

Women's Access to Land

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ABSTRACT

The aim of this paper is to describe some key issues in the context of women's access to land, with special attention to women in developing countries and to Female Headed Households. Another objective of this paper is to explain why this is a sensitive issue and to show some good practices from different countries.

Keywords and phrases: Access to land; Female Headed Households; Customary law; Dissemination of information; illiterate, matrimonial property, joint ownership .

INTRODUCTION

Women's access to land is a sensitive and huge topic to discuss. The situation differs from one country to another and this paper does not lay claim on to be based upon scientific methodology. It is only to be seen as observations based upon literature studies as well as own experiences. The paper shows examples and quotations from some African and Asian countries to highlight the situations and problems in the context of women's access to land and closely related issues.

The first observation made is that especially Female Headed Families are vulnerable in the context of land and access to land. The next observation is that the number of these families is continuously increasing, especially in so called informal settlements. The third observation is that there seems to be a serious difference between the views of women and those of men. Interviews among poor people in an urban area in Lusaka illustrates this observation:

1. "Women certainly regard themselves as major persons, while men want to see married women as dependants in their custody;
2. Women claim joint ownership, while men see themselves as sole owners of matrimonial property;
3. Women want pooled incomes and joint control, while men claim control and ownership over not only their own but also their wives incomes;"¹

¹ Gender contracts and housing conflicts in Southern Africa", p 31

WHY ACCESS TO LAND?

All human beings rely upon access to land in one way or another. The land supplies us with food and a place to live in. Without land, no human beings. Even in pre-historic times people relied upon access to land. They were hunters and the animals they hunted needed a lot of space to be able to survive. Later on, the population increased and people began to cultivate land to support their families. Through out the years, different systems have been developed to supply the population with land. The methods to carry out land allocations and land policies have changed over the time and differs from country to country. The basic objective, although, is the same, namely, to satisfy a growing population with enough space for food production and shelter as well as to provide taxes to the state/dictator/empire etc.

KEY ISSUES REGARDING WOMEN'S ACCESS TO LAND IN DEVELOPING COUNTRIES

Women's access to land may not be a key issue as long as the old structures in society prevail. The families divide their responsibilities between husband and wife according to their conditions, needs and traditions. The husband usually takes care of the family's economy and land matters and the woman of the household and children. From the society's point of view, the husband generally is seen as the head of the family. If the family owns a piece of land, the title is mostly in the name of the husband. The old structures usually includes some kind of welfare system e.g. for parents and other relatives.

The big problems occur when the old structures fall apart and when the "welfare systems" break down. This is exactly what is happening today. All over the world, urban areas expand uncontrolled and informal settlements grow bigger every day. Families are separated and the amount of female-headed families are continuously increasing. Female headed families are estimated to be about one third of the households². Therefore, we can not rely upon the old systems and we have to analyse the consequences of this fact.

Women's Access to land is a sensitive issue. Men, not only from developing countries, often feel threatened when these questions are discussed. Land and access to land is a matter of power, why would we otherwise have wars! The more land, the more power, so why would men like to share the power with women? On the other hand, women in general do not care about power or access to land as long as the family is intact. But, in case of divorce or if the husband dies or disappears, a woman's situation becomes totally changed. The life becomes very unsure. In many countries the woman finds herself without any kind of property and no place to stay in. Often, her only choice is to go back to her own family.

When does women's access to land become an issue?

The following quotations give examples of WHEN access to land becomes an issue:

² Indicator Programme, Monitoring Human Settlements, Volume 4, p 5

“It is common knowledge that widows are quite often totally dispossessed immediately after the death of the husband. A widow is not even recognised as a person who earned part of the property or contributed to its existence.”³

“ The situation is bad also for abandoned women and young widows when they decide to leave the in-law family. In all cases, they left without any compensation. Many of these women came to the in-law without land, so they also left without anything. They do not have any share of the reclaimed land of the family in-law.”⁴

“A few days after the death of my father, his relatives met together and told me that they didn’t recognise me as his daughter. They said that I was born before my parents got married, then according to the Islamic tradition, I was illegitimate and therefore could not inherit my father’s property”⁵

“Another widow stated, his relatives took possession of all the moveable property and all children”.....When she refused to marry one of her husbands brother“,she went back to Dar es Salam without property or children. The reason for this action was that the husband’s family had paid a high bride price for her, she was therefore their property and property can not own property”⁶

