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# Two Faces of Poverty



Making the Law Work for Indigenous Peoples and Women

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Commission on  
**Legal Empowerment**  
of the Poor

# **Legal Empowerment of Poor Women and Girls**

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## Female Face of Poverty

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About one of three households worldwide is headed by a woman

Seven out of ten small business entrepreneurs are women

Women hold just 16 percent of parliamentary seats worldwide

Women comprise upwards of 70% of agricultural labor and produce over 90% of the food, but few own land, water or animals

Two billion people rely on traditional or biomass fuels for cooking and heating - women gather most of these materials

About two million girls, usually aged 4 to 8, are forcibly subjected to female genital mutilation (FGM)

Women make up nearly half the 37.2 million adults (aged 15-49) living with HIV/AIDS

## Millennium Development Goals

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### **Goal 1 : Eradicate extreme poverty and hunger**

Gender equality is interlinked with all eight of the UN Millennium Development Goals and explicitly cited in:

### **Goal 3 : Promote gender equality and empower women**

The only way to achieve success is to break with business as usual and reform institutional arrangements so that they use internal resources more efficiently.

### **Goal 8 : Develop a global partnership for development**

## Feminization of Poverty and Legal Empowerment

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- Lack of identity devices
- Property and Inheritance rights – including in post conflict zones
- Use of legal tools to obtain credit and develop businesses
- Labor rights
- Access to basic services (eg. health, education, environment)
- Sexual and reproductive rights
- Violence (domestic and other)
- Access to justice and legal institutions

## Some Successes to Date

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Beijing + 5 reaffirmed and strengthened the Platform for Action

CEDAW ratified by 185 countries

Significant efforts to address acts of violence against women during armed conflicts have been made at the International Tribunals on the Former Yugoslavia, on Rwanda and on Sierra Leone, and at the International Criminal Court

Initiatives to promote gender budgeting have been implemented in more than 40 countries

Gross enrollment rates for girls in low-income countries have gone from 52% to 88% in the past 30 years

## CEDAW

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Formal laws of equitable treatment and nondiscrimination provide a starting point.

At international and national levels, formal laws express the values of a people and set the standards for conduct with one another.

Thousands of pages of treaties, constitutions and laws pronounce the equality of women and decry discrimination on the basis of sex. The best known of these is the **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**.

## **CEDAW requires countries to:**

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- Incorporate the principle of the equality in their legal systems
- Abolish discriminatory laws and adopt laws that prohibit discrimination against women
- Establish tribunals and other institutions to protect women against discrimination
- Ensure elimination of all acts of discrimination against women by persons or entities

**CEDAW specifies that countries undertaking land or agriculture reforms must report on rural women's rights to property, inheritance and access to land.**

## CEDAW Caveat

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As of March 2005, 180 countries ratified CEDAW, but many with **reservation to the articles relating to women's rights to property, inheritance and rights to land on the grounds that their national law, tradition, religion or culture is not consistent with CEDAW**

- Bangladesh, Egypt and Iraq claim conflict with Islamic law
- Tunisia, Jordan and Algeria cite conflict with existing family and personal code
- Others maintain inconsistent laws but do not publicly admit the conflicts

## CEDAW Shortcomings

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- Some clauses reflect a male dominant society
- Despite reporting requirements imposed by CEDAW, almost none of the developing countries collect and report gender-disaggregated data on rural household structure and operations, income-generating activities, ownership of assets, use of land, and participation in land markets.
- Gender policy is developing without broadly relevant information about women's status and roles in developing countries.
- CEDAW provides an incentive and forum for valuable data collection. To date, however, that it is a lost opportunity.

## Beyond CEDAW

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- The constitutions of most countries include principles of equality and nondiscrimination that are consistent with the requirements of CEDAW, but constitutional provisions and civil codes often have little impact on the realities of intra-familial relationships
- The command of nondiscrimination generally does not reach the circumstances in which property regularly passes from one party to another – death, marriage and divorce
- Religious and customary laws and practices governing inheritance and marriage most often dictate land rights relative to those events

## Social recognition of legal rights to land

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- Achieving gender equality in land rights not only requires clear legal rights but also social recognition of those rights. As women assert their legal rights to access land, cultural norms and practices can operate like a rip time, eroding the legal foundations of gender equality.
- As one woman stated, it hardly matters what “small, small writing on small, small paper” says; her husband is in charge of the family and the house and the marriage and the future. **“If he asks me to leave this place, I will go.”** The woman’s legal ownership of her house is of no consequence to her; in her mind, title is powerless to change what she believes to be true.

