



## LEARNING ABOUT **5 a.2** INDICATOR

SDG Indicator 5.a.2 – Ensuring women’s legal rights to land ownership and/or control

### Lesson: Assessing Proxy B

#### Text-only version

The interactive version of this lesson is available free of charge at: [www.fao.org/elearning](http://www.fao.org/elearning)



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Food and Agriculture  
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working for Zero Hunger

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## Assessing Proxy B

This lesson describes the assessment process for Proxy B, focusing on the key requirements to be considered in analysing the provisions of a national legal and policy framework.

## Learning objectives

At the end of this lesson, you will be able to:

- explain why Proxy B is important in monitoring Indicator 5.a.2;
- describe the four scenarios in which Proxy B exists;
- understand the features that a provision must have to satisfy the threshold for Proxy B.

## Rationale of Proxy B

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

Proxy B is one of the six proxies identified to assess progress under Indicator 5.a.2 – Percentage of countries where **the legal framework** (including customary law) **guarantees women's equal rights to land** ownership and/or control.



Why is spousal consent to land transactions important to "guarantee women's equal rights to land ownership and/or control"?

### Story of Felicie

*"My name is Felicie. Two years ago, my family was in economic difficulty, so my husband decided to sell our family house and our land to a private company, in order to move to the city. He concluded the sale transaction without my knowledge. I learned of it only after overhearing my husband talking with the buyer. I didn't want to sell the land and my home. I was very worried and did not think that moving to the city would improve our economic situation. In addition, I had heard of a national agricultural development project that could help us to improve our income from the land. I went to the court to ask them to cancel the sale, because I did not give my consent to it. Fortunately, the judge cancelled the sale and ordered that the property be returned to my family."*

The law of Felicie's country states that the consent of both spouses is required before the common property of a married couple can be transferred.

*"Now, our economic situation is good. We have greatly benefited from the agricultural development project and earn good incomes by producing cassava flour."*

As the story of Felicieenne demonstrates, rules for the management of commonly held land can be just as important as formally owning it. Property management rights include the power to mortgage, lease or sell property. When such actions are taken unilaterally by a husband or male partner, especially when they concern the **family home**<sup>1</sup> or other critical assets, they can leave a woman and any children homeless, and without means of subsistence.

The inclusion of **consent requirement** in a country's legal and policy framework is therefore **an important way to protect women** from arbitrary or unfair actions of their spouses or partners, and **ensure more equal control over the family home**.

The assessment for Proxy B aims to identify provisions that require **consent**<sup>2</sup> from spouse or **partner**<sup>3</sup> for **land transactions**<sup>4</sup>.

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<sup>1</sup> **Family home:** The family home is the house which is the main residence of the family. This can be property registered in the name of one or both spouses or partners. It may or may not constitute marital property. This term is frequently used interchangeably with the "family residence" or the "matrimonial home" in legal and policy frameworks.

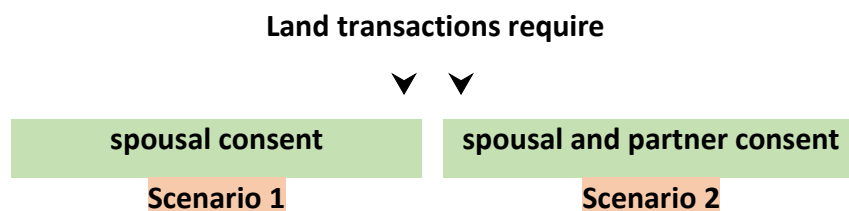
<sup>2</sup> **Consent:** Consent refers to **the requirement that the other spouse or partner agree to the land transaction** prior to the land transaction taking place.

<sup>3</sup> **Partner:** In the case of an unmarried couple, consent should be given by the partner.

<sup>4</sup> **Land transactions:** Land transactions refer to **major transactions concerning land**, specifically the **sale and mortgage** of land. The land for which consent is required can encompass a precise type of property, such as the family home, or all jointly owned property. For the proxy threshold to be met it must, **at a minimum encompass the family home**.

## Assessment for Proxy B

We are back in Abena's office, the national legal expert in charge of performing the Indicator 5.a.2 assessment. She is now conducting the assessment for Proxy B, checking if in her country's legal and policy framework there are provisions that require spouse or partner consent for land transactions. To establish that Proxy B exists, Abena needs to verify that **at least one of two possible scenarios** is present. Let's see what they are.