“Housing is a constant problem for widows.....the majority of African husbands prefer not to live in their wife’s house. Because of this, on death of the husband, the widow is at a great disadvantage since majority of widows have to vacate the matrimonial home. For 20 % of them, this was because they were told by the landlords that the contract was with the husband, not with them..... However, about 68 % had to leave their matrimonial home because they were tormented by the deceased husband’s relatives who were anxious to seize the property,..”⁷

“All the problems she has encountered have been caused by the customary laws of inheritance which prevents widows from inheriting land”⁸

Legislation and Access to Land

Many countries have a constitution that gives equal rights to men and women, but often dual legal systems exist with one general law and one customary law. In general, the customary laws seem to take over the general laws and they are not favouring women. The logic of customary law is grounded in village life and considers communal family interest rather than individual rights.⁹ Culture and religious traditions have a great impact on women’s daily life and these traditions mainly treat women unfairly:

“The Matrimonial Causes Act in Zimbabwe is very flexible and leaves a lot to the discretion of the court. A study of all divorce cases during 1991 in the high court and in the Community Courts of Harare and Chitungwisa which involved conflicts over

³ Exposed to social insecurity Vulnerable women in Tanzania, p 2

⁴ A study of Female Headed Households and Land Tenure” (Vietnam), p 29

⁵ Exposed to social insecurity Vulnerable women in Tanzania, p 13

⁶ Exposed to social insecurity Vulnerable women in Tanzania, p 24

⁷ Exposed to social insecurity Vulnerable women in Tanzania, p 25

⁸ Exposed to social insecurity Vulnerable women in Tanzania, p 37

⁹ Gender contracts and housing conflicts in Southern Africa”, p 38

urban houses was conducted in order to see how the law was implemented. By reading the judgements, one can easily identify the paragraph of the dominating gender contract saying that the husband is the sole owner of property. Judges hold strong view of matrimonial property as belonging to the husband.”¹⁰

“Vietnam has lots of progress in provision of laws and policy, which do not discriminate women. In the constitution, the civil code, the land law and the marriage and family law, women are given special attention. However, the population, especially the ethnic minority population, do not know about these laws and follow therefore instead their own customs. “¹¹

“In Zambia where there has been no legal reform to protect a wife in case of divorce, the Local Courts have fully adapted the gender strategy saying that an urban house and all other property except kitchen utensils belongs to the husband.”¹²

“Joint ownership is possible but rather uncommon. Usually there is only one name, the husbands name, on the contract. A husband can get a deed or transfer a deed without any consent from his wife. Until recently, a married woman could not even buy a house of her own without the consent of her husband.”¹³

What are the mechanisms behind the fact that women often are vulnerable in the context access to land

The society is usually built by men, for men. This means that women have difficulties in understanding the structures in different systems. This may have to do with a high level of illiteracy among women, they usually have less access to education than men. The structure of governmental agencies may also be a problem for women. E.g., the Land Register is often centralised to the capital of a country. This means that even if a woman is entitled to get land registered in her name, she can not manage to travel outside her village because she has no one to take care of her children and the household.

The following examples indicate some of the mechanisms behind the fact that women often are vulnerable in the context access to land:

“ Few women seems to know about their legal rights or entitlements”¹⁴. If you don’t know your rights it is of course difficult to fight for them.

“In Lusaka a battered woman had moved from her husband to her mother. “ The issue was handled in court. ...”Defendant is ordered to return wife”. This woman is clearly seen as a minor or even as property belonging to the husband.”¹⁵

¹⁰ Gender contracts and housing conflicts in Southern Africa”, p 21

¹¹ A study of Female Headed Households and Land Tenure” (Vietnam), p 33

¹² Gender contracts and housing conflicts in Southern Africa”, p 23

¹³ Gender contracts and housing conflicts in Southern Africa”, p 41

¹⁴ Exposed to social insecurity Vulnerable women in Tanzania, p 17

¹⁵ Gender contracts and housing conflicts in Southern Africa”, p 20

Seldom women get involved in politics. This is the same situation as in developed countries, women do not have time or interest in being involved in politics. “In developing countries they need all time for their own and their children’s survival”¹⁶

“...tribes and cultures in Tanzania seem to look down on women who are not married at the age they are supposed to be. For women who bear children out of wedlock the situation is worse and for those who separate or divorce the blame is also theirs since they are supposed to tolerate any situation in marriage.”¹⁷

“Some (women) would like to be able to get a loan to enable them to undertake projects or businesses that would raise their income. However, it is very difficult for them to obtain loans because they have no security.”¹⁸

“Joint ownership by husband and wife is rare. The woman is secure in the house as long as she is married. But if the husband dies she can face problems. There is a new law of inheritance which gives the widow the right to the home. But “property grabbing” by the late husband’s relatives still occurs. The Deeds Registry at Lusaka City Council is not aware of the problem and refuses to change the ownership in the name of the Administrator to protect the widow.”

