

Land Tenure Rights for Women Under Customary Law

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Abstract:

Regional dynamics are rapidly changing, affecting the social structures and therefore land tenure systems. This paper highlights the women's rights issues in accessing land under dual systems: Statutory laws and customary practices and explores the elements that contribute to the success of women accessing and securing land rights in four countries. The goal is to make the knowledge resulting from the use of a platform, such as the Global Housing Policy Indicators (GHI), accessible on an open source to all land specialists, NGOs, policy makers, governmental agencies, as well as a global audience, including women around the world. The cases presented illustrate various difficulties to secure land tenure for women. The GHI assessment tool finds first hand evidence of the discrepancies between constitutional laws that are mostly gender neutral and the set of unspoken social norms or customary laws that discriminate against women, by way of practices restricting women's ability to own, inherit or individually use land. These case-studies include two different types of land related gender inequality patterns - namely perceptual and traditional/ religious law systems. Most are considered 'typical' gender inequality situations characterised by increasing restriction to access and use of land, marginalization, prejudices and insecurity because of political and economic changes.

Abstract: 200 words

Paper: 7765 words/min

KEY WORDS: Customary Laws, Global Housing Indicators (GHI), Land Tenure, Statutory laws, Women's Rights.

INTRODUCTION: GENDER EQUITY IN LAND TENURE – POLICY INDICATORS AS A TOOL TO INSPECT AND HIGHLIGHT GENDER ISSUES

Women's access to land has been mediated by their relationship to men in patrilineal societies. This topic presents an ongoing challenge for an equal access to land as it touches on the core structure of traditional societies. The idea for this paper originates from a growing realization that gender dynamics are changing rapidly. Population growth, economic market globalisation and urbanisation, are deep social changes that affect land bonds and balances in communities that did not yet fully transition from their traditional systems. This peculiar duality between statutory laws and traditional customs leave women exposed to tenure vulnerabilities as they are often the least represented portion of the population. This study is part of the efforts to improve gender equality in developing countries, by allowing for a shared understanding of the challenges of the customary practices that hinder women's access to land, how the constitutions do answer to these particular customs and practices and whether they are successful in embedding them within the newly modernised and highly urbanised societies.

The Global Housing Policy Indicators, GHI¹, offer the possibility to understand the nuances of the complex relationships between the land policies and the local governance practices in the studied countries. This detailed and commented survey was used as an evidence-based tool that offers first leads on specific issues related to land tenure, housing market health and government subsidies that can be further investigated using various other local and regional databases. The GHI lays out a holistic framework to approach housing policies and a housing environment that allows more people to access decent and affordable housing. The GHI collects and measures the existing housing policy systems in order to model effective housing policy changes leading to better conditions. The data the GHI generates is the first step toward establishing standards for an enabling and fair housing environment for every country and provides a comparable data base across countries and cities. Land and property rights are a critical pillar in this framework.

We selected Uganda, Indonesia, Colombia and Armenia as the focus for of this study as each brings regional variation, different contexts, cultures and systems to compare. In Uganda, as in many parts of Africa, most women have limited land use rights and have no control over production and management decisions. The tribal land laws give full access and governance to men while they relegate women to a secondary role in land governance and property and limiting their rights depending on their marital status. Indonesia offers a different system of values and land use: while most land and inheritance laws derive

¹ The full country Global Housing Indicators surveys and analysis are hosted at <http://globalhousingindicators.org>

from the Islamic law, Indonesia's Civil Code stipulates that men and women have equal ownership rights. Women have full rights concerning access to land. Customary frameworks however have different impacts on women's land rights, depending on the regions. For example, West Sumatera – a matriarchal system where Minangkabau women control land inheritance, favors women's land ownership and governance, but only inside their communities and in other regions women are customarily not entitled to own land².

By way of contrast, Colombia and Armenia have much more improved conditions in the field. Yet in Armenia, the number of women owning property is lower than that of men, but it is not due to practices related directly to land. Colombia's land law is favorably equitable, however women headed households, especially from Afro-American descent tend to be vulnerable to poverty and inaccessibility to the housing market. The conflicts that racked the country for the past few decades turned the land into a highly political issue which created a fragile land market. By means of the Global Housing Policy Indicators platform, we hope to address where the countries of choice for this analysis stand now, in terms of gender equality and land tenure, the particular conditions that led to their current situation, and the direction they will take up moving forward.

Although there is a stress on land tenure in rural areas, the Housing Indicators draw also a particular interest to land importance in urban areas; urban land security is also a rising issue. Exclusion of women from access to land pushes them towards the cities, where they often join the ranks of the increasing number of women-headed households in slum areas³. With rural exodus hitting the highest rates yet experienced, the urban population is soon to be forming more than 75 percent of the world's population. Furthermore, the majority of this population are living in slums in developing countries. This trend is exacerbating land issues and increasing the complexity of gender inequalities around land. The likelihood of women owning land in developing countries, or renting it, will therefore be an ever more intricate challenge to overcome.

THE STUDY RATIONALE

This research paper was prompted in part by Habitat for Humanity International's new strategy to raise awareness and implement a global campaign on the critical role land access and secure tenure play in the

² USAID (link)

³ Women's World Summit Foundation WWSF, Switzerland: <http://www.woman.ch/uploads/15oct/WWSF-15oct2011-openLetter-en.pdf> accessed: February 15th 2014.

alleviation of poverty and and to further document this as one of the greatest barriers the poor have to being able to have adequate shelter. An analysis of the data collected by the Global Housing Policy Indicators showed some discrepancies in the relationship between the land access and tenure and the *in-situ* practices in Uganda, Indonesia, Armenia and Colombia⁴. This was an additional evidence to the growing consensus that the right to land security for women is a crucial component in overcoming poverty, that rapid urbanization and the changing markets would only exacerbate, and with complex and inter- related issues that cannot be treated separately from the bigger issues of developing countries such as health, education, poverty, human rights. These observations resonate within the discourse of the of the millennium development goals (MDGs) and the Post 2015 Development Agenda discussions on gender and secure tenure issues and the increasing realisation that legal equality⁵ is not sufficient to overcome the gender gap that is still persisting in the world to this day.

