

Reflection Exercise



Does the legal and policy framework require spousal consent for land transactions?

- 1. Why do you think this proxy was chosen?**
- 2. How is this proxy relevant in your country?**



Step 1: Reflect on the questions
Step 2: Write your answers on the colored paper



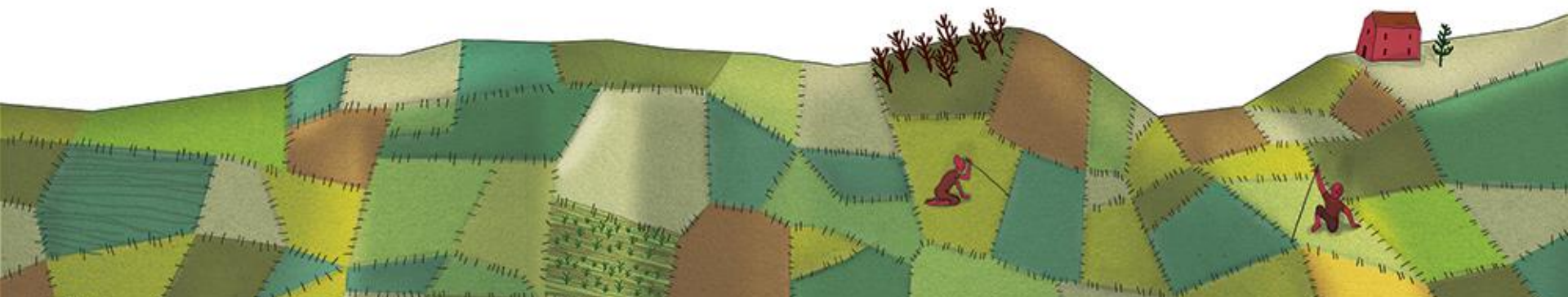


SDG Indicator 5.a.2

Proxy B

Spousal Consent for Land Transactions

Workshop on SDG Indicator 5.a.2. 2018



Proxy B – Spousal Consent



Does the legal and policy framework require spousal consent for land transactions?



Why include a proxy on spousal consent?



- Unilateral actions of one spouse or partner over critical assets *i.e. **the family home*** may leave women and children homeless and without means of subsistence.
- Spouses and partners should enjoy **equal decision-making power** over land.
- **Joint management systems** are the **optimal regime**: they require consent of the other spouse or partner prior to concluding any major transactions concerning joint property.



Scenarios for Proxy B: Spousal Consent



Land transactions
require...

Spousal consent (Scenario 1)

Spousal *and* partner consent
(Scenario 2)



Key Features of Proxy B – Spousal Consent



- **Unambiguous reference to spousal or partner consent** as a condition to transfer land – provisions that only imply consent are insufficient (i.e. provisions on default community of property regime)
- **Mandatory character** of the provision on consent requirement: (“must” or “shall” - not “may”).
- The provision must concern **spouses and/or unmarried couples**
- Consent must cover the **major transactions** of land: at least sale of land and/or mortgage of land.
- “Land” includes any type of land, at minimum the family home.



Threshold for Proxy B: Spousal Consent



Proxy **IS** Present

- ✓ The legal and policy framework provides for a **default community of property regime** which includes all immovable property acquired during the marriage and requires **mandatory consent** of both spouses and partners for the transfer of “common” property.
- ✓ The legal and policy framework provides that the sale and mortgage of land such as a family home (or “communal” house) has to be approved by both spouses.

Proxy **IS NOT** Present

- ✗ Consent provisions are **required except for transactions of customary land**
- ✗ Absence of spousal consent requirements for **different religious or ethnic groups**
- ✗ Provisions stating that marital power rests with the husband



Example of Proxy B in Legislation



Land Law, 2001:

Art. 35: “No person shall

1. *sell, exchange, transfer, mortgage, or lease any family land;*
2. *enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land; (...)*

except with the prior consent of his or her spouse or partner.”

- ✓ Scenario 2 is present. It explicitly refers to prior consent of the spouse *and* partner prior to a sale or mortgage of family land and it is expressed in mandatory terms.

Questions for Plenary Discussion



- Is your answer now different as to why this proxy is relevant in your country?
- Do you have any professional or personal experience with spousal consent, and of good practices in this area?
- Do you know if the proxy is present in your country's legislation? If not, what are the opportunities and obstacles to law reform in this area?

Step 1: Participate in the discussion
Step 2: Facilitators to write results on the flipcharts



Case Study Exercises



Step 1: In your table group, select a rapporteur

Step 2: Read the case study and questions

Step 3: Prepare a report on the flip charts (i) explaining the case study and (ii) answering the questions (30 mins)

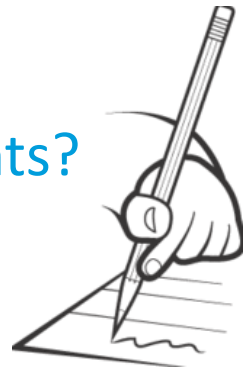
Step 4: Rapporteur presents the results to the plenary (7 min)



Case Study 1: Questions



- Does Chimgee's country meet the requirements of Proxy B? Why/Why not? If yes, which scenario applies?
- If Chimgee's husband sold the land to the wealthy lady, what is the status of the contract of sale and registration? Is it still valid?
- What type of rules should the register or notaries have to ensure that spousal consent provisions are enforced? What type of measures could protect the innocent buyer, the wealthy woman, who purchased the land in good faith?
- What type of measures should the government take to ensure that people in Chimgee's position know their rights?



Case Study 2: Questions



- Does Antonia in Country B have any rights to void the Mega Bank mortgage over the land inherited by her partner?
- Do these provisions satisfy Scenario 1 and/or Scenario 2 of Proxy B?
- What type of law reforms would you recommend to support women in Antonia's position?
- What type of barriers to justice might Antonia face in her fight to retain the family home?



Case Study 3: Questions



- Why type of questions should the lawyer Michael ask Margret to find out her legal rights in relation to the property that she wants to sell?
- What further information is needed to understand if the legal framework in Country C meets the threshold for Proxy B?

