



SECURING WOMEN'S PROPERTY AND INHERITANCE RIGHTS

Equal rights

There is no shortage of international human rights agreements and national constitutions specifying that women and men should have equal rights to access, own, control, and inherit land, housing and other property.

The UN Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), for example, requires signatories to “take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular to ensure, on a basis of equality of men and women. The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment, and disposition of property...”

Nevertheless, in many parts of the world, even where governments have signed and ratified international agreements and passed laws granting equal property rights, property ownership is exclusively in male control.

A mixed picture

Laws and practices relating to women's property and inheritance rights vary enormously from region to region. Among developing regions, Latin America has relatively egalitarian inheritance norms, although some land reform and post-war resettlement initiatives have neglected gender concerns.

In South Asia, although considerable progress has been made on some aspects of women's rights, serious inequalities remain in relation to property. In parts of the Middle East and North Africa, property and inheritance matters are largely governed by Shari'a law, which defines the shares that go to each member of the family: the woman's share is half that of a man when there are both male and female heirs. While religious law does not prevent women from owning assets, in some areas women who are widowed or abandoned by their husbands may cede their share of family land to their brothers in exchange for economic support. Thus both laws and the economic realities faced by women in many parts of the Muslim world reduce the likelihood that women own real property. In many sub-Saharan African countries, colonial laws, constitutional laws and traditional “customary” laws may be in conflict, making it hard to ascertain precisely what rights women have.

Ignorance

Even when they do have a clear legal right to own and inherit houses and land, women and men may be unaware of that right. Women may not know that legal means exist through which they can claim that right, and few women have access to legal advice. If they have access, they may lack money to actually obtain advice. Most find themselves struggling against deeply entrenched public beliefs that property ownership is an exclusively male domain. In many instances, judges and magistrates lack the capacity and knowledge to interpret and implement national laws within the provisions of the international human rights instruments like CEDAW. In other instances (notably in sub-Saharan Africa) decisions may revert to customary law, which often rules in favour of men. Legal literacy and capacity building is therefore an imperative.

Dependence

In many countries, especially in sub-Saharan Africa, the Middle East, and South Asia, women's access to land and housing is through a male relative, usually father, brother or husband. In some communities in Africa, a widow will inherit land in ‘trust’ for her male children (providing they are minors). In others she will be given a life interest in the land. If she remarries, however, she risks forfeiting all claim to this land. Moreover, such arrangements only grant women access to land and property – not ownership, so they have no right to engage in or influence any transactions related to the land.

A growing problem

The problem is not a new one. The AIDS epidemic, however, has thrown women's and girls' lack of secure property rights into stark relief. When mothers and fathers die, orphaned girls may not have the right to inherit their parents' property.

When men die of AIDS, their widows risk being evicted from their homes. In some African countries, women are taken in by their brothers-in-law under a tradition known as "wife inheritance," a custom which can help spread the virus. In others, widows are spurned because of their association with someone who died of AIDS, and left to fend for themselves. Many, it is reported, are subjected to physical and sexual violence.

Property ownership reduces infection risks

Meanwhile, there is increasing evidence that where women can own and inherit property, they are better placed to support themselves and their families. Economic security can make women less vulnerable to domestic violence and protect them from needing to resort to unsafe sex in exchange for food or shelter – thereby helping prevent HIV infection. It also provides a resource base enabling women to deal better with the consequences of HIV/AIDS in the household.

What needs to be done?

The Global Coalition on Women and AIDS is therefore calling on governments that have ratified CEDAW and other international conventions to ensure that domestic legislation on ownership and access to property is harmonized with the provisions of those conventions.

The next step will be to ensure that those laws are effectively implemented. Although many countries have made efforts to review and reform legislation, translating laws from theory into practice at community level remains a challenge.

It will be important to support a variety of approaches within countries to ensure that women can claim their rights. Such approaches include support for paralegal services to help women pursue cases, support for strategic litigation that can establish legal precedents, training for lawyers, judges, registrars and police in women's rights, advocacy with traditional leaders, financial support for community and women's organizations and networks to provide advice and emergency assistance, and documentation and dissemination of best practices. Beyond financial support, such groups also often need additional training and advice on management.