The paper adopted a mixed methods research approach, on a cross regional scale. It included a collective analysis of both qualitative and quantitative data from various primary and secondary sources, including the LANDESA portal, the International Monetary Fund (IMF), the International Finance Corporation (IFC), UN Women, the world governance Indicators portal, etc. The research design involved an in-depth analysis of the Global Housing Policy Indicators surveys of the various countries assessed through the GHI. Departing from this platform that offered the framework for this paper, we reached out to other more specific questions and sets of statistical data within the targeted countries themselves. We also incorporated detailed analysis from scholarly legal sources as well as development practitioners' reports on projects and assessments that were led in the field. Finally, the nature of the topic and its sensitive nature, touching on the core social structure of the targeted countries and on the family relationships and perceptions about gender, led to expand the research areas beyond the statistical analysis of land, to encompass anthropological and sociological research in an attempt to deeply understand some of the reasons that lead to the unequal treatment of women when it comes to land security. This interdisciplinary approach aimed to recognise that inequality in these countries escalates due to an interplay of multiple factors and that women's vulnerability is caused by various drivers at different scales.

Habitat for Humanity International (HFHI) led nearly 30 Housing Indicators surveys in different cities around the world since 2010, targeting indicators that assess the health of the housing market and the quality of policies related to it. This effort has been complimented by various collaborations and working groups with the Inter – American Development Bank (IADB), The World Bank, the U.S. Department of Housing and Urban Development (HUD), the United Nations Human Settlements Programme (UN-

⁴ GHI <http://globalhousingindicators.org>

⁵ UN- Women, 2011

Habitat), among others. The assessments are conducted and completed by in-country experts and HFHI convenes a team of experts both inside and outside the country to review the GHI results. The GHI website provides a one-stop portal for transparent data, discussion, debate and dissemination.

Based on the findings of field research (GHI), secondary data analysis (reports from FAO, UN WOMEN, UNDP, etc.) and detailed questioning of regionally significant differences in customs and law application, this research proposes four broad clusters of threats on women's rights in land tenure. These four items are not an exhaustive list, including all land tenure issues related to gender. The areas of concern in this paper are the following:

- Joint land and housing property: in case of marriage the house/land is often owned by the husband – problems arise in case of divorce, or in case of women trying to achieve economic independence outside of the guardianship of their husbands. The inability to prevent sale of land by their husbands is also an issue;
- Inheritance practices: women in customary law are not favored when it comes to property and land ownership;
- Land titling practices: the environment in which government representatives operate often denies women the facility in filing claims and following up with land paper work; and,
- Types of land tenure (ownership, usufruct, etc.): in constitutions and women's situations in them vis-à-vis customary laws.

The results of this analysis suggest that there is a high- frequency of recorded policy failures to implement, enforce and adjust land tenure laws that are gender neutral. The country cases with more acute inequitable land tenure practices, have dual systems and consistently overestimate the understanding of their recipient populations as to how to navigate these legal systems and practices. There is a tendency to implement laws that are foreign to the traditional communities, a heritage from the colonial systems. This is partly due to systematic biases that favor a national holistic system crafted after contemporary constitutions that has severe consequences. For instance, with the increasing impact of the global economy on developing countries, the land value – especially urban - is higher than it ever was, which causes a shock to communities and their functions. This shock is likely to transfer to the most vulnerable members of these traditional communities as they enter the processes of global economic integration; one of these vulnerable groups, the biggest portion, is women. Women's access to land and economic stability has historically been secured through a communal system: a non- individual right – based system, but as the land value becomes attached to individual titling systems and property documents that validate it⁶ and

⁶ Hernando De Soto, *Capitalism, why it succeeds in the west but fails everywhere else*.

make it marketable, its governance does not serve the community bonds anymore, and the individuals with access to legal documents are the ones that hold all its benefits. This privilege is restricted for male citizens in many developing countries.

Most of the contemporary land tenure regimes in developing countries are composed of customary, religious and constitutional provisions, with a deep influence of the colonial legal systems, which introduced individual property of land without introducing gender equality to these societies resulting in resulting in separate gender roles⁷. By doing so, these constitutional provisions diminished secondary rights of land importance, which was the main source of land security for women who relied heavily on tribal ties to access land and on the communal aspect of traditional tenure. These abstract concepts such as the promotion of economic growth placed a high value on land, making it more difficult for women to ascertain their right to land alongside men, due to the traditional segregation of roles between male and female.

DIVERSE LAND INSECURITY PATTERNS: BACKGROUND ON THE LAND TENURE SITUATION IN THE STUDIED COUNTRIES:

The four country examples that were studied in this paper present a broad perspective on the issues that women face when accessing land. However, we see certain patterns emerging in regards to the outcome of the diverse land systems and customs. The end result of these patterns is that the distribution of land titles and freedom to use land on an individual basis is strongly slanted towards the male population.