JUSTIFICATION TO GIVE WOMEN ACCESS TO LAND

Women’s contribution to the survival of the family is often at least as high as the husbands, although this may not always be possible to count in money. E.g., women invest energy and resources in their houses but this can be difficult to estimate.

Women are often deeply involved in cultivating land. In Tanzania, the agriculture sector employs about 90 % of the country’s foreign exchange (Tanzania). Out of the total active population engaged in agriculture production, 75 % are women.¹⁹

If the traditional family is dissolved, the woman usually takes care of the children. Beside the fact that her economic situation becomes problematic, her need for a secure place to stay in becomes even larger the moment her husband disappears. The least a woman needs is to have a place to stay in, in this situation.

WOMEN’S STRATEGY TO IMPROVE THEIR ACCESS TO LAND

One strategy for women to improve their access to land, is found in Kenya. Thousands of women get together in hundreds of groups. “Women get together specially to pool their savings to buy land, or to start some economic activity that will eventually enable them to do so.”²⁰

The situation for women to get access to house and land can obviously be quite problematic and women often feel that they will not be successful in trying to get the

¹⁶ Exposed to social insecurity Vulnerable women in Tanzania, p 19

¹⁷ Exposed to social insecurity Vulnerable women in Tanzania, p 2

¹⁸ Exposed to social insecurity Vulnerable women in Tanzania, p 17

¹⁹ Exposed to social insecurity Vulnerable women in Tanzania, p 6

²⁰ Woman in human settlement, p 21

legal right to the land or the house. Their strategy can instead be to gain control over the house by having it transferred to and registered in the name of the eldest son.²¹

EXPERIENCES FROM LAND ADMINISTRATION PROJECTS WITH A GENDER COMPONENTS

Vietnam

The Vietnam-Sweden Cooperation Programme on Land Administration Reform, carried out by General Department of Land Administration (GDLA) together with Swedesurvey, supported by Sida, includes a major component of gender awareness. The program includes 6 sub projects, namely legislation, cadastral mapping, land use planning and mapping, land valuation, LIS and program management. Each sub project is responsible to contribute in one way or another to improve the gender situation in the Land Administration Branch in Vietnam. From the starting point, the GDLA staff was not aware of the fact that there were any problems of this kind in Vietnam and the gender issues were not taken into account as a real problem. Throughout the project these issues have been highlighted in different aspect, and the gender awareness is increasing among the Vietnamese staff as well as the Swedish technicians. E.g. the legislation project has realised that the knowledge about the new land law is low among common people. Information campaigns are therefore planned. The LIS project is designing a system so that it can provide statistics about gender etc.

One study, “A study among Female Headed Households and Land Tenure” , VIE 99/1-5, Ms. Nguyen Nhat Tuyen, concerns ethnic minority women in the mountain areas. Some recommendations, among others, are:

- *To change gradually the attitudes of men vs women’s status, a wide dissemination is needed amongst the population about the rights and responsibilities of both men and women to make them aware about their possibilities to become a changing agent in the process of the implementation of the land law. In the short term the staff of the land administration branch are the pioneers in working with the population to make them understand the objectives and the process of LUCs. To achieve progress some short training courses should be designed for the special needs of approaching low educational levels living in isolation in mountainous high land areas. The courses should also target the ethnic minority staff to work at the grass-root levels. Gender issues are recommended to be included in the curriculum.*
- *To raise awareness among men and women (especially targeting the young, school children) about gender equity in appropriate environment, such as in school, WU meeting, peasants meetings, during festivities and market activities where there is a big audience. The meeting organized by the WU at local level was found in many other places as a good measure to make information reach women. This type of meetings can also include other topics for women to discuss about their concerns and help them to build the solidarity, self-esteem and confidence. To attract women to attend the meetings it is good to have some economic/health activities integrated in the programme. The law can be included in these meetings, but the use of*

²¹ Gender contracts and housing conflicts in Southern Africa”, p 29

difficult terms has to be avoided and rather give cases to discuss and find the problem and solution by the women participants. The venue and the timing of the meeting have to be acceptable by the majority of the target participants and not constrain the traditions.

