

Women and Their Property Rights – Albanian Case

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Abstract:

This publication presents the importance of the women’s property rights and also the current situation of this right with a special focus in Albania.

This paper focuses on a much neglected issue: the links between gender inequities and command over property. Although in most countries of the world, in terms of legality, property rights is a constitutional one guaranteed, in practice women in most countries suffers real scarcity of it, from which derive a variety of negative consequences such are; economic dependence, acceptance of domestic violence, discrimination, etc.

This situation derives from a complex range of factors — social, administrative, and ideological — are found to underlie the persistent gap between women's legal rights and their actual ownership of property, and between ownership and control. The History of World Civilization presents surprising facts regarding property rights for women. Starting in Ancient Egypt (3100 BC), they had equal property rights with men, these rights were overshadowed by a historical period to another, reaching the critical level during the period of ancient Greece and by taking different curves up and downs until today. A special place in this paper takes the Albanian case, which refers consistent generally to the global situation.

The analysis is based on secondary data collecting from reports or other studies which are analyzed by comparing them to come to the conclusion. The paper concludes that the women’s property right it is one of the fundamental rights, very crucial, from which derives more

rights and other opportunities related to gender equality and gender discrimination in all other fields.

The necessity of collective action by societies for overcoming these obstacles and the aspects needing a specific focus for policy and action.

Key words: Women’s Property Rights, Gender Equality, Domestic Violence, Gender Discrimination.

A Brief History of Property Rights for Women Globally

Although women’s property rights comes from ancient Egypt, legalized and implemented in its ideal way in this society, paradoxically today many modern women in the United States and Europe never question their right to open a bank account, own property, or even buy wine or beer in a pub. These rights, however, were hard won: for much of history, and even up to 40 years ago, middle-class women were not allowed to handle money; even having a job was seen as a sign of financial desperation. (The Guardian 2014)

The property rights of women dated from the Ancient Egypt, a period of time when the standard of equality were really to be admired and comes until in our times, through an interesting curve ups and downs. Traditionally later on in history, a woman's property has often, but not always, been under the control of her father or, if she was married, her husband.

Ancient Egypt, 3100 BC and after: Women hold equal financial rights with men. “Egyptian women were able to acquire, to own, and to dispose of property (both real and personal) in their own name. They could enter into contracts in their own name; they could initiate civil court cases and could, likewise, be sued; they could serve as witnesses in court cases; they could serve on juries; and they could witness legal documents.

Biblical era, 1800BC and after): Under Jewish law, women have the right to own property and sue others in court without a man representing them. Wives can't inherit directly from their husbands – unless it is a gift or they have no children – but daughters can inherit if they don't have brothers.

Ancient Hinduism, 1500BC and after: Women have the right to control stridhan, or property before marriage, which includes gifts from parents, friends and strangers as well as earnings from her own work. Divorce is not allowed and inheritance laws favor male family members.

Ancient Greece: Women's financial rights are constrained compared to earlier societies. Women are not allowed to inherit property or take a case to court unless a male guardian is in charge. Women can, however, trade and engage in industry, such as tavern-keeping, although work in the classical watering hole is reserved for the lower classes.

Ancient Rome: The pendulum swings back as freeborn Roman women are allowed to divorce, own property and inherit. Divorce is easy to get – presaging the Christian opposition to splitting up marriages – but the husband has the legal right to keep the children.

Byzantine Empire, AD565: The Justinian laws – named for the emperor, known as “the last Roman”, who created a template for modern western civil law – allow women to be married without a dowry. Some working women, including prostitutes and tavern-workers, do not have the right to marry Roman citizens and can only be kept by Roman men as concubines. If a woman cheats on her husband, he can divorce her and “keep the pre-nuptial gift, the dowry and one third of any other property she possessed.

The Middle East, AD600s: Islam is founded in Arabia and allows women the right to inherit estates, own property and initiate divorce. As in Jewish law, when a parent dies the eldest son receives a double share of the inheritance. Men can inherit half their wives' estates, unless they have a child, in which case men only get 25% of the estate.