### Key requirements for the provisions

To determine if Proxy B is present, Abena should check that the provision(s) has the following features:

#### **Explicit nature**

The provision **must unambiguously refer** to spousal or partner consent as a condition to transfer the land. Provisions merely *implying* consent are not sufficient (e.g. simple reference to the existence of community of property regime among the spouses).

#### **Mandatory character**

The mandatory character is expressed **by terms having an imperative character** e.g. "shall", "must", "need to", versus soft terms e.g. "should", "may"...

#### **Recipients**

The right to consent to land transactions **must clearly refer to:**

- the husband and wife; and/or
- partners in an unmarried couple.

The right should not refer to an undefined group of individuals (i.e. a business partnership).

#### **Scope**

1. Consent must cover **at least two major transactions** (mortgages and sales). Such transactions may not be explicitly mentioned, but referred to with general statements, for instance statements prohibiting the "encumbrance"; "disposal" or "alienation" of the estate.
2. **The "land"** that is subject to the transaction must cover **at a minimum the family home**; customary land must not be explicitly excluded.

## Assessment for Proxy B

### LAND ACT 2001

**Art. 35:** "No person shall

- a) **sell**, exchange, transfer, pledge, **mortgage** or lease any family land;
- b) enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land; or
- c) give away any family land, inter vivos, or enter into any other transaction in respect of family land;

except **with the prior consent of his or her spouse.**"

### Conclusion:

This provision falls under Scenario 1. It explicitly refers to prior consent of the spouse as a condition for carrying out the sale and mortgage of family land, has a mandatory character and refers to married couples.

### Example

The following provisions fall within one of the four possible scenarios of Proxy B

#### Provision 1

**Marriage Law 2005, Art. 11:** "Movable properties and up to half of the immovable properties may be used at one's own discretion to meet the household needs, even without the consent of the wife, son, daughter, widow, daughter-in-law."

**No scenario present** - The provision allows the husband, without the consent of his wife, to use or dispose of half of the total immovable property. Although such use should be for the benefit of the household, this means that half of the land can be transferred without consent. As such, the threshold set for Proxy B is not met.

#### Provision 2

**Family Law 1990, Art. 68:** "Unless the spouses agree otherwise, the agreement of both spouses shall be required to sale, exchange, rent out, pledge or mortgage or alienate in any other way a common immovable property to confer a right to third parties on such property [...]"

**Scenario 1** - The provision explicitly requires the consent of both spouses to carry out the sale and mortgage of a common immovable property. It has a mandatory character and specifically refers only to married couples. As an exception to this rule, spouses can decide differently on how to

manage common property. Nonetheless, the scenario is still present because the default position is consent.

#### **Provision 3**

**CIVIL CODE 1990, Art. 159:** "Special provisions relating to matrimonial home: where any estate or interest in the matrimonial home is owned by the husband or the wife, he or she shall not, while the marriage subsists and without the consent of the other spouse, alienate it by way of sale, gift, lease, mortgage or otherwise."

**Art. 176:** "The property in common cannot be sold or encumbered without the consent of the two parties, during the existence of the de facto relationship and until the liquidation and adjudication of the aforementioned property is not made."

**Scenario 2** - Art. 159 clearly requires spousal consent for married couples. In addition, Art. 176 explicitly refers to prior consent of the partners of an unmarried couple as a condition for concluding a transaction of sale, or any encumbrance on the property in common, and it has a mandatory character.

#### **Provision 4**

**Family Law, Art. 3:** "The following property acquired by the husband and the wife during the period in which they are under contract of marriage shall be in their joint possession:

- (a) all movable and immovable property;
- (b) [...]

Husband and wife shall enjoy equal rights in the disposition of their jointly possessed property."

**No scenario present** - The provision only states that spouses have equal rights in disposing of the assets of the joint estate, which usually means that either spouse can dispose of the estate without the consent of the other.

## Summary

Proxy B verifies the existence in a country's legal and policy framework of provisions that require spouse or partner consent for land transactions.

To make the assessment for Proxy B, a national legal expert needs to analyse his/her country's legal and policy framework and verify if at least one of the following two possible scenarios is present:

1. specific reference is made to the requirement of spousal consent for land transactions;
2. specific reference is made to spousal and partner consent for land transactions.

For the provision to satisfy the requirements of Proxy B, it must be explicit and mandatory, and target married or unmarried couples. Consent must cover at least *two major transactions* (mortgages and sales). The "land" that is subject to the transaction must cover *at a minimum* the family home