

## **A piece of land or a piece of paper? Gendered indicators of property rights**

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### **Introduction**

In relation to property rights, the UN Millennium Taskforce on Gender Equality has proposed (a) land ownership by male, female, or jointly held; and (b) housing title, disaggregated by male, female, or jointly held as indicators for tracking progress on strategic priorities to promote gender equality and empower women.

There is no doubt that increases in women's access to, ownership of, and control over, property, and subsequently over productive resources, signifies advancement in women's rights and empowerment. However the extent to which quantitative measures of ownership, such as numbers of titles, accurately depict women's *control* over, or even their *access* to, those resources is questionable.

### *Whose indicator?*

It is important to bear in mind the distinction between changes which may be desired by women themselves and those which are deemed desirable by an organisation. However valid the latter might be, they will not constitute evidence of women's empowerment until and unless their value is shared by women themselves (Kabeer, 1998, p 16).

Debates about land and property rights, both formal and informal, are bound in culture and custom, and bring with them fears of dissolution of families and the replacing of traditional systems with something foreign. Such debates often take place without the involvement of the different sections of a community or society which they affect - particularly women themselves. The extent to which quantitative measurement of land ownership and property titles will actively represent women's rights and equality – and, as is the purpose of the Millennium Development Goals, - poverty reduction, will depend on the perspective of those being measured and the way “control” and “access” are constructed in their context. Further, whether these indicators are interpreted from a women's rights perspective, or from a family welfare or poverty alleviation perspective will affect their validity as a true measure of gender equality.<sup>1</sup>

The diversity and complexity of an issue such as gender and property rights is more than could be captured by two quantitative indicators. This paper illustrates some of this complexity via two cases – the first presents an opportunity for these indicators to be used as a measure of advancement of women's rights, and the second discusses how the indicators could be misleading. This second case particularly discusses the importance of this debate in reforms to land tenure system such as that being put forward in Australia's White Paper on the Aid Program.

### **Land and housing titles – true indicators of advancement?**

#### *Case 1: Post Disaster reconstruction*

An earthquake that struck the Latur and Osmanabad district of central Maharashtra in September 1993 affected 84 villages, left over 8000 dead, and left millions of rupees of property razed to the ground. Out of this disaster came an opportunity for improving the situation for women in the longer term. Pressure and persuasion from women's organizations caused the local administration to issue titles for reconstructed houses to both husband and wife. Widows, the destitute and other particularly vulnerable groups were also given separate houses where eligible. In the Latur case, the state government of Maharashtra entrusted the responsibility of settling approximately 400 disputed cases to *Stree Aadhar Kendra*, a local NGO and Oxfam partner, so that they could provide counsel and ensure women benefited. This was a radical step for the Maharashtra administration at the time.

Issuing of joint titles is now becoming common practice in post-disaster situations in India. After the 2001 earthquake in Gujarat, common titles were issued in most of the NGO and donor programs. After the floods

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<sup>1</sup> A women's rights perspective distinguishes between “independent” rights and shared rights. Independent rights are formally untied to male ownership or control.

in 2005, similar practices occurred. Oxfam partners SEWA and Disaster Mitigation Institute have constructed shelters in joint names. The title deeds have also been made to that effect. Joint titling of housing is not yet law in India, but is gaining momentum and is slowly becoming an accepted norm. This meets the long term strategic gender interests of women and helps them change structural inequities. The number of titles in this case does become an indicator of improvement in women's rights (Bokil, 1997 pp.14 & 41 and Bokil 2006).

The UN Habitat research study "Women's Rights to Land, Housing, and Property in Post-conflict Situations and During Reconstruction: A Global Overview" echoes this sentiment of using reconstruction phases in the wake of disasters, in this case conflict, as an opportunity for advancing women's rights:

(T)he absence from their communities compels women into decision making roles... (this experience) coupled with the discrimination women encounter in the post conflict situation with respect to land, housing and property has resulted in the emergence of women's organizations that are focused on women's livelihood issues including women's rights to land, housing and property (UNHCS, 1999 p.3)

Examples of what can happen when specific action is not taken to strengthen (or protect existing) women's property rights have been documented by Action Aid in their Human Rights Assessment of the Tsunami response. The Assessment found that "*women's rights to equal participation in the decision making processes have also been ignored and women's rights to own property have been largely undermined*" (PDHRE et.al. 2006, p.47) Specific examples include:

- Women who owned land in their own names in Sri Lanka prior to the tsunami, particularly Muslim women who had received property as part of their dowry, are concerned that they are not considered eligible for compensation. Even in cases where the original house or land was in the woman's name, the government deposits compensation payments in the name of the man.
- Banks in the northeast of Sri Lanka reportedly asked women to sign a letter relinquishing their rights to the house and land to their husbands in order to facilitate compensation payments.
- In Thailand, women who lost their partners have not received compensation if they cannot produce a marriage certificate, even if they had been living together for many years and have children together.

