

# Women's Legal Rights to Land Property in Norway – Relevant Lessons for the African Titling Processes

## 1. Background

Women's legal rights to land property in developing countries have gained increasing attention the last ten years. In Africa a combination of customary law based on tradition, and modern statutory law often makes women especially vulnerable. In the old system, the woman's right to land follows her position in the family, but such de facto rights is seldom properly understood and codified into a modern statutory law. Researchers hence points to the danger of disempowering women and diminishing their rights to land in the modernisation process. These points of views are not new, and several policy changes have been proposed included in new land legislation. One solution promoted by several scholars and policy makers is joint land titling, i.e. that the land certificates is issued in both the husband's and wife's name, but this is however not a straight forward issue as land is normally inherited by one of the parties and not acquired by mutual effort.

In promoting women's more equal access to land we are faced both with the challenge of revising laws to make them more geared to promote equity, and also to make the law come into action, i.e. that people exercise their rights, and that the institutions that the laws are embedded in operate in manners that support the spirit of the law. In this paper we hence summarize the Norwegian property system to see whether find where our experience of gender in the property issue is relevant in the African context.

## 2. Women's Land Rights in Norway

In the following a short overview over some main laws and provisions of importance for women's rights to land and property in Norway will be given. Property in this context meaning both real estate (house, flat, land for agriculture), material goods (furniture, electronic devices) and immaterial goods (money, shares in companies, stocks).

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### **Gender Neutral Laws**

The profound basis in Norwegian law today is that every woman is an independent judicial body with equal rights as every man. The Constitution states that every Norwegian citizen, men and women that are 18 years old, have the right to vote in election of Parliament. Every woman of age is thus free to seek her own education, work and employment, start and conduct her own business, buying, selling and trading within every part of the economic life - just as every man. She is also formally her own master in private matters. At the same time both men and women are equal subjects of common duties, e.g. taxation. The Norwegian Penal Code states that nobody is to be subjected to legal punishment until he/she is 15 years old. Both men and women can however individually face practicalities that de facto limit their possibilities, and social institutions and norms may but barriers to women to fulfil the rights they have, but formally there are no legal differences between the sexes on their rights or duties in society.

Historically this gender equality before the law is the result of the women's rights movement's struggle since the beginning of the 18th Century. In 1839 "weak women over 40 who could not survive in other ways", were given limited rights to conduct handicraft-trade. This was followed by gradually permitting women to conduct trade on equal grounds as men and development within laws of employment. In 1884 women were allowed to go to University and only in 1913 all women were given the common right to vote in official elections. The latest gender discrimination law, the Law on allodium (Odelsloven) was changed into a gender neutral law as late as 1974. Today gender-neutral laws are taken for granted, but ensuring full gender- equality in reality and in the family and wider society is still a challenge. Additional non-discrimination regulations and state mechanisms are therefore at place to survey, promote and develop gender equality. Revisions in family law and inheritance law have played an important part in promoting gender equity.

### **Law on Marriage (Family Law)**

The Law on Marriage regulates both the formalities in entering into marriage and the dissolution of marriage; the economic relationship between the spouses – both during the marriage and when the estate is to be divided due to separation or divorce.

It was the former law on marriage of 1927 that for the first time stated that husband and wife were equal, both legally and economically. Today's law of 1991 initially states that women and men have the same right to freely choose their spouse. Marriage is entered by their own free will and by own consent.

### **During Marriage**

As long as they are married, husband and wife have common duties to support each other financially. Formally they can choose between having a common property settlement, which is the general rule by law, or they can agree upon a separate property settlement. The differences between the two types of property settlements is only seen when the marriage

ends. As long as they are married, in reality property is regarded as owned and used as joint ownership.