A scan of indexes such as the GiNi coefficient, the Human Development Index, and the Gross Domestic product of the case countries shows that the concentration of land is not equal. Armenia's GiNi was 30.9% in 2008 which is a low inequality ratio but still suffers from poverty issues as 35.8% of the Armenian population living under the poverty line⁸. Colombia ranks at 58 percent in 2011, indicating a dangerous concentration of land among a very few land holders⁹. In addition to this stark inequality in wealth distribution the percentage of households living under the poverty line in Colombia is 34.1 percent¹⁰. Indonesia's GiNi coefficient was 6.8 in 2009, with 11.7 percent (2012 est.) of the population

⁷ Ingelhart, Norris, 2003

⁸ <https://www.cia.gov/library/publications/the-world-factbook/geos/am.html>

⁹ UNDP, "Colombia Rural: Razones para la Esperanza," Informe Nacional de Desarrollo Humano 2011, December 2011, accessed at:

http://hdr.undp.org/en/reports/national/latinamericathecaribbean/colombia/NHDR_Colombia_2011_ES_low.pdf

¹⁰ <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>

living under the poverty line¹¹. Uganda has a 44.3 percentage of human development in 2009 with an estimate of 24.5 percent of people living under the poverty line¹².

Poverty headcount ratio at \$1.25 a day (PPP) (% of population)

Population below \$1.25 a day is the percentage of the population living on less than \$1.25 a day at 2005 international prices. As a result of revisions in PPP exchange rates, poverty rates for individual countries cannot be compared with poverty rates reported in earlier editions. [More info >](#)



Data source: [World Bank, World Development Indicators](#) - Last updated April 23, 2013
See also: [Thematic map](#), [Poverty Indicators](#), [Poverty rates](#)

ANALYSIS OF CASE STUDIES

Armenia:

The Global Housing Indicators survey analysis demonstrated that in the case of Armenia, statutory laws in place are established to ensure women's rightful access in land. Under the Civil Code, women and girls as widows and daughters have the same inheritance rights as men and boys. However, there is no information readily available regarding how women enjoy their inheritance rights in practice in Armenia.¹³ The marriage act is based on the civil code that is gender neutral, which means that property acquired during the marriage is fairly split between the wife and husband in the event of a divorce. Research did not yield any discriminatory behaviors in the land titling environment. The tenure systems in Armenia are mostly favoring privatization and investment attraction, with a high rate of

¹¹ <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>

¹² <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html>

¹³ Articles 1216 and 1222, Civil Code of the Republic of Armenia

decentralization and self-governance but with the same statutory laws nationwide. There are no recognised differentiations between the laws applied in the 10 different provinces¹⁴. Land gained a great deal of importance after the independence of Armenia from the former Soviet Union: the national government compensated the centrally planned industrial economy failure with decentralised agriculture and opening to international markets.

There is not enough documentation on the customary practices in Armenia. The authors advance the hypothesis that most of the customary laws disappeared during the years when Armenia was under the communist regime. However, there are still covert types of discrimination against women. It is a common practice that women are paid in the workplace less than their male colleagues with the same job description. Women are falling behind men in employment in Armenia. For example, according to the UN data, in 2009 the share of women aged 15 to 64 in the labour force was 59.6 percent compared to 74.6 per cent for men. As of 2011 the gender pay gap was 39.2 % yet the National Population Census shows that the share of women aged 15 to 75 in the labour force was 44.4 percent compared to 55.6 per cent for men¹⁵. Also based on the Armenian Statistics Data collection as of 2008, the poverty rate among women was 55.6 as compared with 44.4 per cent of poverty among men. Although they form 56 percent of the workforce, women constitute only 16.98 percent of the population that have construction loans¹⁶, and only 31.9 percent are registered as business owners¹⁷ which can be significant to the issues women might be facing in accessing land.

We were not able to obtain information on the number of female-headed households, but the available information on the number of women receiving poverty family benefit according to the 2012 Armenian Statistics Data is 221,706 (-out of 386,755). This makes 57.3 % of the total population needing assistance in poverty.

A deeper historical analysis of Armenia in recent years shows that the political transformation that the country went through affected particularly the social safety nets that were established with the previous regime. The tendency to privatize markets such as health, education and housing, made the access to basic needs for women more challenging, especially when they are the breadwinners in their families. The increasingly competitive job market is affected by a social perception that women's position is secondary in the workforce due to a false assumption that women have lower productivity (maternity leaves in failing healthcare systems are an important game changer when it comes to the acceptance of women in

¹⁴ Statistical Yearbook 2007, Armenia National Statistical Service, Yerevan

¹⁵ Overall employment: 1,057,735 (men: 588,358 and women: 469,377)

¹⁶ World Bank Statistics

¹⁷ World Bank Gender Statistics 2009

the workforce). These indicators show that although there is a corpus of laws that safeguards neutrality of gender in access to land, and that there is no clear customary or religious law that directly discriminates against women, their economic situation, and the devaluation of women's work compared to their male counterparts, might not allow them to purchase land or extract value from it, therefore attaining security through tenure.

As of today, there is no national policy addressing women's status regarding this rising social discrimination. And there is a need for processes that deal with gender inequities. The Government has so far made only few attempts to change this situation as it considers – wrongly, as women in the Soviet Union worked equally as men outside of the households but still assumed the full traditional responsibility inside the home, and were often employed as cheap labour in low ranking positions - gender equality is an issue that was resolved during Soviet times, and has therefore only a minor importance in the development agenda. The data shown above show otherwise, that unlike the general belief that gender issues are not a pressing matter, the lack of effective mechanisms to ensure the proper implementation of legislation leads to social discrimination of women in all spheres, including political participation. Women are often left out of economic and political processes, and they are pushed to resume traditional roles in society, and experience the disproportionate effects of a hazardous and thoughtless transition from a totalitarian society (with a centrally planned and rigid economy) to a free market economy-based on democracy in Armenia¹⁸.

