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List of Abbreviations:

ACHR	American Convention on Human Rights
AfCHPR	African Charter on Human and Peoples' Rights
AfCOMHPR	African Commission on Human and Peoples' Rights
AfCtHPR	African Court of Human and Peoples' Rights
AP	Additional Protocol
Art.	Article
ASEAN	Association of Southeast Asian Nations
CCPR	International Covenant on Civil and Political Rights
CESCR	International Covenant on Economic, Social and Cultural Rights
CFS	Commission of Food Security
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
ESCR Committee	Committee on Economic, Social and Cultural Rights
FAO	Food and Agricultural Association
FAO/HLPE	High Level Panel of Experts on Food Security and

	Nutrition
IAComHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
NGO	Non-Governmental Organisation
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN-Habitat	United Nations Human Settlements Programme
UNHCHR	United Nations High Commissioner for Human Rights
US	United States
v.	versus
WFP	World Food Programme
WHO	World Health Organisation

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1 Introduction

1.1 Research Interest:

The underlying research interest of this Master Thesis is centred about the right to property, especially in connection to women's land rights. By examining women's property rights, I wanted to explore how property rights are implemented in legal frameworks and, furthermore, how women practically have access to these property rights. Being aware that a lot of international and national legal systems already have implemented and adopted laws which have the target of supporting and enforcing women's land and property rights, I wanted to research if there exist a certain discrepancy between these laws and the actual experience and practice in real and everyday life. Assuming that I would come to the conclusion, that there is a remarkable difference between the specific legal systems that should be applied in the respective case and the reality of women's actual practised property rights, I wanted to explore the relevant parameters which induce such a situation and how they could be prevented in the future.

The fact that my Master Thesis, in reference to property rights, is dealing in particular with the land rights of women, is due to my perception, that "land" seems to be the most valuable source of property for women, therefore my research interest in this thesis is focused on the linkage between women's property rights and "land" as such.

I started my studies by a consideration of the Right to Property and its implementation in legal frameworks worldwide, further advancing to the exploration of women's land and property rights. My specific research interest is concentrated on the realisation of the right to Property in matrilineal societies, as there are several indicators existing, which

subscript that women's land and property rights have a higher chance of being realised and practised in these societies.

When examining the implementation of the Right to Property in matrilineal societies, I decided to consider societies in Africa and Asia, subsequently comparing them and looking at the similarities as well as at the differences, and finally, which conclusions might thereby arise.

Referring to Africa, on the one hand I chose Malawi as a country where there is a coexistence of matrilineal as well as patrilineal societies, this enabling me to compare these two forms of society, especially regarding the differences in the realisation of the property rights of women. Additionally, I opted for a survey of the Yoruba women in Nigeria, the Yoruba actually being a patriarchal and patrilineal society, however women being granted the possibility to obtain property and land for themselves, to which their husbands have absolutely no claim, this being a clear modification from the usual patterns in patriarchal societies in Africa.

Concerning Asia, I examined and compared the two countries of Nepal and India, thereby especially looking at the influence that women exercise also in reference other Human Rights, such as the Right to Health and the Right to Food. Regarding the Right to Health and its linkage to the Right to Property, I conducted my research under two different angles. First, I looked at the quite obvious relation, meaning if there is a traceable link between an extensive realisation of women's property rights and the women subsequently supporting health initiatives or food supply for their family and children in an increasing way. Secondly, I examined the issue of marital violence in India and its connection to women's property status, moreover the assumption that women without any land

ownership face an increased risk of physical violence, whereat the ownership of immovable property tends to reduce the risk of marital violence in a significant way.

By examining the realisation of women's property and land rights in matrilineal societies, and comparing them to patrilineal societies, I want to research, if matrilineal societies are more advanced in reference to the implementation but also actual exercise of property rights of women. Furthermore, I wanted to explore how such a realisation contributes to the overall goals of empowerment and development of women, more concretely, if an extensive implementation of the Right to Property serves as an empowerment indicator regarding women's advancement.

Alike, a specific interest of mine was to investigate if there is also a detectable direct linkage between the compliance of the Right to Property and other Human Rights, especially the Right to Adequate Housing, the Right to Food and the Right to Health.

1.2 Hypothesis:

Does an extensive implementation of the Right to Property in Matrilineal Societies promote the Empowerment of Women and if so, in which ways exactly?

Additional Research Question:

Is there any linkage detectable between Women's Property Rights and the realisation of other Human Rights? Especially the Right to Adequate Housing, the Right to Food and the Right to Health?

2 The Right to Property:

2.1 Historical Background:

Antiquity:

The origin of the Right to Property goes back as far as to ancient Greek times, Aristotle already pointing out the ongoing conflict between the rich and the poor, constantly struggling and combatting about economic wealth and prosperity. The rich people always trying to deprive the poor people of their rights, the poor therefore always fighting to expropriate the rich of their fortune and resources. Due to this never-ending struggle around power and predominance among the people of ancient times, the relevance of property was comprehensible a very strong one. The Laws of Antiquity, Greek as well as Romans, stipulated in this context that the body of a debtor who could not pay his debt would therefore become the property of his creditor¹.

Equally, the debate about the issue of collective property versus individual property, one of the major challenges when dealing with the Right to Property, reaches back to ancient times. Plato, in his work the Republic, introduced the concept of altruism, which required the ruling class to abandon all their property and personal possessions in order to achieve a society where greed and enviousness no longer played a role. Plato's idea also demanded from the Rulers of the state to resign from their private homes and families, as their focus of concentration should be solely on the governing of the State². The requirement not only to abandon personal property, but also family life has its significance in the fact, that the Greeks regarded family as property- run property,

¹ Aristotle, *Politics*, National Culture Publishing House, 1924, pp 234 ff., cited in I. C. Rujan, 'Considerations Regarding the philosophical concepts of ownership', *Research and Science Today*, Targu-Jiu 2, Nov. 2014, p. 168.

² Platon, *The Republic*, Scientific and Encyclopaedic Publishing House, 1986, cited in I. C. Rujan, p. 168.

therefore the abandoning of the family was essential, if all property should actually be disestablished³.

Plato therefore argues that all property should be abolished, as it is perceived from his perspective, as the root-cause for all struggles and disagreements between classes and peoples, whereas Aristotle has the exact opposite view on property- therefore defending it, as well as pointing out that if the things which exist on earth are to be used due to their real purpose, someone must feel the urge to take care of them, respectively must own them⁴.

Age of Enlightenment:

In his work “The origin of Inequality among People” the well-known writer Jean-Jacques Rousseau made a famous remark:

The first man who enclosing a plot dared to say that it is mine and he found people quite stupid as to believe it was true, that was the founder of civil society. How many crimes, wars, murders, how many miseries and horrors would have spared mankind the man who taking off the pegs or plugging the ditch, would have shouted to his fellows: beware to listen to this imposter, you are lost if you forget that the crops belong to all and that the land is not no man’s land⁵.