The marriage itself does not change the owner's right to use his or her own property, regardless whether the property is bought before or during the marriage by the spouse. There is, however an important limitation from this general rule in relation to the common home:

With no regard to who formally owns or brought the property into the marriage, the law specifically states that a spouse can neither sell or use as security for loans nor terminate a rental-agreement for real estate that is used as their common home, without written consent from the other spouse. This measure is made effective in reality by other laws; at the public office for registration of real estate, deeds will not be registered when this kind of consent is not given and most banks will refuse to give a spouse mortgage with security in the common home without the other spouse's signature on the documents. The same rule is for ordinary furniture in the common home or objects determined for the use of the children.

Property and possessions bought by the married couple together, is considered joint property. In deciding who has bought possessions that have been used as the spouses' common personal use, for instance their common home or ordinary furniture, a spouse's domestic contribution and efforts is to be taken into consideration. The latter provision is based on a Supreme Court-verdict of 1975 ("The housewife- case). Here the husband had purchased the house used as common home for the family. The wife stayed at home taking care of their three children during the entire period of marriage. When dividing the assets at the time of divorce, the husband argued that the value of the house was entirely his since he had paid for it. The Supreme Court, however, regarded his wife as a co-owner and considered her to have contributed to the acquiring of the house through her household-work and domestic efforts, including caring for the children.

### **Separation/Divorce**

How the assets are divided if the couple decides to divorce depends on their settlement agreement. If at the time of marriage they agreed on a separate property settlement, each spouse keeps his or hers property respectively. If no agreement on property settlement exists, the general rule by law is that the value of the property is divided equally between the spouses with deduction of debts. The value of property that clearly can be traced to assets one spouse had at the time of the establishment of the marriage or later have inherited or received as gifts from someone other than the spouse, can however be kept aside, in other words the law opens for an imbalance. With their part of the value of this balance, each of the spouses then chooses which possession physically he or she is to keep. Normally the one who is given custody of the children is given priority to keeping the former common home. Nevertheless, if in e.g. the wife is given custody for the children, she still has to "buy out" the husband and his share of the house. In many cases this is financially impossible

thus forcing the former spouses to sell the property on the open market and divide the value between them.

### **After Divorce**

In 1937 the first law on maintenance payment was proclaimed. Similar regulations are still at hand today: if a spouse's abilities or possibilities to ensure a suitable subsistence have deteriorated due to responsibilities for caring for common children or division of common tasks during the marriage, or particular reasons exist; the other spouse by private agreement or court ruling may be instructed to pay maintenance if they divorce. Financial support as maintenance is fixed for a limited time period up to 3 years. The entitlement to maintenance ceases if the maintenance recipient decides to get married again.

### **By Death**

The division of the estate when one of the spouses dies is regulated by law of inheritance.

### **Law of Inheritance**

Until 1854 sons inherited the double of their sisters when parents died. That year it was stated by law that girls and boys have the same right to inheritance – a provision still valid: when a person dies, his nearest legal heirs are his children. Testator's children inherit equally 2/3 of testator's fortune as their hereditary share.

When married, the surviving spouse is entitled to 1/4 of testator's fortune. A more important right is his or hers right to retain undivided possession of their estate. As long as testator and the surviving spouse only have common children, it is the surviving spouse who decides whether or not to retain undivided possession of their estate. The division of the estate is thus postponed until the surviving spouse remarries, dies or decides to divide the estate with the other heirs. In the meantime, the surviving spouse has absolute power over the estate's fortune and debts and is entitled to use and sell possession as they were her or his own.

If testator had children with someone other than surviving spouse, these children have to consent to the surviving spouse retaining undivided possession of their estate. If the couple had separate property settlement, the surviving spouse can retain undivided possession of separate property only if this was specifically stated by the marriage settlement or their children agree at the time of the division of the estate.

### **Law on Allodium (Odelsloven)**

The Law on allodium was the area where legal gender discrimination was last eliminated, as late as 1974. In Norway firstborn child have the strongest right to inherit agricultural land and property. Originally this right was reserved for only male heirs. This was changed in the revised Law on allodium (Odelsloven) of 1974, where the law states that the first born has the right to inherit the farm and its land, regardless of gender. The argument put forward was that women were as capable of managing a farm, and that gender equal rights would encourage women to undertake agricultural training.

