



Food and Agriculture Organization
of the United Nations

Questionnaire for Data Collection on SDG

Indicator 5.a.2

SECTION 1 – GENERAL INSTRUCTIONS

This questionnaire aims at collecting data relevant for SDG Indicator 5.a.2 measuring “*the percentage of countries where the legal framework (including customary law) guarantees women’s equal rights to land ownership and/or control.*”

The **focal point** of the designated institution for 5.a.2 **is responsible for completing and submitting** the questionnaire to FAO for quality control.

Since the legal nature of SDG Indicator 5.a.2, it might be essential to **involve an expert in law** in the legal assessment and questionnaire compilation. Before submitting the questionnaire to FAO, **the focal point** is also invited to **validate the responses** in consultation with other relevant national agencies, including line ministries that might have responsibilities and/or interest on women’s legal land rights.

The questionnaire should be completed sent back via e-mail to SDG-5A2-Indicator@fao.org for quality check by **FAO**.

We thank you very much for your kind cooperation and we remain at your disposal for any clarifications or **support you might need**. For further information, please **contact**:

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The questionnaire is organized as follows:

Section 1: General Instructions

Section 2: Legal Assessment (Identification of six proxies in the legal framework)

Section 3: Summary of the Assessment (Country Results)

SECTION 1 – GENERAL INSTRUCTIONS

Respondent Information:	
COUNTRY:	Germany
RESPONSIBLE INSTITUTION FOR 5.A.2:	Federal Statistical Office Germany (Destatis)
FOCAL POINT'S NAME AND SURNAME:	SDG Team
SALUTATION (Mr./Ms./...):	
RESPONDENT'S JOB TITLE:	
RESPONDENT'S UNIT/DIVISION :	G25 Environmental-Economic Accounts; Sustainable development indicators
RESPONDENT'S E-MAIL ADDRESS:	SDG-Indicators (G25) <SDG-Indicators@destatis.de>
RESPONDENT'S PHONE NUMBER:	+49 228 99 643 8855
NAME AND SURNAME OF LEGAL EXPERT CONDUCTING THE ASSESSMENT	
LEGAL EXPERT E-MAIL ADDRESS	
DATE OF COMPLETION OF ASSESSMENT (TO COMPLETE AT THE END)	20 January 2023
DATE RECEIVED BY FAO (FAO TO COMPLETE)	30 January 2023

SECTION 1 – GENERAL INSTRUCTIONS

PLEASE READ THIS SECTION CAREFULLY BEFORE COMPLETING THE QUESTIONNAIRE

For the purpose of understanding and completing the questionnaire correctly, the respondent should have read the guidelines “*Realizing Women’s Rights to Land in the Law*” (hereinafter “**The Guidelines**”). The Guidelines provide detailed instructions to be followed when filling out the questionnaire as well as the information needed to establish whether the proxy is present or not in the legal and policy framework of the country assessed.

Instructions for Section 1 – General Instructions: This section provides general information and guidance on the structure and content of the questionnaire. These instructions should be complemented with the material found in The Guidelines, which is essential to fill in the questionnaire accurately. Some specific information regarding the questions is also provided within the questionnaire.

Instructions for Section 2 - Legal Assessment - Identification of six proxies in the legal framework: This section is the core of the questionnaire.

Checklist of policy and legal instruments - Is a checklist of the type of instruments relevant for the purpose of the assessment – ex. Family law, Land Law – in order to guide the expert in the identification of the six proxies in the policy and legal framework of the country analysed. Please do not write in this checklist.

For each of the proxies you are required to complete **two forms**:

Form 1: Policy and Legal Instruments including Provisions for Proxy (x). It is composed of a set of key questions to be answered (YES or NO) in order to understand whether the proxy (x) is present or not in the legal framework of the country assessed. If the answer to a given question is YES, insert the ‘**title**’ and ‘**date of adoption**’ of the instrument where the relevant information for 5.a.2 was found. Copy/paste the **relevant provision** of the instrument as well as the **hyperlink** to the source in the spaces provided. If Proxy D does not exist in the policy or legal instrument(s), data on achieved gender equality in ownership and control of land should be provided for the proxy to be considered present. Equally, if Proxy F does not exist in the policy or legal instrument(s), data on substantial parity between women and men at all levels in land management and administration institutions should be provided for the Proxy to be considered present.

Form 2: Results of Assessment – Proxy (x). It provides the results of the questionnaire, which conclude that the proxy is present or not present in the legal framework. Any additional information concerning the proxy (whether it was found or not) shall be inserted in the space provided in Form 2, under the ‘Additional information’ section. Only if the proxy has been located in primary or secondary legislation, will this count for the purpose of the indicator. Exceptionally, in the case of Proxy D if gender equality in ownership and control of land is achieved and data of it is provided, the mentioned Proxy will be considered satisfied. Moreover, in case of Proxy F, if substantial parity between women and men at all

SECTION 1 – GENERAL INSTRUCTIONS

levels in land management and administration institutions is achieved and evidence of it is provided, the mentioned Proxy will also be considered satisfied.