³ Platon, *The Republic*, Bucharest, Scientific and Encyclopaedic Publishing House, 1986, cited in I. C. Rujan, p. 169.

⁴ Aristotle, *Politics*, National Culture House, 1924, p. 21., cited in I. C. Rujan, p. 169.

⁵ O. Ungureanu, C. Munteanu, I.C. Rujan, *The Historical evolution and philosophical, legal, sociological and theological foundations of property on land*, Romanian Pandects, No. 5/2005, pp. 122-123, cited in I. C. Rujan, p. 170.

Utilitarian Conception:

The utilitarian conception argues that, although the principle of ownership is not given by nature, if an individual person has been able to obtain a good without harming anyone else, this person should be subsequently able to enjoy it⁶.

2.2 Social and political aspects of the Right to Property:

When dealing with the right to property one has to take into consideration the fact, that the point of view of states regarding property rights, depends to a very high extent on their specific historical background as well as their economic and political structure. States which are orientated towards the concept of a market economy will understandably take a more liberal position with regard to property rights, whereas countries following a command economy will have a more social democratic approach. Till this day the perception of the concept of property, and therefore the question of its protection, are very closely linked to the prevailing political position of the respective state⁷.

One of the major considerations regarding a legal protection of a right to property has always been the fact that property, as well as wealth, even nowadays in many countries, is a privilege of rich minorities, a lot of people not even having access to any property or land at all. Taking this into account, many states do not see a necessity for protecting a right to property, while there are still so many more human rights issues to settle⁸.

⁶ I. C. Rujan, 2014, pp. 170-171.

⁷ T. Allen, 'Liberalism, social democracy and the value of property under the European Convention on human rights', *International and Comparative Journal Quarterly*, 2010, 59, pp. 1055-1078, cited in P. van Molen, 'Human rights law and land surveyors', *Survey Review*, vol. 48, no. 346, January 2016, p. 54.

⁸ F. Chevenal, 'Property rights as human rights', In: De Soto and F. Chevenal, eds., *Realizing property rights*, Zürich, Switzerland: Rüfer & Rub, 2006, cited in P. van Molen, p. 54.

In Africa there are still 40-60% of the population landless, while in Asia 60-80% lack any property of land at all⁹. According to the United Nations Human Settlements Programme (UN-Habitat) currently one billion of the world population are faced with a situation of inadequate housing, additionally 800 million are dwelling in slums¹⁰. When taking a closer look at the issue of interferences and infringements by states, it turns out that only in the years 2007 and 2008 over 4 million people were affected by forced evictions¹¹.

2.3 The Right to Property in International Human Rights Law:

The Right to Property, in reference to its inscription in international treaties, appeared to be a quite controversial and highly contested right from its beginning on. During the drafting process of the Universal Declaration of Human Rights (UDHR) the participating member states argued in particular about the exactly meaning of the word “property” and in which ways it should be protected and included in the Declaration. Finally Article 17 of the UDHR stipulated:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

Nevertheless the Right to Property was not mentioned in the subsequent two international covenants, the International Covenant on Civil and Political Rights (CCPR) and the International Covenant on Economic, Social and Cultural Rights (CESCR), which were

⁹ International Food Policy Research Institute (IFPRI), *The world's most deprived*, Washington, DC, USA: IFPRI, 2007, cited in P. van Molen, p. 54.

¹⁰ UN/Habitat, 2008, *State of the world's cities*, Nairobi, Kenya: UN/Habitat, cited in P. van Molen, p. 54.

¹¹ Centre on Housing Rights and Eviction (COHRE), *Global survey on forced evictions 2007-2008*, Geneva, Switzerland: COHRE, 2009, cited in P. van Molen, p. 54.

intended to be a binding follow-up to the UDHR, elaborating on the prementioned rights. Despite this not quite fully accomplished mission in regard to the protection of a right to property, the national and local protection of the right to property is quite multifaceted¹².

In Europe, Article 1 Protocol No. 1 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) states

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by the law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties¹³.

Obviously, the ECHR had the intent to protect not only the property of natural persons but also the property of legal persons, as it refers explicitly to the term “legal person”. In this regard the ECHR differs from the American Convention on Human Rights (ACHR), which intended for quite a long time only to protect the property of natural persons, thereby excluding the protection of property of legal persons at all. Although the European Court of Human Rights (ECtHR) abstained from enunciating an exact definition of the term “property”, the above mentioned Article 1 Protocol No. 1 contains quite a broad spectrum in reference to property, including not only material but also immaterial assets, such as shares of stock, intellectual property rights, claims to money, good will, licenses as well as claims to social security benefits. The Inter-American Court

¹² P. van Molen, 2016, p. 51.

¹³ U. Kriebaum: *Right to the Protection of Property in All Human Rights for All*, M. Nowak, K. M. Januszewski, T. Hofstätter, nwV, 2012, p. 402.

of Human Rights (IACtHR) in opposition provided a definition of property, as it is stated in Article 21 ACHR, in the *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* case

“as those material things that can be possessed, as well as any right which may be part of a person`s patrimony; that concept includes all movables and immovables, corporal and incorporeal elements and any other intangible object capable of having value”¹⁴.

Considering Africa, a specific historical background has to be taken into account, composed of imperialism and only a newfound independence, many natural resources still belonging to the colonisers. In addition also religious rules and customary traditions were and still are of great importance when it comes to the issue of land rights in Africa. Despite the frictions between foreign and local powers in regard to the matter of private property rights, finally Article 14 in the African Charter on Human and People`s Rights (AfCHPR) was adopted, stating that

the right of property shall be guaranteed, it may only be encroached upon in the interest of public need¹⁵.

In regard to Asia, the Association of Southeast Asian Nations (ASEAN) agreed only in the year 2012 on a Asian Human Rights Declaration, which included under the headline of civil and political rights Article 17, which declared

¹⁴ *ibid*, , pp. 401-402.

¹⁵ P. van Molen, p. 52.

every person has the right to own, use, dispose of, and give, that person's lawfully acquired possessions alone or in association with others; no person shall be arbitrarily deprived of such property.

The phrasing of this Article created a lot of reluctance and concern from the beginning on, due to the fact that the protection of rights, specifically the right to property, was linked to the compliance of duties, backgrounds, national security and public morality, therefore undermining the concept of unconditional protection¹⁶.

2.4 Compliance and fulfilment under International Human Rights Law:

The observance and the fulfilment of human rights is an assignment of the monitoring bodies, as well as the courts of justice which are established due to the international human rights treaties. As a result, the process of the further development of human rights laws and standards and its interpretation is an evolutionary one.

When concerned with the interpretation of the right to property, the IACtHR pays major attention to the rights of indigenous peoples in regard to their ancestral lands and cultural identity, thereby confirming their property rights against infringements of the state (*Kichwa People v. Ecuador* 27 June 2012 C/245, *Xakmok Indigenous Community v.*

¹⁶ P. van Molen, p. 52.