Europe, 800s: Anglo-Saxon laws allow women to own their own property, before and after marriage. In Norse societies, women are also allowed to conduct business as equals with men.

France, 1791: Revolutionary France gives women equal inheritance rights (although they lose them later, when the monarchy is restored). The same trend it was in all the world after this period of time.

Currently: Regarding the legal framework women have the same property rights as man in most of the world, but the real situation presents a large gap between women's legal rights and their actual ownership of property , and between ownership and control.

The importance of the women's property rights

Property rights include the legal rights to acquire, own, sell and transfer property, collect and keep rents, keep one's wages, make contracts and bring lawsuits.

The property's right is one of the fundamental human rights, closely connected with the ability to live, to meet the needs of personal and family's professional and social integration, with the economic growth etc.

In terms of a gender unequal society, the women's property rights is more than that. Its absence besides that, deprives women of the opportunity to survive or to integrate into society, consequently leads to their dependence on men, whether fathers or husbands that often brings discrimination and violation of their fundamental rights.

Many researchers of this issue support the link between the immovable property right and the protection of women from domestic violence.

Immovable property (house or land), not only creates opportunities to diversify its use and generate income, it can also act as a cushion for women against domestic violence (Agarwal 1994).

Owning property protect women from potential violence due mainly to income generation, livelihood security, greater respect and decision-making autonomy in marital family.

The few studies carried out on this subject, supports the conclusion above. So the statistics of a questionnaire in India, shows that most of women who left and do not return home because of the domestic violence are women who had property.

¹“Out of the 179 women experiencing long-term physical violence, 43 left home. The percentage leaving home was much greater among the propertied (70.6 per cent) than among those without property (19.1 per cent). Also, a few of the propertied women returned to the marital home (3 out of 12 women).

Property ownership also enhances women’s status in the marital family, as a high proportion of women bring property into the marital relationship as dowry at the time of marriage, mostly land and/or a house. Women’s property makes an important contribution to the family resource base thereby contributing to the economic security of their family and make them independent.

The Current Situation Regarding the Inequality of Property Rights Amongst the Two Genders, World Wide

While regarding the other women's rights there are carried out many studies, in the field of their ownership’s rights those studies are very few. These studies show that globally, many countries still suffers very significant inequalities of property rights between the two genders.

¹ ICRW . (2006) Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience.

Table Nr 1²: Number of countries with gender inequality with regard to inheritance rights and entitlements to ownership of land and other property, by region

	Number of countries with gender inequality related to		
	Inheritance rights	Right to acquire and own land	Right to own property other than land
Africa (48)	45	43	35
Northern Africa (5)	5	3	1
Sub-Saharan Africa (43)	40	40	34
Eastern Africa (15)	13	13	12
Middle Africa (8)	7	8	8
Southern Africa (5)	5	5	4
Western Africa (15)	15	14	10
Asia (42)	25	21	19
Central Asia (5)	2	2	2
Eastern Asia (4)	0	1	0
South-Eastern Asia (10)	4	2	1
Southern Asia (8)	7	7	7
Western Asia (15)	12	9	9
Latin America and the Caribbean (22)	2	5	2
Caribbean (6)	2	1	1
Central America (6)	0	3	0
South America (10)	0	1	1
Oceania (2)	0	2	2
Eastern Europe (9)	2	2	1

Source: Computed by the United Nations Statistics Division based on data from OECD, Gender, Institutions and Development Database online (as of December 2009).

Note: The numbers in brackets indicate the number of countries reviewed. The quality of women's ownership rights was graded from 0 meaning "no restrictions" to 1 signifying complete discrimination against women. Variations between 0 and 1 may indicate the extent of restrictions or the size of the group of women for which the restrictions may apply. Countries presented in the table are those with partial (graded 0.5) or complete (graded 1) discrimination against women on the issue considered.

² UN.(2010) The World's Women 2010- Trends and Statistic, Pg 169.

