



## 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 C

Text-only version

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



This lesson is available in Open Access under the Attribution-ShareAlike 3.0 IGO (CC-BY-SA 3.0 IGO) license. FAO holds copyright of the lesson content, 2018.



Food and Agriculture  
Organization of the  
United Nations



working for Zero Hunger

**In this lesson**

Learning objectives ..... 3

Rationale of Proxy C..... 3

Assessment for Proxy C..... 4

    Key requirements for the provisions – Scenario 1..... 5

    Key requirements for the provisions – Scenario 2..... 6

    Assessment for Proxy C..... 7

Summary ..... 10

## Assessing Proxy C

This lesson describes the assessment process for Proxy C, 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:

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

## Rationale of Proxy C

**Does the legal and policy framework support women's and girl's equal inheritance rights?**

Proxy C 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 are women's and girls' equal inheritance rights important to "guarantee women's equal rights to land ownership and/or control"?

Let's answer this question by beginning with the case of Mei.

### Story of Mei

*"My name is Mei. Recently my father died without making a will. According to the inheritance law of my country, I received only half the portion of the inheritance received by my five brothers. I am disadvantaged as a result of an unfair law, which discriminates against women heirs. Also, the law of my country does not protect me, were I to become a widow. If my husband dies without a will, his assets would only be distributed among our children and his brothers. I would even lose the right to live in my family home!"*

There are still many countries – like the one in which Mei lives in – where the law discriminates against women as spouses and daughters, denying their right to inherit.

Reforms are needed to repeal these norms and **ensure equal inheritance rights for women**. Such changes will also be important in guaranteeing women's equal rights to land ownership and/or control.

In many legal systems, **inheritance is a crucial mechanism for women to acquire assets**, given their limited ability to acquire property through the market. This is due to the persistence of gender inequalities in employment and income generation, as well as in access to other productive resources and services. In addition, inheritance is often one of the main channels through which women can **secure independent land rights**.

The assessment for Proxy C aims to identify provisions which establish that:

➡ **sons and daughters have equal inheritance rights**

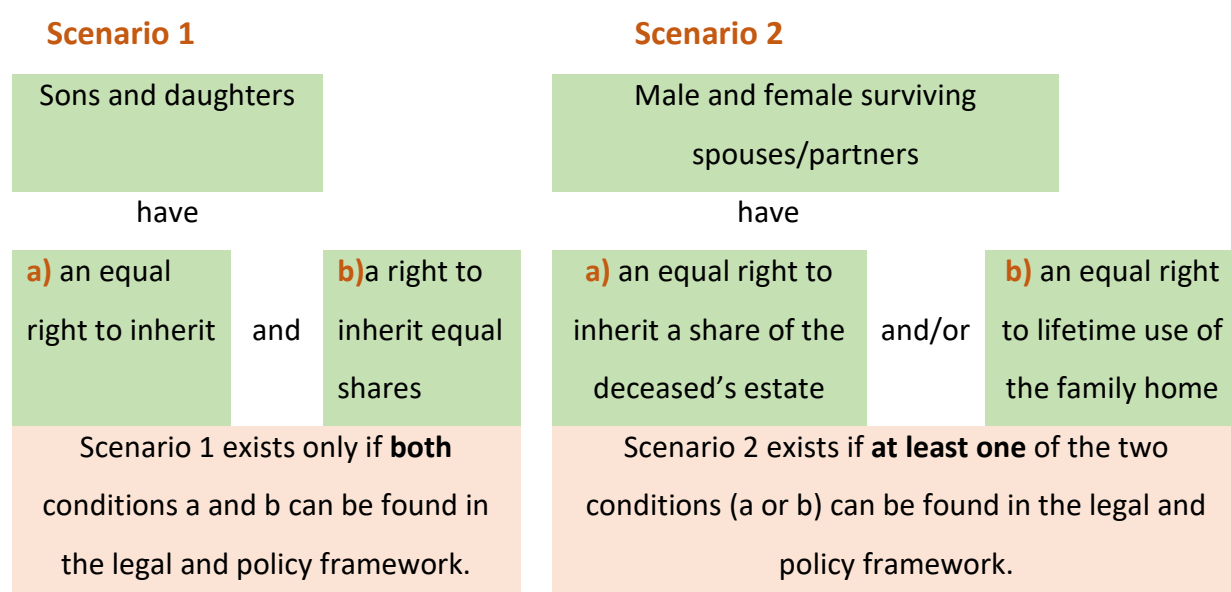
Sons and daughters having equal inheritance rights means that the lines of succession in the legal and policy framework governing inheritance states **equality of rank and equality of share between brothers and sisters, or between daughters and sons**, or are gender neutral. The proxy is not concerned with the rules as to which type of children can inherit (blood descendants (of the father or mother or both), adopted children, children born out of wedlock/rules on marital status of parents), so long as there are no differences between sons and daughters.