Paraguay 14 August 2010 C/214, Yakye Community v. Surinam 6 February 2006 C/142, Maoiwana Community v. Surinam 8 February 2006 C/145, and cases under procedure Kundu Indigenous People v. Panama 12.354 and Kalina and Lokono People v. Surinam 12.369).

The African Commission on Human Rights (AfComHPR) was in the beginning quite reluctant to deal with the matter of property rights- especially in the context of indigenous peoples, although there exist some important decisions like the “Ogoni” case (*The Social and Economic Rights Action Centre v. Nigeria 155/61*) in 2001 as well as the “Endorois” case (*Centre for Minority Rights Development v. Kenya 276/03*). One of the major problems when dealing with the appliance of the right to property is the conflict between the protection of individual/private and communal/collective property. The AfComHPR as well had their problems with this matter, Article 14 of the AfCHPR mainly focusing on individual private property. The AfComHPR nevertheless stated that also communal land rights must be considered as property¹⁷.

The European Court of Human Rights (ECtHR) in contrast has produced so far quite extensive case law dealing with property rights, despite the fact that the right to property is not included in the Convention itself, but only in article 1.1. of the Protocol. Until the year 2010 the ECtHR has decided on not less than 2215 cases dealing with property rights, even recognising the rights of states to deprive people of their property under certain conditions¹⁸.

¹⁷ *ibid*, p. 53.

¹⁸ *ibid*, pp. 52-53.

Interferences or expropriations can occur in different situations like for example nationalisations which effect whole industries; socialisations which effect the system of private ownership or confiscations involving a punitive element. These infringements or interferences concerning the right to property are only justified under very tight conditions- the deprivation therefore has to be due to a certain public or social interest, in accordance with national and international law and additionally it has to be proportionate in regard with the aimed public interest¹⁹.

Concerning the criteria of public or social utility, the ECtHR has the attitude that the individual member states are obliged to decide what is in the public interest. Nevertheless there are decisions where the ECtHR decided that the public interest is not sufficient or existent (*Tregubenko v Ukraine* and *Burdov v. Russia*). The most important requirement regarding the ECtHR is the one of lawfulness, as infringements of the right to property have to be based on laws that must be sufficiently accessible, precise and foreseeable (*Lithgow and Others v. the United Kingdom*). Arbitrary deprivations have to be prevented by all means and procedural safeguards have to be installed to act upon this matter (*Hentrich v. France*). Additionally the balancing of interest between the public or social interest and the rights of the individual has to demonstrate clearly, that the utility of the community in this special case is to be valued higher than the interest of the individual to the peaceful enjoyment of his property. The criteria of fair and just compensation for the suffered interference or expropriation is not a simple one as the ECHR itself does not specifically mention a guaranteed compensation, nevertheless due to the above mentioned principle of proportionality, an expropriation of property can only be considered as proportionate if the supplied compensation resembles a comparable value of the deprived property. However the compensation is not always obliged to reach the market value, as

¹⁹ *ibid*, p. 53.

also compensations of a reduced level might be justified in cases where the aspired objective is linked to economic reforms or social justice²⁰.

Analysing possible state obligations, which might arise in the context of the protection of property rights, positive obligations might require the state to establish a legal framework which enables people to acquire property without discrimination and in accordance with their culture, thus also being protected against interferences of third parties. Such measures might include the implementation of land reforms, as well as the regulating of land administration. On the contrast, negative obligations might demand from the state to refrain from forced evictions and excessive land use control²¹. However the fact that a state might be bound to undertake several measures in order to fulfill its positive obligations on the grounds of international human rights law, does not mean that the state has to provide every person with sufficient housing, as the state is among other things, only obliged to eliminate discrimination in connection with access to property and land rights, but is not obliged to “supply” people with property itself²². Although Human Rights regard usually only the relationship between individuals and the state, and not among human beings themselves, also this kind of violations or interferences might be considered as a human rights matter in cases when the respective state failed to realize and implement regulations and guidelines properly²³.

When investigating, if the right to property should be subsumed under civil and political rights or economic, social and cultural rights, it becomes quite obvious that only the latter applies, as states, as bevor-mentioned are not obliged to supply everybody with a piece

²⁰ U. Kriebaum, pp. 403-405. in *All Human Rights for all*.

²¹ J. Mchangama, *The right to property in global human rights law*, CATO Policy Report, May/June 2011, cited in P.van Molen, p. 55.

²² UN/Habitat, *The Right to Adequate Housing (reprint from 2009)*, Fact Sheet No. 21, Nairobi Kenya: UN/Habitat, 2014, cited in P. van Molen, p. 55.

²³ J.-F. Akandji-Kombe, *Positive obligations under the European convention on human rights*, Human Rights Handbook No. 7., Strasbourg, France: Council of Europe, 2007., cited in P. van Molen, p. 55.

of property or even land, but are only obliged to implement policies which ensure an access to property being free from discrimination due to gender, age, race and religion²⁴.

2.5 The Right to Property and its linkage to the Right to Adequate Housing and the Right to Food:

Similar like the right to property, also the right to adequate housing is not considered a civil and political right, meaning that the states cannot be held responsible for supplying their citizens with houses. The Right to adequate housing is rather a social right, requiring the states to develop policies and implement strategies to support and promote adequate housing. An exception to this perception applies in the case of emergencies- floods, earthquakes, (civil) wars and conflicts, where the state is responsible to create emergency shelters for its people due to positive obligations. In the same manner as infringements of the right to property are only justified under the fulfilment of certain criteria, also interferences with the right to adequate housing have to be subject to the provisions provided for by the law and by the general principles of international law, examples being forced evictions due to public or social utility or expropriations of peoples who are not paying their rents²⁵. As all Human Rights are considered universal, indivisible, independent and interrelated, this also applies to the linkage between the right to property and the right to adequate housing, as access to land is, in a traceable way, essential for the effective realization of the right to adequate housing²⁶. Due to this close connection between access to land, adequate housing and control over land, some human rights

²⁴ P. van Molen, p. 55, cited in P. van Molen, p. 55.

²⁵ P. van Molen, p. 56.

²⁶ H.M. Jacobs, 'Private property and human rights: a mismatch in the 21st century?', *International Journal of Social Welfare*, 22(Suppl. S1), 2013, pp. 85-101., cited in P. van Molen, p. 56.

theorists are therefore promoting a “human right to land”, as the right to adequate housing, without sufficient security of the access to land is quite worthless in this context²⁷.