## Formal vs. Informal Laws: Definitions

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- **Formal Institutions** are those whose norms, rules and sanctions are guaranteed through formal processes that are usually but not always official, and are written and enforceable through legal recourse or arbitration
- Can be associated with organizations of the state, market or civil society.
- **Informal Institutions** are social norms that represent evolved practices with stable rules of behavior outside the formal system

## Formal vs. Informal Institutions: Importance

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- Gendered informal institutions cover all human interactions, from the most private sphere of sexuality to the public arenas of economic and political life. Cutting through these strands or replacing them with norms that are more gender equal can be time-consuming and frustrating as changes may be opposed by or subverted to power-holders
- Gender blindness or gender discrimination in policy aims and in the creation of formal institutions can lead to gender inequality
- Interactions between formal and informal institutions may be more complex than is usually assumed by modernization theories

## Formal vs. Informal Institutions: Importance

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- Informal institutions can be viewed as constraints – norms associated with long-standing cultural and social traditions
- Women often use and even shape some informal institutions to meet their needs. This can mean that women may themselves have a stake in the continuance of certain institutions and therefore be unwilling to give them up
- For policy-makers and program implementers, a more variegated understanding of the relationships between informal institutions and gender equality may provide firmer analytical underpinnings

## Interaction between Formal Institutions and Informal Institutions

	FIs favoring gender equality exist		FIs favoring gender equality do not exist
	<i>Strong FIs</i>	<i>Weak FIs</i>	
<i>IIs favor gender equality</i>	1. <u>Complementary</u> e.g. pregnancy ceremonies and maternal health	3. <u>Substitutive</u> e.g. tontines, women's cooperatives, women's courts	5. <u>Dominant</u> e.g. tontines or chit funds
<i>IIs oppose gender equality</i>	2. <u>Accommodating</u> e.g. parent – youth relations, HIV peer education programmes , gendered division of labour , child marriage ; political representation	4. <u>Competing</u> e.g. dowry demands, unequal educational access for girls versus boys, unequal access to health care and nutrition, bigamy , unequal wages ; biased sex -selection, political representation	6. <u>Dominant</u> e.g. FGM, violence against women, treatment of widows , illegal or unsafe abortion, customary laws on inheritance, unequal work burdens , masculinity rituals

## Women's attitudes to informal institutions

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### Why do women sometimes support informal norms that appear to work against them?

- Submission may buy peace or survival
- Provide status despite being painful or dangerous
- Trade-off control for economic support
- Integration of entire families into crucial social networks
- Some norms appear stigmatizing, but may provide needed rest
- Internalization of some norms promises improvement of status with age
- Expression of defiance against larger society or in solidarity with community

## Towards More Effective Policies

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- 1. *Creating alternative formal institutions when informal institutions are harmful to gender equality and human***  
(FGM in Egypt, Pakistan's *hudood* ordinance change, abortion law reform in Colombia and Nepal)
- 2. *Making existing formal institutions more effective***  
(domestic violence bill in India, ICPD and male responsibility)
- 3. *Supporting complementary or substitutive informal institutions***  
(microcredit, ILO Convention ratified by only 5 countries)

