

MEASURING AND PROTECTING ACCESS TO LAND: DEVELOPMENT OF THE FIG GUIDELINES ON GENDER INCLUSION IN LAND ADMINISTRATION

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1. INTRODUCTION

Land is a primary basis for wealth, status, and power. Access to land is therefore a critical factor in how these benefits are distributed within society. One of the building blocks of the colonial policy in countries such as Canada, the United States and New Zealand, was that land resources and benefits from those resources should be distributed as widely as possible to avoid the landlessness, poverty, and servitude experienced by many Europeans until the 20th century; in other words, the policies sought to widely distribute wealth, status, and power. The inequities and inefficiencies of how access to land is allocated in society are still major issues worldwide, for example, in the former Soviet Union, in the independent African states, and in the Americas and Australasia where indigenous groups had been marginalized.

The rights women have to land have also become a major concern internationally, in part because women are now belatedly recognized as forming an important segment of a nation's economic and social capital. Their labour, often devalued in the past, is a critical element in food production and family maintenance in many countries. Increasingly women are the *de facto* heads of household due to such factors as divorce, migrant labour, war, and general social changes. In developing countries, it is estimated that 50% to 80% of food is produced by women's labour. It has also been shown that women tend to reinvest more resources in the household unit than men and this reinvestment is the basis for nutrition, health, education, and effective poverty alleviation.

This increased recognition of women's rights and their value to the economy and well-being of a nation has also been a factor in western countries. Social norms and legislation that prevented women from owning property have gradually been replaced. But in most countries this devolution of wealth, status, and power associated with property was largely a 20th century phenomena. As recently as 10 years ago women with collateral could rarely obtain a bank loan in North America without the guarantee of a male family member.

The purpose of this paper is not to explore whether women's rights to land should be more equitable, whether based on principles of human rights or based on principles of poverty alleviation and more efficient land use. Instead we share some of the research that has been conducted over the past years through the Land Tenure Service at the United Nations Food and Agriculture Organization on addressing a set of issues, including:

- what do we mean by access to land and the benefits of land?
- how can we measure whether land reform projects or policies affect access to land, i.e., what indicators can we use to determine whether the quantity or quality of access has changed?
- what are the difficulties that may be encountered in addressing women's access to land in a land reform program or a cadastral project?

A fourth issue and the main focus of this paper is:

- how can surveyors make a difference in protecting and perhaps enhancing women's access to land.

The surveying profession should not underestimate its role in allocating, adjudicating, protecting, and changing the way in which people hold rights to land. In the past the major impact was the size and shape of land parcels and the general pattern of the parcel fabric. Today, the profession also has a role in land reform – at home and abroad – in ensuring that the cadastral systems, laws, and procedures put in place during such reforms do not adversely affect the rights of groups and individuals that the reforms were meant to benefit. This is not always an easy task. The purpose of this paper is to document the complexities involved in as *simple* an issue as women's access to land.

This paper is based on a workshop presented in New Zealand in 1999 for Commission 7 of the FIG.¹ This was a first step to development of the FIG Guidelines **Principles for Equitable Gender Inclusion in Land Administration: Background Report and Guidelines** (FIG Publication No. 24) The edited Background Report and Guidelines can be found on the FIG web page: <http://www.fig.net/figtree/pub/figpub/pub24/figpub24.htm>. Preparation of this FIG publication was sponsored by SIDA through Swedesurvey and the Commission 7 Working Group on Women's Access to Land, chaired by Agneta Ericsson. The paper here provides more background and more emphasis on current and future research to be conducted with members of FAO.

¹ Nichols, S., E. Crowley, and K. Komjathy [1999]. "Women's access to land: Surveyors can make a difference." Invited Seminar on behalf of the UN (FAO) to the joint meeting of Commission 7 of the FIG and the New Zealand Institute of Surveyors, Bay of Islands, New Zealand, October 12, 1999. Published in Survey Quarterly, 20, Dec. 1999, pp. 16-19.

2. MEASURING ACCESS TO LAND AND THE BENEFITS FROM LAND

Access is the right or opportunity to use, manage, or control land or natural resources. It includes the ability to reach and make use of the resource. Equitable access to land does not only mean the quantity of rights allocated. To make use of the rights and opportunities, access to land must also be enforceable or secure (for example, against seizure). Equitable access must also be effective, by including equitable access to other resources such as irrigation, marketing mechanisms, or finance that support land use.