In order to fill in appropriately the above-mentioned forms, some important instructions need to be kept in mind:

1. when completing Form 1 all legal/policy provisions containing the proxy should be cited using the copy and paste function, especially if provisions need to be read together to construct the proxy. If the policy or legal instrument(s) is/are not available electronically, the relevant information should be copied and inserted from the hard copy of the instrument, **without any interpretation from the national legal expert**. If the laws are in a language different from English, French or Spanish, please copy and paste the relevant provisions in the original language and then add the official or unofficial translation in English.
2. In federal countries (or where matters on land are decentralized) and where states/provinces/counties/regions have passed their own policies/laws relevant to the proxies, check the laws/policies of the most populated states/provinces/counties/regions (as many as to cover 50 per cent of the population). The proxy should be present in all of the legal and policy frameworks relevant to these locations. If this is not the case (i.e. one proxy is missing in one state), the proxy does not exist. The name of the pertinent states/provinces/counties/regions should be mentioned when citing the legal instrument(s) containing the proxy (*refer to Page 11 of The Guidelines*).
3. In the ‘Additional Information’ section:
 - please insert any instrument (and its provisions) when these *almost* fulfil the conditions/thresholds set by the methodology for a proxy, but do not exactly satisfy the requirements. The threshold and conditions are explained in the methodology and will be referenced for each proxy in the course of the questionnaire.
 - please insert the provisions which include the proxy and the ones contradicting its existence. It might happen in fact that legal provisions in different instruments or within the same instrument appear to conflict, with one provision suggesting the proxy exists and others contradicting this. In these cases, the Proxy does not exist (*refer to Page 9 of The Guidelines*).

Instructions for Section 3 - Summary of the Assessment - Country Results: This section summarizes the results of the legal assessment carried out and reported in Section 2. It provides an overview of which proxies were or were not identified in the country's legal framework and states the total number of proxies found.

THIS IS THE END OF SECTION 1. PLEASE CONTINUE TO SECTION 2.

Legal Assessment - Identification of six proxies in the legal framework

SECTION 2: LEGAL ASSESSMENT

Checklist of policy and legal instruments

The purpose of this checklist is to guide you on the relevant instruments that need to be reviewed to conduct the assessment to determine if the six proxies composing the indicator are present in the legal framework of the country. The proxies are the following:

Proxy A: Is the joint registration of land compulsory or encouraged through economic incentives?

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

Proxy C: Does the legal and policy framework support women's and girls' inheritance rights?

Proxy D: Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land?

Proxy E: In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?

Proxy F: Does the legal and policy framework mandate women's participation in land management and administration institutions?

While the majority of the instruments listed below are relevant for all proxies, some are specific to certain proxies. Please do not write in this check list. It is only for your guidance.

Policies

National land policy or strategy; national land administration program

National agriculture policy or strategy

National gender policy or strategy

Other relevant policies

Primary legislation

Constitution

Family law

Civil code

Land law

Law on land registration

Law on agriculture

Personal law I (relevant only for Proxies A, B and C)

Personal law II (relevant only for Proxies A, B and C)

Personal law III (relevant only for Proxies A, B and C)

Law on gender equality/women's empowerment

Other relevant laws

SECTION 2: LEGAL ASSESSMENT

Secondary legislation

Regulations

Decrees

Rules

By-laws

Circulars

SECTION 2: LEGAL ASSESSMENT

Form 1: Policy and Legal Instruments including Provisions for Proxy A (The Guidelines, Pages 15-23)

Please answer the question/s below. If your answer is YES, fill in the table with the relevant information. Copy/paste the table provided below as many times as needed for each question when citing more than one source/instrument.

Q.A1 Is joint registration of land compulsory for married couples? (Scenario 1)

YES NO

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

Q.A2 Is joint registration of land compulsory for unmarried couples? (Scenario 2)

YES NO

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

Q.A3 Is joint registration of land encouraged through economic incentives for married couples? (Scenario 3)

YES NO

If YES, cite:

Full name of the instrument:	
Date of adoption:	

SECTION 2: LEGAL ASSESSMENT

Copy/Paste relevant provision(s):	
Link to the source (www)	

Q.A4 Is joint registration of land encouraged through economic incentives for unmarried couples? (Scenario 4)

YES NO

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

SECTION 2: LEGAL ASSESSMENT

Form 2: Results of Assessment –Proxy A

To summarize the assessment for proxy A, please tick the appropriate box(es).

Proxy A is present only if at least one of the scenarios mentioned in Form 1 is located in a legal instrument – primary or secondary law.

Q.A5 Is the joint registration of land compulsory or encouraged through economic incentives?

- Proxy was not found
 Proxy found in primary legislation
 Proxy found in secondary legislation (order, rule, regulation)

Q.A6 Additional information in relation to this proxy:

(Note any additional information and/or exception(s) to the provision where the proxy was found or any provision that is close to matching the requirements provided for in The Guidelines (Pages 16 - 19, 21) but does not entirely fulfil the proxy.)

