

Women and Land Rights: Legal Barriers Impede Women's Access to Resources

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Abstract— A woman's ability to own, inherit and control land and property is absolutely vital to her ability to access resources and participate in the economy. Yet many women do not have legal ownership rights to the land on which they live and work. This can increase women's dependence on husbands and male, land-owning relatives and limit their access to credit and productive inputs. The Thomson Reuters Foundation and the World Bank partnered to better understand legal frameworks that affect women's ability to access resources, with a particular focus on the legal and cultural barriers to women's secure land rights. It covered both statutory and customary law, with a particular focus on how laws work in practice. This work should be seen as complementing other gender and law resources such as the World Bank's *Women, Business and the Law*. In practice, women are disadvantaged in many countries where customary or religious law prevails with regards property laws, marital property regimes and inheritance. This Paper highlights Women and Land Rights, Legal Barriers impede women's to access the resources.

Keywords— *inherit, statutory, customary, religious law.*

I. INTRODUCTION

Poor urban women give high priority to affordable access to well-located serviced plots and houses. Women's location preferences, motives for investing in housing and priorities for services may differ from men's. Evidence is mounting that registration of property rights has positive effects for poor people in general and women in particular, especially where households previously had little security. These benefits are manifest in increased investment in housing, a reduced need for activities to protect insecure tenure rights, empowerment of women within their households and benefits to families (including increased investment in human capital, especially of children). This paper makes the case that gender responsive land, housing and urban development policies and practices that address the needs of low income urban residents are as important as individual property rights. Legal tenure for example does not necessarily provide low income residents with access to

formal credit for investment in either housing or economic activities because financial institutions are often unwilling to lend to the poor and low income households are often unwilling to risk their main asset. Evidence on the cost effectiveness, sustainability and longer term impact of land and housing policies and legal reforms is limited and the few quantitative evaluations (and even fewer gendered evaluations) are context or project specific and so their lessons only have limited transferability. In practice, many interventions are multi-sector (such as upgrading of informal settlements) and legal/policy changes are often accompanied by other initiatives (e.g. microfinance, entrepreneurial support, service improvements), so attributing outcomes and impacts to registration and titling is difficult. Many countries have now improved the legal framework for land administration and personal law to protect women's rights, but it is rare for all the ingredients of a progressive legal framework to be in place and often inconsistencies between sources of law and individual pieces of legislation remain. In addition, there are gaps between legal provisions and social norms and practices. Whether or not policies and laws address existing unhealthy and insecure living conditions and redress gender inequality depends on political, social and familial relations and whether poor women and men have a voice in decision making. In practice, many recent land registration and housing programmes, as well as wider land and planning policies, are not gender sensitive. Even when gender considerations are integrated into the design, they have not always been implemented in practice. Experience shows that the legal and policy frameworks for land management and property rights need to explicitly recognise women's rights, requiring gender-specific measures. However, reforms to property and family law are insufficient – they interact with policies and practices related to land administration, planning for increased housing supply and improvements to informal settlements. In order to benefit poor women, laws, governance and administrative arrangements that improve access to affordable, well-located serviced plots and houses for poor residents in

general are required. But unless gender is mainstreamed into their design and implementation, they will not meet women's needs. Although many of the changes appear to be legal and technical, access to and control over land and property is related to socio-economic characteristics and governed by power relations at the family, community, city and country levels. Any changes, including those that seek to increase gender equality, challenge vested interests. Their effects therefore depend on the outcomes of political processes and power struggles.

Gender-specific measures to improve women's access to land and property include:

- Domestic laws relating to property rights, land administration, marital relationships and inheritance should:
- Acknowledge the right to secure tenure and adequate housing;
- Affirm the equal rights of men and women, regardless of their marital status, making full community of marital property (and its joint administration) the default marital regime;
- Mandate joint tenure for urban men and women in civil, customary and consensual unions; and
- Entitle spouses to a share of the deceased partner's estate, and sons and daughters to equal shares.
- Streamline and harmonize inconsistent laws, in particular moving towards consistency between statutory and customary and religious law with respect to gender equality.
- Support the efforts of civil society organizations, especially women's and grassroots organizations, to raise women's awareness of their rights and support them to claim those rights, especially through the statutory, customary and religious legal systems.
- Make affordable or free legal aid available to enable poor women to claim and defend their rights.

Land, property and wellbeing in urban areas:

What all urban people need for wellbeing is a secure place to live, in a healthy environment and within reach of work opportunities and essential services. With respect to land and housing, this implies both affordability and protection against arbitrary eviction, whether by agents of the state, private owners or people's own relatives. Gaining access to land and real property involves choices, which are shaped by

- The legal framework, including both land and personal law
- Social norms and expectations, especially concerning marriage and the family
- The channels through which land and housing are supplied, the types of tenure on offer and the cost of alternative sources of accommodation

To assess the access of poor people, including women, to land and housing requires an understanding of the types of tenure available, the ways in which land and housing are supplied, and what resources are needed to access alternative sources (and are available to the poor), including finance, information, time and skills. It is also necessary to consider what happens if households' or individuals' claims to land or residence are contested: the legislative safeguards that are available, and the processes by which they can be enforced.

Review of Literature:

Chant 2003, gender, crosscutting sources of social differentiation and social norms include socioeconomic status, ethnicity, religion, caste, residence (urban v rural) and age. While women on average (or the households they head) are often disadvantaged compared to men, it should not be assumed that they are all (or even disproportionately) poor. Both land/property and family laws are critical.