This right was however limited to children born after 1965; i.e. children nine years old in 1974. This was probably done to give the time to prepare the first-born girl child the rights to take possession of the farm in due time; and not upset the expectation by first born male child to inherit the farm. Socialisation of the role as a future inheritor of the farm starts at an early age. Even if the first born child has the right to inheritance of the farm; she or he has to pay the siblings their part of the farm value. It is however common perception that the value of farm and farm land is set artificially low in order to assist the farm to stay on in the family.

Gender equity is only one aspect of the allodium law. Revisions in the law are also made to achieve other objectives, such as securing continuity in the occupancy of the farm; and securing economic efficiency.

This was evident in the documentation for the revision of the Law on allodium in 2003 (NOU 2003), where the main discussion is the size of farms to be under the legal system of the Law of allodium. The revision was for increasing the minimum size of the farm under the Law, i.e. that smaller farms may be sold on the open market. Stakeholders related to gender equity argued against such a change as the tendency was for women to use their inheritance rights more for smaller farms, than larger farms that seem to still remain mainly with male heirs. The report also documented a slow increase in the number of women using their first born inheritance rights, and also considerable regional variations.

The report argues that some of the reasons for still strong gender differences are the traditional view of gender roles in the rural areas, and the socialisation in these roles. Women are not to the same extent socialised to become farmers, and women may feel the pressure from parents and grandparents to let a younger brother inherit the farm. But on the other hand the report state that there is a slow increase in the number of women using their rights, and that this trend is expected to continue.

Women have increased their share of ownership of farms from 12 to 22% in the period from the law was revised in 1974 and until 1999.

<b>% women that take over farm on allodium rights</b>					
	1969	1970-79	1980-89	1990-94	1995-99
Total country	9	12	15	17	22

*Source: Statistics Norway, Agricultural census 1999.*

In order to understand the trend in gender difference in inheritance of farms, one also has to understand the structural changes in the Norwegian society at large, and the changes in gender equity. In 2006 only 2,8% of the adult population were farms and fishers (SSB 2006), and this share was 4,2% among the men and 1,3% among women. The reduction in number of farms and farmers has happened simultaneously with increase in education and

development of the service sector. Today more women than men attend higher education. At the same time many farms combine farm income with paid work outside the farm; especially smaller farms.

A recent analytical work done by the government to look at gender equality in financial terms only included paid labour and not farm income or land property at all. It should therefore be fair to say that in the public debate women's access to land has a fairly low profile. On the other hand women seem to larger extent than men to leave the rural area and move to the urban areas, this is partly related to rural young women becoming more educated than rural young men. In the public policy debate there is concern about how one may keep a gender balance in the rural areas, and then encouraging women to make use of their land inheritance rights become an issue.

### **3. Women and Land Rights, with Zambia as Case**

Land is a resource of great social, political and economic importance in all countries, but especially those countries where the great majority live off the land and the activities and production they carry out on their land. Evidence from many parts of Africa document, that there are great variations in access to land both between the sexes and between local practices. It is therefore a challenge to say something on women's land rights in Africa; even limiting it to the case of Zambia show that there are great variations within one country. Zambia has a dual tenure system that makes the issue of addressing women's land rights more challenging. All land in Zambia is vested in the president on behalf of the people (GRZ, 1995) and is embedded in a dual system of tenure, namely customary (ninety four per cent) and statutory tenure (six per cent).

Despite their vital contribution to the well being of many communities through both productive and reproductive roles, women are still discriminated in terms of rights to land as they do not have access, control and ownership of the land resource in many societies. Lambrou (2005) argues that land rights are a major outstanding gender equality issue and one which is at the basis of profound gender discrimination.

Women face challenges in upholding their rights to land in Zambia in both statutory and customary tenure systems. Therefore, discrimination against women in relation to land in Zambia should not be restricted to the customary tenure systems alone as it is widespread.