With regards to land registration the civil status “married” or “not married” does not make a difference under German law. Women and men are registered as the owner of the land, irrespective of their civil status. It is compulsory under German law that every owner is registered pursuant to Section 873 (1) of the German Civil Code (*Bürgerliches Gesetzbuch* or *BGB*). So, if the married or unmarried couple owns the land together, both will be registered separately as owner, each with a share of one half. Joint registration of immovable property is mandatory, if the property is actually owned by both spouses as a matrimonial community of joint property. However, in practice this is rarely the case because a matrimonial community of joint property it is not the rule under German marital law.

(1) common marital property only an option according to marital law

The German Civil Code (*Bürgerliches Gesetzbuch* or *BGB*) provides for the community of accrued gains as the usual legal property status for spouses according to Section 1363 of the Civil Code (BGB). The community of accrued gains is defined by the principle of separation of property, Section 1363 (1) of the Civil Code (BGB), defining that neither the property brought into the marriage by the spouses becomes joint property nor the property acquired during the marriage becomes joint property automatically. If the spouses acquire property together during their marriage, each one acquires one half of the asset, unless they agree on other shares.

Matrimonial community of property (and the possibility of joint registration) only exists if explicitly agreed by marriage contract in accordance Section 1415 and 1416 (3) of the Civil Code (BGB). This does not meet the proxy’s threshold as per SDG indicator 5.a.2 methodology, which requires community of property (and its protection through joint registration) to be the rule.

(2) joint registration in the German Land Register (*Grundbuch*)

Land registration is mandatory pursuant to Section 873 (1) of the German Civil Code (BGB). The Land Register (*Grundbuch*) records the names of the property owners, the proportion that each owner holds as well as existing rights of third parties.

SECTION 2: LEGAL ASSESSMENT

If the spouses live in the regular marital property status as a community of accrued gains and own (or acquire) an immoveable asset together, they are registered separately displaying the proportion of their share, e.g. name of wife $\frac{1}{2}$ and name of husband $\frac{1}{2}$.

If the spouses own the land jointly as marital property, since they chose a matrimonial community of joint property by marital contract, it is mandatory that they are registered jointly as a marital community pursuant to Section 47 (1) of the Land Register Code (*Grundbuchordnung* or *GBO*), such as other communities, e.g. a company. In order to be registered as a matrimonial community in the Land Register (*Grundbuch*) and not separately as individuals, the spouses are obligated to prove to the Land Register Office their registration as a community of joint property in the Marriage Register (*Eheregister*) according to Section 33 of the Land Register Code (*GBO*).

In summary, the German Land Register (*Grundbuch*) displays the property proportions on an immoveable asset established under substantial law. Joint ownership or achievement community for married couples is the exemption by national marital law and can only be achieved by a marital contract opting out the so-called accrued gains regime that is established by law, Section 1363 Civil Code (*BGB*). If a community of common marital property is chosen (Section 1415 Civil Code (*BGB*)), a joint registration is mandatory. However, since common marital property is only an option, joint registration is not compulsory for married couples and therefore Proxy A is not met under German Law. Joint registration is also not encouraged by financial incentives such as tax reductions.

Land Register Code [Grundbuchordnung]

Division 2 Registrations in the Land Register

Section 33

(1) Der Nachweis, dass zwischen Ehegatten oder Lebenspartnern Gütertrennung oder ein vertragsmäßiges Güterrecht besteht oder dass ein Gegenstand zum Vorbehaltsgut eines Ehegatten oder Lebenspartners gehört, kann durch ein Zeugnis des Gerichts über die Eintragung des güterrechtlichen Verhältnisses im Güterrechtsregister geführt werden.

(2) Ist das Grundbuchamt zugleich das Registergericht, so genügt statt des Zeugnisses nach Absatz 1 die Bezugnahme auf das Register.

Section 47

(1) Soll ein Recht für mehrere gemeinschaftlich eingetragen werden, so soll die Eintragung in der Weise erfolgen, daß entweder die Anteile der Berechtigten in Bruchteilen angegeben werden oder das für die Gemeinschaft maßgebende Rechtsverhältnis bezeichnet wird. (...)

<https://www.gesetze-im-internet.de/gbo/BINR001390897.html>

[Unofficial translation:

Section 33

*(1) **Proof** that the separation of property applies or that a marital settlement exists between spouses or life partners or that an object forms part of the reserved property of one of the spouses or life partners **may be provided by means of a court-issued certificate of the entry on the marital property arrangements made in the marriage property register.***

*(2) If the land registry (*Grundbuchamt*) is simultaneously the register court, it suffices for reference to be made to the register in lieu of the certificate.*

SECTION 2: LEGAL ASSESSMENT

Section 47

(1) Where a **right relating to several persons jointly** is to be entered, the entry is to be made in such a manner that **either the shares** of those entitled are stated in fractions **or the legal relationship** governing their association is designated.]