As already mentioned above, there is also a very close relation between the right to property and the right to food, as people overall in the world are relying on “land” to supply themselves with sufficient food in order to prevent malnutrition, famine and diseases, therefore without an access to land, there is also no guarantee of the fulfilment of the right to food²⁸. Roughly one billion people are currently suffering from malnutrition and food shortage, this one billion is composed of 300 million small farmers, 200 million landless agricultural workers, 200 million people living in the urban slums in the cities, and 100 million other people living in rural areas²⁹. The Commission of Food Security (CFS) of the Food and Agriculture Organization of the United Nations (FAO) adopted in the year 2012 a Global Strategy for Food Security and Nutrition, with the purpose of establishing a legal framework which enables especially vulnerable groups like women and small-scale farmers access to land ownership and natural resources³⁰. This framework should not only include the possibility to acquire land, but should also guarantee people access to forests and fisheries, thereby referring to the Voluntary Guidelines on Responsible Governance of tenure, which pursuits the target of realising food security for everyone³¹. The strategy of the CFS as well as the guidelines are closely linked to the General Comment No. 12, passed by the Committee on Economic, Social and Cultural Rights (ESCR Committee), which monitors the CESCR. This Comment

²⁷ J. Gilbert, 2013, ‘Land rights as human rights: the case for a specific right to land’, *International Journal on Human Rights*, 10(18), pp. 114-227, E. Wickeri and A. Kalhan, 2010, ‘Land rights issues in international human rights law’, *Malaysian Journal on Human Rights*, 4(10), pp. 16-25, cited in P. van Molen, p. 56.

²⁸ J. Gilbert, 2013, ‘Land rights as human rights: the case of a specific right to land’, *International Journal of Human Rights*, 10(18), pp. 114-227., cited in P. van Molen, p. 56.

²⁹ R. Künemann and S. Epal-Ratjen, 2004, *The right to food: a resource manual for NGOs*, Washington, DC, USA: FIAD/AAAS Science and Human Rights Program, cited in P. van Molen, p. 56.

³⁰ FAO, 2013, *The human right to adequate food in the global strategic framework for food security and nutrition*, Rome, Italy:FAO, cited in P. van Molen, p. 56.

³¹ FAO, 2012, *Voluntary guidelines on the responsible governance of tenure of land, fisheries and forests*, Rome, Italy: FAO., cited in P. van Molen, p. 56.

focuses on the purpose to establish, particularly for women, access to economic resources, especially guaranteeing the right of inheritance and ownership of land (article 26 of the Comment)³².

Furthermore there is a problem of growing land market pressure, due to the fact that already 50-80 million hectare worldwide have been already acquired by investors, additionally land rights of the local population very often have not been secured and documented yet in a proper way. This allows governments to believe that they are still the owners of the respective land, subsequently enabling them to deprive people easily of their property³³. The High Level Panel of Experts on Food Security and Nutrition of the FAO (FAO/HLPE) argues that in order to prevent this kind of dispossessions and evictions, it is crucial that states assist people with the matter of registrations concerning their property and land rights, thereby ensuring land security for their citizens and allowing them to have a better negotiation position regarding foreign investors and the government itself³⁴.

Property Rights, whether they are with regard to land, forestry or water, are usually defined on two levels: access to the resource and ownership of the resource. The usual ways to acquire property are mainly cash purchase, inheritance or government initiatives and policies, such as anti-poverty strategies or policies with the aim of redistributing wealth in a certain area or region. Besides these ways to acquire property, which are provided for by the law, there exist in many countries and cultures also other- tacit- ways, like the planting of trees in open areas or on the contrary, the clearing of trees in forested areas, by which people can obtain land rights. Their cash investment or labour

³² P. van Molen,, p. 57.

³³ High Level Panel of Experts on Food Security and Nutrition (FAO/HLPE), *Land tenure and international investments in agriculture*, Rome, Italy, 2011, cited in P.van Molen, p. 57.

³⁴ P. van Molen, p. 57.

contribution is perceived by other people as a declaration of property of the respective resource or piece of land. Equally also the use of a certain resource over some time may qualify as acquirement of property³⁵.

³⁵ R. S. Meinzen-Dick, L. R. Brown, H. Sims Feldstein et al, 'Gender, Property, Rights, and Natural Resources', *World Development*, vol. 25, no. 8, 1997, p. 1307.

3 Matriarchy and Matriliney:

The word “matriarchy” derives from the Greek word “arche”, meaning on the one hand “beginning” as well as “domination”. There exists a male biased, more colloquial, connotation of matriarchy meaning “domination by the mothers”, experts doing research in this field however stick to a more profound meaning- “the mothers from the beginning”³⁶.

When analysing the structure of matriarchy as well as of matriarchal societies, one has to examine three different levels: the economic level, the social level and the cultural level. Investigating the economic level, it is very obvious that matriarchal societies are very egalitarian organised, as goods are distributed due to consistent and transparent rules, which are based on the principles of equality and lawful dispersal. Practically speaking this means, that goods are distributed according to the lines of kinship and the patterns of marriage, additionally taking care of the fact that this too is a fair-minded procedure, not leaving a person without sufficient nourishment. As a result, matriarchal societies are very often perceived as “reciprocal” societies. The main economic sector in matriarchal societies is agriculture, ranging from gardening, over ploughing but also irrigation systems. Concerning the social level, the significance of the terms “matrilinearity” and “matrilocality” plays a major role when describing the essential criteria of a matriarchal society. Matrilinearity means the tracing of descent through the female line, implying the fact that names, political titles, property and social positions are passed on through the mother/female line of a society. Family life in matriarchal societies is organised in the way that people usually live together in big clans, consisting of the clan-mother, her

³⁶ H. Göttner-Abendroth, Matriarchal Society: Definition and Theory, published in *The Gift, A Feminist Analysis*, Athanor book, Meltemi editore, Roma 2004, p. 3.

daughters and granddaughters as well as the directly related man- the brothers of the mother, her sons and grandsons. Matrilocality refers to the fact that even when they marry, the daughters and granddaughters never leave the house of their mother, therefore everybody, including the husbands, staying in the clan-house. In addition to the features of matrilinearity and matrilocality, what really defines a matriarchal society in comparison to just matrilineal societies, is the fact that women have the power over distribution of food and other resources, thereby controlling the essential economic factors of their society³⁷. The process of political decision making is organised similar to the process of the distribution of resources- everybody participating in an egalitarian way, the discussion process of relevant matters usually taking place in a clan-house, excluding no member of the household. The decision itself is made due to the principle of consensus, with discussions in a village lasting as long, until a regional agreement is reached. Thus a concentration of power is prevented, without anybody dominating or suppressing another one³⁸. Concerning the cultural level, matriarchal belief is centred around the concept of rebirth, people believing that they will return in their next live to exactly their same clan. Furthermore sexes are considered as totally equal, with no sex being superior to the other, therefore the above mentioned, sometimes used, translation of matriarchy as “domination of mothers” being totally incorrect.

In a nutshell, matriarchal societies can be characterised as non-hierarchical, horizontal societies of reciprocity based on the principles of consensus and equality³⁹.

