

6 Gender and Land Rights

Land, Property and Housing Rights

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Introduction

Land is a useful natural and economic resource, which is central to sustainable livelihoods for both urban and rural populations. Land, property, housing and inheritance rights are inextricably linked (Kothari, 2003:11). Many times a discussion on any of these issues brings forth a focus on another. It is essential that the Commonwealth Secretariat pays attention to land and property rights at this critical time as countries prepare the next ten-year plans of action for women.

This paper provides a conceptual framework for looking at the issue and then focuses on the reality of women's rights to land, property and housing. It then examines some of the standards and norms on land, property and housing at the international and regional level before looking at how these translate to the national level in terms of constitutional guarantees and legal frameworks. It then looks briefly at the work of NGOs in the area.

Conceptual Framework

Land is a productive resource, just like capital and technologies. It is also sometimes a measure of status, as distinctions are made between landlords and tenants. It is a symbol of wealth and power, as the more land people acquire in their own right, the more powerful they become. Land can be used as a form of security to access loans and credit from financial institutions. It is a key ingredient in the bid for secure tenure and improved living environments. Land ownership signifies economic, social and political power (Nicol, 2002:66).

Property can mean land and possessions, which can be distinguished respectively as immovable and movable property. Land denotes home, house, estate or acreage on the one hand,

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while possessions represents belongings, goods, assets, material goods and chattels, on the other. So land and property are indeed unified, and since one cannot be discussed without implicitly touching on the other, this paper also looks at housing rights. Housing rights refer to the right of every woman, man, youth and child to gain and sustain a secure home and community in which to live in peace and dignity (Kothari, 2001: para. 8). Inheritance is the acquisition of property, that is, land or movable property upon the death of a person. It is done according to the wishes of the deceased expressed in writing or orally before his/her death, known as testate succession, or by operation of laws or customs relevant to the deceased (Nicol, 2002).

Women, Land, Property and Housing Rights: The Reality

Women's equal rights to land, housing and property are not recognised in many countries. This is for a variety of reasons. Women's rights are largely linked to marital property and inheritance laws, and are limited by customs, traditions, religious practices and other cultural factors. This is expressed in the registration of land and housing in the husband's name, and the customary handing down of land to male heirs in many societies. Under African customary law, property belongs to the man or is entrusted to a male, who could be a father, brother or husband. Women and daughters very often have only a life interest. Moreover, upon divorce and when settling out of court, women take nothing other than their personal effects and the rest remains in the family.

Lack of access to credit and housing finance, which can enable poor women in rural areas and poor women and men in urban areas to purchase their own property and land, aggravates the problem. This is coupled with lack of awareness of women's human and legal rights, and the low representation of women in decision-making bodies, including the legislative and other bodies responsible for the administration and management of land and property. Women encounter numerous problems regarding land administration at the administrator-general offices and district/national land tribunals, as well as

from court clerks, magistrates and judges, because the majority are men who are biased against women's access to, control and ownership of land.

The legal and regulatory frameworks relating to land markets and land acquisition, including land registry, land valuation and legal instruments to facilitate land acquisition, are ineffective in many developing countries (UN-HABITAT, 2003). There is a dire need for significant improvement in the legal, regulatory and financial systems to enable poor women and men to access land and acquire property in their own right.

When addressing land, property and housing issues, it is imperative to recognise that women are not a homogeneous group and that their needs may vary over time. Much depends on whether they are single, married, widowed, separated or divorced; victims of domestic violence or the HIV/AIDS pandemic; indigenous and tribal women; victims of forced evictions; or women in conflict or post-conflict situations. There are also differences between rural and urban poor women. While rural women are discriminated against by agrarian reforms undertaken by various governments, urban poor women and men in slums and informal settlements lack secure tenure and are constrained by inadequate and subjective policies with respect to land, which condemn them to depend on informal land systems for survival.

It is projected that in the next 30 years, the urban population in the developing world will double to about 4 billion people, at a rate of about 70 million per year (UN-HABITAT, 2003). The rural population will barely increase and will begin to decline after 2020 (ibid). The majority of these people will settle in slums and informal settlements. It is also estimated that 72 per cent of the urban population in Africa are residing in slums. A discussion on land, property and housing rights for women should recognise women's rights and issues pertaining to rural and urban settings.

Women, land, property and housing rights in international and national law

Women's rights to land, property and housing are enshrined in a number of international and regional conventions, as well as in UN resolutions and declarations from inter-governmental

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meetings. In addition, at the national level, many countries have constitutional guarantees of this right, though this is not always translated into national law. The following section looks at these aspects of the issue.

International and regional standards and norms

The Convention on the Elimination of All Forms of Discrimination against Women focuses on women's rights to land, property and housing, especially in articles 1, 2(f), 3 and 5(a). Article 14 paragraph 2(h) addresses the rights of women in rural areas to enjoy adequate living conditions, especially in relation to housing. Article 15 focuses on women's equal rights to conclude contracts and administer property, and their right to equal treatment in court procedures. Article 16, paragraph 1(c) stresses that States parties shall take all appropriate measures to ensure the same rights and responsibilities to women and men during marriage and at its dissolution. Article 16 paragraph 1(h) emphasises the same rights for spouses in relation to the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

The Universal Declaration of Human Rights, particularly in articles 2, 16, 17 and 27, contains provisions for equality and non-discrimination and recognises that women should enjoy on equal terms with men rights to property, housing, security of person and equality before, during and upon dissolution of marriage. The Convention on the Elimination of All Forms of Racial Discrimination (articles 5d and 5e(iii)), the International Covenant on Civil and Political Rights (articles 2, 16, 17, 23, paras 4 and 26), the International Convention on Economic, Social and Cultural Rights (article 2, para. 2, 3 and article 11, para. 1) and the Convention on the Rights of the Child (article 16, para. 1 and article 27) also provide for non-discrimination and women's rights to land and property.

At the regional level, the African Charter on Human and People's Rights (article 2 and article 18, paras 2 and 3) and its Protocol on Women's Rights makes provision for non-discrimination and women's rights to property, land and housing, as do the European Convention on Human Rights (articles 5, 8 and 14) and its protocol No. 1 (article 1) and No. 8 (article 3), the

revised European Social Charter and the Inter-American Convention on Human Rights (articles 1, 17, 21 and 2(4) and its Additional Protocol.

