

WOMEN'S ACCESS TO LAND AND PROPERTY RIGHTS IN ERITREA

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Background

It has been six years since Eritrea emerged from a lengthy war which claimed the lives of an estimated 200,000 Eritreans and displaced over 500,000 others. In addition, it dismantled the social fabric and left behind some 90,000 orphans and over 10,000 disabled persons. During the war, women composed over thirty percent of these on the battlefield, as commando and assault troops, as tank drivers, truck drivers, mechanics, doctors, and teachers.

The Eritrean People's Liberation Front (EPLF) was firmly committed to women's emancipation and supported women's rights to participate as free individuals in the struggle and the construction of a new Eritrea on an equal footing with men.

Legal Civil Rights

Eritrean society is predominantly patrilineal and patrilocal in inheritance and residence patterns, which puts women in a subordinate position in relation to men. The reasons for this gender inequality lie to a great extent in kinship and inheritance systems. Women's unequal status to that of men is seen most sharply in the private sphere of marriage. The roles which women play and which are not shared by men are regarded as inferior. Women's unequal status in marriage and the family is based on traditional, customary and religious attitudes that confine women to particular roles and place a higher premium on the male than the female.

The situation in relation to owning land is that, generally, land is owned by men, not women; but a woman might own land if she is widowed, divorced, or, exceptionally, if she is an unmarried, but mature, woman.

Property Rights

The legal dimensions of property relations in Eritrea are far from simple because different legal

traditions coexist. Property rights are governed by customary law as well as by contemporary state laws that aim to promote equal rights. Nowhere is this apparent incompatibility more striking than on the question of land and inheritance.

In customary law, the main rights guaranteed to the woman pertain to the defence and safety of her person; they do not guarantee her social rights regarding property ownership and inheritance and rights to her domestic autonomy: she cannot inherit land from her father; her husband looks after her. It is a patriarchal society structured on the father's house, the paternal descent line and paternal village.

The contemporary law, for its part, states that equal status at marriage extends to equal access to land and capacity for owning it; it also requires the removal of any discrimination in property-sharing upon divorce or death, with the acknowledgement of the right of the wife to half the marital property irrespective of whether she contributed financially to its acquisition or not. However, this does not apply to Muslim women, who are governed by Sharia law. Their case is in the process of being reviewed.

Customary Land Laws

The customary land tenure system is based on three types of land ownership: by the extended family (a system locally called *tsilmi*), by the village (a system called *diesa*), and by the state (a system called *dominiale*).

With respect to land inherited by descent (i.e. *tsilmi* land), each individual family within the large kinship group has a certain plot of land or a number of plots corresponding to its size and needs. This land is held in quasi-absolute ownership for life. It is worked by a man, his wife and his unmarried sons and daughters. Sons who marry and start families of their own apply for new land, through their father, to the family council charged with the administration of hereditary lands.

Land Inheritance by the Extended Family

The main heirs of *tsilmi* land are invariably the sons; only where there are no sons can brothers inherit it. In some cases, where male issue did not arise, daughters and sisters can claim a share in the paternal estate instead of a dowry. (This implies that the dowry is given in lieu of inheritance).

Tsilmi land represents much more than merely an economic benefit. The fact that it is derived from an original first occupation lends it an important social significance, that of qualifying for enhanced social status.

Tsilmi land invests the man permanently with the status of a member of the local hereditary families, almost a landed aristocracy that looks down upon the new-comers who came later and had to acquire land by purchase or lease.

Traditionally, only a person entitled to *tsilmi* land, known in Eritrea as a *restigna*, is eligible for the office of village chief, a right known as *chikkenet* or *helkinet* - both terms being titles for

head of village, with *chikkenet* including legal responsibility.

Land Ownership by the Village

This form of ownership - the *diesa* - is mainly found in Akeleguzai and Hamasien. Both the *tsilmi* and *diesa* systems were in existence in the highlands before the coming of the Italians; the *tsilmi* was the more dominant form. In the 1930s, the Italians effected the shift from *tsilmi* to *diesa* in these regions. Their stated reason was to put an end to inequalities of the *tsilmi*, which was also becoming the cause of endless litigation.