³⁷ H. Göttner-Abendroth, , p. 5.

³⁸ H. Göttner-Abendroth, , p. 6.

³⁹ H. Göttner-Abendroth, , pp. 7-8.

4 Women's Rights to Property, Land and Adequate Housing:

Women all over the world, but especially in South-Asia and Africa, very often lack actual access to land, this hindering them from the full enjoyment of their human right to property and as a result very often also from their human right to adequate housing. Hence, a vast majority of women, particularly in developing countries, are living in sub-standard houses, in informal settlements or even slums. Roughly one third of women worldwide are currently homeless or living in inadequate housing and approximately an estimated 41% of women headed households live below the poverty line. Due to this unstable environment, women are often faced with a lack of land tenure security, as a consequence leading also to the endangerment of their right to food, as many people are depending on their right to land in order to supply themselves with sufficient nourishment⁴⁰.

The connection between women and land rights very often is linked to the family relations of a women, especially to their male relatives, as this is in most cases their major and only possibility to gain access to land and to acquire property, as women frequently cannot afford to buy land on their own. As a result women are critically depending on good marital and family relations to practice their right to access, obtain, own, control or inherit land but are additionally also facing an increased risk of deprivation of property and dispossession. This derives from the fact that many cultures consider a widow no longer as a part of their family, therefore very often evicting the widow from the land and leaving

⁴⁰ M. Benshop, 'Women's Rights to Land and Property', *Commission on Sustainable Development*, 22 April 2004, Women in Human Settlements Development- Challenges and Opportunities, p. 1.

her homeless⁴¹. Another reason which endangers women's adequate access to land is the circumstance, that when a man takes a second or third wife, he is sometimes not able to support both wives, this leaving the first or second wife without any sufficient accommodation. Unemployment in rural areas occasionally leads to men migrating to bigger cities in search for work, thus leaving the women and children landless behind⁴². As above mentioned, this subsequently also leading to food insecurity, as many people are depending strongly on land for their livelihood. When examining the relation between man and women in regard to food supply and nourishment, there exists evidence, that women, especially in poor households, spend more of the financial resources of a family on food, while men tend to spend the family income on alcohol and tobacco. As women, especially in Africa, also are more inclined to engage in the actual work in the fields, thereby supplying their families, women actually are food security themselves⁴³. Apparently there is direct linkage between land insecurity and food insecurity evident.

In addition to problematic family structures, women are also affected more than men by actions and strategies of the government and state authorities, such as forced evictions, resettlement schemes, slum clearance and development projects. A particularly cruel but also often used instrument during the course of evictions is rape, with the intended purpose of forcing the women out of their homes and villages. Another factor contributing to the problem of land insecurity are armed conflicts or wars, often affecting the most vulnerable groups of a society, such as women and children, thereby destroying families, homes and whole communities⁴⁴.

⁴¹ *ibid*, p. 1.

⁴² *ibid*, p. 2.

⁴³ Bina Argawal, *Are we not peasants Too? Land Rights and Women's Claims in India*, Population Council, 2002, p.4., cited in M. Benshop, p. 2.

⁴⁴ *ibid*, p. 2.

Also religious rules and customary laws of a society play a role with the regard to women's property rights, as they often tend to discriminate women, impeding their access to land and hindering their rights to purchase, inherit or own land⁴⁵.

Concerning financial resources, women usually tend to lack access to credits, as there is still nowadays the male believe predominate, that women are not able to pay back a credit or in the beginning lack the essential requirement of a collateral⁴⁶. The pre-condition of the consent of the husband, which is in many countries still necessary to grant a women a loan, hinders the development and empowerment of women additionally.

The UN Special Rapporteur on Adequate Housing sums the situation of women in reference to their rights to property, land and housing up as follows:

In almost all countries, whether “developed” or “developing”, legal security of tenure for women is almost entirely dependant on the men they are associated with. Women headed households and women in general are far less secure than men. Very few women own land. A separated or divorced women with no land and a family to care for often ends up in an urban slum, where her security of tenure is at best questionable⁴⁷.

When taking a closer look at the underlying root-causes which still hinder women to enjoy their human rights to land and property, one has to distinguish between the international level and the regional and local level. On the international human rights level women are

⁴⁵ *ibid*, p.2.

⁴⁶ UN Special Rapporteur on Adequate Housing, *Study on Women and Adequate Housing*, E/CN.4/2003/55, April 2002, p. 9, available on <http://www.unhcr.ch/housing>, cited in M. Benshop, p. 2.

⁴⁷ M. Benshop, p. 2.

already granted full access to their rights concerning property, but on the regional level these rights are very often not realised properly due to a bunch of reasons⁴⁸.

One of them being the existence of discriminatory laws and policies, which are still being defended and supported in many countries by the help of patriarchal structures. Even in cases when international laws and principles have been implemented into national law, they are often not executed completely, as old prejudices and opinions are still prevailing among judges, police officers and local councillors, misleading them to interpret these law in a way which discriminates women once again⁴⁹.

Another important factor which influences women's rights to land and housing in a negative way, is the lack of proper registration and documentation of formal land titles. In times when land rights were not individualised and undergoing privatisation, land tenure belonged to communities, women therefore having indirect access in a practical way. With the ongoing trend towards individualisation, land titles were mostly registered in the name of the husband, women being excluded from this formal procedure. As a consequence women are left without any formal entitlement regarding their land and property, sometimes facing tragic consequences. In the case of the death of the man, the property falls to the family of the husband, which often choose to evict the wife. In the case of a divorce, similar problems can arise for the women, as the land and the belonging proceeds, solely fall to the husband, if the couple did not choose a joint registration from the beginning⁵⁰.

⁴⁸ M. Benshop, p. 3.

⁴⁹ M. Benshop, p. 3.

⁵⁰ M. Benshop, p. 3.

Colonialism, increasing privatisation, land market pressure and the widening gap between rich and poor have contributed to the deterioration of the relation between women and their property rights⁵¹. Additionally there exists still in many countries worldwide a persistent lack of gender and human rights awareness, among men as well as women, traditional customary attitudes, values and attitudes blocking the way to a new and non-discriminatory legal framework which would be in accordance with international human rights principles and strategies. The absence of women regarding decision-making bodies also impedes the development and empowerment of women, as it would be very crucial to include a female point of view in the implementation and policy-making process to counter the male bias. Initially it would be a very important step to provide as many women as possible with all the legal information and resources concerning their actual rights, but also training them in regard to self-confidence and power, so that they have the means to claim what they are legally entitled to⁵².

