

## GENDERED LAND RIGHTS – PROCESS, STRUGGLE, OR LOST C(L)AUSE?

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*'The women were left out again' (in Uganda)*

In reading some of the literature on gender and land, principally on Africa, but also on Latin America and Asia, one of the most striking comments was this, from the Ugandan activist Miria Matembe:

'You can see the tactics used by these male conspirators. The men had achieved what they wanted for themselves in the [1998] Land Act. The Baganda got their share. The Banyoro got their share. And after the women lost out...none of these men was ready to come our way with support.... As with so many things, the women were left out again. Justice for women? Not this time? But when?'

What the Ugandan women lost was the infamous co-ownership clause, apparently agreed to, but lost between Bill and Act because Miria Matembe, when she read out the clauses in parliament, had not been handed the microphone and so they were not officially recorded in Hansard. Subsequent attempts to re-instate the lost clause have met with firm resistance.

This case serves as a metaphor for the whole complex issue of gendered land rights. In a nutshell, despite a great deal of lobbying, and despite a wealth of sophisticated gendered economic research and analysis, throwing light on the invisible work of women in all spheres, significant achievements outside Latin America have been few, and huge barriers and great resistance remain. I want to look briefly at some of these barriers.

*Why bother with women's land rights?*

But first, there are those who ask - why bother with women's land rights at all? After all, the world is becoming increasingly urbanised, agriculture is changing profoundly and in many parts of the world it plays a far less important role in women's livelihoods strategies than it once did. The ugly word 'de-agrarianisation' has been coined. The most effective answer to this question is that access to and/or ownership of land can greatly strengthen women's bargaining position in the domestic sphere and provide the opportunity to secure other social and economic rights, while also enhancing food security and nutrition for her family. In Latin America, land can also be a resource which women can rent out or sharecrop, so providing a degree of economic autonomy.

*Only secondary rights*

In much of Africa and elsewhere, women only have access rights to land through marriage. On marriage, they move to their husband's village. On divorce or widowhood, they are often chased away. Women often tolerate abusive relationships through fear of losing access to land. The 'secondary' rights they do enjoy are frequently ill-defined, of uncertain duration, subject to change and to maintaining good relations with others. Some have argued that her position is akin to that of a bonded labourer. This, despite all the statistics about women's dominant role in food production. Even these secondary rights are becoming increasingly vulnerable, as the institution of marriage becomes more unstable, and as demographic pressures on land intensify and land acquires greater value.

*The invention of 'tradition'*

Traditional patriarchal systems in Africa were reconstructed under colonialism in ways that benefited men, disadvantaged women, and strengthened male controls over female labour. Chiefs became colonial functionaries but critically retained powers to allocate land. What is often referred to - and now asserted by men - as 'traditional' (as in South Africa) is in reality the product of considerable change and contestation over time. But it can now comprise very strong vested interests, determined to resist change.

### *The unproblematic 'household'*

Many problems have been caused - and continue to be caused - by analysts and policy makers adopting an undifferentiated and conflict-free notion of the 'household'. For example, in a programme in Kenya, title to land was given only to heads of households (almost always men) and the secondary rights of women were extinguished in the process. But one should not abandon the notion of households; they remain the basic component of social organisation and are central to understanding gender inequality in access to land. In addition, independent women and men are not autonomous, isolated individuals, but are embedded in a variety of social relations, networks and institutions. And these can be absolutely critical for women in being able to lay claims on people. Men also need to invest in social institutions to gain access to labour, and their dependence on their wives' labour - however 'free' and unvalued - gives the latter some bargaining power, however weak. Writers talk of a 'time famine' to reflect the huge, multiple demands on women's time. For some feminists, the key is to promote women's rights without destabilising social cohesion or provoking a male backlash - something which clearly involves a process rather than a single 'milestone' event.

### *Resistance is certain*

There is sufficient evidence from across the world to demonstrate that demands for women's rights to land have frequently met with deliberate and formidable resistance in practice, whatever might be said officially in the realms of policy or law. This is because land is so often a symbol of male dominance, and for women to challenge the status quo is to challenge patriarchal control - and thus other social and political inequalities. So political resistance at many levels is not surprising. Women lobbyists are told that gender issues will be addressed 'in due time' (which never quite comes) and, especially in Africa, are often demonised as being unduly influenced by 'western' ideas deemed inappropriate to 'traditional culture'.

### *Family law - the way forward, or just reinforcing marginalisation?*

Given (i) such resistance, (ii) that tenure reforms outside Latin America have rarely benefited women, and (iii) that statutory law, however well intentioned, can be difficult to enforce, some argue that the critical area to change is family law - on marriage, divorce, inheritance, and consensual unions. Reform of family law might protect the land rights of divorced women and widows; the latter being particularly critical in a context of HIV/AIDS. It is recognised, though, that awareness campaigns and advice centres are needed to help women assert their legal claims. Others contest this, arguing that family law is perceived as 'soft' in the legal world, and that women's needs are therefore better addressed in 'harder' land law.

### *Statutory law and social change?*

Many advocates for women's land rights put their faith - perhaps too much faith - in changing the law, at different levels. So, in South Africa, much effort went into creating a new Constitution which outlaws discrimination on the basis of gender. The hope is that, over time and backed by awareness raising and by precedent, statutory law can prompt social change and the acquisition of rights. In Latin America, new civil and agrarian codes have strengthened women's property rights and been more gender progressive than previous agrarian reform legislation.

### *But class is still with us*

Women do have different land needs, preferences and priorities to men, but they do not of course constitute an undifferentiated class. The influential work on Latin America by Carmen Deere and Magdalena León has been criticised for being largely silent on issues of class. In Africa, gender lobbyists themselves admit that they largely come from middle class backgrounds, find it hard to engage directly with peasant women, and may have class interests in purchasing land, which may well conflict with the interests of poor, rural women.