There are a number of normative provisions which, though not legally binding, contain clauses supporting women's rights to land, property and housing. These include the Beijing Platform for Action (para. 58(m)) in which governments committed themselves to remove all obstacles for women in obtaining affordable housing and access to land. Furthermore, governments are requested to undertake legal and administrative reforms so that woman can have equal access to economic resources and gain the right to own and inherit property. The Istanbul Declaration and the Habitat Agenda (CA/CONF 147/18) adopted by governments at the Human Settlement Second World Conference in 1996, urges governments to provide legal security of tenure and equal access to land to all people, including women and those living in poverty (para. 40(b)). Governments are called upon to undertake legislative and administrative reforms to provide women with full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and the right to security of tenure and to enter into contractual agreements.

The Johannesburg Plan of Implementation, endorsed by the World Summit on Sustainable Development (A/CONF. 199/20, Annex para. 67(b)), recognises the importance of women's rights to land, including the right to inheritance, in order to achieve sustainable development in Africa and the realisation of relevant Millennium Development Goals.

UN resolutions on women's rights to land, property and housing include resolutions 1997/19, 1998/15 and 1999/13 adopted by the Sub-Commission on Protection and Promotion of Human Rights; resolution 42/1 adopted by the Commission on the Status of Women; resolutions 2000/13, 2001/34, 2002/49 and 2003/22 on 'Women's equal ownership of access to and control over land and equal rights to own property and to adequate housing' adopted by the Commission on Human Rights; and Resolution on 'Women's role and rights in human settlement development and slum-upgrading' adopted by UN-HABITAT Governing Council, 9 May 2003 (HSP/19c/19/16) (Benschop, 2003).

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Constitutional guarantees and national laws

In Bangladesh, the Constitution states that “all citizens are equal before the law and are entitled to equal protection before the law” but, in practice, laws relating to eliminating discrimination are never strongly enforced. The laws relating to property and inheritance are still discriminatory on the basis of gender. Personal law (both Muslim and Hindu) guides the laws of Muslims and Hindus, while common law guides the laws of Christians. Under Muslim family laws, female heirs inherit less than male relatives do, while daughters inherit half of what sons inherit of their father’s and mother’s property. A wife receives one-eighth of deceased husbands property, whereas the husband receives one-quarter of the deceased wife’s property (USAID, 2002a).

According to the statutory law of Kenya, anyone who is above the age of 18 may own property, irrespective of marital status. However, the rights of a married woman to access to, use of, control over and ownership of matrimonial property is dependent on the marriage system and the ethnic group in which she is married. Property rights in civil marriages are based on the English Married Women’s Property Act of 1882, which states that a married women can acquire, hold and dispose of property in the same manner as if she is unmarried. She can keep this property separately from her husband’s after marriage (USAID, 2002b). Under Hindu law, family property is for use on a communal basis, and individual interests are not defined, whereas under Muslim law, property rights of women are those provided under the Koran. A woman can acquire no interest in her husband’s property by reason of marriage, but she has access to the property during marriage (ibid). Although the Registered Land Act of Kenya aimed at providing titles to individuals, many people believed that registration was intended to confirm the entitlement of a male head of household to the family land. The Law of Succession Act 1981 aimed at unifying all inheritance laws. However, it was weakened by the exemption which allows Muslims to follow the Koran, and by the provision that inheritance of livestock and agricultural lands outside the municipality was to be governed by customary law (ibid). However, the Community in Voi has come up with the innovation of a Community Land Trust,

which promises to provide women's right to access and control land in the long run. Although the community owns the land, there is no discrimination between men and women.

Under the Constitution of Malawi women have the right to full and equal protection by law and may not be discriminated against on the basis of sex or marital status. In customary marriage, however, women do not own property beyond utensils, with the rest belonging to the family of the husband.

In Sri Lanka, women have equal rights under the country's Constitution and in civil and criminal law. For property rights, the laws of Sri Lanka recognise the equal distribution of property except for inheritance principles under Muslim laws, and, in certain circumstances, under Kandyan law. Furthermore, the devolution of titles under the Land Ordinance Act passed by the British in 1935 introduced the practice of inheritance by one heir to be identified and registered under the statutory provisions (USAID, 2002c).

According to the Tanzanian Constitution, anyone has a right to own property. In 1999, the mainland government passed the Land Act and the Village Land Act, which established women's equal rights with men in the ownership of land. The Land Act provides for spouses to hold land as occupiers in common and to hold the right to occupancy by contributing to the upkeep and improvement of the land. The Act promotes gender balance on the National Land Advisory Council established to advise the Minister of National Lands Policy.

The Constitution of Namibia prohibits discrimination on the grounds of sex, race, colour and ethnic origin and states that men and women have equal rights in all aspects of marriage. The new Married Persons Act allows joint ownership of the estate for the husband and wife married in a 'community of property'. If they are married out of property, they will each keep separate assets including property, control their own belongings and can take out separate loans. Customary land is allocated to the husband, and upon death without a will the widow might lose out to the husband's male relatives. However, the Communal Land Reform intends to give widows and widowers equal rights to stay on communal land that was allocated to the deceased spouse.

In Sierra Leone, two systems of land law apply – the General Law and Customary Law – which operate in urban

and rural areas respectively. The Law of Property/Adoption Act 1960 does not prohibit women's title to property. But in practice some women are discriminated against, especially single women, to whom landlords are reluctant to rent premises (Nicol, 2002: 70).