- *The land administration office has to be aware of the risk of exclusion of one group of women from the right they have according to the law. To ensure the gender equity is to ensure the right to have access and control over the land that can support the living in the special group of FHHs.*
- *The land administration branch continues the work started by a working group on ethnic minority issues and besides assigns staff to up-date the information and progress of the work. This work has to be done in cooperation with researchers, social scientists and women's studies experts to give a broad picture of the population that may be affected while implementing the law. This data and research findings would enable the policy makers to adjust the policy for the benefits of the whole population.*
- *The land administration office has to produce under law documents to give guidance for implementation of the law.*

...”

Egypt

In Egypt a Gender Study is conducted within the Egyptian-German Cadaster Project –EGCP_ “Promotion of the cadaster”. From this study following findings are found: The proportion of female landowners in one of the project areas was quite high, 36 % but the management of land and land use of its outputs rests with the male of the household. Female land owners only marginally participate in ownership investigations because they are not accustomed to dealing with formal procedures. In case of the husband's death, the widow has a guardian who looks after the land affairs. A woman who inherits land from her father is more or less expected to hand over the land to her brothers (the share of a female is one half of the share of the male when both have the same relationship to the deceased). Female illiteracy in Aswan Governorate is 65 % 1992 compared to men 50 %. The female-headed households are estimated to be 17-20 %.

The project included a study of the gender situation among the staff within the Egyptian General Survey Authority (ESA). Only 2 % of women in ESA did not have formal education against 41 % of males who are illiterate. In spite of relative high qualifications, women have less remunerated positions.

Findings within the project, among others, were:

- To appoint female staff to assist with the development of material and messages which specifically address to female target groups;
- That selected female employees be trained to assist in the informational campaigns to address female land owners;
- The government institutions have successfully used village women leaders to spread messages. With some training on cadastral technical training procedures and legal aspects of land registration they could become efficient intermediaries between ESA and local women

Mozambique

Sida has supported a long term program in Mapoto with Mozambique's National Surveying and Mapping Department, (DINAGECA). The program includes one identification and adjudication process. The customary laws are very influential in Mozambique and the project took place in an patrilineal system area where women only have access to the husband's family land. In order to speed up the identification process, the local administrative structure together with DINAGECA decided that, in absence of men, the women should be the title applicants, as they were the ones to work in the field. Therefore, some of the titles were given to women, despite prevailing customs in the area. An evaluation team, appointed by Sida, Sida 97/15, exposed that the women did not understand what it meant to hold a title. Therefore, in reality, women did not assume the role of titleholder. The conclusion is that the title will not give them control of the means of production unless they accept this control and that they are prepared to deal with the potential conflict with their husbands.

ABOUT STATISTICS

Below are some gender statistics aggregated

- Even though females comprise more than 50 % of the world's population, they only own 1 % of the worlds wealth²²
- It is estimated that 70 to 80 % of refugees world wide are women and children²³
- According to statistics of the population census in Vietnam in 1989, female headed households make up a total of 27 % of all households in Vietnam.
- According to the 1990 Population and Housing Census in Uganda, 45% of the female population have never been to school²⁴
- Female literacy rates are low: 20 to 50 percent of males level²⁵

There is a general lack of information about women's situation. It is therefore important to promote systems that can provide gender sensitive systems. This should be considered when e.g. LIS systems are created.

WHAT GLOBAL, NATIONAL AND LOCAL INITIATIVES ARE NECESSARY?

To be able to improve women's situation regarding access to land, it is necessary to get an insight about the problems, not only in developing countries, but all over the world. We all have a responsibility to stress these issues. It has to do with what kind of world we would like our children and grand children to take over (we might have daughters or daughter-daughters and they may become widows or even get divorced!). It has to do with attitudes, knowledge and power. We all have to take every opportunity to stress these issues. We need to start from the moment a child is born. We need to teach our children that all people have equal rights. This has to continue in school.