Having some measurement system for evaluating access to land is essential if the ‘success’ or ‘failure’ of a particular policy or project is to be determined. A set of indicators is required to describe the situation before, during, and after change (e.g., a new law, a titling project) has occurred. Basically this is the same principle as in a deformation survey of a dam – measurement campaigns are made at discrete intervals of time to detect movement. The problem in measuring access to land is similar to the problem of determining which points on the dam are critical in detecting movement. These ‘points’ become indicators.

Measurement of access to land needs to involve both qualitative and quantitative parameters. Surveyors and other land administrators tend to think primarily of property rights to the surface of the land together with its fixed improvements. The focus becomes the quantity of rights (e.g., leasehold, freehold, easement), the size of the parcel of land, or its economic value. On the other hand, social anthropologists have tended to emphasize the uniqueness of land tenure systems within a given culture and focus on the nature or quality of the rights that may be involved. Both approaches are valid for certain purposes and both have their limitations. If, however, we are to design a way of measuring women’s access to land it is important to draw on both approaches. The models below for quality and quantity of access are equivalent to understanding the parameters for stresses and strain in a deformation survey.

One way of examining the quantity of rights is to view the ‘bundle’ of rights as a spectrum. At one end of the quantitative spectrum are temporary rights of use. At the other end is absolute control over what can be done with a particular resource, including who else can use the resource and for how long. Somewhere in the middle of the spectrum is the management of the resource where there is more limited decision making power (e.g., the ability to transfer rights and the opportunities to reap the direct and indirect profits from the resource). An English common law freehold estate then might be considered to be at the management level subject to the overall control of the state. A short term leasehold might be considered a temporary use right.

Examining the quality of the rights to determine indicators is more complex and only a few examples can be given here. One measure of quality is the legal security of the rights, i.e., how well do formal law (e.g., legislation) or informal law (e.g., traditional or local community rules) protect the ownership of the rights. Thus, for example, inheritance

through entail or patrilineal rules may limit women's right of management or control. Physical security is another indicator that may be affected, for example, by war or by custom such as where land is seized by the male relatives on death of a husband. A third example of quality of rights is transferability. Use rights may often be non-transferrable because they are vested in a family or particular family members. Furthermore, transferability may be affected by the quality of the evidence of the right, such as an official document or register.

In assessing the quality and quantity of rights, the scope of potential rights of access must be broad. For this reason we have chosen the term "access to land and the benefits of land". Some of these direct and indirect benefits that should be considered in measuring access include:

- rights to shelter;
- rights to access water, firewood, fish, or fruit;
- rights to shares in inheritance on the death of a family member;
- rights to shares in land and improvements on the death or departure of a partner in an informal marriage;
- rights of access to financing and financial inputs;
- rights to the profits from the use or sale of the resource;
- social status in the community based on access to land;
- role in decision-making (e.g., management and control).

The next step for project managers, policy makers and others who want to know more about the quantity and quality of access to land, is what indicators might be used to measure these (i.e., what points on the dam we should monitor to detect movement). These indicators will be important in pre-project assessments and in later monitoring and post-project evaluation. Again only a few samples can be given here.

In many land administration projects and programs the conventional approach has been to use documents of land rights or land registry records. This has the advantage of being straight forward and reasonably objective but the limitations are many. Even in western countries title documents and registers only record a limited set of rights and the situation is made more complex in customary societies and less-developed nations where either:

- few documents or registers exist;
- they may not be up-to-date or complete;
- they may not reflect the on-site situation;
- they often only list one name (*de jure* head of household)
- they probably do not reflect the variety of formal and informal rights that exist through custom and tradition.

A second major indicator used to measure access to land is legislation, such as laws for inheritance, divorce, or land use. This however may also be misleading since the formal legislation may not reflect what actually is accepted as practice on the ground. One

example are the divorce laws in some socialist states which may recognize equal division of property. However, the degree to which a woman's (or man's) rights might actually be protected on divorce, especially in impoverished rural regions, will also depend on their level of access to the courts, ability to finance litigation, the willingness of police to enforce rights, and the degree of support provided by the family or community. Similarly calls for equal rights in constitutions can be quite meaningless in terms of the the actual practice of local communities.

