

Expert Group Meeting
Good practices in realizing women's rights to productive resources, with a focus on land
Geneva, Switzerland
25-27 June 2012

**Good practices and lessons learned in realizing
women's right to productive resources: The case of Jordan**

Expert paper prepared by:

Amal Haddadin*
Jordanian National Commission for Women
Jordan

* The views expressed in this paper are those of the author and do not necessarily represent those of the United Nations.

Land is one of the most important assets for people throughout the world. Yet, in many areas, women are denied access to or control over land and property, either as members of a household or as heads of households .

Land is a particularly critical resource for women when the household breaks down due to male migration, war, abandonment, divorce, polygamous relationships, illnesses or death. Moreover, land ownership enhances women's social status and decision-making role within the household and leads to improved child nutritional status and higher education for girls. Many women without land and property rights are left economically insecure and susceptible to poverty, as well as reliant on spouses or male relatives for survival.

1- Legislative analysis and policy reforms and other initiatives to realize women's rights to productive resources:

Women's rights in labor laws is the greatest way for empowering women as it will increase their income.

Laws and regulations embody both positive and negative provisions for women. Indeed some laws originally intended to protect women have actually had an adverse impact on women's economic participation. As a matter of fact, some laws are based on the principle of women as dependants, and others discriminate against them creating many obstacles in their participation in development.

There is a need to establish articles in laws which guarantee the rights of women and policies that treat women as independent economic actors, in order to remove all kinds of discriminations and to eliminate restrictions on their economical participation:

- Labor laws:

a- The code lists the sectors in which the employment of women is prohibited in hardship circumstances such as mining, chemical industries, construction, and storage. The restriction should not cover the administrative work from which women should not be deprived. The law also prohibits the employment of women between eight o'clock at night and six in the morning (evening and shift work) with some exceptions. Such restrictions may limit their freedom of choice and limit their professional advancement. These restrictions were necessary in the past and adopted from the ILO science the labor facilities at that time where limited.

b- Amendments are needed to facilitate women's participation in public life and to assist them in balancing work and family responsibilities. Thus both public and private sectors should be encouraged to make working hours more flexible. Legislation should grant women the right to breastfeed during work, and offer nurseries for their children, that should be appropriate in terms of quality and costs. The private sector should be encouraged to hire women through use of tax exemptions.

c- Jordanian law unintentionally discriminates against women with regard to their pension and social security rights. As a matter of fact, early retirement provisions have led to excluding

women from training and promotion opportunities on the grounds that it is not worthwhile to invest in building their capacities since they will work for less time than their peer male employees. This may limit women from reaching senior positions and raising pension revenue.

d- The actual legislations in Jordan do not grant family allowances to women, except when she is the only breadwinner of the family, while these allowances are granted to men without exception.

e- The Jordanian Personal Status Law. Unfortunately the Jordanian PSL does not respect the CRC minimum age for marriage, banning children marriage stipulating exceptional situations in which the marriage of girls between the ages of 15 to 18 would be allowed. Minors' marriage will lead to interruption of girls' education and will result in a lack of job opportunities. On the other hand, the law has dealt with the so-called "mandatory custody" which must be due to the son's children in the event of the death of the son before his predecessor, and with no more than a third of the inheritance, whereas the daughter's sons are not given this right in the case of her death before her predecessor. There is a need to amend the law to grant the right of women to own an equal share of the property acquired during marriage. When the marriage ends provisions are needed to address the damage that the woman suffers since she will not receive any compensation except her own dowry which sometimes is very trivial, and the right to compensation, which is equivalent or equal to the alimony for less than 3 years.

Even though it is widely accepted that Islam improved the status of women by recognizing their right to inherit, this right is not highly protected. As a matter of fact, it is well known that many Jordanian women "voluntarily" renounce their shares in the family inheritance. This practice seems grossly unegalitarian, reflecting the Jordanian women's social and economic inferiority and their dependent status. This practice contradicts not only the letter of the Shari'a which guarantees women shares in the family inheritance, but also fundamental Islamic principles.

Renunciation is sometimes 'balanced' by specific consideration: compensation, whether in money or movables. Some cases of fair consideration cannot be entirely ruled out, but money and movable assets transferred by way of inheritance are generally worth less than when inherited in realty. Such a practice denies women's right to equality, diminishing their independence and economic possibilities - in a social environment where even an independent female property owner faces prejudice.