As it is shown from the table above, worldwide are still 74 countries where gender inequality with regard to inheritance rights and entitlements to ownership of land and other property it is a daily challenge. Most of the countries are in Africa and Asia, but it is very important to mention that the table present the situation regarding the legal women property rights, not the real ones. There are many other countries where between the women's legal rights and their actual ownership of property , and between ownership and control it is still a large gap. In those cases it is very difficult to measures the situation, because of many social and traditional factors.

The situation regarding the women's property rights in Albania

The interior Legislation and the ratified one in the field of gender equality, particularly the Convention of CEDAW, the Strategy on Gender Equality and against Domestic Violence have considered the rights and economic security of women, determining gender equality and combating gender discrimination in Albania. The rights of women are also part of the Albania's commitments regarding the European integration, as well as requirements and recommendations made by the European Union to obtain candidate status. Meanwhile the situation of gender discrimination, especially with regard to property rights it is still a challenge for Albanian society.

First concern about the issue it is the lack of the data regarding women's property rights. There are some empirical observations but not real studies. These observations refer more to the legal aspects of gaining the titles of ownership rather than concrete data of women owners. Another limitation is the missing data regarding the link between ownership and real control of the property. In most cases even when formally woman has the right of ownership, is the man who decides

about the management and administration of property. The woman is obliged to confirm simply the will of man.

Currently in Albania, there are two main processes that significantly affect women's access to property rights, land registration and legalization of property. The respective legal framework reveals that the related processes are inherently gender-based and could bear significant consequences for women.

Land registration: Since 1991, Albania has undergone a significant reform process regarding property rights. The total estimate of immovable properties is 4,230,000³, with approximately 3,530,000 properties in rural areas³, regulated by several laws. According to law No. 7501, ownership and land division documents are to be issued in the name of the head of household as the legal representative of a farming household⁴. However, the vast majority of registered heads of households are men. As a result, by specifying the head of household as the single legal representative in ownership certificates, the new registration process results in men's de facto advantage compared to women. Such gender discrimination is evident from registration practice in land administration and urban management projects, like the Land Administration and Management Project (LAMP).⁵ During the initial registration process, property is registered in the name of the person stated in the ownership certificate. While the head of household derives this entitlement from his position, other household members, including the wife, have to first claim their property either through a court decision document or by taking the case to court. The process thereby heavily favors male ownership and hegemony.

³UN- Women – Albania. (2011) Raporti Kombëtar i Pozicionimit të Grave dhe i Barazisë Gjinore në Shqipëri, Pg 84.

⁴ Ligji Nr 7501, datw 19.07.1991 “Për Tokën”.

⁵ UN- Women – Albania. (2011) Raporti Kombëtar i Pozicionimit të Grave dhe i Barazisë Gjinore në Shqipëri, Pg 84.

Legalisation: It is the process of formalization of a considerable number of immovable property units (about 500,000), based on self-declaration by persons or families that informally build homes, stores, etc⁶. Such self-declaration, again, has been done by the head of the household. Subsequently, the agency in charge of legalization (ALUIZNI) issues the legalization permit. This document certifies a person as the owner and is issued invariably in the name of the person who submitted the self declaration. Immovable property is then registered in the Immovable property Registration office, in the name of the person on whose behalf the legalization permit was issued, i.e. the head of household. In the vast majority of cases, about 90 per cent, the registered, official head of the family is a man⁷. As a result, the ownership certificate, the sole document that makes a person an owner, contains the name of the family head, as the applicant, but not the names of other adult household members. However, according to the legalization law, a family civil certificate which includes household members is required as a legal document at the application stage⁸. The situation is vague, however, on whether all members of the family as presented in the certificate at that time are legal owners of the family property, or whether only the person whose name is in the legalization permit retains ownership. Likely, in the case of the law on privatizing houses in 1993 or with the law on distribution of the agriculture land in 1991, but in both these laws, it was well defined that all family members at the time of privatization were owners⁹. Taken together, the current administrative procedure of land

⁶ UN- Women – Albania. (2011) Raporti Kombëtar i Pozicionimit të Grave dhe i Barazisë Gjinore në Shqipëri, Pg 84.