An East African study on women's rights to land, property and housing carried out in 2000/2001 revealed the following (Benschop, 2002):

Women's Rights	Uganda	Tanzania	Kenya
Gender-based discrimination prohibited	Yes	Yes	Partly
Customary laws prohibited if discriminating against women	Yes	Partly	No
Women's equal right to land/housing recognised	Yes (implicitly)	Yes (explicitly)	Yes (implicitly)
Spousal co-ownership occupancy rights presumed	No	Yes	No
Equal inheritance rights	For widows: No For daughters: Partly	Partly	For widows: No For daughters: Yes
Equal rights before, during and upon dissolution of marriage	No	No	No

Other findings of the study include:

- 1 The tradition of 'dowry' contributes to the view of women as 'property' who cannot own property in their own right;
- 2 Without marriage registration, women are more vulnerable upon divorce from or death of their husband;
- 3 Alliances/task forces of NGOs play an important role in lobbying for law reform;
- 4 Non-governmental and community-based organisations greatly contribute to the implementation of laws on the ground;
- 5 Paralegals play an important role in raising awareness on women's rights and in challenging discriminating customs.

In some countries, laws relating to land, property and housing rights are progressive and in other countries they are retrogressive. While in Uganda the laws require the consent of the spouse before transfer of property, in Tanzania the law provides for joint ownership. However, in Lesotho and Swaziland, for example, some laws discriminate against women. This is illustrated by Section 16 of the Deeds Registration Act of Swaziland, which particularly prohibits registration of title to land in the name of women married in community of property. In Lesotho married women are still regarded as legal minors under the protection of their husbands; therefore they cannot make contractual arrangements without assistance. This means that women's access to land, irrespective of their education, is severely affected (Kothari, 2001).

There is no such thing as gender-neutral laws in practice, because laws do discriminate against women in the name of culture and tradition, even where this contradicts the constitution. There is a real need to recognise the specific circumstances of women. Problems arise in the application and interpretation of the law and land administration. The result of any case involving women's rights to land and property in many respects depends on the jurisprudence and good will of the magistrate and/or judges on the bench. Influenced by their beliefs, customs and values, at times judicial officers ignore the written law when passing judgements. The Magaya case in Zimbabwe perhaps illustrates this point.¹

Positive Responses to Addressing Women's Rights to Land, Property and Housing

There are various non-governmental and women's organisations engaged in promoting and protecting the rights of women to land, property and housing. Initiatives include Land Alliance in Uganda and Kenya, Federation of Women Lawyers Associations, Women in Law in Southern Africa, Women in Law in East Africa, Women in Law and Development in Africa, Asia and Pacific, etc. The Gender Land Task Force in Tanzania raises awareness among parliamentarians, government officials and the public with respect to addressing women's rights issues in the country's new land law.

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A number of regional and international organisations have carried out research on women's land and property rights What remains to be done is to co-ordinate, share experience and exchange information for the improvement of women's rights.

In Kenya, the Federation of Women Lawyers undertakes advocacy work at all levels, working with policy-makers, bureaucrats, parliamentarians and administrative chiefs at the community level. Through awareness creation and capacity-building, chiefs in some locations in Kenya are able to decide positively on cases based on their knowledge of the law and human rights of women instead of their traditional beliefs and customs. "Instead of supporting a brother who would want to stop and evict his sister from developing the land allocated to her by her father, although, she is married elsewhere, the chief nowadays can allow the sister to build a house because it is her entitlement" (FIDA Kenya Chairperson, personal communication).

Other NGOs facilitate women's access to ownership of land, for example, the Deacon Development Society (DDS) in Andhra Pradesh, India, works with poor women's collectives in 75 villages, helping women from landless families establish claims on land through purchase (Kothari, 2003).

The International Human Rights Law Group assists women's rights organisations in Africa to promote and protect women's equal rights to inheritance. A number of regional and international organisations have carried out research on women's land and property rights. For example, FAO/IFAD/World Bank Network for Negotiated Land Reform (NELAREM) partnerships between landless groups and civil society in South Africa promote gender equality. What remains to be done is to co-ordinate, share experience and exchange information for the improvement of women's rights.

Conclusion

In conclusion, I would argue that strategies for addressing women's rights to land, property and housing should attempt to understand the land tenure systems that exist in different countries and identify opportunities and constraints. Land tenure refers to the rights of individuals or groups in relation to land. Tenure often involves a complex set of rules, frequently referred to as a 'bundle of rights'. Men have access to the entire bundle of rights, with full use and transfer rights, while women may be limited in their use of the resources (UN-HABITAT,

1995:168). This issue should be addressed in addition to legal reform and other practical and administrative measures that have been adopted in a number of countries. Market reforms with respect to the sale and lease of land and property and the administration of loans can increase women's rights and access. Land tenure reform focusing on more equitable and efficient institutions through good legal support, land information systems and a decrease in transaction costs, and creating unambiguous rights, can improve tenure security. Other strategies could include involving women in development and application of tools (title, registries and land surveys), including women as right holders in registries and designing affordable and equitable dispute resolution mechanisms (Crowley, 1999).

Note

- 1 Discussed in Catherine Muyeka Mumma's paper on 'Reconciling Competing Rights', pp. 62–80.

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Land Rights and Women's Claims¹

Bina Agarwal

Introduction

A neglected issue

In largely agrarian economies, arable land is the most valued form of property and productive resource. It is a wealth-creating and livelihood-sustaining asset. For a significant majority of rural households it is the single most important source of security against poverty. Traditionally, it has been the basis of political power and social status. For many, it provides a sense of identity and rootedness. It is an asset that has a permanence that few other assets possess. In some communities, ancestral land also symbolically stands for continuity of kinship and citizenship.

While many of these links are well recognised at the household level, their importance specifically for women has received little attention. Indeed, the issue of women's rights to land (and more generally to property) has been, until recently, largely neglected in both research and policy. In almost all developing countries, large-scale surveys and agricultural censuses collect property-related information only by household, without disaggregating by gender. Thus we still have to depend on small-scale surveys and village studies to assess women's access to land. These sources reveal that typically few women own arable land and even fewer effectively control any.

The social and economic implications of this are wide-ranging. Millions of women in Asia, Africa and Latin America depend on land for their livelihood. In India, for instance, 58 per cent of all male workers, but 78 per cent of all female workers, and 86 per cent of all rural female workers, are in agriculture. Women's domestic work burden, lower mobility, lesser education and fewer investable assets limit their entry into areas other than agriculture and also their range of non-farm

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options. Moreover, women's agricultural work is, to a greater extent than for men, casual in nature. Relative to men, women also continue to have lower real wage rates and lower average real wage earnings in both agriculture and non-agriculture.