Descent plays a part in this type of land title, which is based exclusively on residence. Under this system, all arable village land is distributed equally to all households in the village, regardless of their size and their needs. Since, in customary law, it was traditionally only married men who headed households, by implication land was shared among men only. But today women head 46% of households in Eritrea, and under the *diesa* system these female heads are entitled to a share of village land.

This system, like others of the communal type, had definite advantages over the *tsilmi* one. For, in the *diesa* system, ownership rights - and by ownership is meant community control over the distribution and other forms of disposal of land - were vested in specific villages with clearly known and demarcated boundaries. Inland, the system gave adequate security to village members, and each new independent household could expect a share of land. The system even accommodated outsiders seeking refuge or marrying into the village. Unlike the *tsilmi* system, its redistribution mechanisms were not meant to allow any differentiation in the amount of land individuals could hold and, therefore, it was believed to be fair and egalitarian.

Under the *diesa*, land is distributed and redistributed approximately every seven years and is strictly divided among villagers. Both the *diesa* and *tsilmi* systems were exclusive, in the sense that outsiders were denied access to land, and women generally gained access to it only under exceptional circumstances.

Land Ownership by the State

In 1919 and later in 1926, the Italians declared almost all lowland (that is pastoral Eritrea, covering four-fifths of the country's land surface) and chosen parts of the highlands, the state domain - or the *dominiale*. Traditionally, every pastoralist clan or village had territory it considered its own. This created two conflicting legal situations: the overall ownership of land by the government and the de facto control of the same land by the various clans.

The people in the lowlands have always been conscious of and had negative feelings towards the double standards and unfairness inherent in the system in general. Demands for the lifting of the relevant ordinance have been voiced. For the EPLF, and now the Government of Eritrea, the removal of the discrepancy between the highland and lowland tenure systems has been a matter of priority. (Persistent drought has greatly decreased the number of livestock and impoverished families are seeking refuge in settlements to gain easier access to facilities. Repatriated refugees, long removed from the pastoral way of life and now in many cases agro-pastoralists, are starting settled farming lives).

Women's access to land varied from place to place. Generally, however, once married a

woman was excluded from a share of her own ancestral land - being now considered as attached to the husband's domain. Widowed or divorced women were sometimes allowed to opt for ancestral land. In one province, Seraye, in the highlands, women were allowed to inherit the mother's land, not the father's. Once married, a woman moves to her husband's village and, as a rule, shares his land.

Eritrean society is male-dominated, and its kinship systems tend to have a bias towards patrilineal descent. Social practices value males greatly. When a woman is married, she is considered her husband's ally. She is therefore expected to look out for his interests and hence those of his descent group as opposed to those of her parental descent group. If she were allowed to inherit property, it would mean that her husband, by inheriting her property, would be inheriting land belonging to another descent group.

Legal Reforms

During the transition period (1991-95) to that of a constitutional government, the Government of Eritrea has instituted new amendments to the Civil Code which have fundamentally altered the status of women in Eritrea. Some of these amendments include changes such as:

- Women now have the legal right to own and inherit land.
- The legal minimum age of marriage has been raised from 15 years to 18 years.
- The man and woman in marriage have the same rights within the family.
- Dowry and bride price have been prohibited.

Problems of Traditional Land Tenure

Eritrea's customary land laws have been the subject of intense study and attempts at reform since the Italian colonial period. These laws, in their written forms, date back to the 15th and 16th centuries, but are still in use to the present day. Attempts to reform them involved changing the extended family ownership into village ownership in highland Eritrea. In the former type of ownership, access to land was acquired through membership of a common descent group, whereas in the latter village residence was usually the only requirement. Moreover, in the former, land was inherited, while in the latter it was periodically redistributed among villagers. The strong point of both systems had always been the security of tenure they accorded to beneficiaries.