The Law should be amended in a way to prevent women from routinely giving up their rights. The law must, under all circumstances, project a clear message respecting women's free will. The amendments must guarantee that the reconciliation between the inheritors should not apply to immovable property inherited from a third party unless registered in the name of the testator. A "positive" amendment in the new law is the stipulation that property of the deceased should be registered in the name of the testator immediately after death, and mandating a three-month waiting period before a female can waive her inheritance rights. This is very important because many women lost their inheritance rights because they were immediately approached by male relatives following the death of a relative and asked to sign documents that would waive their inheritance rights without knowing they inherited in the first place.

f- All citizens, including non-Muslims, are subject to Islamic legal provisions regarding inheritance. Under Shari'a as applied in the country, female heirs receive half the amount of a male heir's inheritance, and non-Muslim widows of Muslim spouses have no inheritance rights since she cannot inherit him, and she cannot inherit her children if they are not of the same religion, i.e. the Christian woman does not inherit her Muslim husband, similarly, a husband and children of a Christian woman do not inherit her. A sole female heir receives half of her parents' estate; the balance goes to designated male relatives. A sole male heir inherits both of his parents' property. Thus amendment is needed to cancellation of the provision related to inheritance especially in the case of difference of religion.

g- Retirement Law: Provisions are needed for the woman to combine her inheritor pension, either from a deceased father or husband, with her own deserved pension. Besides that, other amendments are needed in the retirement legislation concerning the marriage of women who receive pensions, since the actual legislation deprives the widow or the daughter from her inherited pension if she gets married.

h- In the Social Security Law two insurances have been included, maternity and unemployment insurance. Maternity insurance increases the involvement of women in the labor market and protects her rights. Such amendments are the response of the legislator to the excuses and justifications presented to dismiss the employment of women in cases of marriage, pregnancy or maternity leave and encourages employers to employ women and as a result promote her role in the labor market. These amendments also extend social security coverage to all citizens (the voluntary insurance scheme) All of these amendments to the law support women's access to property.

2- Challenges and ways to address these challenges:

A- Access to Justice: Judges are the protectors of human rights, and the ones who guarantee adherence to the commitments of a fair trial. They are the ones who achieve justice for the oppressed and tackle injustice and oppressors, deterring those who infringe on the rights guaranteed by the law. The more women represented in the judiciary, the better the chance to take women's needs into consideration when applying the law, because judges are members of society and are affected by the prevailing culture.

- **The Right to Knowledge of Legal Texts and Provisions.** Reports state the fact that four billion people suffer from the absence of legal empowerment and are living outside of the framework of the rule of law in the world. No doubt this is indicative of the great level of seriousness and deficiency in these people's right to legal and institutional knowledge and information that guarantee them the right to access justice. This is important, especially since the rule of law principle is based on the well-known concept that the legal text is a "pretext applicable to all", based on the principle that "ignorance of the law is not a basis". This is a thorny issue that presents a challenge and comprises a basic paradox. Some initiatives sought to provide this service, including the Women Knowledge Network, and the JNCW's "Waraqati" project. In a country like Jordan where the status of women is often less than that of a man, this right to access of knowledge of the law becomes even more difficult.

- **The Right to Access Legal Counseling and Advisory Services.** The provision of free legal counseling and advisory services is considered one of the basic requirements for guaranteeing the right of access to justice. The problem lies in the lack of a prevention culture, in such a way that most people would seek information and advice before being involved in legal problems. The culture of knowledge of the law's provisions is almost totally absent. The science of law is considered, according to the majority of people, complicated and elitist. Rarely are any efforts exerted to simplify the provisions of the law and making related information available to the public. The culture of resorting to specialists is also absent, even for financially competent people. If we add to this the fact that the cost of these professional consultations and their financial burden for large parts of society, especially women, prevent financially incapable people from requesting this service, a problem surfaces that requires specialized studies to investigate its economic, social, and even psychological effects. Its certain results include the loss of rights and an imbalance in justice, along with associated risks on trust, tranquility, safety and peace.