#### **Women's Land Rights under Statutory (Leasehold) Tenure**

Women's rights under statutory tenure in Zambia can be discussed in two different settings, those who live in informal settlements and those that do not. Allocation of land in the two sectors differs. Within informal settlements similar cultural practices like those existing under customary tenure are more evident than in formal settlements. Land allocation in informal settlements in most cases is done by political cadres and there is no formal title to ownership unless in declared settlements where occupancy licences may be issued. Women found in these informal settlements are amongst the poorest in the country and with the

ravages of HIV/AIDS the situation of these women is worsened.

For women in areas under formal settlement procedures for acquisition of land involves an applicant applying for advertised land to the local authorities. After receiving consent from the local authority the applicant approaches the Commissioner of Lands in the Ministry of Lands, who acts on behalf of the Republican President, for a 99 years title deed. (Although it must be appreciated that in Lusaka the Ministry of Lands carries out the whole process as at now without much involvement of the local authorities). Although women in this category are mostly aware of their rights to land, financial constraints, time consuming and bureaucratic processes in the acquisition of land may be their greatest barrier.

### **Women's Land Rights under Customary Land Tenure**

Areas under customary tenure are mainly administered by traditional leaders. Zambia has over seventy three ethnic groups and this in itself provides evidence of the diversified nature of beliefs, customs and practices that represent heterogeneous relationships towards land in these areas. Acquisition of land under customary tenure is through clearing of virgin bush, as a gift, inheritance, sale of (improvements on the) land, transfer of land in exchange for goods, transfer of land in exchange of services and marriage.

Under customary tenure rights to land vary and may include individual rights (such as residential areas, cultivated fields, or where one has expended some labour individually), concurrent rights (where other people may use an individuals land), communal rights (which are tracts of land that are not individually owned such as grazing areas) (Mulolwa, 2006). All these rights are permanent, proven by oral evidence, except transfer, abandonment, death, expulsion from community (as might occur when someone is accused of using witchcraft) (Chileshe, 2005). Use and occupation of these land rights are based on the active occupation or usage of a piece of land, which is also the main evidence of ownership or an existing interest in the land.

Challenges concerning women's land rights in Zambia are more intensified in areas under customary tenure systems. Mulolwa and Van Asperan (2006) argue that women's land rights under customary land tenure are usually poorly defined, of uncertain duration and dependent on good relations with husband and male relatives. While men have primary rights, women have secondary rights; while men get access to land through their lineage or clan, women usually get access to land through their husbands, who are obligated to allocate land to their wives (Kajoba,2002). Nevertheless, it should be emphasized that they are a varying complexity of customary tenure practices and rights in Zambia and it would not be appropriate sometimes to generalise too much (Mulolwa, 2006).

### **Marriage**

Traditionally one of the most important roles of a married man is to acquire arable land and establish land rights in it, clear and hoe crop fields for his households and if polygamous to assign specific fields to each wife to plant, weed and harvest with the assistance of

children (Chileshe, 2005). Marriage under customary tenure systems is an important site for women's access to land. When a woman marries, it is generally believed that her rights to land are overtaken by the husband under both patrilocal and matrilocal systems (Mulolwa, 2006). Customary land tenure is also heavily dependent on the societal system (matrilineal, patrilineal) and more specific on the custom of settling after marriages (uxorilocal, virilocal) (Mulolwa and Van Asperan, 2006).

Virilocal marriages occur when a wife moves to her husband's homestead or village after marriage, while uxorilocal marriages occur when the husband or man moves to his wife's homestead or village after marriage. In the case of an uxorilocal marriage a woman may have had a small garden cleared for her by her relatives before marriage. One important aspect to this pattern of marriage is that when land is initially given to the woman or wife to be, it is normally given to her by her male relatives. In the case of divorce or death the divorcee or widow may be permitted to retain the land or some of it. Virilocal patterns of marriage allow the wife to make use of her husband's land normally at the will of her husband. In the case of divorce or husband's death, the wife or widow in most instances returns to her village of origin to leave with her relatives. According to Machina (2002), she acquires no rights of her own in her husband's land though widows sometimes may be regarded sympathetically and may have land cleared for them by other men and over such land they can claim undisputed rights even though it is in the land of a deceased husband. This according to Machina (2002) is particularly the case where the widow had children with the deceased spouse.

