

WOMEN 'S ACCESS, CONTROL AND TENURE OF LAND, PROPERTY AND SETTLEMENT

ACCÈS, CONTROL ET REGULARISATION DES FEMMES AU SOL, AUX BIENS FONCIERS ET À L'INSTALLATION FONCIÈRE

ZURITT, KONTROLLE UND BENUTZUNG DER FRAUEN IN HINSICHT AUF GRUND, EIGENTUM UND NIEDERLASSUNG

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ABSTRACT

Both in Beijing (UN 1995) and Istanbul (Habitat 1996) the participating delegates from many nations stressed the need to improve women 's equitable access to and control of land, property and settlement. But how is it the situation today in reality? And what can be done to increase women 's control of land?

In this paper I give a short overview from different cultures in the world. I also give an account of obstacles. At last I point out some practical advice on how to achieve equitable access to and control of land, property and settlement.

RESUMÉ

Aussi bien Pékin (Conférence des Nations Unies, 1995) qu'à Istanbul (Habitat 1996), les participantes, déléguées de nombreux pays, ont souligné le besoin d'améliorer un accès équitable des femmes à la terre, aux biens fonciers et à l'installation foncière ainsi qu'à leur contrôle. Mais qu'en est-il aujourd'hui en réalité? Et qu'est-ce qui peut être fait pour augmenter le contrôle des femmes sur la terre?

Dans ce document, je veux passer en revue rapidement différentes cultures à travers le monde. Je veux aussi vous exposer les obstacles. Enfin, je veux montrer quelques conseils pratiques sur la manière d'atteindre à un accès équitable au sol, aux biens fonciers et à l'installation foncière ainsi que leur contrôle.

ZUSAMMANFASSUNG

Sowohl in Beijing (UN 1995) als auch in Istanbul (1996) haben die teilnehmenden Delegierten aus vielen Ländern das Bedürfnis der Frauen nach Verbesserung des gleichberechtigten Zutritts und der Kontrolle über Grund, Eigentum und Niederlassung unterstrichen. Aber wie ist die wirkliche Situation heute? Und was kann gemacht werden, um die Kontrolle der Frauen am Grund zu erhöhen?

Ich möchte in diesem Papier eine kurze Übersicht über verschiedene Kulturen in der Welt geben. Ich möchte auch einen Bericht über Hindernisse geben. Schließlich möchte ich einige praktische Ratschläge zum Erlangen gleichberechtigten Zutritts und der Kontrolle über Grund, Eigentum und Niederlassung geben.

INTRODUCTION

Women face various constraints around the world related to access to land and property. Cultural, economic and social barriers are obstacles for women to own, inherit and use land.

Nearly one third of the households in the whole world are headed by women. They are generally much poorer than those headed by men and predominate among low-income and informal settlements. To give women right to access to land and property would not only provide an adequate shelter for all, it would also be one way of breaking the vicious circle of

poverty.

Two world conferences on housing and human settlements have taken place in Beijing (UN 1995) and Istanbul (Habitat II 1996). Delegates from different parts of the world participated and stressed the need to improve women's equitable access to and control of land, property and settlement. Many conferences and seminars have been held in the same spirit during recent years. For instance, a workshop was held in Gävle, Sweden, 1995. The workshop focused entirely on women's rights connected to land issues.

To achieve equality between men and women it is important to examine how the situation of women is today in the different countries. I will give an insight into women's access, control and tenure of land, property and settlement in five countries.

EGYPT

As an Arab Muslim country, Egypt's laws and cultural background is highly influenced by Islamic rules. According to Islam, women and men have equal rights to land tenure and property ownership (Asfour, 1995). Nevertheless, traditional structures play a greater and more effective role and continue to discriminate against women.

