

Women's Rights to Land and Property

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1. Introduction

In many cities of developing countries, more than half of the urban population lives in slums and informal settlements, in sub-standard housing, without basic services and without the enjoyment of their human rights to land and adequate housing. Women headed households form a high proportion of the population in many of such settlements.

While lack of security of tenure affects millions of people across the world, women face added risks and deprivations: in Africa and South-Asia especially, women are systematically denied their human rights to access, own, control or inherit land and property.¹ The vast majority of women cannot afford to buy land, and usually can only access land and housing through male relatives, which makes their security of tenure dependent on good marital and family relations. At the same time, millions of women in Asia, Africa and Latin America depend critically on land for a livelihood.

Globally, an estimated 41% of women headed households live below the locally defined poverty line and close to one third of the world's women is homeless or lives in inadequate housing. Exclusion of women from access to land pushes them towards the cities, where they often join the ranks of the increasing number of women headed households in slum areas. In Kenya, for example, where women head 70% of all squatter households, over 25% of women slum dwellers migrated from their rural homes because of land dispossession.

2. Forced evictions and exclusion

Alarming numbers of cases are reported of in-laws having evicted widows upon the death of their husband. A widow is not considered to be part of the clan and is expected to return to her parents and/or fend for herself.² The HIV/AIDS pandemic has contributed to an increase in such evictions. In many Sub-Saharan African countries, married women

¹ An exception can be found among matrilineal societies of north-eastern India, where only women can own land and traditionally only the youngest daughter can inherit. From: Yariisa Richmond Lyndgdoh, *Effect of Tribal Land Tenure Systems on Urban Development: Case Study of Shillong, north-east India*, paper presented at Seminar on Tenure Security Policies, Johannesburg, July 1999. In most other matrilineal societies however, it is the male relatives of the women that inherit land.

² In many areas, widows are themselves 'inherited' by their brother-in-law, although this practice occurs less than in the past. Refusal to follow this custom also leads to eviction.

also face eviction from the marital home, when their husband takes a second (or third) wife and cannot afford to support both his wives. Very rarely can a woman in such cases return to her parent's land. When a man sells the family land and leaves for the city, women and children are often also left landless. All these cases show that the household relationship is not equal to start with. The commercialized tradition of dowry is contributing to this inequality: asked about co-ownership of land between him and his wife, a Ugandan farmer compared his wife with a tractor, that he had paid for. How could she (co-) own property if she herself was (seen as) his property?³ In addition to increasing vulnerability to evictions, exclusion of women from decisions on the use, control and transfer of land has also led to a decrease in food security and sustainable development.⁴

While too many women face forced evictions by their in-laws and domestic violence within the marital home, they are also affected disproportionately by forced evictions, resettlement schemes, slum clearance and development projects carried out by or through state actors.⁵ Armed conflicts and resulting displacement, destruction of homes, family structure and communities often leave women more vulnerable. The lack of documentation combined with legal or customary discrimination often block women from accessing their land rights. In cases such as Rwanda, the deprivation of widows after the 1994 genocide led to fierce lobbying for the reform of Rwanda's civil code, which now allows widows to inherit property.

Women headed households and single women have little access to credit and other resources, often because of lack of collateral and/or the assumption that they will be unable to meet financial obligations in the absence of a male partner.⁶ In various countries, married women still need the consent of their husband before taking a loan, a requirement that violates international human rights law.

The UN Special Rapporteur on Adequate Housing confirms the dire situation of millions of women across the world: *"In almost all countries, whether 'developed' or 'developing', legal security of tenure for women is almost entirely dependent on the men they are associated with. Women headed households and women in general are far less secure than men. Very few women own land. A separated or divorced woman with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable"*.

³ Annual Report 2001, Uganda Land Alliance. In Sub-Saharan Africa, it is the men who pay dowry to the family of their future wife, while in most parts of Asia, dowry is paid by the women's family.

⁴ There is increasing evidence that, especially in poor households, women spend more on basic family needs, while men spend a significant part on personal goods, such as alcohol, tobacco etc. See Bina Agarwal, *Are We Not Peasants Too? Land Rights and Women's Claims in India*, Population Council, 2002, p. 4. Furthermore, particularly in Africa, women are food security, as it is women who do most work on the land, process the harvest and feed their families.

⁵ When communities are forcibly evicted and moved to places with no sources of livelihood, men tend to migrate and leave women to fend for the family. Rape is used as a "tool" to forcibly remove women from their homes before and during forced evictions.

⁶ UN Special Rapporteur on Adequate Housing, *Study on Women and Adequate Housing*, April 2002, E/CN.4/2003/55, p. 9, available on <http://www.unhchr.ch/housing>

3. Underlying causes

3.1 *General*

Women's equal rights to access, own and control land, adequate housing and property are firmly recognized under international law.⁷ However, at country level, the persistence of discriminatory laws, policies, patriarchal customs, traditions and attitudes in various countries are still blocking women from enjoying their rights.

