II. WOMEN’S RIGHTS TO LAND AND OTHER NATURAL RESOURCES (excerpt)

2.1. Introduction

This chapter examines women’s rights of access to and management of land and other natural resources. These are mainly determined by two areas of law: general civil law (property, family and succession law) on the one hand, and agrarian and natural resource law on the other. For instance, even where land legislation per se is gender neutral, women’s land rights may be curtailed by discriminatory norms of family law (e.g. restricting the legal capacity of married women to administer property) and of succession law (especially where land sales are rare and inheritance is the primary form of land acquisition). Within natural resource legislation, particular attention is devoted here to land law, both because rights to other natural resources (e.g. water) may depend upon land rights, and because land legislation usually affects women’s rights more directly (while other natural resource legislation rarely contains gender related provisions).

Rights to natural resources are extremely important for rural women. First, women’s livelihoods crucially depend upon them, especially in developing countries. Second, the nature and extent of these rights affect women’s bargaining power within the household (vis-à-vis husbands and male family members), as well as in the community and society at large. Thus, while land reform programmes adopting the household as the beneficiary unit and issuing land titles to the (male) household head may still provide female household members with access to land, they may undermine their bargaining power (and thus their social position).

Before starting the analysis, two preliminary observations need to be made. First, in examining natural resource rights in different countries, it must be remembered that the nature and content of these rights may vary considerably across countries (e.g. individual freehold property, use rights in state-owned land and legally recognized customary rights). The focus here is on whether these rights, whatever their nature and content, are differentiated on the basis of sex/gender. Second, even where formal legislation is gender neutral, women may be prevented from acquiring and enjoying natural resource rights by socio-cultural practices. Therefore, data e.g. on the share of land titles held by women would provide helpful insights on the rights really enjoyed by women. However, systematic collections of this kind of data are extremely rare. This difficulty may limit the effectiveness of this study in analysing the natural resource rights actually enjoyed by women.

2.2. Relevant international law

At the international level, provisions concerning women’s rights to natural resources are embodied in human rights law, in international environmental law and in soft-law instruments.

Under international human rights law, women have a right to own and administer property without discrimination (UDHR; arts. 2 and 17, CEDAW, art. 15), and to an “equal treatment in land and agrarian reform” (CEDAW, art. 14(2)(g)). Within the family, both spouses have equal rights in the “ownership, acquisition, management, administration, enjoyment and disposition of property” (CEDAW, art. 16). Women’s water rights are protected by article 14(2)(h) of the
CEDAW (right to adequate living conditions, including in relation to water supply); rights to potable water are also linked to the right to adequate food recognized, without discrimination, in article 25 of the UDHR and article 11 of the ICESCR.

Soft-law instruments have been adopted by the human rights bodies of the United Nations. For instance, Resolution 15 (1998) of the Sub-Commission on the Promotion and Protection of Human Rights (entitled “Women and the Right to Land, Property and Adequate Housing”) stated that discrimination against women with respect to acquiring and securing land constitutes a violation of human rights law, and urged governments to amend and/or repeal discriminatory laws and policies and to encourage the transformation of discriminatory customs and traditions (paras. 1 and 3).

As for international environmental law, the preamble of the Convention on Biological Diversity recognises women’s “vital role” in the conservation and sustainable use of biodiversity, and affirms the “need” for their participation in policies concerning these issues (para. 13). Gender-specific provisions are also embodied in the 1994 Convention to Combat Desertification, which provides for the facilitation of women’s participation in efforts to combat desertification at all levels, and specifically for their effective participation in national action programmes and as an instrument for capacity building (arts. 5, 10 and 19). Women’s participation in national action programmes is also required by article 8 of the Regional Implementation Annex for Africa. The annexes for Asia, Latin America and the Northern Mediterranean do not specifically mention women, although articles 4 and 5 respectively refer to article 10 of the Convention (which envisages women’s participation in national action programmes).

Among Rio soft-law instruments, principle 20 of the Rio Declaration states that “women have a vital role in environmental management and development,” and that “their full participation is therefore essential to achieve sustainable development”. The Non-Legally Binding Authoritative Statement of Principles on Forests calls for women’s participation in the planning, development and implementation of national forest policies and in the management, conservation and sustainable development of forests (principles 2(d) and 5(b)). Moreover, Chapter 24 of Agenda 21 is specifically devoted to gender.

Women’s rights to natural resources have also been addressed in soft-law documents adopted by other international conferences. The Beijing Platform for Action envisages legislative and administrative reforms to ensure gender equality in access to natural resources, including inheritance and ownership rights (para. 61(b)). Similarly, the World Food Summit Plan of Action affirms the objective of ensuring gender equality and women empowerment (objective 1.3) and envisages measures to enhance women’s access to natural resources (para. 16(b))....