As more men shift to urban or rural non-farm livelihoods, a growing number of households will become dependent on women managing farms and bearing the major burden of family subsistence. The percentage of *de facto* female-headed households is already large and growing. Estimates for India range from 20 to 35 per cent. These include not just widows and deserted and separated women, but also women in households where the men have migrated out and women are effectively farming the land. These women shoulder growing responsibilities in agricultural production but are seriously constrained by their lack of title to land.

The male biases in land ownership and transfers that have been noted in many developing countries are in danger of being replicated in new land reform initiatives and property rights formulations. For instance, agrarian reform is a major policy issue in post-apartheid South Africa, and new private property rights in land and other assets are now being constituted in Eastern Europe and the former USSR. Here new gender inequalities are already being created (Meer, 1997; Verdery, 1996). It is therefore timely and essential to examine in more detail why it is important for women to have effective and independent land rights, what obstructs their realising their claims and what could be done to improve the situation.

While these issues are discussed here largely in the Indian and South Asian context, many of them are also relevant to other developing regions and to transition economies. And although the focus here is on arable land, since that is such a crucial form of property and means of livelihood in South Asia, many of the arguments and concerns could be extended to cover women's rights in a dwelling house or in other forms of property.

Defining land rights

Rights (in any form of property) are defined here as claims that are legally and socially recognised and enforceable by an external legitimised authority, be it a village-level institution or

some higher level body of the State. Land rights can stem from inheritance, transfers from the State, tenancy arrangements, land purchase and so on. They can be in the form of ownership or usufruct (rights of use) and can encompass differing degrees of freedom to lease out, mortgage, bequeath or sell.

Three additional distinctions are relevant here:

- 1 There is a difference between the legal recognition of a claim and its social recognition, and between recognition and enforcement. A woman may have a legal right to inherit property, but this may remain merely on paper if the claim is not recognised as socially legitimate or if the law is not enforced.
- 2 There is a distinction between ownership and effective control. It is sometimes assumed incorrectly that legal ownership carries with it the right of control in all its senses. In fact, legal ownership may be accompanied by restrictions on disposal (e.g. where a married woman needs her husband's consent to alienate the land she legally owns).
- 3 We need to distinguish between rights vested in individuals and those vested in groups. Our concern here is with women having effective and independent rights in land, effective rights being rights not just in law but also in practice, and independent rights being rights that women enjoy in their own capacity and independent of those enjoyed by men.

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Why Land is Important for Women

Effective and independent land rights for women are important on at least four counts: welfare, efficiency, equality and empowerment.

Welfare

It is generally accepted that access to land can reduce a household's risk of poverty, but for several reasons land solely in men's hands need not guarantee female welfare. First, there are persistent gender inequalities and a bias favouring males in the distribution of resources within households, including allocations for basic necessities such as health care, education and,

in some regions, even food. Biases in food and health care are revealed especially in anthropometric measures (e.g. weight and height for age, weight for height, etc.), morbidity rates and, most starkly, in female-adverse sex ratios. In contrast, direct land transfers to women are likely to benefit not just women but also children. Evidence from many parts of the world shows that women, especially in poor households, spend most of the earnings they control on basic household needs, while men spend a significant part of theirs on personal goods, such as alcohol, tobacco, etc. (Dwyer and Bruce, 1988). Apart from differences in spending patterns, women with assets such as land have greater bargaining power, which can lead to more gender-equal allocations of benefits even from male incomes.

Second, women without independent resources are highly vulnerable to poverty and destitution in case of desertion, divorce or widowhood. In parts of western and north-western India, it is not uncommon for rural women, even from rich parental and marital families, deprived of their property shares when widowed, to be found working as agricultural labourers on the farms of their well-off brothers or brothers-in-law. The fate of deserted and divorced women is worse. Relatives, including sons and brothers, often do not provide the expected economic security to women who are widowed or whose marriages break down. Many of these women end up living on their own. In fact, mortality risks among widows tend to be higher among those living as dependents of male relatives compared with those who are heads of households and who presumably have some independent means of subsistence (Rahman and Menken, 1990). For widows and the elderly, entitlement to family care can depend critically on whether they have property to bequeath.

Land can provide women with both direct and indirect benefits. Direct advantages can stem from growing not just crops but trees, a vegetable garden or grass for cattle. Indirectly, owned land can serve as collateral for credit or as a mortgageable or saleable asset during a crisis; it increases the probability of women finding supplementary wage employment and serves as an important asset base for rural non-farm enterprises. Women's access to even a small piece of land can be a critical element in a diversified livelihood system, and can significantly improve women's and the family's welfare, even if

the plot is not large enough to provide full family subsistence. And independent access to land will become increasingly important for women as marital and kin support erodes and female-headed households multiply.

Efficiency

In addition to welfare gains, more gender-equal land rights could also enhance productive efficiency. First there is an incentive effect. Although it is widely recognised that security of tenure can be critical in motivating farmers to make productivity-enhancing investments in their fields, the need for similar incentives within the family has been largely ignored. Some recent studies suggest that incentives could be as important within families. In Kenya, for example, where men and women often cultivate separate plots, the introduction of weeding technology in maize production raised yields on women's plots by 56 per cent where women controlled the output, and by only 15 per cent on their husbands' plots, where women also weeded but men got the proceeds (Elson, 1995).

Second, where land access is in the form of titles (which serve as collateral in many regions), secure rights for women would help increase output by improving women's access to credit. This can prove especially crucial in situations where women are the principal farmers, as where male out-migration is high or where widows (or wives) are cultivating separate plots still formally owned by kin.

Third, research from some other parts of the world suggests that women might use land more efficiently than men in certain contexts. In Burkina Faso, for instance, due to their choice of cropping patterns, women achieved much higher values of output per hectare on their own plots than their husbands did on theirs (Udry et al, 1995). Although women's yields for given crops were lower than men's, this was due to their lesser access to inputs such as fertilisers that were concentrated on the men's plots. The study estimated that output could be increased by as much as 10–20 per cent if such inputs were reallocated from plots controlled by men to those controlled by women in the same household. A literature review of the effect of gender on agricultural productivity in several countries of Africa and Asia also concludes that output could be notably

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increased if women farmers had the same access to inputs and education as male farmers (Quisumbing, 1996).