The right of access to the use of land (and not ownership of it) by every member of a given community in all parts of the country, has been the basis of community control of land in all its forms. This has been the case whether under *tsilmi*, *diesa* or tribal land under the umbrella of the *dominiale* in the lowlands. The Eritrean economy is predominantly based on subsistence agro-pastoralism which involves over eighty percent of the population, with the majority of them (an estimated sixty percent) residing in the highlands.

The traditional agrarian sector in Eritrea contains some fundamental characteristics, which are inherently detrimental to growth, both economic and human. A major detriment is the outdated

farmland use management, which is based on communal ownership and allows for absentee ownership to community members who reside outside the community and do not necessarily live off the land. Also as a result of population growth and periodic increase in the number of eligible claimants, the size of plots allotted to individual farmers has been decreasing over the years, to the extent that plots have been rendered economically non-viable. Under the *diesa* tenure, such land is also allocated to individuals for a relatively short seven years, after which time the community takes stock of available land and reallocates it to both old and new claimants. Such an arrangement precludes any long-term investment in and improvement of land.

The Thinking Behind the Eritrean Government's Land Proclamation

The restructuring of the Eritrean land tenure system had to be done within the general socio-economic framework under which the old systems operated. Eritrea still is a nation of individual peasant farmers and pastoralists closely attached to the land. They still form the backbone of the Eritrean economy.

A Land Commission was set up by the Provisional Government of Eritrea (PGE) in September 1992. The new system had to cater to traditional individual needs for land while not losing sight of the demands for development and national reconstruction. Two alternatives crystallised after the lengthy research and deliberations of the Commission: reforming and universalising the *diesa* system on the one hand, and declaring all land government-owned and allowing usufructuary rights on land to individuals on the other hand. The latter prevailed.

Great caution had to be taken to make absolutely sure that vesting the right of ownership on the government in no way meant its nationalisation in the Socialist or Marxist sense. The government was to take over the distributive and administrative duties formerly reserved for villages and clans without upsetting the right of the individual to access to land. There was a need to find a middle ground where the dynamics of tradition and the demands of modernisation could meet and be carried on.

Land is one of the determinants of all property relations, but diversity in these relations has to be taken into account. Eritrea is emerging as a mixed economy where all forms of property arrangements exist and interact. At least in this highly crucial, transitional stage, the country cannot afford to give up its land to pressure groups --be they villages, clans, large private owners, speculators, associations of various colours, etc. The dynamics that sustained the *tsilmi*, the *diesa* and other traditional forms of tenure have to be maintained at the base. The super-structure has to change, though. This is the logic, indeed the challenge, behind the new Eritrean Land Proclamation.

Under the traditional arrangement, access to land was limited to only the male members of the community. Women (unless widowed, or as heads of single-parent families) were not entitled to land. However, the new proclamation disallows any discrimination based on sex, ethnicity or religion: access to land is an entitlement to be enjoyed by all eligible claimants. Some of the reasons for the Government to be able to reclaim land include (a) the beneficiary's failure to utilise the land without acceptable justification, (b) his or her moving away from the locality, (c)

his or her death without leaving heirs.

Another major contribution of the new Proclamation is the ending of periodic redistribution of land. Under the new laws, land will be allocated to claimants for life. Such long-term allocation of land is expected to allow for investment in land and inputs into it for longer-term benefits.

The Basic Tenets of the Land Proclamation

The right to ownership of land is vested solely in the Government. This is not an unrestricted right, as it restrains the Government from selling and giving land in ownership. This right is more custodial than absolute in nature, as the Government is merely taking over rights of communities, but at the same time retaining the principle of direct control of former community land by individual citizens.

There are now two broad classifications of government land. The first is land allotted to Eritrean citizens in lifetime usufruct rights. Almost all of this is land previously held by extended family, village and clan units throughout the country. The second classification is land directly controlled by the Government. This includes the land previously in its hands, the land left over from allocation to citizens, expropriated land and land reserved for different purposes by legislation, e.g. mine and forest reserves, etc. The Government may use the land it directly controls for whatever purposes it deems fit, including leasing it to all types of investors.

