc.) of each beneficiary.
- Encourage additional research on second spouses by independent researchers, which is urgently needed both to better understand and address the challenges.
- Conduct a rapid assessment of the national legal and regulatory framework for the land rights of informal spouses in select Latin American countries, to obtain updated comparative and “best practice” information and better understand legal and regulatory gaps.

**Box 5: Research and learning questions to better understand and address risks to informal spouses and partners in the context of land rights formalization**

- Scope and existing typologies of the problem: How can we obtain a better comprehensive understanding of the problem? How many men are living on land they share with informal spouses? In how many of these cases did the informal wife contribute financial resources to buying the land? In how many cases has she contributed her labor to improving the value of the land/property? In how many cases does the land/property on which the informal wife lives legally belong to her informal husband and his formal/legal wife? Or only to the informal husband? Under prevailing local customs/norms, who is considered to own the land? In how many cases do the informal spouses depend on their land to live and earn an income?
- Legal lens: What are the applicable legal frameworks? What are the relevant national legal provisions relating to marriage, or community property within informal marriages and partnerships? What is the full extent of applicable international law?
- Socio-cultural lens: What are the relevant cultural/social norms? What do women and men in the country think about what should be done to balance the rights/interests of the formal spouse with those of the informal spouse?
- Pathways for land projects: If it is decided that the informal spouse does have a right to the land where she lives, what type of right would this be? Would it be community property with her informal spouse? Lifetime usufructuary right? What existing legal instruments in the country could be applicable?
- Field methodologies: How do we develop interview methods that help implementers to identify informal second spouses, which is very difficult to do through typical interviews and the mechanics of focus group discussions?

Based on GLA & REDDOM, 2019

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Global Land Alliance  
1 Thomas Circle, Suite 700  
Washington DC 20005  
+12403434860  
[www.globallandalliance.org](http://www.globallandalliance.org)