In the past this created a traditional safety net which allowed for the care of widows and children. Due to the breakdown in the extended family, economic pressures, social change, the ravages of HIV/AIDS and other factors, such traditional safety nets are slowly eroding away. In situations where women may be given some land to use, the female headed households will normally have smaller portions of land as compared to male headed households. Polygamous marriages are also more common in these areas. Problems to do with polygamous marriages mostly come in when the husband dies as land and property are allocated according to the status of a woman within the marriage such as first or second wife and the number of children the woman had with the deceased (Nsemiwe, 2006).

### **The Effects of Privatization of Land Rights**

The need for land reform has been recognized by many African countries as a tool to reduce poverty and enhance development. Privatisation of land rights has been one of the key features of land reform in many of these countries. Privatisation involves the registration and titling of rights to certain plots of land. In Zambia the 1985 Procedure for Land Alienation and the 1995 Lands Act allow for the conversion of land from customary tenure to state (leasehold) tenure. According to the 1995 Lands Act, the conversion of rights from customary tenure to a leasehold tenure shall have effect only after the approval of the chief, the local authorities in whose area the land to be converted is situated and should be approved by the Commissioner of lands. Conversion of land from customary tenure to

statutory leasehold tenure has mostly been to the detriment of the indigenous people as they are in most cases left with limited rights to land that are essential for sustaining rural livelihoods. People who are not members of the villagers are the ones who can normally afford to convert or get title to land and this leaves out the locals.

### **The Lands Act of 1995 and Draft Land Policy**

The present Lands Act of 1995 does not necessarily discriminate against women (Machina, 2002), but the law however is gender neutral. It ignores the long historical reality of an unequal society in which women have not had access, ownership, or control over land as it assumes that there is gender equality in land (Mulolwa, 2006). The said Act does not provide enough legal backing to encourage women's land rights and according to Machina (2002) it is a law of the rich who can afford to use it to their advantage.

The new Draft Land Policy of 2002 observes that women still lack security of tenure to land in comparison with their male counterparts. The stated policy blames customary and traditional practices for the problem. In this regard the policy states that thirty per cent (30%) of the land demarcated for allocation is to be set aside for women and other vulnerable groups (or people with special needs). The remaining seventy per cent is for both men and women. This may be seen as a step ahead for advocates of women's land rights but this in itself raises a lot of questions. The draft does not specify who should be considered vulnerable or with a special need neither does it specify what proportion will go to women and what will be allocated to the vulnerable groups. This legislation also raises concern in that it may not apply in areas under customary tenure.

### **The Intestate Succession Act CAP 59 of the Laws of Zambia**

This Act is concerned with distribution of an intestate estate. The said Act provides that an intestate estate should be distributed by twenty per cent (20%) going to the surviving spouse (if there is more than one widow the twenty per cent (20%) will be shared amongst them in proportion to their duration of their respective marriages to the deceased), fifty per cent (50 %) to the children, twenty per cent (20 %) to the parents and ten per cent (10 %) to dependants. Where one or more beneficiaries is non-existent the Act dictates which category of the existing beneficiaries will assume the residue though in most cases the residue is assumed by the surviving spouse and children. The Act also provides penalties for two categories of property grabbers. Firstly, for those without authority the Act provides that the offender be fined or imprisoned for a duration not exceeding two years or both, in cases of property grabbing. Secondly, for those who abuse authority the Act provides for a fine or imprisonment not exceeding one year or both. The court may also make an order for restitution or order the culprit to compensate the beneficiaries.