### *Land and agrarian reforms and women's movements*

The literature on Africa suggests that across a variety of land reform, titling and registration programmes, the impacts on women have been largely negative, mainly due to planners'

misconceptions about the 'household' and to the absence of effective political pressures. In some cases, female households heads have been allocated land, but in practice few have benefited and in many cases women have actually lost rights of access to land for cultivation. In Latin America by contrast, Deere and León present a more positive picture of the gendered implications of current land titling programmes, combined with new civil and agrarian codes. Through effective national pressure from rural women's organisations in Colombia and Nicaragua, wives gained statutory rights to mandatory joint land titles with husbands. But progress was slower in Honduras and Mexico, where women's movements were more divided. There has been some legal progress for women in consensual unions; in Colombia registration for joint land titling was simple, though in Honduras, until recently, such unions had to receive legal recognition, which was costly and time consuming, before titles could be granted. Also, given the relatively enlightened legal tradition in Latin America, women have been able to acquire land through inheritance, which tends to be more gender equitable than other ways of acquiring it. These achievements - leaving aside issues of class and fears of increasing polarisation among women and men - obviously reflect the very different levels of political struggle in Latin America, where civil society, though frequently divided and weakened, remains immensely stronger and more experienced than in Africa.

#### *The shadow of HIV/AIDS in Africa*

Only in sub-Saharan Africa are HIV infection rates higher for women than for men, and in a variety of ways the pandemic there is making women's land rights even more precarious. Women are especially vulnerable to infection (reflecting a lack of power in the domestic sphere) and, as widows, to near destitution following property grabbing by her husband's relatives. HIV/AIDS also reduces women's capacity to care for the sick and for orphaned children, while her labour time for both productive work and participating in community networks is further squeezed, at a time when such networks assume more critical importance. So it is disheartening that so few of the new land laws and policies in Africa directly confront the gendered implications of HIV/AIDS.

#### *Some very hard choices*

There are several hard choices and conflicting arguments in the area of gendered land rights:

- Should one push for individual land rights for women, or are they more strategically located within family and group rights (including for common property rights)?
- Should human rights arguments (equality, dignity, non-discrimination) take precedence over development arguments (investing in women brings higher social and economic returns)?
- Should one press for gender friendly land titling (which is likely to exclude poorer women), or retain customary law, despite its marginalisation of women as secondary rights holders, and hope to reform it?
- What role can law play in all this? Does it make sense to put one's faith in the role of law to bring about progressive social change?
- In parts of Latin America, demands for collective indigenous land rights have sometimes competed with pressure for individual gender rights.

#### *How do you 'do gender' in land reform, and what about the cost?*

Trying to implement gender sensitive land reform can be very complex, leaving aside the issue of resistance. South African Department of Land Affairs officials regularly complain that they don't know how to 'do gender' and need training. Moreover, gender sensitive policies will entail additional costs, in support for public education, training, legal aid and facilitation to increase women's participation in decision making and project planning.

#### *So how to strengthen women's land rights?*

In a recent FAO report on strengthening women's access to and rights in land in Southern and Eastern Africa, Cheryl Walker made some very useful policy recommendations on a framework to advance and protect women's rights in land, which are well worth repeating here:

- Constitutional commitment to gender equality as a fundamental principle.
- Statutory provision for joint registration of customary household land rights for spouses and the adoption or retention of the spousal consent requirement in the case of land transfers.
- Provisions to protect communal resources from privatisation and alienation.
- Government investment in non-farm rural development as an urgent priority.
- Government investment in basic public health (water, sanitation, etc.) and in rural social services such as schools and clinics.
- Provisions to ensure that women are represented on local level land administration bodies.
- Training for government officials tasked with the implementation of land policies on gender issues and women's rights.
- The development of indicators that would measure progress towards equity for women in land access and land rights.
- The review and repeal of all personal, family and customary law, including provisions on inheritance, which discriminate against women, as well as the review and repeal of any other legislation that prevents women from owning land or entering into contracts in their own right.
- Strengthening the capacity of local-level institutions to administer land and adjudicate disputes in a gender-neutral way, through the recruitment of women personnel, the training of personnel, and the review of existing practices.
- Taking steps to ensure that information on women's rights and on remedies if they are violated are widely disseminated.
- Provision of legal aid to support women secure their rights through the courts if necessary.
- Vigorous programmes around AIDS awareness.
- Initiating a major review of all land policy in the light of HIV/AIDS, looking at district-level demographic, economic and social impacts on land access and land use.
- Developing projects for housing and supporting AIDS orphans in communities, with government support.
- Investment in agricultural support services which target both women and men.
- Investment in labour-saving domestic and agricultural devices which address women's needs with regard to their labour/time famine.
- Finally, at the macroeconomic and global level, addressing the unequal terms of trade for African agriculture and industry.

### *Conclusions?*

There are no easy, simplistic solutions to the difficult issue of advancing women's land rights. I think I would agree with those, like Ambreena Manji, who argue that we are in danger in putting a great deal too much faith in the law. For example, if the Uganda women did finally win the co-ownership battle, this could well be defeated in practice in an environment which is (male) dominated by credit institutions and a commerce-friendly government and judiciary. Latin American experience would suggest that there is no serious alternative to political struggle to achieve rights that are so fiercely resisted at so many levels.

### **NOTE ON SOURCES**

This short, highly condensed paper, designed principally to be of use for Oxfam staff and partners, makes no pretence at originality and has been written entirely on the basis of the work of others, most notably:

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