3.2 *Eroded customary laws and practices*

Due to colonial influences, individualization of land tenure, land market pressure and other factors, many customary laws and practices have eroded over time; the forms of solidarity that used to exist and that protected women from exclusion, have now disappeared in many areas. Even where statutory national laws recognize women's rights to land, housing and property, "traditional" values prevail amongst judges, police officers, local councilors and land officials. They often interpret statutory laws in what at present are understood to be "customary ways", as a result of which women are deprived of the rights they should enjoy under statutory law.

3.3 *Registration of land in name of husband*

While in communal land tenure systems, women had significant indirect access and rights to use communal resources through their roles as household managers, they were further excluded when land tenure was individualized and invariably adjudicated and registered in the name of "heads of households" or men. Without legal protection, women are at risk of suddenly becoming landless, as has happened in the many cases where the husband sells the family land. Upon divorce, women still have to prove their contribution to the marital home in court. Upon the death of the husband, the marital home is included in the deceased husband's estate and is divided among his heirs. Many succession laws only entitle widows to a temporary use right of the marital home. If the marital home had been registered jointly, it would not become part of the estate upon the death of any spouse, and instead the widow would remain registered right holder of the land and house with the authority to sell, mortgage or carry out any other transaction. Unequal land distribution and widening gaps between rich and poor have further excluded women. Overemphasis on privatisation, individual freehold tenure and rigid planning and registration procedures that are costly, lengthy and often inaccessible to the (urban) poor deepens the gap between those who can and those who cannot afford.

3.4 *Discriminatory laws and policies*

An increasing number of countries has now recognized women's equal rights in their Constitution, thus complying with international human rights standards and obligations. However, there still are countries, such as Zimbabwe, Zambia, Lesotho and Kenya, where discrimination in customary and personal law matters (such as inheritance) is still permitted in their current Constitution. The notorious Magaya case in Zimbabwe, in

⁷ For an overview of international human rights instruments related to women's equal rights to land, housing and property, see Chapter One of UN-HABITAT, *Rights and Reality: Are women's equal rights to land, housing and property implemented in East Africa?*, 2002, available on: <http://www.unhabitat.org/tenure> under "publications".

which the Supreme Court ruled that Ms. Magaya could not inherit land, because customary law does not permit women to inherit and the Constitution still allowed for discrimination in such matters, shows the disastrous consequences that can follow from such legal provisions. The necessity of a constitutional provision that prohibits discrimination, including in customary law and practice (as laid down in the Constitutions of Uganda, South Africa and Mozambique) cannot be overemphasized.

Even today, laws and policies related to land and housing that explicitly discriminate against women still exist, as in the case of Swaziland, where married women are specifically excluded from registration of title to land in their name. In most countries, such laws and policies are gender neutral, but do not address existing discrimination. For example, many land laws allow for co-ownership of land, but spouses have to mutually agree on this and take active steps to register as co-owners. In practice, it is only a small proportion of, usually well educated, urban-based and relatively wealthy people who do so. And even among this group, many women face cultural attitudes that favor registration of land and housing in the name of men. Innovative approaches, such as in Tanzania's Land Act of 1999, where land occupied by both spouses is now presumed to be co-registered unless otherwise indicated by the spouses, are much more protective of women's interests and needs and actually implement women's rights. In Latin-America, most civil codes now include joint titling of spouses. However, in practice, these provisions are widely misunderstood and misused: cases of brothers or fathers and sons registering land jointly are widespread, and defeating the purpose for which this provision was formulated. Cultural attitudes and lack of clarity about implementation of such provisions go hand in hand to prevent the implementation of joint titling for spouses.

Laws related to marital property and inheritance rights remain discriminatory in most Sub-Saharan African and various other countries. In countries like Lesotho and Swaziland, married women are seen as legal minors, who cannot enter into contracts without consent of their husband. While laws increasingly recognize equal inheritance rights of daughters, this is often not the case regarding widows. In the few countries where the laws recognize women's equal marital property and inheritance rights (for example in Latin America), cultural attitudes in many areas in Latin America expect a daughter to relinquish her right to inherit land to her brother. In many sub-Saharan African countries, the idea of women inheriting land is seen as a threat to the continuity of clan land. Even in various matrilineal societies, such as in Malawi, Zambia, Mozambique and Tanzania, land market pressure and individual registration processes are threatening the continuity of inheritance systems that so far have protected women more. Religious laws usually entitle women to inherit, but the share of inheritance is invariably smaller, and there is an emphasis on access rather than ownership rights.