The ownership rights in Egypt are governed by the civil law, which declares that Egyptian citizens have equal rights to access and control of land. The law is characterised by the fact that an Egyptian woman has an independent financial "Patrimoine". The independence of "Patrimoine" does not only make it possible for the woman to acquire financial rights and to carry financial liabilities in her own name, it also prevents discrimination of ownership or registration of property. After marriage, the husband has no right to the woman's money or property. She continues to own her property and bear her own financial liabilities. (Takla, 1995)

While the modern law is neutral to gender, the customary law opposes the equality of rights between men and women. The customary law has a greater impact on people, especially on uneducated and poor families, and leaves the modern law with little power. Within the customary law the father is regarded as the head of the family and the inheritance right is favourable to children of the male sex. Women have the tendency of losing their identity as an indirect result of their dependent social and economic status. Even though ownership of property is becoming more and more common for Egyptian women, the majority of properties are registered in the father's or the husband's name. It does not matter if the woman has bought the property out of her funds or contributed with money. Property, contracts and leases should be managed by the husband according to the tradition. A woman does seldom use her rights as it could be considered as a lack of trust or disrespect to her husband.

One of the main problems in Egypt is the attitude of the male population. They do not comprehend the situation of the women, they do not give them any appreciation and cannot understand why the women should have any rights. Another problem is the lack of educated women. There is a high rate of drop-outs from secondary schools and universities. 70 per cent of the Egyptian women are illiterate.

An Egyptian woman is, as explained above, entitled to the same funding and loan rules as the husband is, without any discrimination. Still there are not many women as borrowers or account holders. The reason is their non-existent involvement in the economic activities. As long as women have no guarantee or credit, their chances to get loans are minimised. Today there are social welfare associations (NGO's) that are working seriously in order to help the Egyptian woman to establish small businesses. The generation of revenue will improve her financial independence. Some business women run large farms and some are managing land due to the fact that the sons of the family get education and positions in government or jobs in cities. (Takla, 1995)

UGANDA

Women's relationship to land and property in Uganda springs from traditions, customs and attitudes which have been there for years. The processes of colonisation and urbanisation have also affected people's access to land. The national law does not discriminate against women in their access to land and property. But the reality is different. Nearly 90 per cent of Uganda's population live in rural areas where discriminatory attitudes dominate the communities (Keller, 1996).

Patrilineal kinship is the basis in most of the ethnic groups in Uganda and justifies an ideology of male superiority and female inferiority. The prejudice against women is created right from the day of birth. They are considered as dependent throughout their lives, always under the control of a male, either their father, husband or brother.

According to custom, women are disadvantaged in relation to men in rural land and property ownership. Inheritance laws deny widows, unmarried and divorced women any right to own land. Women are not their husband's automatic heirs. The land is passed from father to son. It is up to the son to protect his mother's interest and she does not find any support from elsewhere. A stable relationship between the woman and her husband's relatives is of great importance. Relatives of the dead man can claim rights to property under patrilineality inheritance customs and chase the widow off the land at any time. Under the legal system, a wife may claim 15 per cent of the husband's estate. Whereas when a woman dies, her husband becomes automatically the owner of everything she possessed (SIDA). The insecurity many women feel due to the pressure from their husband's relatives and the lack of access to property often force women to migrate to urban areas.

Land holdings are farmed by husband and wife together (very often only by the woman), but are controlled by the man. Women are not allowed to purchase land or other property in their own names. The land title is invariable in the name of the man. As a wife she has the right to use land under the corporate ownership of her husband's patrilineage. She is allowed to grow crops and vegetables on the plot and has access to communal grazing lands, farmlands and water supply. (Lee-Smith, 1995)

The situation in the fast growing urbanising cities and towns differs a bit from the rural areas. While the rural family focus their attention on the boy and traditionally educate him to take over upon the death of the father, the parents in the urban areas usually give the children of both sexes equal opportunities of education as a means of improving the future living conditions. The educated women in the towns have therefore easier access to formal employment and secure incomes, which increase their opportunities to buy and own land. (Musubira, 1995)

In contrast to other countries in the sub-region, Uganda is in a process of addressing the recognised biases in law and custom. Since 1986 the government of the National Resistance Movement has put great efforts and political will to improve the status of women. They are determined to integrate women into the development process. Uganda has received international attention for its affirmative actions to enhance the participation of women in the decision-making process at both local government level and national level.