Although the Act may have also been seen as a step towards improving women's rights especially to land and property, the Act may also seem to have loopholes due to the following reasons. Firstly, the Act provides that distribution to children should be done in proportion to their ages and educational needs; it has not defined how this should be done. Secondly,

the Act does not apply to land held under customary tenure (Mulolwa and Van Asperan, 2006). Lastly, the Act places no age limit for a child to be considered as a beneficiary who is entitled to the proceeds or a proportion of the estate. Views concerning this Act have differed country wide as some Zambians have not been in favour of the Act due to various factors. Some husbands worry that if their wives knew they could inherit such a large share, particularly the seventy per cent (70 %) they stood to gain if their children were still minors, they would kill their husbands (Scholz and Gomez, 2004). Furthermore it has been observed that many women (especially the mothers to the deceased sons) believe that widows should not be allowed to inherit such large shares of land or property. This is because these women or mothers increasingly rely on their sons to provide for their care and well being as they grow older. Most of these mothers or women argue that they raised their sons, put them through school, invested in them and in the event of a sons death, his estate should repay and provide for his mother, not his widow (Scholz and Gomez, 2004).

On the other hand some women do not know about the Act and those who do know about it are afraid to take legal action due to various fears and concerns. Some view being interested in family assets especially that left by a late husband as shameful. Other women are scared of being accused of killing their husbands in order to acquire assets such as land. Worse still some fear being bewitched by family members who may not benefit from the deceased assets.

### **Conclusion**

The importance of the relationship between land and women has for decades demanded attention and will need even more attention in the future if strategies and visions to enhance this relationship are to be effectively understood and properly implemented. Reasons for gender inequalities in land are many fold though culture or tradition and inheritance practices in some areas in Zambia may be the greatest challenges. Other factors that may be the cause of women's land rights not being upheld are that women themselves are unaware of their rights to land due to the lack of availability and knowledge of information about women's land rights especially in rural areas. Women are also faced with socioeconomic constraints such as lack of capital and illiteracy. But the barriers may go beyond this, by claiming their rights women may be subject to negative sanctions, and social exclusion in their societies. Claiming their rights may mean that they have to face other risks.

### **4. Relevance of Norway's experience to Africa?**

It is hard to see any specific relevance of the gender equality aspect of access to land rights for Norwegian women to the African women's situation. The two situations are dramatically different, with access to farm land in Africa being of high importance for people's livelihood and status. Inheritance systems and family laws are also different, and the heterogeneity of the African women's situation also make any simple generalisation difficult. First born rights to inheritance have not been important in a situation where access to land has to take into consideration care of all siblings and family members in the society. However with more land scarcity and land already divided into small plots the inheritance system and

farm size will be an issues in the future. Also the HIV/AIDS epidemic is only just making its imprint onto agricultural structures and production in Africa, and may have important consequences for how inheritance systems and land rights will be developed in the years to come. There is also a lack of good information system in Africa, and a lack of proper data on land situation, and the rate of conversion of customary land to statutory land and privatisation of land in many African countries. In such a situation the public discussion is hampered by lack of proper data.

However on the more general level of legal systems development, and development and enforcement of women's right there might be lessons learned. The difference between ownership and the right to occupancy is importance to understand. It is not necessary ownership that is most important always, but the security that the right to occupancy gives, and which has to be written into the laws and legal frameworks.

In Norway there is a strict framework for revisions of laws and the making of new laws, with sufficient time for deliberations and hearings of the views of the stakeholders. Necessary documentation and reports are also carried out as part of the revisions and are made available for the public and for informing the public discussion. Such an open and democratic tradition may assist in making laws legitimate, and also informing the secondary law system for enforcement of the laws. But it is also important for providing the necessary information and guidance to the public. In Norway the public is reached both through a well developed information system, through the educational system, and through targeted campaigns. But the information is also directed towards organised groups, like the farmers' associations and the women farmers' association. Therefore both state capacity and legitimacy, including their outreach capacity to provide reliable information; as well as people using their rights to organise and request information are important systemic aspect of the Norwegian state and society.

Norway has gender neutral laws regarding land and property, gender equality is promoted by other policy mechanisms and institutions. The gender equality law and the family law are important instruments for gender equality. Norway also has a decentralised system and land issues are to the extent possible solved through the local land consolidation court. There is also a decentralised system of enforcement.