Other indicators include physical occupation or proof of the actual exercise of the rights. Again these have some difficulties in that they may not conform to the formal (legal) status and it may be difficult to observe (especially in a short time span) all of rights in play. Related to these indicators are indicators such as: *de facto* head of household; primary food provider; community acceptance or agreement of someone's rights; or the share of financial and labour inputs. Even more difficult to measure objectively and completely are factors such as social status and decision-making power. In summary, there is no perfect set of easily measurable points on our dam.

3. FURTHER EXAMPLES OF THE CHALLENGES

Three examples have been chosen here to demonstrate how difficult it can be to protect or enhance women's access to land and its benefits.

Documenting Customary Tenure: In several African countries (e.g., Zimbabwe, Uganda, Malawi) there have been proposals to document or register customary rights in land. The arguments for these certificates of customary tenure and for registration are that the processes will:

- provide greater security of tenure on customary lands;
- provide a document that can be used as collateral for credit;
- provide more information for planning and land management.

Despite the merits or limitations of the processes, there could be significant impacts on women's access to land. The major difficulty is the fact that such documentation effectively freezes customary rules that are in place at the time. No account is made, for example, of such future rights as the right of a woman to return home and receive a parcel of family land after a divorce. Limited rights such as the right to pick fruit or gather wood on another's property may actually be eliminated by the documentation. And then there is the question of whose name(s) the certificates or registers will record. For example, will the name be the *de facto* head of household, who may be a woman whose husband works away from home, or the *de jure* head of household according to customary law. There are limitations with both of these approaches, including the problem of whether the documents have priority over customary law in cases of inheritance when both names are recorded.

Changing Cultural and Religious Beliefs: Traditional laws and religious laws often protected women and provided for wives, widows, and female children through other

means than equal land shares on inheritance. In Islamic law, for example, girls may receive 1/2 the land that sons receive on the death of their father. This is in effect their dowery to bring to a marriage. The sons on the other hand have the responsibility to provide for unmarried sisters and their mother and in theory require more land. Other cultures have had similar traditional laws.

The difficulty today is that traditional societies are not immune to the influence and social changes around them. Education of women and greater opportunities for employment and self-sufficiency are affecting many traditional communities. Divorce, desertion, and urban migration may also challenge the traditional social safety nets. And the devastation of HIV/AIDS and war have fragmented the traditional extended family arrangements in many countries. At the same time, in the midst of obvious need for changes, who has the right to demand they be made or to force another community to adopt another set of values? This certainly could raise ethical dilemmas for the professional in a cadastral survey project.

Gender Targeted Development Project: International aid organizations have been targeting women for special assistance for decades. More recently protection and enhancement of women's rights to land has become a focus for some land reform projects. One of the difficulties is that these projects often enhance the value of the land. So, for example, women may have had parcels of marginal land in the community to raise personal crops. After a land development project, this land has received irrigation and a new road is built. The value of the land is thus enhanced. Will local authorities allow these women to maintain their land rights after the project is over? Experience, for example, in housing projects has shown that making improvements may lead to the loss of the right to use a house allocated to a woman on communally owned land.

The objective of the above discussion was not to discourage action. Instead it was to demonstrate that making changes does not always result in the benefits originally intended.² The situation is complex.

4. SURVEYORS CAN MAKE A DIFFERENCE

We believe that surveyors can make a difference and therefore our objective has been to raise awareness of the issues. In this section, a number of ways in which individual surveyors and the surveying profession can assist in protecting and improving women's access to land are discussed briefly with the hope of beginning a constructive dialogue within the International Federation of Surveyors and its Member Associations.

² See, for example, B. Harden [1990]. "Good intentions." Chapter 5 in *Africa: Dispatches from a Fragile Continent*. New York: W.W. Norton & Company, in which the author details the unexpected outcomes from a well intentioned aid project in Kenya.

Sharing Awareness of the Issues and Their Complexity: Just being aware that there may be some potential issues is a long step forward. This will help project managers, task managers, and other participants in policy formation or project design understand that they need to be sensitive to potential impacts. Awareness of the complications in what may have seemed to be a straight forward surveying project, may help professionals decide whether or not people with specialized expertise may be necessary. It is also important that surveyors share this awareness with their staff and others involved in the projects, especially those on the ground.