3.4.4 Limited implementation

Laws and policies, even if recognizing women's equal rights to land and property, are still very difficult to implement. Regulations and guidelines for implementation of laws and policies are often very technical and in many cases have not yet been written from a gender perspective. As a result, forms for registration of land for example, often simply

lack the space to indicate joint registration of both spouses. And the land officials having to work with these forms often lack any gender awareness. Persistent cultural and customary attitudes also work against implementation of women's rights.

2.4.5 Lack of representation on decision-making bodies

Without gender aware officials on bodies dealing with land allocation, inheritance and dispute settlement, a male bias among these officials will continue to stand in the way to women's enjoyment of their rights. Moreover, inclusion of women in decision-making and policy formulation processes, especially among vulnerable groups such as slum dwellers, ethnic minorities etc. is crucial.

2.4.6 Lack of awareness

Among men and women alike, there still is a lack of gender and human rights awareness, of the serious repercussions that the denial of women's rights continue to have and of the possible strategies towards actual implementation of these rights on the ground. In addition, many women do not have information, confidence, experience and resources to obtain what they are legally entitled to.

4. Towards Real Rights

The UN-HABITAT led Global Campaign for Secure Tenure emphasizes that *“securing tenure for the household does not necessarily secure tenure for women and children. In undertaking the Global Campaign for Secure Tenure, the extension of secure tenure must benefit women and men equally....”*

So far, women's land and property rights have remained mainly illusory rather than substantive and the majority of women have therefore not been able to enjoy these rights.

The Habitat Agenda, Millennium Development Goals, various Resolutions of the UN Commission on Human Rights and of the UN-Habitat Governing Council, provide the mandate to UN-HABITAT to be on the forefront of efforts to improve women's land, housing and property rights, including their equal secure tenure. On the basis of ongoing research, UN-HABITAT, together with various governments, and partner organizations at international, regional, national and local level, is working on identifying and developing strategies and tools towards women's enjoyment of land and property rights. Some of the activities currently undertaken are:

- (a) *Advocacy* for further participatory law and policy reform with a holistic approach (linking laws and policies related to rural and urban land, housing, water, credit, marital property, inheritance, and gender). Ongoing research is identifying particular needs for law and policy reform in specific countries and the Global Campaigns for Secure Tenure and Urban Good Governance can use those research findings as advocacy entry points, while linking up with various lobbying and advocacy alliances already working towards law and policy reform;

- (b) *Technical advice* on how to include women's rights, concerns and needs in regulations and guidelines for the implementation of laws and policies;
- (c) *Technical advice* on gender inclusive adjudication;
- (d) *Technical advice and advocacy* on innovative, affordable and flexible land tenure systems;
- (e) *Training* of judges, police officers, Members of Parliament, local councilors, land officials etc. on gender awareness and women's land and property rights (this activity is carried out by UN-HABITAT partners and others);
- (f) *Training of paralegal networks* who disseminate information on women's land, housing and property rights in their communities, intervene in disputes and have been seen to successfully prevent evictions of widows etc. and who are challenging local customs when discriminating against women (this activity is carried out by UN-HABITAT partners and others);
- (g) *Awareness raising*: wide dissemination of international and regional human rights instruments recognizing women's equal land, housing and property rights;
- (h) *Linking up and supporting* the already existing initiatives of women slum dwellers who through innovative approaches have managed to collectively gain access to land and housing, e.g. through saving schemes and cooperatives;
- (i) *Identifying joint tenure types* that improve women's security of tenure and mechanisms to increase independent registration of land and housing in women's names;
- (j) *Gender perspective in slum upgrading*: ensuring that in slum upgrading and regularization programs, women's rights and specific needs and interests are actively taken into account;
- (k) *Women's inclusion in decision-making*: ensuring that women are well represented in all decision-making processes surrounding slum upgrading and regularization.

5. Conclusion

Women's equal rights to land, housing and property are human rights, recognized in various international human rights instruments. The recent Women's Rights Protocol to the African Charter on Human and Peoples' Rights (adopted in July 2003) is a very welcome regional addition to such instruments. Various positive developments have taken place in terms of law and policy reform in many countries, while other countries have not yet taken such steps. In general, a more holistic and inclusive approach is still needed in the reform of laws and policies that links laws related to inheritance and the division of marital property to laws and policies on land, housing, credit and gender. Urban and peri-urban land issues should also be brought within the national land policy and linked to rural land issues. Gender should be a true cross cutting perspective, also included in budgeting. Implementation of such laws and policies remains a huge challenge and require concerted efforts from all levels in order for women's rights to land and property to become reality.

More information on the work of UN-HABITAT related to this issue can be found on: <http://www.unhabitat.org/tenure>; <http://www.unhabitat.org/gender>; <http://www.unhabitat.org/campaigns>