German Civil Code (Bürgerliches Gesetzbuch (BGB))

Book 3 Law of Property

Division 2 General provisions on rights in land

Section 873 Acquisition by agreement and registration

(1) **The transfer of the ownership of a plot of land, the encumbrance of a plot of land with a right and the transfer or encumbrance of such a right require** agreement between the person entitled and the other person on the occurrence of the change of rights and **the registration of the change of rights in the Land Register**, except insofar as otherwise provided by law.

Title 6 Matrimonial property regime

Subtitle 1 Statutory property regime

Section 1363 Community of accrued gains

(1) The spouses live under **the property regime of community of accrued gains if they do not by marriage contract agree otherwise.**

(2) The property of the husband and the property of the wife do **not become the common property of the spouses; the same applies to property that one spouse acquires after marriage.** The accrued gains that the spouses acquire in the marriage, however, **are equalised if the community of accrued gains ends.**

Chapter 3 Community of property

Subchapter 1 General provisions

Section 1415 Agreement by marriage contract

If the spouses, **by marriage contract, agree on community of property**, the following provisions apply.

Section 1416 Marital property

(1) The property of the husband and the property of the wife, as a result of community of property, become **the joint property of both spouses** (marital property). The marital property also **includes the property that the husband or the wife acquires** during the period of community of property.

(2) The individual objects become joint property (...).

(3) **If a right that is registered in the Land Register or may be registered in the Land Register becomes marital property, each spouse may require the other to cooperate in correcting the Land Register.** (...).

https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

SECTION 2: LEGAL ASSESSMENT

Form 1: Policy and Legal Instruments including Provisions for Proxy B (The Guidelines, Pages 24-29)

Please answer the question/s below. If your answer is YES, fill in the table with the relevant information. Copy/paste the table provided below as many times as needed for each question when citing more than one source/instrument.

Q.B1 Does the legal framework require spousal consent for land transactions? (Scenario 1)

YES NO

If YES, cite:

Full name of the instrument:	<i>The German Civil Code (Bürgerliches Gesetzbuch, BGB)</i>
Date of adoption:	<i>18.08.1896</i>
Copy/Paste relevant provision(s):	<p>Book 4 Family Law</p> <p>Title 6 Matrimonial property regime Subtitle 1 Statutory property regime</p> <p><i>Section 1365 Disposition of property as a whole (1) A spouse may only with the consent of the other spouse agree to dispose of his property as a whole. Where he has agreed without the approval of the other spouse, he may perform the duty only if the other spouse consents.</i></p> <p><i>Section 1367 Unilateral legal transactions A unilateral legal transaction that is entered into without the necessary consent is ineffective.</i></p> <p><i>Section 1368 Asserting the ineffectiveness If a spouse, without the necessary approval of the other spouse, disposes of his property, the other spouse is also entitled to assert the rights arising from the ineffectiveness of the disposition against the third party in court.</i></p>
Link to the source (www)	<p>https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html</p> <p>https://www.gesetze-im-internet.de/bgb/BJNR001950896.html#BJNR001950896BJNG011702377</p>

Q.B2 Does the legal framework require spousal and partner consent for land transactions? (Scenario 2)

YES NO

If YES, cite:

SECTION 2: LEGAL ASSESSMENT

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

SECTION 2: LEGAL ASSESSMENT

Form 2: Results of Assessment– Proxy B

To summarize the assessment, please tick the appropriate box(es).

Proxy B is present only if at least one of the scenarios mentioned in Form 1 is located in a legal instrument – primary or secondary law.

Q.B5 Does the legal and policy framework require spousal consent for land transactions?

- Proxy was not found
 In primary legislation
 In secondary legislation (order, rule, regulation)

Q.B6 Additional information in relation to this proxy:

(Note any additional information and/or exception(s) to the provision where the proxy was found or any provision that is close to matching the requirements provided for in The Guidelines (Pages 26-28) but does not entirely fulfil the proxy.)

Under German national law the accrued gains regime applies. This means that by law there is no joint ownership or achievement community for married couples (neither as the default regime nor as legally established presumptions), except in the (rare) case of a marital contract establishing community of property. Consequently, each spouse may dispose of his individual property without the other spouse's consent since men and women are understood as individuals regardless of marital status. Therefore, there is no specific rule requiring spousal consent for land transactions.

There is one important exemption: if the asset to be transferred is the *only or most valuable asset the spouse possesses, the other spouse must consent to the disposition of the property as a whole* according to **Section 1365 of the Civil Code (BGB)**. Although a legal definition of the concept of "property as a whole" does not exist, this provision deviates from the principle of the separation of property in view of protecting the economic livelihood or financial basis of the family community. Additionally, it is intended to protect the other spouse's claim to equalisation of accrued gains. According to German case law, legal transactions concerning individual objects are also subject to consent if they account for *all or almost all of the property (85 to 90 %)* (cf. Federal Supreme Court (BGH), judgement of 23 June 1983, ref. IX ZR 47/82). If *the property shares of the spouses are not balanced*, the wealthy spouse owning e.g. the family home is not supposed to sell it without the other spouse's consent. Accordingly, one's "property as a whole" has to be understood in relation to the family's property and therefore to both spouses' properties. It can either mean *everything one owns or one asset that makes up for most of the family's property*. (When defining this term commentary literature makes a reference to Section 311b III BGB, this is only a reference though, a legal definition cannot be found.)