One of the interesting ethnic groups in Armenia is the Lom group: the Roma part of the Armenian society is difficult to track and account for, especially when it comes to tenure security since it is somewhat a nomadic community. Understanding women's position and the power structures within this portion of the Armenian society is difficult. However, there is no recorded practice of discrimination against women from Lom origin based on their ethnicity. Armenian Roma call themselves “Lom”, and are the only non-European Gypsies that may be regarded as authentic Roma. Their presence in the historic lands of Armenia, which were extended over a much larger territory than the present-day Republic of Armenia and included most of Eastern Anatolia, dates back to at least the 7th century c.e. The Lom have been strongly Armenised, notwithstanding, they have kept their Gypsy identity and perform the traditional Romany professions and practices, except fortune-telling. They belong to the Armenian Christianity and are heavily present in Armenia.¹⁹

¹⁸ Svetlana A. Aslanyan, WOMEN'S RIGHTS IN ARMENIA, Op.Cit Accessed at <http://www.socialwatch.org/node/11600>

¹⁹ Roma and “Gypsies”: Definitions and Groups, Accessed at: <http://www.imninalu.net/Gypsies.htm#Lomavren>

To conclude the Armenian case, Gender is an increasingly important factor in determining vulnerability in Central Eastern Europe (CEE) and Commonwealth Independent States (CIS) countries. This is especially true for women heads of household, who have lost earning and employment capacity through the transformation period because of reductions in child care, higher incidence of layoffs, and pay disparities. Reductions in state subsidies for health and childcare have affected women disproportionately and serve to reduce the amount of disposable income for housing (U.N. Commission on Human Rights 2005: pars. 46-49). The situation for women is particularly disadvantageous in Central Asia, where women possess fewer legal and cultural rights to property ownership²⁰. The failure of the safety nets and the absence of legal structures to counter the social perception of women is the biggest hindrance to land security²¹. \

Colombia

The Colombian case presents another atypical case to analyse. The country is recovering from waves of violence that shook the country's structure since the 70's²². The main legacy of the several decades of political instability is the displacement of large portions of the Colombian population internally²³. The conflict resolution and peacekeeping efforts that the country is undergoing eventually led to a plan of action that is restructuring the land tenure system. In a 2010 assessment the United States Agency for International Development (USAID) concluded that in Colombia "formalization of land rights is viewed not only as a mechanism to enhance tenure security and promote production but also a critical tool in efforts to prevent the spread of the humanitarian crisis surrounding displaced persons."²⁴ Given the sensitive role that land issues hold in the political environment in Colombia, there are several efforts to establish new firm systems for land titling. The centrality of land in the political recovery of the country puts in question the position of women in this transitional time. It also drives to question the new state laws in relation to the common practices of the local communities and their acceptance to it, especially from a gender perspective.

The current state administration is to continue promoting Plan Colombia and establishing its highlights: peace, combat the narcotics industry, reviving the Colombian economy, improving human rights, and strengthening the democratic and social institutions of the country. The civil law prevails in the majority

²⁰ Habitat for Humanity Housing Review on 23 countries in the Europe and Central Asia region (2013)

²¹ <http://www.genderindex.org/country/armenia>

²³ "The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia," Human Rights Watch, September 2013, accessed at: <http://www.hrw.org/reports/2013/09/17/risk-returning-home-0>

²⁴ USAID, "USAID Program Brief: Land Tenure and Property Rights, Colombia," January 2010, accessed at: http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Colombia_Program_Brief_0.pdf

of cases in marriage and inheritance, giving equal rights to men and women, and protecting the rights of both parties (wife and husband) equally in joint land titles. Land titling processes present a more complicated system that suffered from the unstable political environment in Colombia. There was a wave of illegal land dispossession that caused a number of traditional land owners to evacuate their land due to false land titles issued for cartel lords by local notaries in the 90s. The civil court system and customary dispute-resolution institutions that generally handle land disputes were not able to solve these issues. Neither the court system nor the customary dispute-resolutions are yet adequately equipped, to handle issues related to restitution following mass displacement.²⁵

There are three types of tenure in Colombia: individual purchase, communal ownership such as Indian reservations that don't have any individual ownership, and state owned tenancy (mostly for farming lands). Officially, both women and men have equal access to the two individual based. However land distribution in Colombia is highly inequitable, with an estimated 0.4% of the population owning 62% of the country's best land²⁶.

Customary norms, religious beliefs and social practices that influence the right to land are still differentiated by gender. The situation of women depends more on the family tree they belong to via their marital status. Traditionally the spouse is allowed the right to participate in the benefit of the land of her husband but is not allowed possession, because once broken, marriage rights do not exist for the wife²⁷. The indigenous, afro-descendants and Rom ethnic groups have a specific legislation acknowledging their land rights, as well as the jurisdiction of their authorities²⁸, yet the treatment of women from these ethnic groups within or outside of their communities is highly discriminatory. Traditional authorities and customary institutions' power hold over women is limited by the government effort, especially under the light of the rapid urbanization that Colombia is witnessing. Yet, these authorities still retain a level of autonomy and are often, with few exceptions, exclusively male dominated.

In the case of Colombia, Women are facing not only the communities' customs and religious laws, but they also face the atmosphere of illegitimacy of land transactions and the violation of their land rights. Women are the most susceptible to forced displacement by armed groups. The percentage of women-headed households in Colombia increased from 26% to 31% between 1997 and 2003. Women-headed households constitute 35–50% of all displaced households. Women-headed households and Afro-

²⁵ (UN-Habitat 2005; Elhawary 2007)

²⁶ USAID, Colombia: Property Rights And Resource Governance Profile

²⁷ Ibid

²⁸ For full report on the Colombian property rights regime, see the GHI survey led in 2011

Colombian women suffer disproportionately from displacement and more frequently live in informal settlements. Women are also more restricted in their access to subsidies, credit, and adequate basic services, and have limited access to formal employment²⁹.