Fourth, women in many parts of South Asia are often better informed than men about traditional seed varieties and the attributes of trees and grasses. If they had greater control over land and farming, this knowledge could be put to better use.

Fifth, tenure security and especially titles can empower women to assert themselves better with agencies that provide inputs and extension services. While some argue that land transfers to women will have a negative efficiency effect, in that such transfers will reduce output by reducing farm size and increasing fragmentation, there is no noteworthy evidence of this. In India and other parts of South Asia, small farms are found to have a higher value of output per cultivated unit than large farms (Banerjee, 2000); fragmentation can arise equally with male inheritance.

Equality and empowerment

The equality argument is an important one in and of itself, since gender equality is a measure of a just and progressive society. But in addition, equality in land rights is a critical element in women's economic empowerment. 'Empowerment' is defined here as "a process that enhances the ability of disadvantaged ('powerless') individuals or groups to challenge and change (in their favour) existing power relationships that place them in subordinate economic, social and political positions" (Agarwal, 1994:39). Endowing women with land would empower them economically as well as strengthen their ability to challenge social and political gender inequities.

Land rights can thus serve multiple functions in rural women's lives that are not easy to replicate through other means. This is important to keep in mind since the present thrust of most national and international agencies is not on land rights but on micro-credit programmes that are being promoted as a panacea, especially (but not only) for poor rural women. Although credit is clearly an important need for poor women, many individual women not only face problems in retaining control over such loans, but the privileging of this one form of support over all other livelihood sources can prove problematic and diversionary. A number of evaluations show

that such credit programmes do not reach the poorest households, let alone change the gender balance in property ownership and control. In fact, a recent study for Bangladesh (cited in IFAD, 2001) identified a lack of access to land and homesteads as major factors in the exclusion of the poorest from credit NGOs.

An alternative to the existing approach of promoting micro-credit for non-land-related micro-enterprises is to link land and micro-credit by providing rural women who depend on land-based livelihoods with credit for leasing in or purchasing land in groups. Here micro-credit would complement rather than substitute for efforts to enhance women's land rights. This would require a significant shift from the existing focus of most micro-credit programmes.

Women's Land Access in Practice

There are three major ways by which women can gain land: inheritance, state transfers and the market.

Inheritance

In most countries arable land is largely privatised. In India, 86 per cent of arable land is privately held. It is not easy to determine how many women inherit land in practice, given the noted absence of gender-disaggregated land ownership data at the all-India level. Small-scale studies can nevertheless be revealing, such as a 1991 sample survey of rural widows by Martha Chen (2000) covering seven States. Chen found that of the 470 women with landowning fathers, only 13 per cent inherited any land as daughters.

Women as widows fared somewhat better. Of the 280 widows whose deceased husbands owned land, 51 per cent inherited some. But this still means that half the widows with legal claims did not inherit anything. And of those that did, typically their shares were not recorded formally in the village land records. Other studies have shown that where the land is so recorded, invariably the widow's name is entered jointly with adult sons, who effectively control the land. The popular perception is that the widow's share is for her maintenance and

Land purchase through the market ... cannot compensate for gender inequalities in inheritance or government transfers.

not for her direct control or use. Widows without sons rarely inherit. Moreover, widows in India constitute only about 11 per cent of rural women, and 76 per cent of them are over 50 years old, many of them too old to effectively work the land. Hence, inheritance as widows does not compensate women for their being disinherited as daughters.

Government transfers

A second potential source of land for women is state transfers. These transfers can be part of land reform programmes, resettlement schemes for those displaced by large dams and other projects, or anti-poverty programmes. Irrespective of the programme under which the transfers occur, typically the land is allotted almost exclusively to males, even in communities that traditionally practiced matrilineal inheritance (i.e. ancestral property passed through the female line). This male bias has a long history and even in peasant movements in which women were significant participants, they were not recognised as independent claimants to land.

In the more recent period, a few of India's Five Year Plans have given some recognition to women's land claims. The crunch, however, lies in whether state governments are willing to implement these recommendations. In addition, the ceiling surplus land available for distribution is extremely limited: it was only 0.56 per cent of India's arable land at the time of the Eighth Plan and today it is less than 0.2 per cent of the country's arable land.

Through the market

The third source of land for women is through lease or purchase. The importance of this option will depend on financial, institutional and infrastructural support to women. In itself, this is a limited option since individual rural women seldom have access to adequate financial resources for this purpose. Also, in terms of purchase, rural land markets are often constrained and land is not always available for sale. Land purchase through the market thus cannot compensate for gender inequalities in inheritance or government transfers. There is

somewhat greater potential for obtaining land on lease, since this is more readily available.

For both lease and purchase, however, external support to women would improve access. For instance, in parts of South Asia, groups of landless women have been using subsidised credit provided by the State for leasing or purchasing land in groups, and cultivating it jointly. Such collective endeavours could well prove an important supplementary means by which women can acquire land, even if not the primary means.

Obstacles to Women's Land Access

What stops women from gaining greater land access? While the difficulties that individual women face in getting land through the market were indicated above, those relating to private and government land are more complex.

Privatised land: legal, social and administrative biases

Inheritance laws

In most of India, inheritance was traditionally patrilineal (that is, ancestral property passed through the male line), with some limited matrilineal pockets in the south and north-east (Agarwal, 1994; 1995). Among the majority Hindu community, for instance, the common pattern was for women to inherit only in the absence of male heirs, typically in the absence of four generations of men in the male line of descent. Widows had the first claim and daughters followed. What women received, however, was only a limited interest, that is, they enjoyed the property during their lifetime after which it reverted to the original source. Women's rights of disposal were also restricted: they could not mortgage, give or sell the land, except in exceptional circumstances. In most cases, the rights of Muslim women in customary practice were very similar to those of Hindu women in their regions of location.