# Formal or Informal Businesses?

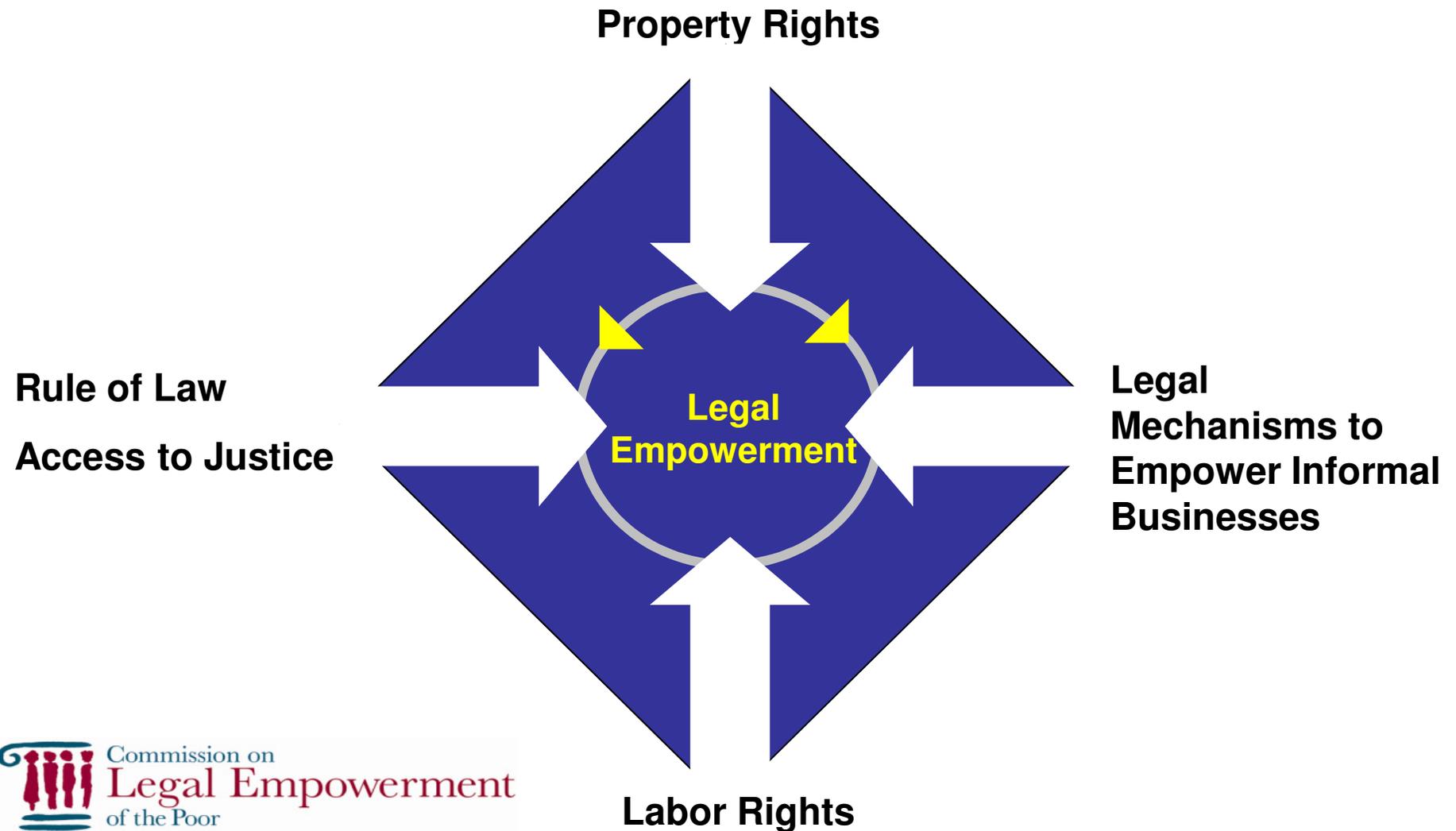
	COSTS	BENEFITS
<b>INFORMALITY</b>	Fewer mechanisms for dealing with risk and uncertainty	Avoiding the costs of formality (taxes, permits, regulations)
	Bribes and corruption	
	Lack of identity	
	Limited access to economies of scale and scope (markets are limited to family circles)	
	Impossibility of diversifying risk and investments	
	Higher transport costs	
	Risk of losing family assets	
	Less access to market knowledge	
	Difficulty to establish business hierarchies different from the family ones	
	Difficulty to divide and specialize labor	
	Enforcing contracts only by force	
	Limited access to capital	
	Short-term firms and investment	
	Losing the advantages of advertising because they have to hide their business	
	Unpredictability (inspections, laws, etc)	
Higher credit costs		

# Formal or Informal Businesses?

	<b>COSTS</b>	<b>BENEFITS</b>
<b>FORMALITY</b>	Administrative Permits	Limited liability
	Taxes	Shielding the firms assets form shareholders' creditors
	Products Regulations	Enforceable rules and agreements among partners
	Labor Regulations	Predictable rules to withdraw capital from the firm
		The possibility of issuing shares that facilitate the perpetual succession of the firm, can be used to raise capital, transmit information about the business and represent rights over the enterprise
		Access to business identification mechanisms that transmit information about national identity, addresses, the assets they own, their financial history, etc.
		Access to rules that establish enforceable standards of responsibility among partners, administrators and workers, allowing a more efficient division and specialization of labor and achieving economies of scale
		Enforceable contracts; Access to formal conflict resolution mechanisms
		Legally advertise and protection of brands and trademarks
		Predictable and speedy rules for closing a business; Default rules
		Membership of trade associations
		Permits to use public land, resources and utilities
	Access to incentives packages such as tax rebates, exports licenses and trade fairs	
	Flexibility	

# Framework for Empowering Poor and Indigenous Women and Girls

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## Challenges: Access to Justice and Rule of Law

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- Laws are framed in the context of a normative male subject and do not take account of women's specific situations
- More progressive laws lack enforcement
- Judges, legal aid services share mainstream perceptions and reinforce women's subordination through interpretations of law; women's representation in legal institutions continues to be low
- Informal justice systems are often based on traditional or religious precepts that deny women economic autonomy
- Poor and indigenous women lack information about the justice system
- Litigation involves high costs, long delays and far distances

## Challenges: Property Rights

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- Title to land or property is often a necessary condition to claiming other benefits such as subsidized agricultural inputs, ration cards and credit
- Lack of property rights prevents women from obtaining compensation from the government in cases of eviction and displacement, often after infrastructure development projects.
- Lack of a legal claim on the marital home and property often forces women to continue in violent and abusive relationships
- HIV/AIDS, natural disasters and war zones increase property feuds
- 25 % of developing countries have formal laws that impede women from inheriting or buying land, and taking out mortgages