There are several efforts to enhance women's situation in the Colombian society. the Observatorio de Asuntos de Género (OAG), for example is operated by Consejería Presidencial para la Equidad de la Mujer – CPEM and is a tool for monitoring compliance with current national and international norms regarding woman's equity and gender equity, as well as public policies, plans and programs from the standpoint of their different impacts on men and women, in order to make recommendations aimed at eliminating discriminations and overcoming gender inequities still present in the country³⁰. The Observatory however does not monitor discrimination related to land access and tenure for women. (ref?)

The authors note that in addition to the gender inequality in access to land and therefore to a source of income and economic independence, the case of Colombia sees also an ethnic injustice. Poor³¹ and vulnerable urban households are disproportionately headed by women, especially afro-descendent women, and gender inequities are widening. In Colombian cities, the majority of poor households are now headed by women, and the likelihood for a women-headed household to be in poverty, especially for households with children³², has increased over the last two decades³³.

Further, gender disparities in access to key services are particularly prominent. This places a double burden on women, as they are not only more likely to be living in areas with low levels of service provisions, access to education, health and steady income³⁴, but they face the strong likelihood of tenure insecurity³⁵. In the past 4 years, women-headed households became more likely than men-headed households to live in homes without title, or on common land. Poverty incidence is higher among female-headed households³⁶. The strong correlation between women-headed households and poverty rates are clear in the Colombian example where recipients of social programs like those in Red Unidos (formerly Red Juntos) have traditionally had a very high representation of women-headed households.

²⁹ Meertens, D. 2006. Land rights and gender. UNIFEM, Bogotá, Colombia

³⁰ [http://www.rialnetportal.org/documentos/rial/Inf1%20\(Genero\)%20ING.pdf](http://www.rialnetportal.org/documentos/rial/Inf1%20(Genero)%20ING.pdf)

³¹ Bernadette Baird-Zars, 2013

³² UN Habitat. 2005. Colombia. Land Tenure, Human Rights and Gender Series: Latin America. UN Habitat.

³³ World Bank. 2012. Poverty and Labor Brief: The Effect of Women's Economic Power in Latin America and the Caribbean. Washington DC

³⁴ ECH data for 2002-2005; GEIH data for 2006-2011.

³⁵ Dalmazzo Peillard, Marisol. Las Mujeres y el Habitat. Revista en Otras Palabras. No. 5, p. 106-107 and 124-128, as cited in UN Habitat 2005, Colombia: Land Tenure, Human Rights and Gender in Latin America review.

³⁶ Bernadette Baird-Zars, 2013

It has been documented through several surveys that the perception of insecurity in Colombia is higher than real insecurity. This perception of insecurity, or fear of crime, tends to be higher in women than in men, and it affects land access for women³⁷.

The enforcement of the law is a fundamental step in the practice of law. Rural women and their organizations need support also in this framework. One critical point in the case of Colombia is that women have managed to play a political role in the design of instruments to protect and promote women's rights, within the conflict environment. It would be interesting to monitor the level of implementation of the legislative frameworks related to land and women's access to land security. However, the problem of sexism is still prevailing, especially in indigenous communities: each ethnic group wants to promote their own traditions, but in the process fail to allow women an equal share of rights. There is a depreciation of the value of women in the production systems within the family in Colombia. This view on women's position within the Colombian social structure causes a disrespect of the written laws over the customary laws.

Indonesia

The four interest items that constitute the core structure of this paper show evidence of various policy weaknesses in relation to gender equal access to land in the case of Indonesia. The Global Housing Indicators assessment on property rights points us firstly to an inconsistency in joint land ownership; the law does not require multiple signatures in cases of joint ownership by spouses³⁸. The land does not have to be necessarily owned jointly because only one name is legally required on the property title. The consorts might opt to have pre-marital agreements that stipulate that all property during the marriage period be split in half in case of divorce. However, since it is not mandatory and not a common practice, it is only adopted by a small portion of the population. Second, the Marriage Law draws for the majority of Indonesians from the Islamic law, and is highly patriarchal. The man is seen as the head of the family³⁹, which gives him more facility to access paperwork and procedures, specifically for acquiring land titles, and more leeway in land transactions because the society is more lenient towards men in the market. The inheritance law is the same as the marriage law, it is strongly rooted within the Islamic tradition for the majority of Indonesians. The basic premise of the inheritance law is that a man is entitled to inherit twice the share of his female kin if the parent is deceased and that a woman only inherits one eighth of her

³⁷ Valérie BÉRENGER and Audrey VERDIER-CHOUCANE, 2009

³⁸ GHI Indonesia – 2011 Survey

³⁹ Kathryn May Robinson, Sharon Bessell, Women in Indonesia,

husband's belongings after his death. The larger shares of inherited lands in addition to the socially accepted male predominance in different economic sectors make for difficulty in access to land for women both in rural and urban areas⁴⁰. Finally, land law is divided between two systems in Indonesia, a statutory system and the customary practices. The various types of registered land tenure and land acquisition are not gender restrictive: the article 9 in the Basic Agrarian Act states that men and women alike have equal opportunity to acquire benefits of land and pass it to their families⁴¹. The *Adat* Land Law, on the other hand, is based on an unwritten set of laws and almost no registration or titling. This set of laws is mostly communal, and does not fit within the individual rights based system of the statutory laws.

The Republic of Indonesia draws its laws on family matters, inheritance and land from the Islamic law, the *Chariaa* law, when addressing citizens of the Muslim faith, and a civil law for other citizens. Muslim citizens represent 87 percent, or a large majority of the population, meaning that the majority of women are subject to the *Chariaa* law that benefits men over their female counterparts in inheritance. However, although the constitution can allow an individual to opt out of the *Chariaa* law and adopt the civil law, the enforcement is social. The implementation of the *Chariaa* law is secured by family ties and community practices. Many cases of assault on women have been recorded in the past decade, after the adoption of the *Chariaa* law as a basis of the legal code in Indonesia. This stems from the male dominated traditional practices. The predominately patriarchal nature of the society makes the reading of the historic religious texts highly beneficial to the interests of the male elite of the Muslim society. In addition, the Global Housing Indicators survey shows several possible conflict points in women's accessing land.