### 2.5. Northern Africa and the Middle East

#### 2.5.1. Regional overview

Some countries are not parties to the CEDAW (e.g. United Arab Emirates), while others have ratified it with reservations for the application of Shari’a law, either as general reservations or with regard to specific articles, particularly article 16 on family relations (Egypt, Kuwait, Libya, Morocco and Saudi Arabia). The Arab Charter on Human Rights recognises the right of every citizen to own private property without discrimination between men and women (arts. 25 and 2), but it is not in force.
At national level, family and succession laws usually follow Shari’a norms. The status of women under Shari’a law varies considerably according to the country and the prevailing school of jurisprudence. For instance, women enjoy greater rights under the Hanafi school (traditionally based in Kufa, Iraq) than under the Maliki school (traditionally based in Medina). However, generally speaking, Shari’a norms are usually interpreted so as to vest family direction in the husband/father (e.g. verse 34 of Sura an-Nisaa of the Quran). Women’s inheritance share is usually half that of men in a similar succession position. For instance, daughters usually get half of what sons get. If there is more than one widow, they must divide the widow’s share among them. Restrictions on women’s inheritance are usually justified on the ground that male family members have an obligation to provide support to female members, while the latter have no obligation to support others. However, women are often left without adequate enforcement guarantees (Hussain, 1999; Gopal and Salim, 1998). In areas where inheritance is the main form of land acquisition, discrimination in inheritance rights severely affects women’s access to land. Moreover, there are reports of rural women renouncing even to their limited inheritance rights in favour of male relatives (Baden, 1992).

Some countries have enacted codes or laws that, while incorporating Shari’a norms, improve the position of women (e.g. Tunisia). In Turkey, where the legal system is explicitly secular, the Civil Code of 2001 has significantly improved the position of married women compared to the previous 1926 Civil Code. Under the new Code, the husband is no longer the household head (art. 186), and men and women have equal status within marriage (art. 188). The Code has also introduced the regime of community of property with equal shares for the spouses, but only with regard to property acquired after 1 January 2003.

Very little data is available on the amount of land owned by women. However, reports indicate that land ownership by women is rare throughout the region, although great intra-regional variation exists. Women own 28.6 percent of the land in Jordan, 4.9 percent in the United Arab Emirates, and 0.4 percent in Oman. Even where land is owned by women, women’s plots are often smaller than men’s, and remain under the control of male family members (FAO, 1995b).

2.5.2. Tunisia

Within this context, Tunisia has a particularly advanced legislation. The Personal Status Code 1956 (as amended in 1981 and 1993) codifies Shari’a law on the one hand and improves women’s position on the other. While the husband is the household head (art. 23(4)), both spouses are to “co-operate” in the management of family affairs (art. 23(3)). The matrimonial property regime has long been separation of property; Law 98-91 (1998) allows spouses to opt for the community of property regime, entailing that common goods may be transferred only with the consent of both spouses; lacking this option in the matrimonial contract, separation of property applies. The husband has no control over the separate property of the wife (Code, art. 24). Conjugal obligations are to be fulfilled according to customs (art. 23(2)), which may reflect stereotyped gender intra-household division of roles.

Succession law is based on Shari’a law (particularly the Malekite tradition), which severely limits women’s inheritance rights. Widows and daughters are among the necessary heirs (“héritiers réservataires”; art. 91). Generally speaking, women inherit half of the share inherited by equally related men. For example, a widow gets a quarter of the estate if there are no children, and an

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1 For instance, it abolishes polygamy (art. 18) and grants both spouses the right to request divorce, subject to judicial review (art. 31); in several Islamic countries, termination of marriage is carried out by the husband alone through unilateral repudiation).
eighth if there are children, while a widower gets a half or a quarter of the estate, respectively (arts. 93-95). In case of only child, the son is “universal heir” (art. 114), while the daughter is entitled to half the estate (art. 93). Moreover, some family members have inheritance rights only if they are male (e.g. uncle and cousins, art. 90).

The negative effects of the discriminatory succession norms on women’s land rights are particularly acute, as inheritance is the primary means of acquiring land rights in Tunisia; for instance, a village-level study in the Sidi Bou-Zid region found that inheritance accounted for over 70 percent of land acquisitions in most covered villages, and in some cases even for 100 percent (e.g. in Milket). The study also reveals that customary rules excluding women from inheritance are followed in rural areas. Therefore, where women marry outside the clan, they do not claim their statutory inheritance rights over land, as this would be perceived as inappropriate and as an offence to their male family members (Ferchiou, 1985).

Property law (“Code des Droits Réels”) and contract law (“Code des Obligations et des Contrats”, particularly article 3) are gender neutral: men and women can equally acquire and own property.

