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WOMEN AND LAND TENURE AND AGRARIAN REFORM

POLICY AND PROJECT APPROACHES

A Draft Annotated Outline

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The orientation of this paper is to describe how in most land tenure and agrarian reform efforts, regardless of the countries' political ideology or economic level, women have not benefited, and, in most cases, their situation has worsened with lower prestige and personal status and drastic decrease in opportunities for economic advancements and social services inducing land productivity.

Policy and project approaches are suggested in implementing UN mandates and reorienting national land tenure legislation and agrarian reconstruction for women's independent access to productive resources.

A. Land tenure is inextricably involved with laws and legislation. Thus, the concern for laws and social change as well as issues of law and development.

1. Law and Social Change

Definitions of law by Raymond Aron and variations of laws as a command of the legislator (a positive law) and manners/customs. (Main Currents of Sociological Thought) Arguments of Montesquieu in that "laws of each nation should be adapted to its people in such manner that it would be fortuitous if they suited the people of any other nation". (Spirit of Laws).

--What is the relevancy of laws to social change?

--Is it possible to adapt customs and traditional norms within a national legal framework?

--What are the rights and responsibilities of citizens to know the law or the land or to settle disputes on an inter-actional basis?

2. Law and Development

Legal actions have played a dichotomy of roles in the stages of development--from advancing and accelerating social change to blocking and preventing modernization. David Trubeck warns scholars of previous failings in analyzing law and development--"they must keep their value preferences and intellectual preconceptions from blinding them to the actual phenomena of legal life in the Third World and they must attempt to construct more precise and universal categories conducive to realistic generalizations".

The inadequacies of indigenous/traditional laws and statutory codes affecting development goals and international cooperation is summarized. According to Balestrieri, "Unfamiliarity with new legal codes relating to agriculture and rural development is not

restricted to the peasant society. Often those responsible for administering the law even with the best intentions may lack the experience or the specialized training required for their roles". "Peasant bitterness today is directed not so much at the absence of protective legislation, but at the failure to implement it, and at the difficulties of gaining access to the judicial process".

Other cases will be presented on law and development with a focus on agriculture/rural development. (Thome, Seidman, Meaghr and Smith).

B. Factors of Land Reform

This section will describe land reform issues with examples of further complications as experienced by rural women. Information to be primarily obtained from (i.) FAO and country background papers, committee transcripts and final reports from the 1979 World Conference on Agrarian Reform and Rural Development and (ii.) publications and summary of discussions with faculty and staff of the Land Tenure Center, University of Wisconsin at Madison. (Dorner, Kenel, Penn, Knowles, Stanfield, Thiesenhusen and Feltstehausen).

1. What are the political arguments and what are the possibilities for land reform in countries where the majority of the households are landless or near landless and an increasing number of these same households are female headed?

Consider that 600 million people live in rural households that are either completely landless or lack secure access to adequate farmland. In the three countries of Bangladesh, India and Pakistan--some 28 percent of the rural households are totally landless and yet support a population of 157 million by their wage labor alone. (World Bank) FAO reports that in noncommunist Asia, some 30 percent of the rural labor force is completely landless. A comparison will be given of countries with a high percentage of landless insecure tenants and marginal farms with female headed households--Indonesia, Philippines, Guatemala, El Salvador. (Buvinic and Youssef; Esman; FAO).

2. In Africa, Asia and Latin America where three-fourths of the world's people live, the control of farmland remains a principal key to wealth, status and power. (Eckholm).

In terms of land access and ownership, women's "wealth, status and power" is dramatically decreasing. Although evidence is far from complete, it seems generally true that in pre-colonial societies, women controlled important areas of land; they decided on its use, either alone or in consultation with men; and they controlled the distribution and use of crops grown on the land in question. (Rogers) Achola Pala suggests that in pre-colonial pastoral or agricultural economies, women were usually well protected economically because their 'usufructuary' rights in land and cattle were well defined, and were actually more effective than individual ownership.