Under the 1945 constitution and the Basic Agrarian Law established in 1960⁴², the state has the main control over land, its resources and its aerial space. When it comes to land tenure, this control is delegated to instances that coexist: the *Adat* land rights system⁴³ and the agrarian act based land tenure. The *Adat* is the set of various customary practices that ensures that the ethnic communities have their communal land right preserved in accordance to the traditions of their ancestors⁴⁴, as long as the general interests of the state are not in peril. The *Adat* laws are different according to the region. It can be communal or individual. Depending on the customary familial practices, the land can be owned individually by the female heads of the households, or women can be denied access to land. The certified land right on the

⁴⁰ Ibid

⁴¹ FAO

⁴² Look for further references: <http://karyatulishukum.files.wordpress.com/2009/12/complete-adat-community-lands-right.pdf>

⁴³ E. Ann Black, Gary F. Be: "Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations

⁴⁴ Ibid

other hand is the form of the constitutional provision that manages contracts related to usufruct, rental, building, etc. This law allows registering property and tracking its transference. However, although it was aimed to gradually replace the *Adat* Law and standardize land law across the country⁴⁵, it does not have the same impact, as many of the properties are still not registered.

This legal pluralism, although aiming to secure the rights of the diverse religious groups and communities living in the islands of Indonesia, may be an environment where it is difficult to secure women's right to access land as it creates occasions where women see themselves as the victims of these different systems. Although there has been some effort in translating customary laws and practices into national codes, various communities' laws have still not been. Women's inheritance rights under communal laws in some parts of the country – West Sumatra for example, which has a matrilineal character - do not apply under the national land law. A man owning an official title to land can sell or rent a piece of land belonging to both him and his sister and fully benefit from it without her approval, which is illegal under the customs binding their community, yet unpunishable under the land law⁴⁶.

As Indonesia becomes more urbanized, the social structure is undergoing a significant shift as the household size is changing drastically, and the power structure within the household is changing as well. Women's role in the Indonesian society is also rapidly evolving, as many women access and excel in various fields that are considered male-dominated. The schooling rate of Indonesian girls going beyond secondary education is higher as well, which can be an indicator that these women would be keener to request an egalitarian access to land. Anthropological and sociological studies showed that the official perception of women's roles in the Indonesia society, i.e. companions to their husbands and house and children caregivers, does not encompass the true position of women within the family structure⁴⁷ is inaccurate. In fact, their responsibilities expand beyond this limited gender roles to manage financial matters, neighborhood networks and social relationships within their communities⁴⁸, making them de facto heads of their households. This type of social power does not appear in statistical data on land tenure, but it is a strong component that determines different ways that women benefit from land. The current interpretative nature of the religious texts applied to the majority of Indonesian women, allows for an unfair treatment of them in the society. Laws and practices unrelated to land tenure, reinforce the social perception that women are less able to own and manage land properties than their male kin.

⁴⁵ E. Ann Black, Gary F. Be: "Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations" P: 274 - 277

⁴⁶ Noerdin, Edriana (p. 182)

⁴⁷ Sullivan, 1983

⁴⁸ Hatley, 1991

While there is a great work to be led to reform the regulations in order for them to treat all genders equally, the Indonesia government and civil society should consider taking into consideration that the revival of the customary institutions under a modernized light must be accompanied by a social awareness of the position of women in the public opinion as an equal member of society as men. The divorce law for Muslims is not as easy as it is stipulated in the *Chariaa* law, especially when initiated by the man, who is allowed to divorce his wife without any justification under the traditional religious practices. This change in religious policy is a positive move towards an equitable treatment for women, but it is still a shy one.

Uganda

Uganda is one of the typical cases where the conflict between customary laws and statutory laws aggressively weakens women's position in the society for it has a population that is heavily tribe-organised. Officially, Uganda's constitution grants provisions for gender equality and prevails over customary practices that contradict its core values. The legal system is a mix of English common law and customary law⁴⁹. The Ugandan land law does not specifically enforce gender equality and the clan system does not provide a sufficient security to the female tribe members. Both systems failed to ensure women's rights to land and instigated women's movements in Uganda to add land tenure to their key issues⁵⁰.

The housing indicators based analysis demonstrates that legal inheritance is a big impediment to women's land tenure. The survey⁵¹ indicates that even though the law allows women to own, buy, and inherit land, the common practice is that most of the land owned by women was bought and not inherited due to the cumbersome inheritance law. Also, the GHI mentions that the joint land titling, even though it is available by law, is limited to the wealthier portion of the society; there is no clause in the constitutional provisions for joint property binding two married people – this makes it difficult for women to have access to the land acquired during the period of their marriage. Joint titling is not a common practice due to the fact that 75 percent of the land is still under the various customary laws, which favors male heirs over their female counterparts, showing gender-biased practices.