The major features of Tunisian agrarian legislation include: the abolition of the traditional habous land tenure regime (Decrees 31 May 1956 and 18 July 1957, as amended, lastly by Law 2000-24 of 2000); the regulation of private property of agricultural lands and the transfer to the state of vacant lands (Law 64-5 of 1964); the regulation of common-property lands (Law 64-28 of 1964, as amended); the registration of rural land titles (Decree-Law 64-3 of 1964, as amended), and the protection of land occupation by farmers exploiting or developing the land (“mise en valeur”) (Law 74-53 of 1974, as amended, lastly by Law 2000-10 of 2000); and the realisation of an agrarian reform in irrigated lands (e.g. Law 58-63 of 1958, as amended, for the Medjerma Valley). This legislation is gender neutral, and applies equally to men and women farmers. However, in practice few rural women own land, both because of legal obstacles contained in other areas of law, particularly succession law, and because of cultural factors.

2.9. Conclusion

This chapter has highlighted some of the key issues concerning women’s rights to land and other natural resources. First, women’s rights may be curtailed by de jure direct discrimination. This is particularly the case of family law (which may restrict the legal capacity of married women to administer property, including land; e.g. South Africa before the family law reforms) and of succession law (which may restrict women’s inheritance rights; e.g. Tunisia and some personal laws of India and the Philippines). Discriminatory succession norms have a particularly negative effect on women’s land rights where inheritance is the primary form of land acquisition (as in the rural areas of many developing countries). De jure direct discrimination also exists in agrarian reform legislation entitling only men over a certain age to obtain land, while women qualify only if they are household heads.

Second, women’s rights may be limited by indirect discrimination. For instance, the criteria for land distribution under agrarian reform programmes, while not referring to gender explicitly, often refer to male-dominated categories like permanent agricultural workers (while women are concentrated in the seasonal and temporary agricultural labour force) and smallholders (while women rarely own land) (e.g. Philippines, Brazil). Moreover, under land redistribution and titling programmes, land titles are often issued in the name of the household head, who is usually (de jure or de facto) the husband/father (e.g. Kenya).
Third, women’s natural resource rights may be determined by the interaction between norms of different nature coexisting in a context of legal pluralism (e.g. customary and statutory law). Gender struggles for access to and control of natural resources may be fought by men and women relying on both statutory and customary norms. In this context, customary norms may be invoked by women to claim rights not recognized under statutory law (e.g. in the case of the Kenyan registration programme), and by men to limit women’s inheritance rights under statutory law. Similarly, statutory law may be relied upon by men to limit women’s unregistered land rights (e.g. Kenya), and by women to challenge the constitutionality of discriminatory customary norms (e.g. the Pastory case in Tanzania).

Fourth, even where there is no formal discrimination, women’s rights may be restricted in practice. For instance, even where land legislation is gender neutral, most land may be in practice held by men (e.g. Fiji). Moreover, rural women may lack the documents required by laws and regulations to benefit from agrarian reform programmes (as documented for Brazil). In some cases, formally gender neutral norms may allow discrimination in practice; for example, norms granting absolute freedom of will may be used to disinherit widows and daughters (as documented e.g. for India under the Hindu Succession Act). In other cases, socio-cultural factors, such as perceptions on women’s role in the family and in society and/or female seclusion practices, constrain the meaningful participation of rural women in natural resource management institutions (e.g. in Indian panchayats and village forest committees and in Mexican ejidos). Moreover, socio-economic factors (particularly women’s dependence on their male family members) may pressurise women to renounce to their statutory land rights in favour of male relatives (as documented for Burkina Faso and India).

In most cases, steps have been taken to improve women’s natural resource rights. Discriminatory family laws restricting the legal capacity of married women have been repealed (e.g. Brazil and South Africa). The principle of non-discrimination has been explicitly stated in agrarian reform programmes (e.g. Mexico and Brazil). Moreover, affirmative action to facilitate women’s access to land has been adopted in some countries (Brazil). Joint titling for couples (whether married or not) has also been adopted (the Philippines and, recently, Brazil), and women-specific forms of collective land holding or use have been established (e.g. UAIMs in Mexico). Furthermore, gender related provisions have been adopted with regard to natural resource management institutions, in terms of both composition and activities (e.g. under the South African National Water Act of 1998). The effectiveness of some of these measures deserves to be studied more closely. For instance, it is not evident that merely reserving to women seats within natural resource management institutions results in greater participation of women in decision-making, as some field studies found that women did not attend meetings even if they were entitled to, or did so but were largely ignored or merely acted as spokespersons of their husbands (e.g. on India, Ogra, 2000).

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GN  Gender-neutral / nondiscriminatory  
ND  Non-discrimination / equal-rights principle explicitly stated  
SM  Special measures to advance women  
J/D  De jure direct discrimination  
J/I  De jure indirect discrimination  
F   De facto discrimination reported in the literature reviewed

Where two or more acronyms are included, they refer to different aspects of relevant legislation and/or to a gap between law and practice.