In order to get the gender concept more widely understood and for bringing especially the marginalised women into focus, the government has created the Ministry of Gender and Community Development (Musubira, 1995). An institutional framework that assists the socially and economically disadvantaged women is necessary. It is not only the custom perception that denies women access to land, it is also their economic inability to purchase land. Only nine per cent of the women have title to the land they farm. As they are not able to provide collateral, their ability to secure loans through the formal banking system is limited. To overcome this problem the government has implemented two schemes which specifically extend credit to women: the Uganda Women's Finance Credit Trust and the Rural Farmers' Credit Scheme of the Uganda Commercial Bank (SIDA). Despite these initiatives, the bank is still unable to help the majority of women. The reason for that is that

most rural women want to borrow such small sums and have such weak financial skills. Why so few women try to obtain loans depends on illiteracy, fear of not being able to repay, lack of assistance with the loan procedure and poor access to banks in their areas.

The enormous need of land and shelter is being recognised by the Ministry of Lands, Housing and Physical Planning. Its "Enabling Approach" assists women to get secure land titles and descent and affordable shelter. (Musubira, 1995)

The majority of women, 60 per cent, are either illiterate or poorly educated (Musubira, 1995). In order to increase the number of female students, the government awards them 1,5 points additional bonus. This will enable women to get access to university education and improve their chances to gain land and property. No women have so far enrolled the government technical training institutes. It depends on the fact that they are residential and have no boarding facilities for women (Habitat, 1994).

The main objective with the Uganda Women Lawyers' Association (FIDA) is to create legal awareness among the communities on their rights and obligations under the law. They put special emphasis on women and children. FIDA provides free legal advice and conduct rural legal education. (Stiftung, 1994)

Due to all these progresses, women's access to land and shelter is bound to increase in Uganda in the near future.

INDIA

Several great religions of the world can be found in India, for instance Hinduism, Buddhism, Christianity and Islam. They have all different legal systems which cause confusion and problems in India. In spite of the stated principles of the constitution that there shall be a uniform civil code, this objective has not yet been achieved. The laws of inheritance are for example not uniform, but are based on considerations of religion. Consequently, discrimination does not only occur between men and women, but also between women and women because of personal laws.

The livelihood opportunities for women in India are based on their access and control over land, especially in rural areas. The piece of land a woman own on her own can be used as collateral for a loan, for a kitchen garden, to raise poultry, or grow fodder etc. The plot is therefore very valuable for the woman. The customary right rural women have to commonly held land and livelihood resources is one of the few rights and the most important right women have to productive assets that is non-dependent on men. Village commons and forests are becoming increasingly scarce through state control and privatisation. This has resulted in declining quality and quantity of area under the village commons and has created difficulties for the poor women to survive. In the case of privately held land, which most arable land still is, women have gained rights to ownership through legislation of customary systems of inheritance. (Gayatri, 1995)

Hindus are the predominant religious communities in India. The Hindu Succession Act of 1956 gave women equal right of inheritance along with men. The rule of succession makes the mother, the widow and the daughter entitled to the same share as a son. But the tradition against this right is so strong that in most cases the family's property is given to the sons or other male members. A distinction is made under the Hindu Succession Act between succession to ancestral property and succession of self-acquired property. The Act is clearly discriminating in the way that women are inferior to men to inherit ancestral property. No female can become a co-parcener or owner of a co-parcenary. A co-parcenary property (ancestral property) is a body consisting of only those persons who, because of birth, have taken an interest in the property of the present holder and who can inherit the property at the time of the holder's death. Some women are entitled to obtain a share in the co-parcenary property if a partition takes place on the condition that the woman is unmarried, or has separated from her husband or is a widow. (Chandermani, 1986)

Despite the fact that Muslims are in the minority in India (13 per cent), India is still the country with the second largest Muslim population in the world (Poverty and Development, 1994). Compared to Hindu law, the Muslim women have a worse position because no legislation was undertaken by the parliament after independence as it was for Hindu women. The Muslim Personal Law Shariat Application Act of 1937 gave Muslim women inheritance right and the right to hold the inherited property absolutely (Viswanath, 1995). But gender inequalities still persist as the woman's share of inheritance is half of what her male counterpart gets. Another aspect of discrimination is that the children of a pre-deceased son or a pre-deceased daughter are totally excluded from inheritance by the heir of nearer degree.

The Muslim Personal law is liberalised in many Islamic countries, but in India you can find the Islamic law of the 7th and 8th centuries (Viswanath, 1995). The State has no power to alter the Islamic law, the interpretation of the Koran is to be done only by Mullah's and not by human agencies as the courts. This single factor undermines the status of Muslim women and put them in an inferior position in society.