Women's major role in decision making and ascribed status is well documented by Elise Boulding. In the article, "Nomadism, Mobility and Status", Boulding suggests a greater exercise of authority with "persistent traces of matriilineage and a significant public role for women among the Arab-Beduoian, the Turko-Mongolian and the Celtic". She describes how in family sociology vocabulary--migration is a family crisis and old patterns won't do--authority becomes more fluid under such circumstances and everything depends on competence, not on social status. Boulding explains how the pioneer era of the United States is perhaps the one time for which the favorite sociological model of modernization as a movement from ascribed to achieved statuses was historically descriptive. (Democracy in America by De Tocqueville)

Unfortunately, much of that pioneer spirit for women's authority has been lost for women's contributions are usually not reflected in U.S. farm and community property legislation. Security of tenure for "wealth, status and power" concerns women of the developing and the industrialized world. The paper will include examples of "community property states" with recognition of contributions by both partners in a marriage--further information to be obtained from American Rural Women/Washington. (pending legislation in Minnesota and Wisconsin and research by Wilkening and Ahrens on "Involvement of Wives in Farm Tasks as Related to Characteristics of the Farm, the Family and Work Off the Farm in Wisconsin").

3. Situation of class having more importance and thus greater attention than sex discrimination in land tenure.

In Patricia Garrett's Ph.D. thesis, Growing Apart: The Experiences of Rural Men and Women in the Central Valley of Chili (1978), she explains that women were excluded from direct participation in the process of agrarian reform because they were, in most cases, legally ineligible to qualify as direct beneficiaries. "The same legislation which effectively excluded the majority of the rural male population also excluded women from agrarian reform". Throughout most of Latin America, huge private estates have remained predominant. In the region, according to FAO, 7 percent of the landowners possess a startling 93 percent of the arable land as of 1975. Large farms employing more than 12 people accounted for more than 40 percent of all cropland in Colombia, Ecuador and Guatemala; for 60 percent of Brazil's cropland; and for more than four-fifths of the cropland in Chili and Peru. (FAO).

4. What are the restrictions and handicaps when land is not legally owned? Policies of taxation and pricing and facilities for research, credit, extension, cooperatives, transportation and marketing?

The 1980 study of Louise Fortman on "Women's Involvement in High Risk Arable Agriculture--the Botswana Case" explains the difficulties of female headed households in raising cash due to the fact that women have a smaller average herd size and thus a lack of draft power. Because women are more likely to hire draft power and labor, they have cash expenses in addition to normal cash requirements which men are less likely to have. Furthermore, women have lower cash incomes than men.

Even if land tenure is successful, there are many examples of encouraging cash crop production with innovative assistance given to males and pressures for food exports. (Boserup; Janelid)

And as evident from K. Staudt's research in Kenya, even when women legally own land, the government gives preference to men in agricultural services. She explains that even wealthy and innovative woman managers with relatively high tracts of land experience bias in the receipt of agricultural services relative to their male counterparts.

5. Land resettlement questions

What of the situation of women and land resettlement schemes?

Examples of Indonesia and Sri Lanka to be given.

--In 1960, a Basic Agrarian Law was passed in Indonesia aimed at: equitable redistribution of land; regulating relationships between owners, sharecroppers and tenants; terminating the traditional ways of suppression of the rural poor; improving production and efficiency in agriculture by allowing the cultivators to reap the benefits of their efforts and by providing them with the supporting services through cooperatives and governmental agencies; and improving the social and political status of the landless. The Government's program of transmigration is to relieve population pressure on the land, providing the landless and others with employment opportunities and fostering viable patterns of agricultural and rural development, as well as developing the un-or under-utilized resources of the outer islands. Families go from the densely populated areas of Java, Bali and Madura to the "outer islands" e.g. Sumatra, Sulawesi, Kalimantan and Irian Jaya. During the period 1950-1971, approximately 400,000 transmigrated. The target for transmigration during the REPELITA II (1975-1979) was 1,250,000 or 250,000 families. While structural reform of the land tenure system is aimed at needy rural families, women do not appear to be specified as a target group. Consequently, while the possibilities for rural families to receive access to land increase, the access of the woman to land rights remains limited by the customary attitudes governing family possession and use. (1979 FAO/UNDP Women's Integration in Development Mission-Indonesia).

--Example of women's working and living conditions in a Mahaweli Settlement area in Sri Lanka with an explanation of the break up of the traditional pattern of land inheritance and ownership by the new settlement principles being applied. Land can be distributed to both men and women. But if the woman is married only the husband is entitled to receive land, as the plot is registered in his name. Each family is considered a special unit--the head of the household being automatically the husband/or the father. This principle deviates from the traditional Sinhala laws of land ownership where the married woman possess the inalienable right to own land. Thus, under the new scheme of land distribution, if the woman wants to divorce her husband, she is deprived of means of subsistence as she has no rights to the family land.