4.1 The Relation between Gender Differences and Property Rights:

For quite some time, increased attention has been paid to the relation between gender asymmetries and property rights in reference to the parameters of environmental sustainability, economic growth, equity of resource distribution and empowerment of resource users. In the beginning stands the prediction that security of land tenure is required in order to guarantee that women are likely to invest into their specific piece of land. If women have to fear that their investment, in the long run, because of an increased productivity, might lead to deprivation of property, women understandably would be more reluctant to invest into their specific piece of land due to the poor perspective. Land tenure security therefore is a major precondition for granting economic development and

⁵¹ M. Benshop, p.3.

⁵² M. Benshop, p.5.

efficiency, as women without formal land titles are less encouraged to invest in land. One of the reasons being the above-mentioned fear of losing the piece of land anyway sooner or later, another reason being that without formal entitlement women cannot use the land as a collateral in cases of securing credit, which again hinders the economic development in the long way⁵³.

There is certain evidence available, that the linkage between the following three elements- property rights, the control of income and the effect of income control on welfare- has a very interesting aspect in relation to differences in gender. One of the criteria to illustrate this connection is the issue of malnutrition⁵⁴. Malnutrition is a quite appropriate example, as it is able to demonstrate how gender differences play a role when it comes to the investment of family income, as women are more likely than men to invest their income on family nutrition and child health⁵⁵.

A variety of different analysis and surveys, in Asia as well as in Africa, have been conducted with the aim of investigating the correlation between women's property rights and their influence on child nutrition, health care and education. In addition different researches examined the relation between women's land rights and an increase in agricultural efficiency and productivity. One survey in Burkina Faso came to the conclusion that the harvest of crops would increase by 6% if the essential tools for farming like fertilizers were shared more equally among households between men and women⁵⁶.

⁵³ R. S. Meinzen-Dick, L. R. Brown, H. Sims Feldstein et al, 'Gender, Property, Rights, and Natural Resources', *World Development*, vol. 25, no. 8, 1997, p. 1304.

⁵⁴ R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1304.

⁵⁵ A.R. Quisumbing, L.R. Brown, H.S. Feldstein et al, *Women: The Key to Food Security*, Food Policy Report, Washington, DC., International Food Policy Research Institute, 1995, cited in R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, pp. 1304-1305.

⁵⁶ C. Udry, 'Gender, agricultural production and the theory of the household', *Journal of Political Economy*, 104(5), 1996, pp. 1010-1046., cited in K. Allendorf, 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal?', *World Development*, vol. 35, no. 11, p. 1978.

In Andhra Pradesh, India, a group of women obtained a piece of land and started farming and harvesting it collectively, facilitated and supported by the Bodhgaya land movement, which enabled people who had acquired land to get access to loans more easily, research illustrating the fact that women used their loans to purchase bullocks and other essential tools, necessary for successful farming rather than men, who spent their money on alcohol⁵⁷.

When examining the pre-conditions of women's access to property, initially one has to look at the distribution of resources and therefore it also has to be distinguished between de facto and de jure equity. There are several ways in which resource rights are able to be acquired, one of them being labour contribution, others being purchase or inheritance. However it is already quite obvious, that not all of the mentioned possibilities to gain access to resources are available for every citizen to the same degree. Certain parts of a population are excluded at all from the possibility of purchase or inheritance, due to their status in society or their lack of enough income to buy land or property⁵⁸.

In many countries women are already granted property rights due to national and local implementation but these rights remain on a legal basis without any execution or actual exercise in real life. Among the circumstances which might preclude women's practice of their property rights are a lack of political connections as well as a lack of cash without possibility to acquire any credit. Another factor which also affects women's possibilities to own, work or control land is the time-factor, meaning that women are in most parts of the world still the ones who are responsible for the household chores as well as the raising of the kids, meaning that if a woman in addition to her already existing duties wants to

⁵⁷ Alaka & Chetna, 'When women get land: A report from Bodhgaya', *Manushi*, 40, 1987, pp. 25-26., cited in K. Allendorf, p. 1978.

⁵⁸ R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1306.

cultivate land she is very often confronted with organisation problems, as she is not able to schedule her time as free as man in comparison⁵⁹.

In the process of identifying obstacles and barriers on the way to empowering women and their land rights, it is essential to examine the different possibilities to acquire property- mainly purchase, inheritance and government strategies- and which role gender settings play according to each of these paths⁶⁰. The inheritance patterns of most cultures for instance prefer man over females, not only in patrilineal societies but also in matrilineal societies where property is passed to the nephews of a clan. Also persisting traditional values and beliefs still play a major role when it comes to the role of women and what is perceived as “adequate”. As a result, one has to make the effort to look behind these gender relations and the impact they might have on women’s land rights, in order to break up old society structures, which keep hampering women from exercising their property rights⁶¹.

The above-mentioned criteria might or might not occur in certain societies or cultures, but what affects property rights on a world-wide scale are phenomena like the repercussions of imperialism and colonialism, land market pressure, large-scale investments and the increasing occurrence of privatisation. Privatisation can take place on two levels, either property being transferred from the state to groups or from customary property to the registration of property in the name of an individual. However the term “privatisation” does not necessarily mean also an individualisation of rights, as many owners of private property are large enterprises or corporations⁶². In the process of privatisation, very often the women and other marginalised groups are excluded, as they

⁵⁹ R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1309.

⁶⁰ R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1307.

⁶¹ R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1308.

⁶² R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1308.

lack essential information about the ongoing procedure, political connections or simply the financial resources to purchase a piece of land for themselves⁶³.

In identifying the objectives and tools which will support the movement of empowerment of women, it is not only essential to pay attention to the differences concerning gender but also to understand the systems of production, the labour distribution as well as the distinctions when it comes to the bargaining powers of men and women. However differences regarding the production or efficiency may not simply be on the basis of gender itself but due to correlated circumstances such as access to bargaining processes, markets, education, information and financial recourses. Policies and strategies with the aim of guaranteeing women equal rights, therefore not only have to take into account the specific historical or political situation of a certain country, but have also to provide an infrastructure which enables women to exercise their rights in accordance with the existing legal framework. Such a framework has to provide for the necessary legal services as well monitoring bodies surveying the actual human rights situation in a country, particularly in respect to possible infringements of rights. Additionally women should be included in decision and policy making bodies, as a female point of view might prevent a male bias from the beginning on concerning the drafting process of strategies and initiatives⁶⁴.

⁶³ R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1308.

⁶⁴ R. S. Meinzen-Dick, L. R. Brown, H. S. Feldstein et al, p. 1312.

4.2 Excursus: Land Rights of Nomadic Peoples:

An excursus regarding the Land Rights of Nomadic People is included at this point of the research, as nomadic people face, to at least some extent, the same difficulties as women in reference to an effective implementation and realisation of their land rights. Although the obstacles and barriers with which nomadic people are dealing might be slightly different, they share the lack of attention and awareness concerning their property rights with women.