In situations where an external event such as a disaster or conflict creates a space for advancing women's right to own land and property, collecting data on the issuing of titles by sex may provide a useful measure of progress. The indicators may also act as a prompt to get this issue on the agenda of aid donors and implementers at times when gender sensitive responses are defined more by their meeting of practical rather than strategic needs. This is summarised by Oxfam's Country Representative in India, Milind Bokil: "*This is actually a very interesting and important area – (a) silver lining in the dark clouds... You make some advances which are useful for long term goals.*"

### *Case 2: Gender issues in land reform*

The *White Paper on the Australian Government's Overseas Aid Program* includes a recommendation to pursue "a collaborative and demand-driven Pacific land mobilisation program to explore ways to overcome the major land tenure constraints to growth in the region" (Australian Government/AusAID, 2006, p.12) making this discussion of indicators timely close to home. The Land briefing paper prepared for the Pacific 2020 Report which is "a practical manifestation of the White Paper commitments" (Downer, 2006), provides a good analysis of land issues in the Pacific, except for its failure to even mention the relationship between women and the land in Pacific societies.

In Melanesia in particular large areas of land were under customary tenure<sup>2</sup> at the time of independence - Papua New Guinea 97%, Solomon Islands 84%, Fiji 83%, and Vanuatu reverted all land in the country to customary ownership (Fingleton, 2005, p.7). The need for economic growth to support a growing population, changing patterns of settlement, and conflicts over land use are prompting a rethinking of land tenure systems, both within the region and externally.

In land reform processes such as that indicated in the White Paper, there is often a move to assign all rights to a single holder, rather than having multiple claimants on the resource. This has implications for women's property rights:

While this (assigning rights to a single holder) reduces transactions costs and facilitates market exchange of the resource as a commodity, it cuts off many who formerly had customary access rights to use the resource for the

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<sup>2</sup> Custom land is owned by groups of indigenous people. An individual may have rights to use a piece of land, but theoretically, cannot sell it (Jalal 1998 p.53)

production of goods and services. What are the implications of this?... (Women) often have less access to money, political connections, and other resources needed to acquire title. In the process of privatization... many women and marginal users lose out. This has been demonstrated repeatedly... (Meinzen-Dick et. Al. 1997, p18)

So what does this mean for the relevance of the proposed indicators? At first glance perhaps this potential marginalisation of women would lead us to emphasise that such indicators should be incorporated in the development of any reform strategies, which is indeed the case. But first it is necessary to explore women's rights in existing customary systems – in significantly more detail than is allowed for in this paper, but in brief pertinent points are:

- Both matrilineal and patrilineal systems of land inheritance exist in the Pacific. In matrilineal systems land rights pass through women, and women have some rights and a certain amount of power, but these rights are secondary to men (Jalal 1998 p. 64);
- Even in matrilineal societies there is no guarantee that women will be consulted or have an active role in decisions about land usage - for example in one case reported by Solomon Islands women from Ysabel province, a woman's brothers and male cousins sold her land without telling her to another male Solomon Islander (Jalal 1998 p. 64). The experience of women in Bougainville where land is also passed through matrilineal descent (refer box at right) is another example.
- While matrilineal land passage does not indicate "ownership" in a western sense, it does contribute to women's status and security. Titling in joint names may actually institutionalize male control over land in matrilineal societies rather than enhance women's rights.

**Box: Testimonial from Bougainville – Panguna Copper Mine**

The mothers and women of the Panguna area were left out from services... No one sought our views, and still today the BCL and even some of our national men with positions in BCL have forgotten the local women either in participation in decision making or training. It was only the educated people that were making the decisions, so women and the elderly were excluded. This is another injustice committed against our women as we were made strangers and victims of our own land...

In Bougainville we women own the land but it was the men who are speaking and negotiating on our behalf. We never got a chance to actually speak out (CERD/Oxfam, 2004).

There are wider reaching issues in the way power and control over productive resources is constructed in Pacific societies than can be progressed by formalising land ownership via issuing titles or otherwise registering land. Even where custom allows for women's property rights, there is no guarantee that they will be upheld. The assumption cannot be made that ownership, especially joint ownership, will automatically translate into access and control.

Global experience in land reform efforts highlights some of the pitfalls that land reform in the Pacific may experience if a women's rights analysis is not placed at the forefront, and if it doesn't proceed with an understanding of the diversity in land tenure systems – not only between countries, but within provinces and islands. A World Bank review of land administration projects summarises:

There has been a lack of understanding of the complexity and diversity of land tenure patterns, including women's rights, by most land administrators, by project managers, and by those providing technical assistance... There is a belief that addressing gender issues only means issuing titles or co-titles to women, with little appreciation, for instance, for what happens (a) in subsequent transactions, (b) in enforcement and actualization of those rights, (c) in realizing the benefits that may stem from formalizing women's rights..., and (d) in altering decision-making powers within households (World Bank 2005, p. 18).

The example of the Maharashtra earthquake response and the findings of the UN Habitat research (UNHCS, 1999) both point to the centrality of local women's organisations in getting the issue of property rights on the political agenda, and of the importance of education and awareness raising – of all people on the status of women's national and international rights in relation to land, housing & property, and of ongoing pressure and follow-up of what happens after a title is issued. Quantitative data on the numbers of titles issued would need to be contextualised by qualitative information on social movements towards real reforms in land access, control, and ownership for the proposed indicators to have any meaning.

## Conclusion

In cases where there is local sustained action to ensure both the legal framework for property rights, the awareness of that legal framework and how to use it – particularly of women who need it, and the implementation of that framework, the indicators presented would be a useful measure of changing status and roles.

But if indicators are to be used as “a key tool for accountability, identifying and monitoring the impact of policies and programs on women and men” or as “tools that capture change in women’s status and gender relations”, then the proposed indicators that measure numbers of titles, but do not accommodate the difference between usage rights and decision making power as opposed to ownership, will give an inadequate, and perhaps also inaccurate picture.

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