Marriage in Uganda is mostly customary⁵² and therefore it does not legally bind the husband to share any acquired property with his consort, which makes women's situation economically critical if they face the

⁴⁹ CIA Factsheets

⁵⁰ Aili Mari Trip: Women's Movement: The case of Uganda

⁵¹ GHI Uganda, 2012 Survey

⁵² E. Ann Black, Gary F. Be,

events of divorce or widowing. Since the Ugandan society⁵³ is mostly patriarchal, except for the region of Buganda that benefits from a matrilineal inheritance customs⁵⁴, the relation to land goes through the male heirs, and the view of women as property holders is unconventional. Practices such as dowry, bride price, polygamy or the legitimised abandonment of the wife due to her not bearing a male descendant, reinforce the socially accepted idea among most of the Ugandan population – especially the rural part- that women are not made to inherit or own land, and that it is a man's right. This perception takes a stronger turn when it comes to inheritance practices: because tenure of land is male oriented, and because either land or marriage bonds are seldom registered, the patriarchal rule is the one that prevails. Women fail to inherit parental land once they get married, if they don't have children, and when they do have children, the land is often passed directly to the children⁵⁵. The percentages of inherited land vary between 60 percent of land inheritance when it comes to male-headed households and 39 percent of female-headed households inheritance rate⁵⁶. Women's equal right to inheritance has not yet been recognized in national legislation. With regard to the rights of widows, the Succession Act is in violation of the Constitution and the country's international obligations as signatory state to treaties prohibiting discrimination against women on the basis of their sex⁵⁷. This weakens women's position and leaves them without voice.

The Global Housing Policy Indicators survey also shows that the majority of the land tenure is still under the various customary laws in Uganda⁵⁸. The customary tenure systems are linked to the tribes and the communities dwelling in the land. Therefore, they are logically tightly linked to the social structure of the community and are regulated by such bonds as marriage, inheritance, and family relationships. There are four tenure systems in Uganda, including: Freehold tenure, which allows full ownership rights; leasehold tenure, allows the lease of registered land for a certain period and on certain conditions; the *Mailo* tenure which can be described as a hybrid between the statutory laws and the customary practices; and finally, the fourth system is the set of various clan practices and allotting and distributing land. These customary land laws allow for communal and individual use of land, but are mostly present in unregistered land⁵⁹.

Further research shows that in most communities, women still cannot have access or own land, although they can work on it. There are a number of mainstreamed traditional practices that are proven to be

⁵³ Ibid

⁵⁴ Aili Mari Tripp, 2004

⁵⁵ Ibid

⁵⁶ Troutt, 1994. Troutt's estimates for 1990 also show that the percentages of land purchase were of 30 percent for women and 32 percent for men, which is fairly equal. This shows that the greater issue for women access to land security resides within the biased inheritance systems.

⁵⁷ FAO Gender Land Equality

⁵⁸ Property Rights, GHI, 2012 Survey

⁵⁹ Aili Mari Tripp, 2004

harmful to women in contemporary society. The religious beliefs, traditional practices and norms discriminate between men and women in various aspects of social life. This discrimination becomes crucial when it comes to land accessibility in the Ugandan case, due to the importance of these laws in the land tenure. The rise of land value due to investment and the stress on individual property gives more incentive for tribal leaders and individuals in general to pursue land titling on their own, neglecting the obligation that their customs bestow on them and making women a vulnerable group as their benefit from land has been a somewhat indirect one. Customary laws grant women land through two processes: marriage and inheritance. The option of buying land and joint titling with their husbands is still a practice that is not affordable for all and that is restricted to elite women. It takes 12 steps to register a property. It is often a lengthy and timely procedure that exposes women to various possibilities to face social discrimination or corruption⁶⁰.

The majority of Ugandans still rely heavily on direct access to land for their livelihood⁶¹. The modernisation of production systems, the commercialization of agricultural land and the promotion of tourism, industry, privatisation and foreign investment both lessened the land-based clan powers as individuals are able to find jobs in other fields than agriculture. The kinship-based land systems are shaken due to the tendency of most individual leaders to either seek to sell land or turn it into a profitable good from an international market standpoint, or be too restrictive in the management of the clan assets in an effort to preserve the collective wealth. This causes a massive exodus, where population create pressure on urban and peri - urban regions and land access becomes even more problematic.

The Ugandan civil society, women's associations, and individuals strategised several ways for women to access land mainly through facilitating land purchase and acquisition. Although women won some important battles when it comes to land rights in Uganda, there are still some key issues in land accessibility that still set back women's position when it comes to land access especially in rural areas. The necessary political leverage is lacking, and the high percentage of untitled land skews the security of land towards various types of male ownership.

CONCLUSION

The Global Housing Indicators Platform allows for a mapping of housing issues mostly related to property, finance, subsidies, infrastructure and regulations. It proved, in the case of this study, to be

⁶⁰ From the doing business survey 2013

⁶¹ FAO 2011

crucial in comprehending specific gaps in gender equality in issues related to land tenure, as it established a working framework that brought together four different countries from four different regions and contexts. The nuances in the commentary sections on the Global Housing Indicators surveys led to understanding that although the legal language in Armenia, Colombia, Indonesia and Uganda is gender neutral, the practices in the field are biased. The lack of gender equality awareness in all of the four countries is exacerbating the practices that hinder women's fair access to land security, either due to tribal or religious systems over-powering the legal framework, or because the societies perceive the gender inequality as a norm. The analysis led at the beginning of this paper finds solid resonance in the implicit and biased social practices towards women in these countries, and all four cases studied show a weak legal commitment in this issue.

By gaining ownership of rightfully- owned land and inherited property, women can be empowered to provide themselves with income and security, decrease poverty and lower the risk of domestic violence, allowing them to be more prosperous and to be better providers for their families. Our sense is that the problem of gender inequality stems essentially from the fact that there are no functioning mechanisms that make rural traditions co-exist with the constitutional practices. The current legal context does not offer such security for women. In order for a just and equitable land tenure in communities with two or multiple systems that have fundamental contradictions, it is important to emphasize on educating the population – especially women about their rights. Training women helps improve their understanding of land laws and property rights laws, and empowers them with livelihoods, education, and skills. Local governments play a decisive role in breaking the discriminatory gender roles and perceptions, via programs, advocacy, implementation and enforcement of public policies that promote the economic autonomy of women and training civil servants and members of the Judiciary corpus on gender issues tenure.