C. International mandates related to law and the status of women

A review of international mandates and conventions regarding rural women and the law and particularly rights to use, access and ownership of land.

--The Plan of Action as adopted at the 1980 World Conference of the UN Decade for Women.

--The World Plan of Action adopted at the World Conference of the International Women's Year (1975) contains several references to the need for research, data collection and analysis on subjects related to customs and laws affecting women's contribution to development. The Plan gives high priority to "cross cultural studies, especially of causes of discriminatory customs, practices, attitudes and beliefs which impede women's contribution to the development process and mechanisms of change". (paragraph 171). The recommendations for national action contain a resolution requesting that "appropriate measures should be taken to inform women of their rights". (paragraph 40).

-- The Convention on the Elimination of Discrimination Against Women, adopted at the thirty-third UN General Assembly (article 12), requests:

"States Parties shall take all measures to eliminate discrimination against women in rural areas in order to guarantee them equality as participants and as beneficiaries of agricultural and rural development and particularly to:

- (a.) obtain equal access to credit and loans; marketing facilities; appropriate technologies; and equal treatment in land and agrarian reform as well as land resettlement schemes".

--In 1975, member governments of the Food and Agriculture Organization of the United Nations requested that "FAO support measures to ensure that women share in the benefits of development in the rural sector, particularly through recognition of their full legal equality". (Resolutions 2/66 and 10/75 of the FAO Council and Conference). Member governments of the FAO reconfirmed their interests and commitment regarding "the integration of women in rural development" with the adoption of a resolution on "Equality of Legal Status for Rural Women" at the 1979 World Conference on Agrarian Reform and Rural Development. The resolution stresses the "urgent need to expand knowledge and statistical data on all aspects of women's role in rural activities" and requests Governments to "Repeal those laws which discriminate against women in respect of rights of inheritance, ownership and control

of property" and to ensure full membership and equal voting rights for women in people's organizations, such as tenants' associations, labour unions, cooperatives, credit unions, organizations of the beneficiaries of land reform and other rural development programmes".

D. Customary and statutory codes--the existence of legal dualism and features of both systems in regard to traditions/laws which advance/limit women's access to land and other income producing property, particularly in the areas of inheritance, legal capacity to administer property, rights to property acquired during marriage and land tenure/agrarian reform legislation.

Examples will be given of anthropological evidence and land tenure legislation and the disparities between the two for women as legal participants and beneficiaries. Particular examples to be given of legislation patterned from western concepts of ownership and registration including (a.) distinction of ownership and control of land, (b.) categorization of crops/ownership and use of cattle. Descriptions will be given of land tenure in instances of planned agrarian reconstruction--Botswana, Kenya and Taiwan and revolutionary reforms--Ethiopia, Iraq, Algeria.

For example, in the traditional indigenous societies of Africa, the position of women was strictly determined by the authority and control of the lineage on her life. Before marriage (and in a matrilineal society, after marriage) her rights and duties as a woman were defined in terms of her membership with her own lineage. In addition to her social and legal position within traditional society, the woman's economic role was determined by lineage, as well. The paper will cite examples of family inheritance patterns according to religious laws; property ownership and transfers in marriage and status of women in relocating from dependency upon a lineage system in rural areas to an urban setting.

The Kenya Constitution excludes the sex attribute as one of the descriptions covered by the term discriminatory. This means that there is no law in Kenya that can give protection in the case of sex discrimination. Under these conditions existing or newly established tribal, religious or common laws and practices that discriminate against women qua women are legally valid in Kenya. "Land registration dispossesses women of the security

of tenure they had in family holdings and vests in men, and the very few women who succeed in becoming registered, indefeasible titles which they would never have inherited in the traditional system of land tenure".

(Gutto) Yet, the government has committed itself in print to effect equitable redistribution of land and employment to be achieved by "utilizing a variety of means, one of which is land adjudication, and subsequent reliance upon private incentives and African traditions to redistribute land in a socially desirable fashion".