Ensuring Women's ACTIVE Participation: This includes ensuring that women in the community affected and on project staff are involved in the project or policy processes, not as an afterthought, but from planning, to implementation, and to evaluation of the results. This is not always an easy process and sensitive ways must be found in some communities to allow women to share their views and experiences openly, especially with strangers. Another way in which women in the community or organization can be encouraged to participate is to provide role models, such as appointing women as key project members.³

Obtaining Knowledge of the Situation: For project managers to know whether women's access to land may be an issue, there is a need for an adequate pre-project assessment of the situation. The level of detail of the assessment will depend on the local situation and the objectives of the project. However, if the situation does appear to have issues impacting on rights of disadvantaged groups, then special measures may have to be taken to understand the potential implications of the project. This can be assisted by monitoring changes during the project and by obtaining feedback from women as well as male community leaders before and during the project. Post-project evaluation (the role of which is too often disregarded or minimized) is also important for understanding what worked and what did not; i.e., what were the lessons learned.

Providing Opportunities for Women's Rights to be Explicitly Recognized: If a land titling, cadastral surveying, land registration, or information system project is going to document rights to land, then decisions need to be made as to: what rights will be included? whose names will be documented and based on what evidence? and how will these names be kept up to date? In addition there is a need for the decisions made on these issues to be acceptable to the recipient community to ensure the sustainability of the systems introduced.

Supporting Women in Land Administration Organizations: In major internationally funded projects, women employees often do not have the same access to opportunities on the project. Yet these women may be able to help foreign project members and recipient organization staff to better understand the issues related to women's access to land locally.

³ The importance of role models was made very apparent to the primary author in her first year of teaching cadastral surveying. After a guest lecture by the only woman cadastral surveyor in Canada at the time, one first year foreign student wanted to know whether all cadastral surveyors in Canada were women.

They may also be a communication bridge to the community's women. Projects can also enhance women's sustained participation in a land project through education and training. The Swedish International Development Agency, for example, has required that 50% of all participants in cadastral training and education projects abroad be women.

Ensuring Effective Access Through Other Support: Providing equity is not enough. To be effective, access to land must also include access to other resources (such as financing, technology, and training) and to required support systems (e.g., water, roads, marketing co-operatives). Without these resources and support, the projects may leave nothing but paper titles behind.

5. CONCLUSION

Others have argued that providing secure and effective access to land for women can benefit families, communities, and nations through, for example:

- increased economic opportunities;
- increased investment in land and food production;
- improved family security during economic and social transitions; and
- better land stewardship.

However, these benefits can only be fully realised if the strategies adopted for improving women's access to land work in practice and if decision-makers and project teams are aware of those strategies that do and do not work. They need to know about the quality and distribution of rights in land, the economic and cultural impediments that limit women's effective and secure access to land, and the benefits that can be achieved by enhancing women's access. They also need to know what options for improving equitable access to land exist and be able to evaluate the full range of implications of these options.

The objective of this paper was to explore a few of the many issues related to women's access to land. Surveyors have an impact on land tenure systems worldwide. This implies that the profession also has a special responsibility to society. As the land tenure issues grow increasingly complex and become more diverse, the profession has a responsibility to know more about the issues and to do more to ensure that the systems for administering property rights serve all societies well.

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⁴ This paper is provided by the Land Tenure Service, SDAA. It has been produced by a team headed by Dr. Sue Nichols. The Land Tenure Service welcomes comments.

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BIOGRAPHICAL NOTES

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Katalin Komjathy holds a MBA and is a part-time Masters student and Research Assistant at the University of New Brunswick. She currently lives with her family in Pasadena, California. She has researched property issues related to aquaculture and, for the last three years, gender issues related to land. She is the primary author of the FIG guidelines and presented the guidelines to the General Assembly in Seoul.

Agneta Ericsson, is the Chair of the FIG Commission 7 Working Group on Women's Access to Land. Agneta has been involved with the Swedish input to Habitat 96 and has taken the lead role in having Commission 7 address gender issues in land administration. Agneta commissioned the Guidelines with Tommy Österberg of Swedesurvey. She is currently Chief County Surveyor in charge of approximately 100 surveyors in 2 counties in Sweden.

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