Lifetime usufruct rights to land are those attached to Eritrean citizenship. Only citizens above 18 years of age (and in the case of farmland in direct use) have access to land in this category. Land for residential purposes in the village of origin is open to every citizen. These rights allow no form of distinction based on sex, religion, origin, etc. The village is still the springboard for land allocation. But it has no collective claim to its former farming areas as the Government now owns such land. The village, however, still collectively controls its own grazing area, woodlands and roads, and retains its water rights.

Land held in usufruct can neither be sold nor passed on in inheritance. But the Proclamation allows the following ways for land transferability: a deceased usufructuary's allotted land automatically passes to his or her children if they are minors. They have the option of retaining it when they reach the age of majority. A special provision allows usufruct beneficiaries to change their tenure from one of usufruct to one of lease. This is attractive for those who would prefer a long-term lease arrangement in order to exploit the land allotted in ways other than those permitted by the Proclamation. Thus, land leased in this manner may be heavily invested in and turned into a site for business that can be sold, inherited, etc. According to the Land Commission, the idea is to introduce new ways of exploiting the land and attracting the movement of capital into farming communities.

An important aspect of the Proclamation is its recognition of the equal rights of women to access to land. No distinction whatsoever is made between men and women in all the provisions of the new law. In this matter, all traces of customary prejudice against women have been eliminated. The Proclamation also serves as an instrument for environmental protection in

Eritrea. The Government has been provided with the right to issue land use policies, to make improvements on the land and to determine forest and animal reserves.

The Government's power of ownership is not absolute, though; its role is custodial. (As Part 3 of the Proclamation clearly provides, the Government shall not take land away from its occupiers, be they usufructuaries or leaseholders, without the payment of fair and adequate compensation).

The big improvement of the Eritrean Land Proclamation is the equal rights of women to access to land. This is not a mere declaration of good intentions nor is it a future wish or possibility. It is a commitment whose implementation has actually started in the pilot areas.

Implementing the Land Proclamation

The process of implementing the new Land Proclamation is being accomplished in phases that have already taken some years and will still take some more to complete. Initially, customary laws not in contradiction with the basic principles of the Proclamation were allowed to continue on a transitional basis, as a national educational campaign was being conducted which aimed at explaining, in detail, the content and intentions of the Proclamation, and as this was being test-implemented in selected pilot areas.

The general implementation took place as follows: the different legal systems existing in Eritrea (formal codified laws, customary laws and, among some groups, religious laws as well) sometimes run parallel to each other and sometimes are in conflict. In such circumstances, there is a battle to implement the new law. However, in many instances the internalised informal code is more powerful and binding than the formal law. The new civil laws do not all apply to all Eritreans, though. For Muslims it is Sharia law that is practised as regards inheritance and marriage and divorce matters. For example, a woman keeps the wealth she brings with her to the marriage but has no right to an equal share of family property upon divorce. New land inheritance laws, if fully implemented, will give women more economic autonomy.

The implications of women's land inheritance for the position of women are very far-reaching. If land inheritance became a generalised feature of Eritrean society, it would be a powerful agent in the empowerment of women, as it would increase women's economic independence. It is probable that most women in Eritrea are not yet aware of how the new land laws affect their rights and those of their daughters. It is important, therefore, to make information about land laws and their implications widely available.

At this early stage there is a gap between the legal reforms of the EPLF (now the Government of Eritrea) and on-the-ground realities. The implementation of the new laws is not proving an easy matter. For example, ignorance of the law is, along with cultural preferences for early marriage, one of the factors contributing to the continuing pressure to provide a dowry. Also, in spite of the new laws prohibiting discrimination against women, men are still refusing to give them land to which they are legally entitled.

Customary law dictates most rights and restrictions within the community. The latter often conflict - and will do so increasingly - with the new civil code and the provisions of the newly proclaimed Constitution. The implementation of the new land law is a big challenge. In order to speed up the process, the Land Commission should be made stronger. Women's awareness of their rights must be strengthened, too. And the means and support to follow through the complex and lengthy legal processes must be provided to women, if they are to improve their condition by legal means. The new Constitution does not negate the value of customary law, but it aims to ensure equality for women.