So, in the absence of a marital contract establishing joint or community of property, there are two possible scenarios when the spouses live in a community of accrued gains (as it is the rule under German law):

1. the spouses own the land together, meaning each one owns half of the land

SECTION 2: LEGAL ASSESSMENT

As a consequence of the absence of joint property, each spouse can *only dispose of her or his share of the land held in fractional community*. So in fact a unilateral transaction of the family home is not allowed.

2 one spouse owns the entire land

It depends on whether the property is the *most valuable asset and builds the economic base of the family's life* or whether it is only one asset amongst other equally valuable assets. As land or real estate often is the most valuable asset a spouse possesses, land transactions are not possible without the consent of the other spouse.

In summary under German national law spouses have equal rights to land ownership which means parity between women and men in land management. The question asked is not suitable to evaluate women's rights regarding land transactions under German law since the underlying principles in German marital law do not see the spouses as a community owning land jointly but as two individuals owning land on their own. The scenarios show that mostly, land transactions are subject to the spouse's consent.

Beyond the consent requirement in Section 1365 of the Civil Code (*BGB*), the law does not provide for any further restrictions on a spouse's right of self-determination in the case of community of accrued gains. If the spouses wish to have further restrictions on disposal, they are free to make appropriate arrangements in a marriage contract, e.g. to agree on the matrimonial property regime of community of property in which case Section 1424 of the Civil Code (spousal consent requirement) will apply. On the other hand, the spouses can also renounce the restriction on disposal of § 1365 BGB by means of a marriage contract.

SECTION 2: LEGAL ASSESSMENT

Form 1: Policy and Legal Instruments including Provisions for Proxy C The Guidelines, Pages 30-41)

Please answer the question/s below. If your answer is YES, fill in the table with the relevant information. Copy/paste the table provided below as many times as needed for each question when citing more than one source/instrument.

Q.C1 Do sons and daughters have an equal right to inherit? (Scenario 1A)

YES NO

If YES, cite:

Full name of the instrument:	<i>The German Civil Code (Bürgerliches Gesetzbuch, BGB)</i>
Date of adoption:	<i>18.08.1896</i>
Copy/Paste relevant provision(s):	<p>Book 5 Law of Succession Division 1 Succession</p> <p><i>Section 1922 Universal succession</i> <i>(1) Upon the death of a person (devolution of an inheritance), that person's property (inheritance) passes as a whole to one or more than one other persons (heirs).</i> <i>(2) The share of a co-heir (share of the inheritance) is governed by the provisions relating to inheritance.</i></p> <p><i>Section 1924 Heirs on intestacy of the first degree</i> <i>(1) Heirs on intestacy of the first degree are the descendants of the deceased.</i> <i>(2) A descendant living at the time of the devolution of an inheritance excludes the descendants related to the deceased through himself from the succession.</i></p> <p><i>Section 1930 Priority of the degrees</i> <i>A relative is not entitled to inherit as long as a relative of a preceding degree survives.</i></p>
Link to the source (www)	<p>https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html</p> <p>https://www.gesetze-im-internet.de/bgb/BJNR001950896.html#BJNR001950896BJNG011702377</p>

Q.C2 Do sons and daughters have the right to inherit in equal shares (Scenario 1B)

YES NO

If YES, cite:

Full name of the instrument:	<i>The German Civil Code (Bürgerliches Gesetzbuch, BGB)</i>
Date of adoption:	<i>18.08.1896</i>

SECTION 2: LEGAL ASSESSMENT

Copy/Paste relevant provision(s):	<i>Section 1924 Heirs on intestacy of the first degree (4) Children inherit in equal shares.</i>
Link to the source (www)	https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

Q.C3 Are male and female surviving spouses/partners entitled to an equal right to inherit a share of the deceased spouse's/partner's estate? (Scenario 2A)

YES NO

If YES, cite:

Full name of the instrument:	<i>The German Civil Code (Bürgerliches Gesetzbuch, BGB)</i>
Date of adoption:	<i>18.08.1896</i>
Copy/Paste relevant provision(s):	<p>Book 5 Law of Succession Division 1 Succession</p> <p><i>Section 1931 Right of intestate succession of the spouse (1) The surviving spouse of the deceased as an heir on intestacy is entitled to one quarter of the inheritance together with relatives of the first degree, and to one half of the inheritance together with relatives of the second degree or together with grandparents. If there are both grandparents and descendants of grandparents living, the spouse also receives the share of the other half that under section 1926 would pass to the descendants. (2) If there are relatives neither of the first nor of the second degree nor grandparents living, the surviving spouse receives the whole inheritance. (3) The provision of section 1371 is unaffected. (4) If at the time of the devolution of the inheritance there was separation of property and if one or two children of the deceased are entitled as heirs on intestacy together with the surviving spouse, the surviving spouse and each child inherit in equal shares; section 1924 (3) applies in this case too.</i></p> <p>Book 4 Family Law Title 6 Matrimonial property regime Subtitle 1 Statutory property regime</p> <p><i>Section 1371 Equalisation of accrued gains in the case of death (1) If the property regime is ended by the death of a spouse, the equalisation of the accrued gains is effected by the share of the inheritance on intestacy of the surviving spouse being increased by one quarter of the inheritance; it is irrelevant here whether the spouses in the individual case have made accrued gains.</i></p>
Link to the source (www)	https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html