During the 20th century, however, through the concerted efforts of women's organisations, liberal lawyers and social reformers, inheritance laws shifted significantly toward gender equality. For instance, the Hindu Succession Act (HSA) of 1956 made sons, daughters and widows equal claimants in a

man's separate property and in his share in the joint family property. It also gave women full control over what they inherited, to use and dispose of as they wished. Similarly, the Muslim Personal Law Shariat (Application) Act of 1937 substantially enhanced Muslim women's property rights compared with those prevailing under custom.

Yet, in both communities some notable inequalities remain. Both Hindu and Muslim inheritance laws, for instance, treat agricultural land differently from other property. The HSA exempted tenancy rights in agricultural land from its purview. Likewise, the Shariat Act excluded all agricultural land (both tenanted and owned). Subsequently, some of the southern states extended the provisions of this Act to also cover agricultural land. In all other regions, however, agricultural land, unlike other property, continues to devolve according to customs, tenurial laws or other pre-existing laws. In most of north-west India, such laws and customs give women's property rights very low priority.

A second source of inequality lies in the differential inheritance shares for men and women. In the HSA, for instance, although sons and daughters have equal shares in a man's separate property, there is also the continued recognition of joint family property in which sons but not daughters have rights by birth. The situation remains highly unequal in most States. In the case of Muslim law, differential shares arise because daughters are allowed only half the share of sons in any property.

Social bias

In addition, there is a gap between legal rights and actual ownership. In most communities that were traditionally patrilineal there is strong male resistance to endowing daughters with land. Apart from a reluctance to admit more claimants to the most valuable form of rural property, resistance also stems from social practices that determine marriage choices and post-marital residence. Traditionally among matrilineal communities where daughters had strong claims in land, post-marital residence was in or near the natal home. This kept the land under the overall purview of the natal family, as did close-kin marriage. In contrast, in traditionally patrilineal communities, post-marital residence was patrilocal (the woman joined her husband in his natal home) and often in another village. In

addition, in northern India close-kin marriage was forbidden among most communities, and there were social taboos against parents asking married daughters for help during economic crises.

Many of these customs continue today and obstruct women's claims, especially among upper-caste Hindus of the north-west who are the strictest in forbidding in-village and close-kin marriages and in socially restricting parents from seeking help from married daughters. Here, endowing a daughter with land is seen as bringing virtually no reciprocal benefit, and any land inherited by her is seen as lost to the family. Daughters face the greatest opposition to their inheritance claims among such communities. Opposition is less in south and north-east India where in-village and close-kin marriages are allowed and parents can, if they need to, seek support from married daughters.

Many women also forgo their shares in parental land in favour of brothers. In the absence of an effective state social security system, women see brothers as an important source of security, especially in case of marital break-up, even if in practice brothers are seldom willing to support sisters for extended periods. Cultural constructions of gender, such as how a 'good sister' would behave, and practices such as female seclusion in some areas also discourage women from asserting their rights. Where women do not 'voluntarily' forego their inheritance claims, male relatives have been known to file court cases, forge wills or resort to threats and even physical violence.

The gender gap between the ownership and effective control of land is as striking as that between law and practice. Here too social practices and notions of male entitlements play an important role. For instance, marriages in distant villages make direct cultivation by women difficult. In many areas this is compounded by illiteracy, high fertility and social restrictions on women's mobility and public interaction. While the practice of veiling is geographically restricted, the ideology of female seclusion is more widespread and operates in complex ways. Effectively, it restricts women's contact with men by gendering forms of behaviour, and gendering public and private space. This reduces a woman's mobility and participation in activities outside the home, especially market interaction; limits her knowledge of the physical environment; and disad-

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vantages her in seeking information on new agricultural technologies and practices, in purchasing inputs and in selling the product.

Other difficulties facing women farmers include their limited control over cash and credit for purchasing inputs, gender biases in extension services, ritual taboos against women ploughing and demands of advance cash payments by tractor or bullock owners for ploughing women's fields. Taboos against ploughing increase women's dependence on male help and reduce yields if ploughing is not done in time.

Administrative bias

Community- and family-related social constraints are compounded by the unhelpful approach of many government functionaries who typically share the prevailing social biases and often obstruct the implementation of laws favouring women. The bias is especially prevalent in the recording of daughters' inheritance shares by village officials. In the north-western state of Rajasthan, for instance, a number of village officials told the author that although they encouraged widows to claim their shares, they discouraged daughters from doing so. Village councils also tend to favour men on this count.

At one level, all these constraints – legal, social, and administrative – appear formidable. Yet, the striking regional variability in the strength of the constraints provides entry points for change. South India, which has the fewest obstacles, could provide an important starting point for furthering the goal of gender equality in effective property rights. Demonstrated achievements in one region could help subsequent attempts in other regions.

Government transfers

While male bias within families can to some extent be explained in terms of conflicting interests and social attitudes in relation to private land, why do governments also transfer public land mostly to men? There appear to be several reasons for this bias.

To begin with, there is the common assumption that men are the primary cultivators and breadwinners and women are the helpers and dependents. There is also a widespread social perception regarding women's appropriate roles and capabili-

ties. More generally, land-related policy continues to be formulated largely on the assumption of a unitary household within which resources transferred to men are seen as benefiting the whole family. However, the substantial evidence of unequal intrafamily resource allocations, noted earlier, indicates otherwise. Interestingly, those who most vociferously oppose such resource transfers to women often implicitly recognise that families are far from harmonious or altruistic institutions. Rather they fear that women will leave the family if they have the fallback option that property ownership would provide.

A concern with family unity also limits the nature of transfers to women in the rare cases when such transfers do take place. For instance, there is a long-standing assumption in public policy that farms will be cultivated on a family basis. As a result, the emphasis has been mostly on giving women joint titles with husbands, and allotting titles to widows only in the absence of adult men in the family. In fact, it is fallacious to assume that improving women's economic situation will lead to family break-up. The likelihood is that greater economic equality between men and women within the Indian family will help improve intrahousehold resource allocation and gender relations and strengthen family relationships. For instance, husbands will be less likely to desert or divorce wives who own property or have other means of access to assets such as land or homesteads.

To enhance gender equality in land and livelihoods, changes appear necessary on at least five counts: conceptual, legal, social, institutional and infrastructural.