Considering the continent of Africa, not only matrilineal societies play an interesting role when it comes to the question of the application of property rights in accordance with international Human Rights law, but also the rights of nomadic people, also called mobile indigenous communities, should not be left out of the discussion. Basically all property rights, may they have their origin in international human rights law or in regional or local customs or religions, are linked to the fact that property rights are only granted those people who have the intent to permanently occupy the certain piece of land, which they make a claim for. Occupation therefore is the key-factor in this context, on the contrary of course implying the opinion that land that is not occupied in a visible sense by anyone is “free” to be occupied by someone else⁶⁵.

There exists hardly any legal framework or international treaty which takes the circumstances or actual situations of nomadic people in regard to their property rights into account. As a result these people are left without hardly any protection, their rights almost failed to be recognised completely. The only instrument which is applicable to the

⁶⁵ J. Gilbert, ‘Land Rights And Nomadic Peoples: Using International Law At The Local Level’, *Nomadic Peoples*, vol. 16, issue 2, 2012, p. 78.

situation of nomadic people and their land rights is international Human Rights Law, specifically the section of cultural rights. As human rights apply to everyone without distinction, they function as a universal framework of protection, therefore cultural rights acknowledging and respecting and protecting also the different lifestyles of nomadic people. Although there is not a specific right to a nomadic lifestyle included in Human Rights Law, the protection of it should be assured due to the universal protection of all cultures, this certainly therefore also applying to nomadic cultures⁶⁶.

One of the reasons why the land rights of nomadic people still are not widely recognised in legal frameworks or international instruments, is well-founded in the discussions and controversies which encircled the right to property from the beginning on. As has been already mentioned above, the right to property was and is still in many countries of the world highly contested, as it developed mainly in accordance with the Western point of view, which perceives the right to property as an individual right and in regard to land rights therefore observes it as an individual land title. Nomadic people's land rights on the other hand are seen and practised mostly as collective rights but not individual rights. As a result, these communities are claiming collective rights in reference to land titles but not individual rights. In order to minister their requirements, nomadic people created customary systems of their own, these systems being a result of collective systems of ownership⁶⁷.

There exists however one exception to the assumption that there is no protection of nomadic peoples land rights under international law, this exception being the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The convention under Art. 5 (v) states that everyone, without distinction due to

⁶⁶ *ibid*, p. 78.

⁶⁷ *ibid*, p. 78.

colour, race, national or ethnic origin, has the right to own property, alone as well as in association with others. This article originally is referring also primarily to an individual property right, however recently the Committee on the Elimination of Racial Discrimination (CED Committee), which has the task to monitor the implementation of the CERD, has made acknowledgments also towards a recognition and protection of nomadic peoples land rights, therefore including also collective property rights and demonstrating an increasing awareness to the needs of nomadic and semi nomadic populations⁶⁸.

The link between human rights and land rights is non-discrimination. The explanation being that, if the property rights of nomadic people are not recognised and protected, it would constitute discrimination, because other parts of the population would have access to land without any limitations, only the nomadic people due to their certain way of life and their customs and traditions not. In recent times also international Human Rights Courts have started to acknowledge and respect the land rights of nomadic people, additionally the UN Declaration on the Rights of Indigenous People was adopted in the year 2007 by the General Assembly (GA) of the United Nations. This declaration marks a milestone regarding the recognition of the importance of land rights of indigenous people, as it also emphasis on other important rights which are required in order to have access to property of land, such as the right to participation and consultation, therefore highlighting the extremely important relevance of property rights in reference to indigenous peoples⁶⁹.

One of the above mentioned international Human Rights Courts which has started to put an emphasise on the topic of indigenous peoples land rights, is the IACtHR. In the year

⁶⁸ *ibid*, p. 79.

⁶⁹ *ibid*, p. 80.

2001 the IACtHR passed a landmark decision, internationally as well as regionally, acknowledging the fact that possessions of indigenous people should be recognised and protected even if they lack a formal title. With this decisions the court took into consideration that indigenous people usually tend to possess land rights without any formal entitlement, this being especially the case with regard to their ancestral lands. However, this should not hinder them from practising their land rights without any limitation or infringement in comparison to other segments of the population. Additionally the court stated that when it comes to property rights of indigenous peoples, also collective rights are recognised without any distinction⁷⁰.

Regarding Africa, the AfComHPR argued that traditional property rights of indigenous people should have the same significance as formal land titles and that upon these granted rights, indigenous people should also have subsequently the possibility to register and document their property rights⁷¹.

Process Rights:

The increasing Human Rights awareness which has been directed at the right to property is not always seen as unproblematic and has also faced controversial reactions all over the world. This is due to the fact that property rights as well as land rights have been regarded since the beginning of time, as a part of the national sovereignty of a state, a section where usually no interference from the outside is tolerated. This deriving from the natural areas of responsibility of a state, which of course includes the control over land and resources within the sovereign territory. Furthermore are human rights usually relating to a confrontation between the individual vis a vis the state, a conception which

⁷⁰ *ibid.*, p. 80.

⁷¹ African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication 276/2003, 2010, cited in J. Gilbert, p. 80.

interferes with the above mentioned state domain concerning land and territory rights. In order to avoid any disputes at this level, human rights have focused their centre of attention more on process rights, than on declaratory rights. Process rights are comprehended as rights which enable people to exercise or practise their human rights, such as a right to demarcation, to consultation and participation. A right to demarcation of a certain piece of land is seen as an essential pre-condition when considering the land rights of indigenous people⁷² and the IActHR and the IAComHR have developed a rather progressive jurisprudence concerning the right to demarcation, stating as follows:

Indigenous and tribal peoples have a right to special, adequate and effective procedures for the delimitation, demarcation and granting of title of their territories. Owing to the specific traits of indigenous communal property, these procedures must be different from the general mechanisms for granting of title over agrarian property that are available to other sectors of society. The mere adoption of legislative or administrative mechanisms that are adjusted to these standards is insufficient if they do not lead, in practice, to guaranteeing the right to communal property within a reasonable time⁷³.

The aim of the rights to participation and consent is to guarantee, that indigenous peoples are approached by state authorities whenever there exists the mere possibility that their rights might be infringed or affected. Subsequently this approach should grant indigenous people the chance to utter their opinion regarding the matter in question or to express their consent. The obligation of states to make an effort to reach an agreement with indigenous peoples on all matters affecting them is stipulated in different human rights instruments,

⁷² *ibid.* p. 81.

⁷³ Inter-American Commission on Human Rights, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources*, OEA/Ser.L/V/II.Doc. 56/09: Norms and Jurisprudence of the Inter-American Human Rights System, 2009, cited in J. Gilbert, p. 81.

such as the ILO Convention 169- the Indigenous and Tribal Peoples Convention- as well as the UN Declaration on the Rights of Indigenous Peoples. The UN Declaration states in several articles the right of indigenous people to free and informed consent in matters regarding land rights, in Article 32 citing

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources⁷⁴.