Q.C4 Are male and female surviving spouses/partners entitled to an equal right to lifetime use of the family home? (Scenario 2B)

YES NO

If YES, cite:

SECTION 2: LEGAL ASSESSMENT

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

SECTION 2: LEGAL ASSESSMENT

Form 2: Results of Assessment – Proxy C

To summarize the assessment, please tick the appropriate box(es).

To determine whether Proxy C is present in a legal instrument – primary or secondary law - refer to the “Tips” boxes for Scenario 1 and 2 at Pages 32 and 35 of The Guidelines.

Q.C5 Does the legal and policy framework support women’s and girls’ equal inheritance rights?

- Proxy was not found
 In primary legislation
 In secondary legislation (order, rule, regulation)

Q.C6 Additional information in relation to this proxy:

(Note any additional information and/or exception(s) to the provision where the proxy was found or any provision that is close to matching the requirements provided for in The Guidelines (Pages 31-40) but does not entirely fulfil the proxy.)

Proxy C is present based on the provisions cited in Form 1 above.

If the matrimonial home is located in a property that is solely or jointly owned by the deceased, the property falls within the estate. Any co-heir may proceed to compulsory auction for the purpose of dissolution of the community. The enforced auction proceedings may be temporarily discontinued upon application if this appears reasonable when considering the conflicting interests of the various co-owners (§ 180 paragraph 2 of the Act on Enforced Auction and Receivership (Gesetz über die Zwangsversteigerung und die Zwangsverwaltung, ZVG).

If the property would have to be sold to satisfy the compulsory shares, § 2331a paragraph 1 sentence 1 BGB provides for a deferment option if the heir would otherwise be forced to give up his or her family home. However, the surviving spouse is not legally entitled to a lifelong right to use the family residence, unless the deceased has made such a provision in his will or in a contract of inheritance.

Section 2331a Additional time

(1) The heir can demand additional time to satisfy the compulsory share if the immediate satisfaction of the entire claim would constitute an inequitable hardship for the heir on account of the nature of the objects of the estate, in particular if it would force him to give up his family home or to sell business assets that form the economic basis for the everyday life of the heir and his family. The interests of the person entitled to a compulsory share must be adequately taken into account.

SECTION 2: LEGAL ASSESSMENT

Form 1: Policy and Legal Instruments including Provisions for Proxy D (The Guidelines, Pages 41-46)

Please answer the question/s below. If your answer is YES, fill in the table with the relevant information. Copy/paste the table provided below as many times as needed for each question when citing more than one source/instrument.

Q.D1 Does the legal framework provide for the allocation of financial resources for increasing women's ownership and control over land?

YES NO

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

Q.D2 If your answer to question Q.D1 is "NO", please provide official statistical data shows that nationally, at least 40 percent of those owning land are women for the proxy to be considered present.

--

SECTION 2: LEGAL ASSESSMENT

Form 2: Results of Assessment–Proxy D

To summarize the assessment, please tick the appropriate box(es).

Proxy D is present ONLY if it is located in a legal instrument – primary, secondary law OR if official statistical data shows that nationally, at least 40 percent of those owning land are women

Q.D3 Does the legal and policy framework provide for the allocation of financial resources to increase women’s ownership and control over land?

- Proxy was not found
- Proxy was not found but official statistical data shows that nationally, at least 40 percent of those owning land are women
- In primary legislation
- In secondary legislation (order, rule, regulation)

Q.D4 Additional information in relation to this proxy:

(Note any additional information and/or exception(s) to the provision where the proxy was found or any provision that is close to matching the requirements provided for in The Guidelines (Pages 42-44) but does not entirely fulfil the proxy.)

SECTION 2: LEGAL ASSESSMENT

Form 1: Policy and Legal Instruments including Provisions for Proxy E (The Guidelines, Pages 47-56)

Please answer the question/s below. If your answer is YES, fill in the table with the relevant information. Copy/paste the table provided below as many times as needed for each question when citing more than one source/instrument.

Q.E1 Does the Constitution recognize customary law? (Scenario 1A)

YES

NO → Question **Q.E3**

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

Q.E2 Does the Constitution provide for the supremacy of gender-equality and non-discrimination in case of conflict with customary law? (Scenario 1B)

YES NO

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

SECTION 2: LEGAL ASSESSMENT

Q.E3 Does the legal or policy framework recognize customary land tenure? (Scenario 2A)

YES

NO → Question **Q.F1**

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

Q.E4 Does the legal and policy framework recognizing customary land tenure explicitly protect women's land rights? (Scenario 2B)

YES NO

If YES, cite:

Full name of the instrument:	
Date of adoption:	
Copy/Paste relevant provision(s):	
Link to the source (www)	

SECTION 2: LEGAL ASSESSMENT

Form 2: Results of Assessment – Proxy E

To summarize the assessment, please tick the appropriate box(es).