Varley 2013 - kinship and marriage relations are central to the way rights and laws are shaped, and women cannot be considered in isolation from their roles as wives, mothers, sisters and daughters. Social norms and expectations affecting family and marital relationships include those governing the acceptability of cohabitation versus marriage, household composition, practices of seclusion, treatment of widows, and the obligation to remarry following the dissolution of a marriage.

Property rights can be based not only on statute but also on custom or informal practices that enjoy social legitimacy. They may vary within, as well as between, tenure systems. It is therefore possible to have a high level of tenure security, but restricted rights to use, develop or sell land, or a limited level of tenure security, but a wide range of actual rights - Payne and Durand-Lasserve, 2013. Studies of women's perceptions of their endowments, economic opportunities, voice and agency, even if they are carried out in urban locations, do not always consider land and housing - Munoz Boudet et al, 2012.

Women's experience of gender inequality can also be conceptualized in terms of their power and freedom relative to men. The possession of major assets, including rights to property, can contribute to gendered social mobility. Boudet

et al (2012) attempts to provide not only a general picture of women's experience of gender inequality, but also an analysis of whether and why they have experienced changes in their position relative to men in both rural and urban areas. Urban women report they "perceive significantly more gains in their power and freedom over the past decade than any other group sampled....The reports by urban women, moreover, starkly contrast with urban men's sense of loss of power and freedom over the same time period and the challenge that this presents to their compliance with expected models of masculinity" (p 103). The primary factors that empower men and women and explain upward and downward social mobility are identified as occupational and economic opportunities, with men's downward social mobility being linked primarily to slow economic growth and limited job opportunities. The study found that "urban women perceived more extensive gains in their power when they control major assets, are free (or freer) from domestic violence, acquire greater social capital, and have a supportive local opportunity structure...Urban women also benefited from residing in neighbourhoods where gender norms are more relaxed, markets are stronger, and public services more accessible" .

In many parts of the world social disapprobation of women who remain unmarried, combined with economic disadvantage, prevent many women from establishing independent households and, if they do, constrain their ability to afford land or a house. The complexity of women's and men's views on their obligations towards their spouses and children, and their uneven ability to exercise agency with respect to property, are illustrated by Varley's. Despite the legal provision that if an owner dies intestate the children will inherit property in equal shares, respondents' views about who should inherit varied widely. Many believed that their sons should come first, because they are expected to marry and become responsible for their own families, whereas others favoured their daughters because women are considered to be at a socio-economic disadvantage. On the whole, male householders favoured sons over daughters, while women householders were more likely to favour daughters over sons. However, there were indications that attitudes are changing: some believe that whichever of their children look after them in their old age should be favoured, and younger people were more likely to think that children should inherit in equal shares. Overall, "men talked about protecting their wives and children; women about being protected. This suggests women's relationship with property is a more indirect, passive one,

contrasting with the agency assumed by men" - Varley, 2010.

Family relationships and attitudes towards marriage and gender roles interact in complex ways with laws to influence men's and women's access to land and housing, their control over property, and their entitlement to inherit. Varley notes that the arguments for both preferring sons to daughters as heirs and putting property documents in a husband's name largely hinge on the belief that it is first and foremost men's responsibility to work and to house their families (Varley, 2010). Men's obligation to provide for their family's legitimizes their assumption of ownership. Research also suggests that "many women do not assert their rights to property for fear of being seen as less than fully committed to the relationship" (Varley, 2010). While a union lasts, Varley suggests, women can fulfill gendered expectations of their roles in the family without having to assert their rights, and it is not until the relationship ends in separation, divorce, or death that the right becomes relevant (Varley, 2010).

II. RESEARCH METHODOLOGY

Research methodology has many dimensions. It includes not only the research methods but also considers the logic behind the methods used in the context of the study and explains why only a particular method or technique has been used. It also helps to understand the assumptions underlying various techniques and by which they can decide that certain techniques will be applicable to certain problems and other will not. Therefore in order to solve a research problem, it is necessary to design a research methodology for the problem as the some may differ from problem to problem.

Objectives of the Study:

- Explore how and why access to and control over land and property improves the wellbeing of urban women, especially poorer women.
- Identify and explain patterns and trends of land ownership among urban women and men across cities, countries and regions.
- Identify and assess attempts to address the constraints on access to and control over land and property, especially for poor urban residents, with particular reference to the extent to which the design and implementation of interventions have been gender aware, and their outcomes and impacts for women.
- Suggest areas worthy of further research, as well as possible indicators and types/sources of data for

assessing women's access to, use of and control over land and property.

III. MEASURES AND CONCLUSIONS

Women can reinforce the misconception that they have plenty of time, potentially lead to family and gender conflict, and fail to influence programme design and implementation, it also suggests that the skills and knowledge women gain in the process have empowered them at the community level, in negotiations with external agencies, and in monitoring the outcomes of interventions. Gender evaluation criteria for use in the design, monitoring and evaluation of policies and practices. The criteria include:

- Equal participation by men and women in land governance and the design and implementation of tools;
- Capacity building, organisation and empowerment of women and men to use, access and benefit from tools;
- Legal and institutional issues relevant to women and men;
- Social, cultural and economic considerations affecting women's and men's access to land; and
- Coordination arrangements and the potential for scaling up and sustaining outcomes

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