## Potential of enforceable land rights

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Secure land rights and access to communal grazing property and forests can provide rural women and indigenous populations with **income, nutritional benefits, physical and psychological security, and social and political status**

- allow women supported opportunities to develop their capabilities
- engage women more fully in the market economy
- bring an immediacy to issues of land rights within a community (such as customary practice of inheritance)
- provide opportunities to explore and pilot methods in which to increase land productivity and to diversity livelihood options
- potential to be a catalyst for social change

## Inheritance and the limits of legislative reforms:

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The vast majority of countries follow patrilineal systems:

- In Burkina Faso and Zimbabwe, the patrilineal system trumps constitutional pronouncements of gender equality
- Bolivia, Chile and Brazil prohibit discrimination in matters of family but customary norms and practices continue to favor men

## Balancing equality and economics

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Land markets are driven by economic principles, not considerations of equity and social justice

For women, one of the best opportunities to obtain secure access to land is through alternate forms of land rights such as:

**land leasing**  
**sharecropping**  
**joint ventures**  
**leases with options to buy**  
**phases land purchase**

These types of contractual relationships require fewer resources and may offer greater flexibility than outright land purchases

## State in land markets

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In order for women to participate effectively in the land market, the state must play an active role, including provisions for:

- incentives to landowners to increase the supply of land on the market
- adoption of land laws that permit tenancy and contractual arrangements conducive to the rural poor's engagement
- subsidized access to funding for beneficiaries for land purchases, land leasing and subsequent land improvements
- funding for infrastructure development

### III. Challenges: Labor Rights

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- Women **earn less** than men and are **under-represented at decision-making levels**
- Women in almost all categories of work are vulnerable to **sexual harassment, discrimination and rights violations** that hamper their well-being and productivity
- Wage work in agriculture and fisheries, domestic work, home-based work and work in the informal sector, which are the primary livelihood options for the majority of poor women in developing countries, continue to **lie outside the boundaries of labor legislation and social security mechanisms**

### III. Challenges: Labor Rights Continued

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- **Relaxed labor laws** and the removal of special provisions for women are strategies being used in many countries to attract foreign investment, and **are justified as being necessary to lower the cost of production**
- **Migrant women workers** are not protected by national legislation and are extremely **vulnerable to violence, abuse and human rights violations**
- Provisions such as **maternity leave, childcare, health care and exemptions from night work and hazardous work** are therefore essential to allow women to participate in the formal workforce

## IV. Challenges: Legal Mechanisms to Empower Informal Businesses

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- Women's presence in the informal economy has increased as a result of macroeconomic policies that promote **normalizations and 'flexibilisation' of the labor force**
- **Microcredit and microfinance institutions** are practically the only source of capital for women
- Low returns and the pressure of loan repayment results in **girls being called on to subsidize the work of women** in the informal sector, dropping out of school and taking over household tasks to free their mothers to work
- Expansion of sex work and work in the entertainment industry exposes girls and women to **HIV/AIDS, social stigma and human trafficking**

## V. Making Reforms Work for Women

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- **Patriarchal mindsets, low participation of women** in legislative bodies, **lack of transparency** and **lack of information** on policy issues are all barriers to engendering the policy process
- PRSPs which provide the overarching policy framework for poverty reduction in the majority of developing countries are largely **gender-blind**
- **Allocation of public resources** is subject to significant gender biases, with poor financing being the main reason for non-implementation of legal and policy measures for gender equality
- Women's organizations are **under funded, marginalized and unable to effectively voice women's interests** or influence macroeconomic policy-making

# Legal Empowerment's Value Added

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## High Level Advocacy

- Consolidation of the evidence
- Compelling report
- Political and policy momentum

## Conceptual/Paradigm Shift

- Push for men to see themselves better off as women become better off
- Power as a positive sum game

## Policy Tool Kits for Change

Establish methods of reforming systems that can be implemented successfully around the world

## Women's Collective Action/Grassroots Advocacy

Strengthen grassroots organizations to create a powerbase to support the collective

## Commissioners' Voices

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“Discrimination in the enforcement of the law, denial of equal opportunity in education and employment, denial of property rights, inheritance rights and land rights, exclusion of women from political representation, deprivation of sexual and reproductive rights, and the use of social forces and physical violence to intimidate and subordinate women all constitute fundamental violations of the human right to equality.”

Mary Robinson

“Under criminal law, a woman’s life is worth half of a man’s; the legal value of a woman’s testimony is half of a man’s testimony.”

Shirin Ebadi

“Even from early childhood, a girl is looking after her siblings; she's the one who's helping her mother and looking out for the domestic animals. And then when she is married, she's becomes poor in a poor family. The management of poverty in our society is mostly done by women.”

F.H. Abed