To determine whether Proxy E is present in a legal instrument – primary or secondary law - refer to the “Tips” boxes for Scenario 1 and 2 at Pages 49 and 52 of The Guidelines.

Q.E5 In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?

- Not Applicable because customary law/land tenure is not recognized or does not exist
- Proxy was not found
- In primary legislation
- In secondary legislation (order, rule, regulation)

Q.E6 Additional information in relation to this proxy:

(Note any additional information and/or exception(s) to the provision where the proxy was found or any provision that is close to matching the requirements provided for in The Guidelines (Pages 48-53) but does not entirely fulfil the proxy.)

SECTION 2: LEGAL ASSESSMENT

Form 1: Policy and Legal Instruments including Provisions for Proxy F (The Guidelines, Pages 57-64)

Please answer the question/s below. If your answer is YES, fill in the table with the relevant information. Copy/paste the table provided below as many times as needed for each question when citing more than one source/instrument.

Q.F1: Does the legal and policy framework provide quotas for women’s participation in land management and administration institutions?

YES NO

If YES, cite:

Full name of the instrument:	<i>Act on the Participation of the Federation in Appointments to Bodies (Federal Act on Appointment to Bodies)</i>
Date of adoption:	24 April 2015
Copy/Paste relevant provision (s):	<p><i>Section 1 Aim of the Act</i> <i>The aim of the Act is the equal representation of women and men in bodies, in so far as the Federation may designate members of such bodies.</i></p> <p><i>Section 2 Scope of application</i> <i>This Act shall apply to all bodies under section 3 nos 1 and 2 for which the Federation may designate members. It shall not apply to the appointment of members of the Federal Government, to the judiciary or to members of bodies designated in the exercise of legally guaranteed independence.</i></p> <p><i>Section 3 Definitions</i> <i>For the purposes of this Act,</i> <i>1. “supervisory bodies” means supervisory and administrative boards as well as constituent bodies exercising comparable supervision, regardless of their designation and legal basis, even if their members are chosen by vote;</i></p> <p><i>Section 4 Requirements of supervisory bodies</i> <i>(1) As from 1 January 2016, at least 30 per cent of the members of supervisory bodies to be designated by the Federation must be women and at least 30 per cent must be men. ...</i> <i>(2) The aim is to increase the percentages specified in subsection (1) to 50 per cent as from 1 January 2018. Where the Federation is entitled to an uneven total number of seats in a body, the disparity between women and men may amount to only one seat.</i></p>
Link to the source (www)	https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=101572&p_count=97387&p_classification=02&p_classcount=3675

SECTION 2: LEGAL ASSESSMENT

Q.F2: If your answer to question Q.F1 is “NO”, please provide official statistical data that shows that nationally, at least 40 percent of those owning land are women for the proxy to be considered present.

SECTION 2: LEGAL ASSESSMENT

Form 2: Results of Assessment– Proxy F

To summarize the assessment, please tick the appropriate box(es).

Proxy F is present ONLY if:

- 1. It is located in a legal instrument – primary or secondary law, OR**
- 2. Official statistical data shows that nationally, at least 40 percent of those owning land are women**

QF2: Does the legal and policy framework mandate women’s participation in land management and administration institutions?

- Proxy was not found
- Proxy was not found but official statistical data shows that nationally, at least 40 percent of those owning land are women
- In primary legislation
- In secondary legislation (order, rule, regulation)

Q.F3: Additional information in relation to this proxy:

*(Note any additional information or/and exception(s) to the provision where the proxy was found or any provision that is close to matching the requirements provided for in **The Guidelines (Pages 58-60)** but does not entirely fulfil the proxy)*

The proxy is present based on **the Act on the Participation of the Federation in Appointments to Bodies (Federal Act on Appointment to Bodies)** of 24 April 2015 -cited above-, since this Act also applies to land management and land administration boards as well as constituent bodies at the federal level ("in bodies, in so far as the Federation may designate members of such bodies"). Additionally, the 16 Länder have similar regulations, e.g.

- Lower Saxony § 11 NGG:
https://www.niedersachsen.de/download/115129/Entwurf_Niedersaechsisches_Gleichberechtigungsgesetz_NGG_.pdf
- Mecklenburg-Western Pomerania § 17 GIG M-V:
<https://www.landesrecht-mv.de/bsmv/document/jlr-GleichstGMV2016pP17>
- Northrhine-Westphalia § 12 LGG:
https://recht.nrw.de/lmi/owa/br_bes_text?anw_nr=2&gld_nr=2&ugl_nr=2031&bes_id=4847&menu=1&sg=0&aufgehoben=N&keyword=Landesgleichstellungsgesetz.

[...]