The Norwegian example of changes in the Law on allodium also show that there is to be expected a considerable lag between revisions in the law giving women more rights, and the exercise of these laws in society. This example also show that there is a need for repeated campaigns to reach new generations, and information and mobilisation using organisations and associations.

## **5. Conclusion**

Systems for transitions of ownership within the family is by many still seen as mechanisms to keep the stability and social cohesion in "the valley", i.e. local geographical areas. Any

challenges to the existing systems, such as when Norway introduced gender neutral inheritance for the first born, was initially seen as new rules that destabilised the “social order” by many traditionalist in the rural areas. That may be one reason for the compromise made to only make the new law valid for people born after 1965 i.e. that means the law was only made valid for children that were nine years of age when the law was approved by Parliament.

Family law and inheritance law and first born's right, are all geared to keep the property in the lineage/kinship. Family laws and inheritance laws in Norway work to keep the land and farm as an economic unit; but it is also seen by many to contribute to social stability and social cohesion. Women's land right are often at least initially seen as a threat to social order and stability in many countries; and a threat to a society in harmony, especially by more traditional and conservative factions.

Norway is a modern state, where individual rights and duties are important. Formal systems dominate as conditions for existence and security. Still social norms and attitudes govern many decisions and choices. The family, both the nuclear family and the greater extended family to less degree is still important as agents of social norms and social change. Gender and women's access to property is regulated through family law which historically has moved towards protection of the woman/mother and inheritance law.

African countries have coexistence between modern forms and customary forms. Although a modern state, customary and statutory law coexist. Corruption and land grabbing is frequent event. There are strong differences in gender roles and division of labour. Individual rights are less explicit, and women and men are more dependent on their larger family and community. This means that both men and women depend more on their larger community for their existence and security. Informality has been growing, informal and family and community relations dominate as conditions for existence and security. Globally throughout history women's rights have improved with the transfer of welfare responsibilities from the family and community to the state and its institutions.

Development of women's right to land, and exercise of this right, is a social and political process related to broader changes in society, such as formal institutions and legal frameworks, but also in social institutions and social norms. Usually formal changes happens as a response to social changes in society; but it is not unusual that the legal system then becomes more advanced on gender equality than social institutions and social and cultural norms in society, leading to ignorance or outright resistance to these new laws.

Structural differences, social institutions and cultural practices tend to marginalize women's right to property and land in Africa compared to Norway. African women in addition to dealing with common and general practical difficulties further face discrimination and disproportional obstacles in claiming and maintaining their rights to land and property. Norwegian experience on women's rights in more general terms may have more relevance for

the African women than focussing on specific Norwegian “tools” for women to access land.



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# Indigenous Land Rights in Norway: Does Norwegian Land Rights Developments have Relevance for Africa?

## **Introduction:**

This paper outlines the development of Sami land rights in Norway in the effort to explore whether Norwegian Sami experiences may have relevance to African indigenous peoples. The paper is divided into five parts. The first provides general background to the relations between the Sami and Norwegian state. The second looks at contemporary land rights history. Next, I will describe the development of a Sami political movement and events that changed the course of Norwegian-Sami relations. Before taking on the recently introduced Finnmark Act (2005) I will take account of recent developments in legal practice that have served to better protection of Sami rights to use of land. Finally, the Finnmark Act (2005) will be discussed in light of reconciliation. The chapter concludes by summarising the relevance of Norwegian experiences to an African context.

To explore the relevance of the Norwegian indigenous land rights development to Africa, I will start by contextualising the Norwegian Sami situation, historically and legally. I will account for Sami forms of subsistence and its protection within Norwegian law. After providing an outline of the particular nature of the colonisation of Sápmi, I will describe the development of a Sami political movement and Sami unity as central prerequisites for Sami emancipation. The development of the Norwegian land rights struggle gained momentum in the 1970s, when the Alta-Kautokeino conflict forced the government to recognize Sami people's rights. To meet the demands of the existing Sami political organisations, the government set up the Sami Rights Commission. Over the next twenty years, the Sami Rights Commission recommended a number of substantial changes to

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