⁷ Ibid

⁸ Ligji nr.9482 datë 03.04.2006 “ Për Legalizimin, Urbanizimin dhe Integrimin e Ndërtimeve pa Leje”, i ndryshuar

⁹ Ligji Nr. 7652 datë 23.12.1992 “Për Privatizimin e Shtëpive Shtetërore”.

Ligji Nr. 7698 datë 15.04.1993 “Për Kthimin dhe Kompensimin e Pronës Ish-Pronarëve, i ndryshuar nga Ligji Nr. 9235 datë 29.07. 2004 “Për Kthimin dhe Kompensimin e Pronës”.

⁹ Ligji Nr 7501, datë 19.07.1991 “Për Tokën”.

legalization/registration establishes an almost invariably male head of household or family head as the sole agent and representative of land. It thereby contributes to the systematic reduction of female property owners in Albania. As the process and practice continue, chances are high that property (housing and land) will be increasingly male-owned. Consequently, this deprives Albanian women of their assets and rights, and negatively impacts on women's access to credit, especially in rural areas. As previously mentioned, some of women's most common obstacles in starting businesses are related to limited access to credit and a lack of collateral. This is the case when women are not registered either as owners or co-owners. Also as a negative other consequence is the high level of domestic violence, most evident in rural areas.

Conclusion:

The women's property rights is a very important one, closely connected to almost all the parameters of gender equality, gender discrimination and domestic violence. It is an economic right and should be the root of gender equality strategies. Its absence usually deprives women of the opportunity to survive or to integrate into society, consequently leads to their dependence and often brings discrimination and violation of their fundamental rights.

Despite this importance, this right continues to be one of the women's unrealized rights.

There are many countries in the world which deny legally this right for women, while in many other countries, although women enjoy this right legally are far away from its concrete benefits, because it is really a large gap between women's legal rights and their actual ownership of property, and between ownership and control. One of these countries is Albania too. The issue is not very propagated, is left somewhat in the shade. There are only few studies and researches in the

field, while in many countries are missing all the statistics about.

The situation requires a multi-action from all the interested actors and especially from governments. It is a real need to analyze the situation through the research studies as well as an in-depth gender analysis of current practices and legal procedures. Therefore, specific indicators on women's property and land ownership are required to set up as indicators on Gender Equality and the Status of Women. Gender-disaggregated data on land ownership, registrations and legalizations over the years needs to be established and this requirement is an urgency in Albania.

BIBLIOGRAPHY

1. Agarwal, Bina. (1994) *A Field of One's Own: Gender and Land Rights in South Asia*. Cambridge: Cambridge University Press.
2. Convention for Elimination of All Kind of Discrimination Against Women- CEDAW.
3. ICRW .(2006) *Property Ownership and Inheritance Rights of Women for Social Protection – The South Asia Experience*.
4. Ligji Nr 7501, datë 19.07.1991 “Për Tokën”
5. Ligji Nr. 7652 datë 23.12.1992 “Për Privatizimin e Shtëpive Shtetërore”.
6. Ligji Nr. 7698 datë 15.04.1993 “Për Kthimin dhe Kompensimin e Pronës Ish-Pronarëve, i ndryshuar nga Ligji Nr. 9235 datë 29.07. 2004 “Për Kthimin dhe Kompensimin e Pronës”.
7. Ligji nr.9482 datë 03.04.2006 “ Për Legalizimin, Urbanizimin dhe Integrimin e Ndërtimeve pa Leje”, i ndryshuar.
8. Meinzen-Dick, Ruth S.; Brown, Lynn R.; Sims Feldstein, Hilary; Quisumbing, Agnes R. (1997). *Gender, property*

- rights, and natural resources. *World Development* (Elsevier) 25 (8): 1303–1315.
9. UN.(2010) The World's Women 2010- Trends and Statistic
 10. UN- Women – Albania. (2011) Raporti Kombëtar i Pozicionimit të Grave dhe i Barazisë Gjinore në Shqipëri
 11. Women and Money. (2014) *The Guardian*. Available at : <http://www.theguardian.com/money/us-money-blog/2014/aug/11/women-rights-money-timeline-history>