Moreover, the **Federal Act on Gender Equality – BgleiG-** and Equality Laws at the Länder level aim at implementing gender equality in the federal public administration, federal courts and federal administration institutions under private law. They provide among other things for preferential treatment of women in new recruitments in case they are under-represented. Although this Act has had positive effects on a more equal share of positions between men and women in administration (https://www.researchgate.net/publication/278497905_The_Policy_on_Gender_Equality_in_Germany) with the proportion of women in all management functions in Federal administration having attained 30%, it does not establish a mandatory quota in accordance with the methodology which requires a minimum percentage to be legally established.

The relevant provisions are the following:

SECTION 2: LEGAL ASSESSMENT

Act on Equality between Women and Men in the Federal Administration and in Federal Enterprises and Courts (Federal Act on Gender Equality - BGleIG)

Gesetz für die Gleichstellung von Frauen und Männern in der Bundesverwaltung und in den Gerichten des Bundes (Bundesgleichstellungsgesetz - BGleIG)

24.04.2015

§ 1 Ziele des Gesetzes

(1) **Ziel des Gesetzes ist es,**

1. die Gleichstellung von Frauen und Männern zu verwirklichen,

2. bestehende Benachteiligungen auf Grund des Geschlechts, insbesondere Benachteiligungen von Frauen, zu beseitigen und künftige Benachteiligungen zu verhindern (...)

§ 2 Geltungsbereich

(1) *Dieses Gesetz gilt für die Dienststellen nach § 3 Nummer 5.*

§ 3 Begriffsbestimmungen

Im Sinne dieses Gesetzes sind: (...)

5. Dienststellen:

a) *Bundesgerichte,*

b) **Behörden und Verwaltungsstellen der unmittelbaren Bundesverwaltung (...)**

c) *Körperschaften, Anstalten und Stiftungen des öffentlichen Rechts des Bundes;*

maßgebend sind § 4 Absatz 1 Nummer 4 und 6 sowie § 6 des Bundespersonalvertretungsgesetzes;

Abschnitt 2 Maßnahmen zur Gleichstellung von Frauen und Männern

§ 5 Ausnahmen von der Anwendung

(1) *Die Vorschriften dieses Abschnitts sind nur dann nicht anzuwenden, wenn die Zugehörigkeit zu einem bestimmten Geschlecht unverzichtbare Voraussetzung für die auszuübende Tätigkeit ist.*

§ 8 Auswahlentscheidungen bei Einstellung, beruflichem Aufstieg und der Vergabe von Ausbildungsplätzen

(1) **Sind Frauen in einem Bereich unterrepräsentiert, so hat die Dienststelle sie bei gleicher Qualifikation wie ihre Mitbewerber bevorzugt zu berücksichtigen (...)** 2. **bei der Einstellung (...),**

https://www.gesetze-im-internet.de/bgleig_2015/BJNR064300015.html

Explanation:

The BGleIG applies to all agencies within the meaning of § 3 number 5 BGleIG, namely federal courts, authorities and administrative offices of the direct federal administration, including institutions under public law.

According to § 5 jo. § 8 BGleIG it is mandatory that, if women are under-represented in a specific group, they are to be given preferential treatment in the recruitment of new employees and for professional advancement.

Similar formulations can be found in the Land Equality Acts, which are relevant for appointments to positions at local courts, which are responsible for keeping the land registers according to § 1 of the Land Register Code (*Grundbuchordnung, 24.03.1897 (GBO)*)

<https://www.gesetze-im-internet.de/gbo/BJNR001390897.html>

SECTION 2: LEGAL ASSESSMENT

THIS IS THE END OF SECTION 2. PLEASE CONTINUE TO SECTION 3 – Summary of the assessment

SECTION 3: SUMMARY OF THE ASSESSMENT

PROXY A Is the joint registration of land compulsory or encouraged through economic incentives?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
PROXY B Does the legal and policy framework require spousal consent for land transactions?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
PROXY C Does the legal and policy framework support women's and girls' equal inheritance rights?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
PROXY D Does the legal and policy framework provide for the allocation of financial resources to increase women's ownership and control over land? If the proxy is not present, but official statistical data shows that nationally, at least 40 percent of those owning land are women, please also tick "YES".	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
PROXY E In legal systems that recognize customary land tenure, does the law explicitly protect the land rights of women?	<input checked="" type="checkbox"/> NA <input type="checkbox"/> YES <input type="checkbox"/> NO
PROXY F Does the legal and policy framework mandate women's participation in land management and administration institutions? If the proxy is not present, but official statistical data shows that nationally, at least 40 percent of those owning land are women, please also tick "YES".	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<p style="text-align: center;">TOTAL NUMBER OF PROXIES PRESENT IN THE LEGAL FRAMEWORK</p> <p style="text-align: center;"> <input type="checkbox"/> NONE <input type="checkbox"/> ONE <input type="checkbox"/> TWO <input checked="" type="checkbox"/> THREE <input type="checkbox"/> FOUR <input type="checkbox"/> FIVE <input type="checkbox"/> SIX </p>	

THIS IS THE END OF THE QUESTIONNAIRE.