- **The Right to Access Legal Assistance.** Laws have regulated the means for providing legal assistance. However, and in limited and very specific cases, this assistance was absent from many important areas. As a matter of fact, there exists the potential for benefiting from the opportunities available, namely appointing a defense lawyer for financially incapable defendants, in accordance with the provisions of Article 100 of the Jordanian Lawyers Association. Furthermore, the law stipulates that a lawyer must be appointed for defendants facing major criminal charges which require, in case of conviction, the death sentence or life imprisonment with hard labor. The text of the Association's law insinuates, however, that legal advice is available in criminal cases only, although injustices imposed on women specifically, and rights that could be lost, are in other areas as well, such as issues related to Shari'a law, where there is no text of Article 100 because there is no Association for Shari'a lawyers, and because they are not necessarily members of the Lawyers Association.

The JNCW has established the Women's Complaints Office to receive, through various means, women's complaints and transfer them to a wide network of service providers, including legal assistance from non-governmental organizations and professional agencies. The Ministry of Justice's initiative to support this service is considered one of the most prominent aspirations of those concerned with justice for a basic institutional treatment that receives government support in this field. It may be possible as well to demand that the municipalities in the Kingdom provide this service within the parameters of their municipalities free of charge, as a developmental service to the local community.

- **The Right to Free Litigation or at Reasonable Fees and Expenses.** The basic principle is that justice is granted free of charge. Despite this, legal regulations tended to impose litigation fees that were gradually increased, with the excuse of maintaining the serious nature of the trial or litigation despite the fact that those who are financially capable may abuse the litigation right, while those who are financially incapable may lose their right because they cannot afford these fees. The law guarantees the poor the right to apply for deferring the fees. However, the possibility for submitting such a request is faced, on one hand, with the difficulty of proving financial incapability, including the embarrassment this causes for the applicant, especially if she is a woman. This is a very common and disturbing problem in Jordan.

- The Right to Suitable Time Frames for Attaining and Implementing a Fair Ruling.

There is no doubt that slow justice is closer to denying justice than to achieving it. Hence, guarantees are necessary to make sure that decisions are issued within suitable time periods, and that these decisions are actually enforced within a reasonable time and without complications. Hence, refining and distinguishing between laws of principle and laws of enforcement on one hand, and the legal texts that provide room for procrastination, is one of the basic guarantees of the right to access justice, especially when decisions involve children and matters that cannot afford delays, such as alimony, housing, financial rights and others.

B - Women killed in Jordan in the name of family honor. Most perpetrators of such crimes receive a reduced prison sentences because they are deemed by the courts to have committed their crimes while in rage and because their families dropped charges against them. Many of these crimes have nothing to do with “family honor.” In fact, some women are killed over inheritance issues such as if a woman does not relinquish her right to inheritance. So-called honor killings do not derive from religion or Arab tradition. The idea of a family dropping charges in the crimes if committed by family member and as a reason to reduce the sentence must be cancelled.

C - The most important challenge is to secure transparent statistics through a series of quantitative and qualitative indicators that are transparent, national, periodic, classified per sex, age, marital status, and the gender gap in all sectors. This will allow policy makers to have a precise definition of problems and difficulties in order to put forth policies and strategies that are appropriate.

3- Good Practices and Learned Lessons:

- The Jordanian National Commission for Women (JNCW) operates as a national observatory to monitor and assess the situation of women, has established the Women's Complaints Office to receive, through various means, women's complaints in these issues and transfer them to a wide network of service providers, including legal assistance from NGOs and professional agencies. It may be possible also to require municipalities of the Kingdom to provide this service for free as a service to the community development. The efforts of JNCW aim at advancing women in all settings through implementation of Jordan's National Strategy for Women. JNCW strives to improve the status of women, enhance their economic, social and political participation, safeguard their gains, and defend their rights in order to achieve a higher level of social justice and gender equity and to seek to overcome the obstacles facing women's progress. JNCW submits its recommendations and reports to the Prime Minister to take the appropriate measures regarding them.

- Jordanian legislation stipulates the independence of financial capacities between men and women, husbands and wives.

- A major achievement in the new Jordanian personal status law: the Khuloe (consensual divorce). Prior to this, Jordan's legal system used to allow only men to file for divorce, but now Jordanian wives successfully have the right to file for divorce. According to the Khuloe law, in the absence of adequate reasons and without providing any justifications, the wife will return her

dowry and she will waive the deferred dowry, and forsake any right to alimony. If the judge cannot reconcile the couple, the woman is granted a divorce. This improves the status of women who used to practice the renunciation of their property and other rights in order to get divorce. Some husbands used to make such renunciation a condition to divorce wives.