²² Women in Human Settlement, p 6

²³ Indicators programme, p 29

²⁴ Women's access to land, p 105

²⁵ Women in Human Settlement, p 6

Not only developing countries disfavour women. The societies in Western countries are certainly not equal societies and market driven economies are probably less gender sensitive than communistic states. Let me give you an example from Vietnam. During the communistic era, the constitution gave men and women equal rights. During the Vietnam War in 1970ies, women had to take over from men regarding labour, politics etc. Therefore, women have been quite visible in all activities in the society. Unfortunately, this trend is regressing, probably due to an emerging market economy and the old feudal structure is taking over again.

I am sure that we all understand why everybody should have a fair chance to have a place to stay in, earn their own living without being dependent in an other person's goodwill. The problem is to gain insight and knowing what to do.

A lot of activities are ongoing with the objective to improve women's situation in the world. At the **global level** governments have committed themselves to work for women, e.g. Forth World Conference on Women, Beijing Platform for Actions:

“Men and women shall have full and equal access to economic resources, including the right to inheritance and ownership of land and property...” (Beijing Platform for Action, paragraph 63 (b),

The Conference on Human Settlements (HABITAT II):

“Governments at the appropriate levels, including local authorities, should nevertheless strive to remove all possible obstacles that may hamper equitable access to land and ensure that rights of women and men related to land and property are protected under the law. (Global Plan of Action: Strategies for implementation B para 55).

This is fine, this gives us a platform to stand on, but nothing will happen if it is not followed up at national and local level.

From the **national level**, Mrs Anna Lindh, Minister of Environment, Sweden, at her welcome speech at the international workshop on Women's Access, Control and Tenure of Land, Property and Settlement, 1995, exemplified measures used in Sweden in order to increase women's rights and increase the possibilities to participate on an equal basis with men (Sweden is supposed to be one of the most equal societies in the world):

- The most important measure is the right for women to work. The opportunity for women to support themselves, to choose whatever occupation they find interesting, to have the same conditions as men in working life, is a necessity in order to reach equality between men and women.
- The second prerequisite is the possibility to get childcare and care for elderly.
- The third is political reforms in the field of economic, social and family policy that contribute to the development.

Governments must increase the education level among the population and they must include the girls. Also, governments must disseminate information about legal rights. To be able to supervise the trends we need statistics. All governmental systems should be able to provide gender sensitive statistics.

Every sector has to contribute. As far as land surveyors are concerned they have a lot of possibilities to promote equal access to land. Therefore a task force group has

been established within FIG, Commission No 7, regarding Women's Access to Land. The objective of the Group is to highlight the Land surveyors possibility to play a crucial role in protecting women's rights and to ensure that women can actively participate in the different processes. The following examples show how land surveyors may have impact in women's access to land, in different ways:

1. When allocating land, the land title can be issued in the names of both husband and wife;
2. When developing cadastral systems, the system should be able to accommodate a common or joint title;
3. In the land use planning process, both men and women should be engaged;
4. Decentralising the Land Register may make it easier for women to apply for a title;

Financial institutes should look over their conditions to grant loans to women. Even in Sweden, women have problems getting loans because they are women. Financial institutes are not used to and not familiar to business conducted by women.

Political organisations all over the world should consider what they can do to facilitate for women to participate in politics.

The **local level** is where you and I can do something about the situation. **Men** need to be engaged to solve the problems because they are the ones that have the power. Therefore they also need to understand why this is important for men. This could be exemplified by a new phenomenon coming up in some Asian countries; girls, if they have a choice, prefer to remain unmarried and have no children. In the short term maybe this is a successful behaviour both for the girl and the society, but not in the long term. Instead, "the society should realise that young girls are future investments as far as development and reproduction is concerned."²⁶

Women must be made to understand what they can do themselves. Probably, the greatest problem is women's lack of education. In the study carried out among minorities in Vietnam following statement is found, "Lack of education, information and communication are the main obstacles for female headed households to be aware of their rights. Without this awareness women are only some objects that can be trade by family."²⁷ This statement seems to be adequate for many women in many countries. Many of the problems are connected with lack of information. People (both men and women, but especially women) just do not know their rights and responsibilities. Dissemination of information is therefore necessary.

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²⁶ Exposed to social insecurity Vulnerable women in Tanzania, p12

²⁷ A study of Female Headed Households and Land Tenure, (Vietnam) p 33

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