What Should Be Done?

To enhance gender equality in land and livelihoods, changes appear necessary on at least five counts: conceptual, legal, social, institutional and infrastructural.

Conceptual and empirical

For a start, it appears necessary to challenge the conventional model of a harmonious male-headed family in analysis as well as policy, and to recognise the family for what it is: a unit of both co-operation and conflict, of both sharing and selfishness, where women and men can have different interests, preferences and motivations, where self-interest also enters and where

allocations are often unequal and affected by differential bargaining power. Indeed, there is an emerging consensus among gender-aware economists about the validity of the bargaining approach to understanding intrahousehold dynamics.

It is important to gather systematic gender-disaggregated information on land ownership and use, both for better understanding of the existing situation and for effective monitoring. Researchers collecting land-related data in other projects could also be encouraged to collect gender-disaggregated information on land ownership and use.

Legal

The legal aspects should include at least three elements.

1 Amending the inheritance laws

These would include a number of changes, such as placing agricultural land on a par with other forms of property in the laws applicable to Hindus as well as those applicable to Muslims and abolishing the joint family property provision in the HSA, as has been done in Kerala. Even though legal changes are not a sufficient condition for ensuring women's ownership and control over property, legal equality provides an essential tool in the hands of gender-progressive groups, who could then work for *de facto* equality. Progressive legislation also underlines the State's commitment to the idea of gender equality.

2 Legal literacy

This is essential to make laws effective and needs to reach both adults and near-adults. For the latter, legal literacy could be made part of the curriculum in the senior years of school.

3 Recording women's shares

Village women need support to ensure that their land shares are correctly recorded by the relevant village official, and need legal advice and help if they wish to contest their claims with either the family or the administration.

In all these efforts, gender-progressive groups could play a significant role.

Social

Unless and until women's claims begin to be seen as socially legitimate, parents who have a male bias are likely to use the right of making wills to disinherit daughters, even if the laws are made fully gender equal. Similarly, efforts are needed to change conservative or negative perceptions about women's appropriate roles and abilities and to challenge social norms that restrict women's public mobility and interaction.

Although social attitudes, norms and perceptions are not easy to alter, certain types of interventions could further the process. For instance, government initiatives to transfer land titles and infrastructural support to women farmers would have a notable demonstration effect. Interventions to strengthen extra-family economic support for women, including through a government social security scheme, would help reduce women's dependence on relatives and especially on brothers in whose favour women often forgo their claims. Overall, economic support would also enhance women's ability to challenge inequalities in the family and community. In so far as the popular media is one of the arenas where gender roles and relations are both projected and constructed, media interventions in a gender-progressive direction would also help transform social attitudes.

Institutional

Reforms in this area need to be holistic and innovative. For instance, policy-makers generally assume that farms will be cultivated on a family basis. Hence to the extent that the government is beginning to recognise that women farmers too have legitimate claims in land, joint titles (titles held jointly by husbands and wives) are mostly favoured. Such titles have both positive and negative implications. On the positive side, clearly getting some land is better for women than having none. But on the negative side, joint titles also present women with several potential problems. Women often find it difficult to gain control over the produce, to bequeath the land as they want or to claim their shares in case of marital conflict. Also with joint titles wives cannot easily exercise their priorities in land use if these priorities happen to differ from those of their

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husbands. Most importantly, joint titles constrain women from exploring alternative institutional arrangements for cultivation and management.

Individual titles, by contrast, give women greater flexibility and control over the land. At the same time, individual women often lack funds for equipment or inputs, and where holdings are very small individual investment in equipment can prove uneconomical. Individual women also face considerable pressure from male relatives who want to acquire or control the land.

Solutions might include the following:

- 1 Women who own individual holdings invest in capital inputs jointly with other women, while managing production individually. Male farmers have done this in several regions, by jointly investing, say, in a tubewell where they have contiguous plots. This reduces the individual cost of major investments.
- 2 Women purchase land jointly while owning it individually and farming it collectively.
- 3 Women lease land as a group and cultivate it jointly.
- 4 Women's groups manage and oversee cultivation on land owned by men.
- 5 Women hold group rights over land distributed by the government, or otherwise acquired by women (Agarwal, 1994). Effectively, the women would be stakeholders in a kind of land trust. Each woman in the group would have use rights but not the right to alienate the land. The daughters-in-law and daughters of such households who are resident in the village would share these use rights. Daughters leaving the village on marriage would lose such rights but could re-establish them by rejoining the production efforts, should they return, say on divorce or widowhood. In other words, land access would be linked formally with residence and working on the land, as was the case under some traditional systems when land was held collectively by a clan.

In these various institutional alternatives, women are not just adjunct workers on family farms; they have direct control over production and distribution. Co-operation is between women

with common interests and not between households. The arrangements enable women to gain access to land through the market or through the community – access that women rarely have as individuals. Where linked with land pooling, joint investment and collective management, these arrangements can also help overcome any problems of small size and fragmentation.

Moreover, a collective approach to land management helps women to mobilise funds for capital investment on the farm, take advantage of economies of scale and co-operate in labour-sharing and product marketing. In addition, if the land is held under a system of group rights (as in the fifth alternative) it would strengthen women's ability to withstand pressure from relatives and retain control over the land, and it would circumvent the problem of inheritance since the women would not have rights of alienation. It would also circumvent the issue of outside-village marriages, since women's rights would be based on residence.

Some policy-makers and scholars argue against co-operative farming by pointing to India's failed efforts of the 1950s and early 1960s. However, the focus then was on households, and on male heads as representatives of households. Not only did gender receive no mention, but inadequate attention was paid also to socio-economic inequalities between households, with the result that co-operatives were often large-farmer dominated. A crucial difference in the approaches outlined here is that the institutional forms discussed shift the focus of co-operative efforts from disparate village households to disadvantaged individuals with common interests. Focusing on the effects on poor women could open an important window of opportunity to revive land reform, community co-operation and joint farming in a radically new form.