➡ **male and female surviving spouses and/or partners are entitled to an equal share of the deceased spouse's/partner's estate.**

Male and female surviving spouses/partners refers to the **spouse/partner who was married to the deceased** in a manner recognized by the marriage law(s) of the country, or the surviving partner in an unmarried couple. Equal share of the deceased spouse's/partner's estate refers to a first rank **right** for a surviving spouse/partner **to inherit a portion of the deceased's estate** in the default order of succession, or a lifetime user **right to the family home**, without any difference between male and female surviving spouses/partners.

## Assessment for Proxy C

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 C, checking if there are provisions that support women's and girl's equal inheritance rights in her country's legal and policy framework. To establish that Proxy C exists, Abena needs to verify that **both scenarios (Scenario 1 and 2)** are present.



### Key requirements for the provisions – Scenario 1

To determine if **Proxy C, Scenario 1** is present, Abena should check that the provision(s) has the following features:

#### 👉 Explicit nature

The provision **must specifically refer to equal inheritance rights and equal shares for sons and daughters**. Provisions that imply equal rights to inheritance are usually insufficient to establish that sons and daughters inherit equally under the legal framework (i.e. a general clause such as "there shall be no discrimination in property rights" is not sufficient).

NB: The threshold for this scenario is still reached even if the provisions on sons' and daughters' inheritance only apply in the absence of a will.

#### 👉 Conditions

Any **conditions attached** to the right to inherit should be **the same for sons and daughters** (i.e. a clause providing that daughters inherit only if they remain unmarried, without similar restrictions placed on sons, means that the requirements for the scenario are not met).

#### 👉 Scope

A right to equal inheritance for sons and daughters **exists if two conditions are met**:

1. both sons and daughters have a right to inherit the estate of their parents (regardless of who else inherits, and regardless of rank); and
2. sons and daughters inherit equal shares, which means that children, irrespective of their gender, are entitled to equal portions of the estate of their parents.

## Key requirements for the provisions – Scenario 2

To determine if **Proxy C, Scenario 2** is present, Abena should check that the provision(s) has the following features:

### **Explicit nature**

The provision **must specifically refer to the equal right to inherit or use the family home** for male and female surviving spouses (or for surviving spouses and partners in an unmarried couple). Provisions that merely imply equal rights to inheritance for male and female spouses are usually insufficient (i.e. a general clause such as "there shall be equality in all inheritance matters" is not sufficient). In addition, the order of succession matters. The spouse or partner should be among the first in the order of heirs (it does not matter if they share this status with children or parents of the deceased).

NB: It does not matter if the clause on spousal inheritance only applies in the absence of a will.

### **Conditions**

There should be **no conditions attached to the right**, regardless of whether they are the same for male and female surviving spouses (i.e. a requirement that a spouse or partner has to prove that they contributed to the property financially to benefit from the provision, or that the spouse or partner must have borne children or male heirs, means that the requirements for the scenario are not met). Any conditions attached to the right to inherit should be the same for sons and daughters (i.e. a clause providing that daughters inherit only if they remain unmarried, without similar restrictions placed on sons, means that the requirements for the scenario are not met).

### **Scope**

A right to equal inheritance for male and female surviving spouses **exists if one of the following two conditions are met:**

1. The female and male surviving spouse or partner is entitled to inherit a share of the deceased spouse's estate on an equal footing. This means that the amount or type of share is the same, regardless of whether the surviving spouse is male or female (i.e. a clause providing that the male surviving spouse inherits the estate and the female surviving spouse receives a life interest in the family home is not sufficient). Or
2. The female and male surviving spouse or partner enjoy a "user right" over the family home for the lifetime. A "user right" refers to the right to live in the family home and to use it according to the needs of the surviving spouse. This must be a lifetime right for the surviving spouse or partner. It is acceptable that the user right terminates upon remarriage of the surviving spouse.

However, these provisions are only acceptable if they apply equally to male and female surviving spouses. The "family home" is the house which is, or has been the main residence of the family.

## Assessment for Proxy C

Abena is analysing the provisions...

### CIVIL CODE 1973

**Art. 801:** "In all questions regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Laws, marriage, dissolution of marriage, the rule of decision shall be the Personal Laws of the parties.

The Personal Laws are not codified (written down in statute) in this country."

### Conclusion:

This provision does not satisfy the threshold for Proxy C. It is not sufficient that the law simply provides that a certain religious law applies to the estate of the deceased of a particular faith. The right to equal inheritance for spouses and children must be specifically stated in the legal and policy framework.

The following provisions fall within the two scenarios of Proxy C

#### Provision 1

**Civil Code 1990, Art. 176:** "Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children."

#### Scenario 1 (a), (b)

Scenario 1(a) is present, as the provision specifically recognizes the right to inherit for children of the intestate. Scenario 1(b) is present, as the law explicitly states that in the presence of more than one child, the inheritance should be divided equally among all children. There is no distinction based on gender, therefore it is assumed that there is equal treatment between female and male children. As there is no reference to surviving spouses' right to inherit or use the family home, Scenarios 2(a) and (b) are not present.

