

LAND, ENVIRONMENT

c) Cadastral systems

How is equality between women and men relevant to cadastral systems?

Rights of ownership and use of property are critical to equality between women and men and are therefore emphasized in international agreements and conventions on equality.

Why is it important for women to have title to land or property in their own name or be named on titles jointly with their spouses? Ownership of property is an important aspect of economic security and opportunity for individuals and families. Within marriage, clear recognition of joint ownership in property titles or registration documents serves to:

- clarify the right of both spouses to take part in joint decision-making on how land and other property will be managed and used;
- guard against unilateral action by one of the spouses, such as unilateral sale or unilateral pledging of property for credit;
- provide protection and security in the event of divorce or death of the spouse.

Clear identification of joint ownership recognises the interests of both spouses. However, it is particularly important to women as it is more often women who are not recognised as owners.

The establishment and maintenance of a cadastral system includes functions that seem largely technical and administrative – surveys to describe the boundaries of particular parcels of land, the preparation of land titles or registration documents, and the design of an information system that contains the relevant data and allows for updating as ownership changes hands.

However, the execution of these functions may have the effect of determining who does (or does not) own property. Where property rights are uncertain, the task of surveying and initial documentation of ownership involves more than information collection – the law and the information provided by occupants and neighbours requires interpretation. Decisions about ownership may be made in this process – through, for example, a decision about boundary lines, or about which occupant will be recorded as the owner. A number of factors can influence the likelihood that decisions are equitable from a gender perspective. For example:

- women's status and authority – women may have less bargaining power and community support than men in disputes about matters such as where to draw the line between two parcels of property;
- lack of knowledge about the law on women's rights in marital property, and biases toward male ownership (by women, men and cadastral system personnel) – with the result that few women are named on title deeds (and although they may still have rights in the property, much effort and expense may be required to protect this right in the case of divorce, death of the spouse, or unilateral use by the spouse).

In summary, issues of ownership, tenure and the use of property have major implications for economic security and well-being of both women and men – and if the above equality concerns are not taken into account, policy and practical decisions can have the effect of reinforcing or exacerbating existing inequalities between women and men. The diagram on the next page summarises key issues and related questions.

Establishing cadastral systems in new market economies:

Attention to the issues outlined in this note is particularly important where a system of private property is only recently introduced. In the new market economies of Central and Eastern Europe, concepts of private property are relatively novel, rights under the law are just being established, and coherence between laws on land ownership and on marital property may not yet have been achieved.

In this situation there is a high risk of arbitrary decisions that will have long-term negative consequences for women's economic security and equality between women and men.

Government commitments to equality in ownership and control of property:

Beijing *Platform for Action (PFA)*:

Paragraphs 165 (e), 166 (c);

UN *Convention on the Elimination of All Forms of Discrimination Against Women*:

Article 16(1)(h).

Laws affecting rights in property

- ▶ The nature of rights to real property (both in urban and agricultural areas)
- ▶ Marital property (rights during the course of the marriage and in the event of divorce)
- ▶ Inheritance (from spouses as well as parents and other relatives)

Gender equality issues:

- ▶ *Does legislation on personal status allow women to own real property? (There remain a number of countries in which women do not have independent legal status.)*
- ▶ *Is the law clear about the rights of spouses in relation to marital property? Does it provide for joint decision-making on the use of property (including use of property to obtain credit, sale of property)?*
- ▶ *Is the law clear on the rights of spouses in the event of divorce or death of partner?*
- ▶ *Are the various laws affecting ownership rights to real property consistent with laws on marital property (and with government commitments in the Beijing PFA and CEDAW to equality between women and men regarding economic resources and marriage)?*
- ▶ *What are the provisions for exercising rights that exist in marital property law where these rights are not reflected in the name on title deeds or registration documents?*

Establishment of a cadastral system

- ▶ Design of a cadastral information system for titles or registration that contains the appropriate information
- ▶ Land surveys to clarify boundaries and describe specific parcels
- ▶ Determination of ownership of land surveyed at the initial stage
- ▶ Requirements in the ongoing management of the system to obtain information from the purchaser and seller of property about the rights of others in relation to that property.

Gender equality issues:

- ▶ *What guidance is given to personnel collecting initial information for a cadastral system about how to deal with women's claims to property and about documenting ownership rights of spouses? To what extent could ignorance of women's rights or assumptions about men being automatically household heads bias decisions against women?*
- ▶ *Are lawyers/notaries and personnel of the cadastral office obliged to participate in protecting spousal rights by requiring information about marital status and joint ownership rights in transactions processed through the cadastral office (in sale of property, transfer of title, use of title as security for debt)?*

Benefits to individuals of clarification of property rights and functioning cadastral information system

Clarification of rights in relation to economic assets that can be:

- ▶ A means of holding savings/wealth (for security in the near future and in retirement)
- ▶ A basis for earning income (as a site for a service or manufacturing activity, or a terrain for agricultural production, or as a rental property)
- ▶ A means of undertaking other economic activity (providing the security for credit for other activities, or a location for a home-based business)

Gender equality issues:

- ▶ *Does the property/cadastral system allow women to benefit equally with men (for example, in using property as a means of holding savings, earning income, or for credit purposes)?*
- ▶ *Does the system uphold and protect women's economic security? What about ensuring that the property is not unilaterally sold or pledged for credit? What about security in cases of divorce or death of the spouse?*
- ▶ *Does the system protect and promote women's economic rights? Do wives have equal rights with men to use property for economic purposes?*
- ▶ *What would be required to proceed with the design and establishment of a cadastral system that is in accordance with commitments to equality in the PFA and CEDAW?*