Although women in India have right to access and control of property, very few are able to lay claim to these legal rights. The majority of women in India are totally depending on their husbands. Many women give up their jobs after marriage and have therefore no independent source of income. In most cases, the property acquired during marriage is purchased from the husband's earnings and is registered in his name. The right of the wife to claim part ownership of the property acquired is not recognised by the various personal laws. The principle of determining ownership on the basis of financial contribution works inequitably against women as they are economically dependent on their husbands. What is not recognised is the wife's contribution in terms of household and family responsibilities. Rural women shoulder greater workload than men. (Chandermani, 1986)

61 per cent of the Indian women are illiterate (Viswanath, 1995). For example, very few Muslim women are going for higher education. They are also less developed in socio-economic terms than their Hindu sisters.

To make information available and to share experiences and strategies Asian Women and Shelter (AWAS) network was set up at the regional level. The national Consultation on Women, Shelter and Development in New Delhi was another attempt. (Viswanath, 1995)

Efforts of the formal credit sector in India to deliver credit to poor women have been unsuccessful. The conditions under which loans can be given, the collateral required, the procedure followed, the documentation necessary and the language of transaction are some factors that have kept women away from formal banking institutions. Credit must be provided that enable women to effectively use, manage and control it. (SPARC, 1995) The Working Women's Forum (WWF) has a credit programme that lends to individual women in poor communities, but through community-based groups. The group is responsible for the loans instead of individuals. Loans are small, but a new loan is available on completion of payment of the previous one. (Habitat, 1994)

An institutional change is necessary. It is today a conflict between international and local processes in urban areas in India. National policies have not the power to prevent the implementation of own rules by the city authorities.

UKRAINE

Traditionally, the women in Ukraine had a strong position and were not as oppressed as the women who lived in neighbouring countries. Even though they were disadvantaged of the patriarchy methods in public life, they had an essential and powerful role at the family level. This fact rose from the revolution in the former Soviet Union in 1917 when women and men fought together for equality. The situation of women in Ukraine today is different because of the political and economical transformation that occurred as a result of the

transition from totalitarian to democratic regime. (Mironenko, 1995)

Current legislative system in Ukraine gives women equal right to that of men to ownership of land and settlement. Still not many women are aware of their legal rights and believe society discriminates against women in favour of men. The patriarchal traditions are very strong and most people have a traditional mentality. The need for legal and constitutional reform is vital. (Mironenko, 1995)

Very few properties in rural areas are privately own. The majority of farm land is owned and controlled by the state. Some kolkhozes still exist, which are collectively own. Adults and children over 16 years old have a share in this special organisation. Privatisation of land and real estate are going on at the moment. No direct data is therefore available with respect to access, control and tenure of land and settlement by women in Ukraine.

Many indirect processes are influencing ownership and other property rights of women for land and settlement. 51 per cent of the women are engaged in the economy and the majority have a job. Even though women have lower income than men (the official salary is 30% less than that of men), this fact contributes to the creation of equal economic conditions between men and women in the family. Women in Ukraine have a very high working load. It is common that women along with 40 hours per week of paid labour are spending 30 hours per week of household work. The transfer to market economy in the beginning of the 90s resulted in an increased unemployment, especially for women. (Mironenko, 1995)

A low number of women participate in the decision-making process. For example only 4 per cent of the members of parliament are women (Englund, 1996). There is a high level of general education in Ukraine. In this respect, men and women are equal. Despite the education, women are engaged in jobs which do not require much education and therefore are low paid. Women's access to banking loans is small.

Due to the reduction of income and the non-participation in public life, many women live in poverty. 90 per cent of Ukrainian women live under unfavourable financial conditions. In this situation some women who own a piece of land or building often sell or lease the property in order to get money. It usually leaves the women in a very insecure position. (Mironenko, 1995)

SWEDEN

Sweden has come further than most countries in the field of equality between women and men. The legislation and policy allows women to participate in all spheres of life: family, labour market and politics (Hobson and White, 1995). The attitudes concerning the traditional roles of men and women have changed much because of the introduction of separate income taxation for husbands and wives and women's increasing participation in the labour market. Swedish women have one of the highest labourforce participation rates in the world, lowest levels of economic dependence in the family and one of the smallest wage gaps between men and women (Hobson and White, 1995).