- The Jordanian civil law: This legislation states a positive provision in the interest of women in Jordan: the law states that if a man exercised undue influence or any other kind of duress over his wife to conclude a juridical action or waive her property rights these actions are considered to be void.

- Trade Law: To avoid the effect of the husband's bankruptcy on the women's real estates, Jordanian Trade Law protects women's property whereby it provides that: "if the man goes bankrupt, his wife recovers her real estates and movables, upon proving that these were her property prior to marriage, or she bought them with her own money, provided she proves the source of these funds." Then she can recover the properties she bought during the period of her marriage.

- Property of the deceased: mandating a three-month waiting period before a female can waive her inheritance rights as mentioned before.

- Personal statute law granting women the right, upon conclusion of a marriage contract, to add any condition to the contract unless contrary to the provision of law which ensures her rights, especially her rights of private property.

- Parliamentary Election Law & Municipality Law: A quota system has been implemented whereby 25% of municipal council seats are dedicated for women, and 15 seats reserved for women in the parliament and the ability to run the election for the rest of the seats. These laws encourage women to run for both Parliament and municipal elections. This will help the representation of women in decision making bodies. Jordanian women, however, need to continue their progress to reach 30% percentage, which is considered the minimum level that guarantees fair representation of women.

The right to housing: This right will be analyzed during the marriage and the dissolution of the marriage.

- Recognizing the housing right during the marriage:

It is important that the legislation guarantees the right to housing. Thus the Jordanian legislator states that if one of the spouse signs a lease contract, both spouses will be considered as joint holders over the lease contract. This right also persists even if the marriage took place after signature of the lease contract. However, the question is to know whether the spouse who signed the contract is entitled to rescind the lease contract solely. Unfortunately the Jordanian legislator didn't prohibit this act. This means that the women risk losing their housing right if the spouse decides to rescind or amend the lease contracts without her permission.

- Recognizing the housing right after the dissolution of the marriage:

a. The dissolution by divorce. The dissolution of marriage ends the housing right of the divorced woman. This unfortunate solution is compensated by the right to have a sum of money to be equal to a rent depending on the wealth of the spouse.

Law entitles family members of the tenant who lived with him in marital residence, upon his death to continue living in it for a period of three years from the date of death, and the lessor for the purposes of the other purposes like exercising trade shall continue to the heirs of the tenant for a period of six years.

b. The situation is different if the spouse is the owner of the marital residence. The death of the owner will give the other spouse the right to stay in the marital residence in counterparty of paying a rent to the rest of the inheritances.

Personal statute law protects the right of women in housing and states that:

- The husband has no right to let his family and relatives live in the marital residence without the approval of his wife and she can reverse her approval if she does not want their presence in the house.

- The wife has the right to stay at the marital home after divorce and during the waiting period, which is 130 days, until divorce becomes definitive for both spouses

- Impose a housing rental home custodial parent of the child by the ability of person who has to pay alimony upon his wealthy or property from the date of the demand.

- The mother who has the custody of the child has the right of alimony from the children's father equivalent to the expense of the rent of a house.

The Dowry: An access to Property

Marriage under personal statute law is governed by the marriage contract, which, like any other contract, is a binding offer and agreement that gives rise to reciprocal rights and obligations. Thus, if the contract is valid then mutual inheritance is established. The husband has a unilateral right to no-fault divorce. One of the most important rights guaranteed by contract is the right to receive a dowry from her husband of money or goods (usually jewelry). Dowry is one of the pillars of the contract owed whether or not it is specified in the marital contract even if the marriage contract or other document contains a written agreement by the wife to forego dowry.

The realities of life in Jordan are such that the dowry is the only independent source of wealth to which most Jordanian women have access. Inheritance laws favor male heirs, and legal and social norms minimize female labour force participation. Thus, dowry remains a potentially critical element in the balance of rights and duties between the spouses. In addition, several larger socio-economic changes have increased the importance of the dowry in women's lives. The emphasis on wage labor has decreased possession of productive assets such as land, making it less likely that women will receive productive property as gifts, dowry or inheritance. Instead of viewing women's work as productive and adding value to the economy, a woman's role is seen

as that of a consumer, and as such women can be entirely dependent on their husbands for alimony.

In Jordanian society, the size of the dowry can help to empower a woman by giving her extra resources. If dowry was eliminated, this resource would remain in their husbands' hands, and wives would lose control over how and when (and on whom) the equal amount would be spent. This dowry may also limit polygamy as it must be paid for each wife.