Infrastructural

The success of women's farming efforts, whether as individuals or groups, can depend crucially on their access to infrastructure. As noted earlier, there are significant gender (in addition to class) inequalities in access to credit, labour, other production inputs (including hired equipment) and information on new agricultural technologies. Poor women cultivating very small plots have the most difficult time in this regard.

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The experiences of many NGOs working with poor women, using a group approach, suggest that some restrictive social norms could be challenged successfully as a by-product of forming groups for the more effective delivery of economic programmes.

Prevailing gender biases in the delivery of government infrastructure thus need to be removed. To some degree, this could be done by employing more women in agricultural input and information delivery systems (women extension agents are often recommended for this purpose), but such systems also need a reorientation of male functionaries so that they too contact and assist women farmers. Also, dependence on the State alone may not be enough, or have the same potential for success in reaching women, as non-governmental initiatives. For instance, in credit delivery to poor women, NGOs in India have been more successful than government agencies. The role of NGOs could similarly be important in providing technical information, production inputs and marketing facilities to groups of women farmers.

Collective action

For initiating and sustaining the complexity of changes required to strengthen women's land claims, the committed involvement of a range of actors, and especially of a wide spectrum of women, will be necessary. It will require various forms of collective action by women, both in relation to State policy and its implementation, and in relation to land access via the market, the community and the family. Such collective action should also seek to bring into its fold gender-progressive elements (men and women) within the State, political parties and civil society groups.

The local bureaucracy would be more likely to register individual women's claims in family land if there were collective pressure from gender-progressive groups. Such organisations could also provide women with vital information about the laws and legal support if necessary. They could also strengthen women's bargaining position through economic and social support structures that reduce women's dependence on male relatives, especially their brothers. Such organisations could also help women demand that the government put in place a well-structured social security system.

The experiences of many NGOs working with poor women, using a group approach, suggest that some restrictive social norms could be challenged successfully as a by-product of forming groups for the more effective delivery of economic pro-

grammes. Group support for village women can be provided both by separately constituted groups that give women specialised help and by organisations comprised of village women themselves. The presence of more women in the village panchayats, as a result of the one-third reservation for women provided by the 73rd Constitutional Amendment in India in 1992, can also strengthen rural women's hands. Although simply having more women in such bodies cannot guarantee gender-progressive programmes, the record leaves room for optimism: women in these bodies were found to be more sensitive to women's concerns and to give priority to their needs in ways that male panchayat members typically did not (Gandhi and Shah, 1991). Women's presence in positions of authority also has a favourable demonstration effect and can change social attitudes and perceptions about women's roles. Moreover, village women are more likely to take their grievances to women representatives than to all-male bodies.

However, support for women's land claims on a large scale will need much more broad-based collective action by women. Although economic and social differences between women might prove to be obstacles on certain counts, there are still significant areas of mutual benefit that cut across class/caste lines, around which successful co-operation would be possible, which could serve as starting points. One is legal reform. Women of both rich and poor peasant households with a stake in family land stand to gain from gender-equal inheritance laws. Equally, challenging restrictive social norms will bring benefits for women of both well-off and poor households. The experience of the women's movement in India also indicates that women of different socio-economic backgrounds can co-operate strategically for legal reform, as they did in campaigns to amend dowry and rape laws, despite differences in ideologies, agendas and social composition.

Moreover, many urban middle class women activists have played and continue to play important roles in promoting poor rural women's economic and social concerns, such as supporting their campaigns for higher wages and their programmes for wasteland management, credit and small-enterprise development. In more recent years, there have been also some significant cases of middle class activists promoting poor women's land claims.

... there needs to be a shift away from the overwhelming preoccupation of most rural NGOs, donor agencies and governments with micro-credit delivery toward the creation of productive assets, especially landed assets, in women's own hands, and toward enhancing women's capacities as farmers.

All said, there now appears to be a favourable climate for raising the question of women's independent claims to land and livelihood; it is imperative to do so, given the importance of land in women's lives. Some NGOs that earlier concentrated on other issues are now beginning to focus on women's property issues, including agricultural land and homestead plots in rural areas and dwelling houses in urban areas. A number of South Asian women's groups also have been arguing for gender equality in inheritance laws by emphasising that their constitutions promise equal treatment of women and men. Moreover, women's groups that have not raised the issue of women's land and property claims directly have still, over the years, spread an awareness of gender concerns. This has created an environment within which women's claims to land can be placed more centrally in the arena of public concerns – something that was not easy to do 20 years ago.

A window of opportunity is also provided by the growing attention being given to watershed development and localised irrigation schemes by a number of NGOs and some government agencies in several parts of South Asia. But once land becomes more valuable with the availability of irrigation, women's land claims are unlikely to be recognised. The opportune time to establish women's claims is during the process of developing the watershed or irrigation facility, not afterwards.

Moreover, there needs to be a shift away from the overwhelming preoccupation of most rural NGOs, donor agencies and governments with micro-credit delivery toward the creation of productive assets, especially landed assets, in women's own hands, and toward enhancing women's capacities as farmers. In this context, women's rights in arable land and homesteads need to become a central part of the development discourse. Here development agencies that fund research or grass-roots action could also play a significant positive role.

Finally, given that this issue is significant and relevant for women in many countries, there is scope here for sharing experiences and strategies for change; for building horizontal linkages between groups with similar goals; and for international coalitions both between South Asian countries and between South Asia and other parts of the globe. This would be facilitated by emerging international support for women's claims in property. CEDAW has focused on equality in property as one

of its important directives. The UN Conference on Human Settlements, at its Istanbul meeting in 1996, also focused on women and land. Since then the Huairou Commission – in conjunction with the UNDP, UN-HABITAT, the Women's Environment and Development Organization (WEDO) and the Women's Caucus of the UN Commission on Sustainable Development – has held several discussions with women's groups worldwide to examine regional progress in enhancing women's access to land and property. The Huairou Commission is also requesting support for a global campaign to promote women's claims in land and property and housing rights for the urban poor under the auspices of UN-HABITAT.

All these national, regional and international efforts which are beginning to emerge suggest that today the climate is certainly more favourable than it was two decades ago for responding positively to the concerns raised by poor women in West Bengal: "Why don't we get a title? Are we not peasants?"

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