REFERENCED WORKS:

Agarwal B. - a field of one's own: gender and land rights in south Asia

Christian Voelkel, "Three Reasons why Colombia's Land Reform Deal is Significant," International Crisis Group, May 28, 2013, accessed at:

<http://www.crisisgroupblogs.org/crimeandpolitics/2013/05/28/three-reasons-why-colombias-land-reform-deal-is-significant/>

Dalmazzo Peillard, Marisol. Las Mujeres y el Habitat. Revista en Otras Palabras. No. 5, p. 106-107 and 124-128, as cited in UN Habitat 2005, Colombia: Land Tenure, Human Rights and Gender in Latin America review.

Dalmazzo Peillard, Marisol. Las Mujeres y el Habitat. Revista en Otras Palabras. No. 5,

Daniela Zapata, "Indicators for monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women", Santiago, Chile. December 2008 accessed at:

http://www.eclac.cl/mujer/publicaciones/xml/1/34831/Serie_91_i.pdf

Donny Meertens , Forced Displacement and Gender Justice in Colombia Between Disproportional Effects of Violence and Historical Injustice, accessed at:

<http://www.brookings.edu/~media/Projects/idp/tj%20case%20studies/Meertens%20Gender%20and%20Colombia.pdf>

Donny Meertens, , 2006. Land rights and gender. UNIFEM, Bogotá, Colombia

E. Ann Black, Gary F. Bell, Law and Legal Institutions of Asia: Traditions, Adaptations and Innovations, Cambridge University Press, January, 2011

Fatima Mernissi, "Women in Islam: A Historical and Theological Enquiry" BB Oxford Editions. Year?

GDP per capita : (source: <http://data.worldbank.org/indicator/AG.LND.TOTL.K2/countries/AM-CO-ID-UG?display=graph>)

Hernando De Soto, Why capitalism succeeds in the West, but fails everywhere else.

http://cmsdata.iucn.org/downloads/land_rights_publication_english_web.pdf

http://csis.org/files/publication/131126_Meacham_Colombia_ExecutiveSummary_Web.pdf

Human Development Report 2013, The Rise of the South: Human Progress in a Diverse World,
Accessed at: http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf

Human Rights Watch “The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia,”, September 2013, accessed at:
<http://www.hrw.org/reports/2013/09/17/risk-returning-home-0>

IUCN , “The land we graze: a synthesis of case studies about how pastoralists’ organizations defend their land rights”, IUCN ESARO office, Nairobi, Kenya. viii + 48pp January 2011, accessed at:

Japanese International Cooperation Agency, Country Profile, Indonesia

Kathryn May Robinson, Sharon Bessell , Women in Indonesia : gender, equity, and development

Margaret Rugadya and Elisa Scalise, Developing a National Land Policy in Uganda: A Learning Process, LANDESA, 2013

Patricia Grogg and Constanza Viera, “Key Land Reform Accord in Colombian Peace Talks,” IPS, May 27, 2013, accessed at: <http://www.ipsnews.net/2013/05/key-land-reform-accord-in-colombias-peace-talks/>.

Ronald Inglehart, Pippa Norris - Rising Tide: Gender Equality and Cultural Change Around the World

Roy L. Prosterman - One Billion Rising: Law, Land and the Alleviation of Global Poverty

Roy L. Prosterman and Tim Hanstad, “Land Reform in the 21st Century: New Challenges, New Responses” RDI Reports on Foreign Aid and Development # 117, accessed at:
http://www.landesia.org/wp-content/uploads/2011/01/RDI_117.pdf

S. D. Stein, The Armenian and Roma Genocide, accessed at:
<http://www.ess.uwe.ac.uk/genocide/armromgen.htm>

Shlomo Angel, Housing Policy Matters,

Steiner, Roberto, Acosta Paula, Vasquez Tatiana. 2010. Análisis del Informe de Estado de Familias en la Red Juntos. Fedesarrollo.

Svetlana A. Aslanyan , Gender Equality: History Must Be Honoured, Center for the Development of Civil Society, 2010, accessed at: http://www.socialwatch.org/sites/default/files/armenia2010_eng.pdf

Svetlana A. Aslanyan, Women's rights in Armenia, SOCIAL WATCH: poverty eradication and gender justice, 2010, accessed at:

http://www.socialwatch.org/sites/default/files/B15Armenia2010_eng.pdf

The Global Gender Gap Report 2013, World Economic Forum, accessed at:

http://www3.weforum.org/docs/WEF_GenderGap_Report_2013.pdf#page=20

Troutt, E. "Rural African land Markets and Access to agricultural Land: The Central region of Uganda", University of Wisconsin, 1994.

UN_HABITAT, Benschop, M. 2002. Rights and Reality. Are women's equal rights to land, housing and property implemented in East Africa? United Nations Human Settlements Programme (UN-HABITAT), Land and Tenure Section. Nairobi, Kenya. Accessed at:

<http://ww2.unhabitat.org/publication/hs66702e/default.asp>

UN-Habitat 2005, "Land tenure, housing rights and gender in Colombia.

USAID, "USAID Program Brief: Land Tenure and Property Rights, Colombia," January 2010, accessed at:

http://usaidlandtenure.net/sites/default/files/USAID_Land_Tenure_Colombia_Program_Brief_0.pdf

USAID, Country Profile: Property Rights And Resource Governance Colombia, accessed at:

http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Colombia/files/HLP%20AoR/Colombia_Land_Tenure_Profile_2010_EN.pdf

Valérie BÉRENGER and Audrey VERDIER-CHOUCANE, From Gender Inequality to Women's Quality-of-Life Index, 2009

World Bank. 2012. "Poverty and Labor Brief: The Effect of Women's Economic Power in Latin America and the Caribbean". Washington DC