With extensive research completed in Chili, Patricia Garrett explains that "women were excluded from direct participation in the process of agrarian reform because they were, in most cases, legally ineligible to qualify as direct beneficiaries. Excluded as direct beneficiaries, women were also denied participation in the decision making structures on the reformed units. This differential pattern of participation extended or exacerbated the pre-existing differences in the experiences of men and women. Agrarian reform, in this sense, simply drove a wider wedge between men and women". Yet, Garrett justifies this neglect stating that "In the case of the Frei administration, the incorporation of women would have required a fundamental redefinition of the goals, and therefore, the organization of the reform process. In the case of the Allende administration, such a redefinition and a decision to act therone would have let loose incontainable pressures in the countryside. In the case of the Frei administration, the incorporation of women would have been a strategic error; in the case of the Allenda administration, a tactical error".

Extensive information will be given on the Ethiopian Agrarian Reform. In Ethiopia, since the first implementation of the Rural Lands Proclamation, it is men who have, for the most part, been registered for the allocation of the land. Only widowed and divorced women and wmen who are co-wives of polygynous unions who receive no support from their husbands have been registered for land as independent heads of family. Proclamation 31 and subsequent proclamations established peasant associations as the primary political entity for implementing the Rural Lands Proclamation and other goals of the Revolution. Proclamation 71 provides that one of the duties of the peasant associations shall be to establish women's associations. Women, with the exception of some wives of polygynous marriages, divorcees and widows, have not been allowed to become members of the peasant associations. Since

it is within the powers and duties of the peasant associations to establish women's associations, the women's organizations are placed in a secondary and legally inferior position to the men's organization.

Other examples to be presented from Iraq and Ecuador.

E. Arguments influencing policy and change

What are the arguments in favor of women's independent access to productive resources? What are the possibilities for change? The following themes will be further explored:

1. The high productivity rates of small farms in comparison to large farms. Data comparing per-hectare output on farms smaller than 20 hectares with that on farms larger than 20 hectares reveal higher gross productivity on the smaller units in many countries. (Brazil, Colombia, India, Iraq, Peru and Uruguay--FAO data). In India for example, production on the smaller units averages 80 percent more than on the larger farms. (Eckholm).
2. Increasing number of female headed households and their vital importance in decision making--crops (both subsistence and cash crops), household food storage and marketing. Focus to be given to female headed households in food priority countries (FAO) and countries with exceptional high rates of male migration--Botswana, Swaziland, Lesotho, Algeria, Syria, Jordan and Turkey.

F. Research on Women and Land Tenure/Agrarian Reform

Considering the dearth of information on women and land tenure, it is proposed that a series of national projects be undertaken with AID financing and within the auspices of the Women and International Development Network of MUCIA with the leadership in the Land Tenure Center, University of Wisconsin, Madison. Collaboration should be established with national institutions with a consideration for government's willingness to undertake this research and scope for legal changes benefiting women. Other factors to be considered: (i.) national women's bureau/women and development machinery and their priorities/interests related to rural women and the law; (ii.) national colleges of law and agriculture and their interest in the topic and willingness to collaborate. Countries presently considered include Ecuador, Nicaragua, Peru, Botswana, Zimbabwe, Egypt and Indonesia. National institutions and women consultants will be suggested.

As a follow up to the recommendations of the Panel on Women, Land Use and Urbanization at the World Congress on Land Policy, Strategies and Instruments of Implementation (Cambridge, Ma. 23-27 June 1980), further exploration should be made of linkages for field activities with the Lincoln Institute of Land Policy (Cambridge, Ma.) and the International Centre for Land Policy Studies (London).

Some of the research factors to be considered are included in the paper by E. Chaney, E. Simmons and K. Staudt on Women and Development:

1. Do women have legal rights to own and inherit land as individuals?
2. Does a redistribution of land in a proposed land reform take into account women's traditional access to land as well as their access in the modern legal code?
3. Are there grounds for women participating in land redistribution schemes in their own right?
4. Under what conditions does the introduction of cash crops spur competition for the land used for food crops?
5. What proportion of good agricultural land is held or controlled by women?
6. Do cultural taboos work to deny women access to land and water? Or do the stereotypes of "weakness" and sexual "vulnerability" prevent women from participating in certain agricultural tasks, thus limiting their productivity?
7. Do women's competing demands for time bar them from effective access to use or ownership rights in land and water resources?

A matrix will be developed for a comparative analysis on women and land tenure/agrarian reform. Somewhat similar to the one completed by Murray for Haiti (attached) but with a further breakdown on (i.) acquisition of property, (ii.) right to devise and transfer, (iii.) community property and property rights in relation to spouse.

Most Common Tenure Modes

Governing Haitian Plots