Women's rights in Sweden are protected by several laws. For example is the primary aim of the Equal Opportunities Act to improve the terms under which women participate in the labour market.

The Marriage Code contains rules that put women and men on an equal level in marriage. The main principles are that each spouse owns his or her own property during marriage and that their combined property is divided equally in case of divorce. The financially weaker party in the marriage is also protected by the code when property is divided as a result of divorce.

According to the Swedish law women have the same right as men to access, control and tenure of land, property and settlement. A married couple has equal right to their common

property, it does not matter who is registered as owner. If certain properties should be private and not common it must have been decided according to the law. Despite the equal right of women to own property, there is a tendency that land property is more often owned by men than by women. Approximately, 40 per cent of the property in Sweden are owned by women. But the statistics show that women's registered ownership has increased the last ten years. (Qvist, 1995)

OBSTRACLES AND PRACTICAL ADVISE

The obstacles behind the fact that women have less access, control and tenure of land, property and settlement than men, are different in different cultures. The approaches to achieve equality between women and men will therefore vary from country to country.

Many governments at all levels have failed to adopt appropriate rural and urban land policies, which is a primary cause of inequity. Governments including local authorities are responsible for protecting the interests of women and ensuring that women are granted equal access to land and property as men are. Rights of women and men related to land and property should be protected under the law.

The existence of two sets of laws relating to land and property leads to frequent ownership and inheritance disputes where women are usually the losers. Land and property ownership for women is an area where many countries have either no laws or no clear guidelines for dealing with traditional discrimination against women (Habitat, 1994). Policy research is needed on the many contradictions between customary and modern laws. Traditional barriers to women's access to she lterneed to be removed.

Women's and men's unequal conditions in society, in working life and in the family must be made visible before they can be taken into account in policy making (Swedish Ministry of health and social affairs, 1994). There is little data dealing specifically with women. Research could help identify the obstacles.

Even though women represent more than half the humanity and are active human settlements managers, they have been largely excluded from participating in decisions concerning the development of human settlements (Habitat, 1995). Greater involvement of women in policy-making at local, national and international levels is essential, especially in the implementation of land reform. Men and women need to participate equally in human settlements planning and management.

Land reform cannot be ignored in the process of women's rights to equal treatment. Decentralisation of land management is essential for improving people's access to land. Local government is the most appropriate level of government to handle land management in favour of local populations. (Lacroux)

Poor women have practically no access to shelter credit. Financial institutions prefer to give big loans, which the poor cannot afford because their monthly incomes are too small for the repayments required (Habitat, 1994). Lack of substantial savings and collateral also prevent women to take loans. Women are often also unable to make transactions without a male relative's consent. Financial institutions must be encouraged to improve women's access to credit and develop strategies for subsidies, incentives and co-operative financing.

The land-delivery systems are in many countries centralised, inefficient and expensive. They cause problems to any citizen trying to acquire land. But the poor, especially the women, are the ones that suffer most from it. A review of land-delivery systems is required to make them more efficient. Women have to get better access to information about land transactions including stages of land purchase and transfer, the required documentation and charges. (Habitat, 1994)

Land information systems in every country should be examined from a gender point of view. It must be possible to register more than one owner in the system. Co-ownership

registration must be introduced and promoted, reflecting both names in case of a couple, all names in a family, community or co-operative. The information system must also facilitate registration of different kinds of ownership and tenure.

What is generally missing among women is awareness of their legal rights and of the opportunities that are available to them. In order to create awareness of women's rights vis-a-vis tradition non-governmental organisations (NGOs) and women's groups should be important actors at community level. They should provide education, legal support, advice and information on women's rural and urban land rights. (Lee-Smith, 1994)

Networking among women's groups is another essential step to support and promote equal gender rights to land and property. Groups of women can meet and exchange information and skills, and formulate joint action programmes. When women are more organised and well informed, they have more power and courage to demand their rights (Habitat II, 1996). A dialogue should be created between professional women and grassroots women.

Women are often excluded from education, which put them in a disadvantaged position in the world of work and in political life. Even those who can read have problems understanding the technical language used in documents on shelter development (Habitat, 1994). There is an urgent need to increase women's educational opportunities, from literacy campaigns to scholarship.

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