#### Provision 2

**Succession Act 1989, Art. 2:** "During intestate succession, the following are considered heirs:

First of all children of decedent, child born after testator's decease, spouse, parents [adoptive parents].

**Art.15:** "A surviving spouse shall have the right to reside during his lifetime in any family property, chieftaincy property or community property in which he/she cohabited with the deceased as their matrimonial home."

**Scenario 1(a), Scenario 2(a) 2(b).**

Scenario 1(a) is present, as the law explicitly states that the children of the deceased are considered equal heirs and inherit in first order during intestate succession. Scenario 1(b) is not present, as the law does not state the right to inherit equal shares. Scenario 2(a) is present, as the surviving spouse is a first rank successor and no distinction is made between male and female surviving spouses. Scenario 2(b) is also present, as the law recognizes an equal lifetime user right to the family home. Since Scenario 1(b), right to equal shares for male and female children is not found, Proxy C is not present in the legal and policy framework.

**Provision 3**

**Law of Succession 1990, Art. 67:** "The estate of the decedent shall be inherited in the following order:

First in order: spouse, children, parents. Second in order: brothers and sisters, paternal grand parents, maternal grand parents. When succession opens, the successor (s) first in order shall inherit to the exclusion of the successor (s) second in order. The successor(s) second in order shall inherit in default of any successor first in order.

[...]

Successors same in order shall, in general inherit in equal shares.

[...]

Successors may take unequal shares if an agreement to that effect is reached among them."

**Scenario 1(a) and (b) and Scenario 2(a).**

Scenario 1(a) is present, as the provision states that male and female children inherit in the same rank. By using gender neutral language, the provision recognizes both daughters' and sons' right to inherit a share of the deceased's estate. Furthermore, Scenario 1(b) is present, as the law explicitly states that successors in the same rank inherit in equal shares.

Scenario 2 (a) is present, as the provision states that spouses will inherit in first order of succession. For the purposes of assessing if the spouse or partner has a right to inherit a share of the deceased's estate, the order of succession matters. The spouse or partner should be among



the first order of inheritors. In addition, as the term "spouses" is gender neutral, it is implied that both female and male spouses will inherit in the first order of succession. Moreover, the law does not make any distinction based on the gender of the spouses with regard to the size of the share of the estate to which they are entitled.

The law allows successors to take an unequal share only upon agreement between the descendants. The scenarios, and therefore the proxy are nonetheless present, as this provision represents the exception to the default position, which provides for the equality of shares among successors of the same order.

Since both Scenario 1(a) and Scenario 1(b) are present, as well as Scenario 2(a), Proxy C is present in the legal and policy framework.

#### **Provision 4**

**Administration of Estate Act 1902, Art. 25:** "The lawful heirs to the assets comprising the estate shall be the lawful and blood relatives and the surviving spouse, in accordance with the following regulations. The surviving spouse inherits one half of the whole inheritance. The children or their descendants inherit from their parents, grandparents, or further blood relatives in the ascending line, without distinction between those of different sex or age. They each inherit in equal shares, if they all are from the same level.

**Art 100:** This law does not apply to the estates of individuals married under the Personal Codes (Hindu, Muslim etc).

PERSONAL LAW ACT:

**Article 97:** The widow or divorcees shall each be entitled to one half of the joint property as long as it is not specified in the marriage agreement.

**Article 176:** If there is only one daughter in the family then she gets half of the share, if there are two or more daughters then they together get two-thirds, and if there is a daughter together with the son, then the son gets two to one with the daughter. "

#### **No scenario present**

While the civil law includes Scenario 1(a), Scenario 1(b) and Scenario 2(a) by recognizing equal inheritance rights for the children of the deceased and the surviving spouse regardless of gender, that law does not apply to individuals of a particular religious faith. According to the codified religious law, individuals who are part of the religious group are subject to a provision that makes a distinction among the shares of inheritance entitled to sons and daughters. When the deceased

is survived by both sons and daughters, the daughter is entitled to half of the son's share. The presence of an exception cancels the existence of the scenarios found in the Civil Law. This means Proxy C is not present.

## Summary

Proxy C verifies the existence in a country's legal and policy framework of provisions that support women's and girls' equal inheritance rights.

To make the assessment for Proxy C, a national legal expert needs to analyse his/her country's legal and policy framework, and verify the existence of both the following scenarios:

1. reference is made to equal inheritance rights for sons and daughters (including the right to an equally sized share of the estate);
2. reference is made to the equal right of male and female surviving spouses to an equal share of the deceased's estate (either equal ownership or equal use right).

For the provisions to satisfy the requirements of Proxy C, they must be explicit on the equal right, and not treat women and men differently.