Although international human rights law has been developed mainly without the recognition or the awareness of the land and property rights of indigenous people, it can be of great support on a regional and local level, encouraging and increasing processes which might help to promote a more progressive perception of nomadic peoples land and property rights. A method which has already proven to be very effective in this context has been the mapping and therefore demarcating of certain areas of land, through indigenous peoples by themselves, by this way showing their local communities the usage of a certain acreage⁷⁵.

⁷⁴ J. Gilbert, p. 82.

⁷⁵ J. Gilbert, pp- 82-83.

5 Matriliney and Women's Land and Property Rights: Africa

5.1 Matriliney and Women's Access to Land in Malawi:

In this section, women's land rights are examined by the means of considering the different processes by which women in Malawi can acquire property and thereby under these conditions, comparing matrilineal and patrilineal societies in Malawi. Additionally also the obstacles and barriers regarding access to land will be investigated, which women have to face in both kinds of societies.

Similar to most African countries, also in Malawi the majority of the population is relying on their access to land, especially in the rural areas of the country, for various reasons. On the one hand people require access to land in order to fulfil their need to build a house for themselves and therefor a secure accommodation. On the other hand, people are strongly depending on land, as it symbolises a source of livelihood and survival to them, giving them the opportunity to cultivate the land, grow crops on it, and as a consequence provides them with the possibility to engage in the local economy by selling their harvest⁷⁶.

In Malawi the processes by which women can obtain property in reference to land, varies depending on the fact if they are living in a matrilineal or patrilineal society. However,

⁷⁶ N. Tschirhart, L. Kabanga, S. Nichols, 'The convergence of HIV/AIDS and customary tenure on women's access to land in rural Malawi', *SAHARA-J: Journal of Social Aspects of HIV/AIDS*, vol. 12, no.1, 2015, p. 136.

despite this differentiation, the main way by which land is acquired in Malawi, is through inheritance, inheritance patterns and customs again varying from patrilineal to matrilineal society⁷⁷.

The differentiation between matrilineal and patrilineal communities is also visibly to some extent under a geographical point of view, with the Lambya, Tonga, Ngonde, Tumbuka, Nyana and Ngoni as patrilineal communities residing mainly in the north of Malawi, the Yao, Ngoni, Nyanja and Lomwe as matrilineal societies, living in the central and southern regions⁷⁸. The community of the Chewa in central Malawi, being quite an interesting exception from the above mentioned communities, as the Chewa originally were associated with being matrilineal, however their inheritance patterns granted inheritance according to matrilineal ways as well as to patrilineal ones, however nowadays they are mostly virilocal, meaning that as the couple is settling at the clan of the husband, therefore also the patrilineal inheritance patterns are applying⁷⁹.

The importance of the resource “land” in Malawi, is easily comprehensibly by taking into account, that 35.5% of the GDP of Malawi in the year 2006 was resulting from agriculture and also the largest export has been agriculture⁸⁰. Contributing to these economic facts, which already highlight the importance of land in Malawi, is the constantly rise of the

⁷⁷ N. Tschirhart, L. Kabanga, S. Nichols, ‘The convergence of HIV/AIDS and customary tenure on women’s access to land in rural Malawi’, *SAHARA-J: Journal of Social Aspects of HIV/AIDS*, vol. 12, no.1, 2015, p. 135.

⁷⁸ E. Berge, D. Kambewa, A. Munthali & H. Wig, ‘Lineage and Land Reforms in Malawi: Do Matrilineal and Patrilineal Landholding Systems Represent a Problem for Land Reforms in Malawi?’, *Land Use Policy*, 2014, vol. 41, pp. 61-69, doi: [10.1016/j.landusepol.2014.05.003](https://doi.org/10.1016/j.landusepol.2014.05.003), cited in N. Tschirhart, L. Kabanga, S. Nichols, p. 136.

⁷⁹ Takane, T., ‘Tobacco and Smallholders in Malawi: Village Case Studies in the Mchinji and Mangochi Districts’ in T. Takane (Ed.), *Agriculture and Rural Development in Malawi: Macro and Micro Perspectives*, Chiba, Japan, Institute of Developing Economies Japan External Trade Organization, 2005, pp. 93–119, cited in N. Tschirhart, L. Kabanga, S. Nichols, p. 137.

⁸⁰ World Bank, *Malawi at Glance*, 2007, http://devdata.worldbank.org/AAG/mwi_aag.pdf (Accessed 1 September 2008), cited in N. Tschirhart, L. Kabanga, S. Nichols, p. 136.

population as well as the fact that land is a definite resource, implying that land is becoming more and more scarce in Malawi⁸¹.

Regarding women's access to land, in Malawi most of women's land rights are structured in an informal way and organised by local customary practices and the influence of family relations. Beyond that, most of the land in rural Malawi is considered customary land and therefore regulated under the Land Act, declaring these parts as public land, leaving them exclusively to the administration of government authorities. However, there exists also individual property in Malawi, which is either registered as "private land", "freehold title", "leasehold title" or a "Certificate of Claim". Public land on the other hand, is organised communally, lacking any formal titles⁸².

Regarding the different ways of land access of women in Malawi, matrilineal as well as patrilineal societies are based on the principle of inheritance. Furthermore, inheritance in this context simply implies, that in matrilineal matrilineal societies women can inherit land, whereas in patrilineal patrilineal societies women cannot inherit. The differentiation between matrilineal and patrilineal points at the residency factor of a married couple, matrilineal (uxorilineal) therefore meaning that the married couple settles at the village of the wife, patrilineal (virilineal) on the contrary meaning that the couple chooses to live with the family of the husband⁸³.

⁸¹ N. Tschirhart, L. Kabanga, S. Nichols, p. 136.

⁸² N. Tschirhart, L. Kabanga, S. Nichols, p. 136.

⁸³ *ibid*, p. 136.

Inheritance in Matrilineal Societies:

In matrilineal societies, women are the main decision-makers, inheritance is therefore traced along the female line, leaving men mostly aside. There is even documentation available, that argues, that there are some matrilineal communities in Malawi, where it would cause remarkable trouble to leave land to men⁸⁴. However if there are currently only sons existing in a lineage, they would be able to inherit land. The main purpose of a transfer of ownership exclusively through the female line, is to prevent persons from outside the village and clan to interfere with the existing property order and to guarantee that all property is accumulated along the women, as men might decide some day to leave the village and then there would be struggles concerning the property relations. A crucial role in this scenario is played by the uncle of a female in a matrilineal society, as the uncle usually has the responsibility to assure that the land stays within the clan and to reject any interferences from men, also assisting in cases of a divorce. However it is not part of the function of the uncle to enforce any guidelines or restrictions upon the woman, regarding the actual use to the land, as this is solely the task and the right of the respective woman who owns the land⁸⁵.

Inheritance in Patrilineal Societies:

As already mentioned above, patrilineal societies are marked by the characteristic of virilocality, implying that after marriage the couple settles in the village of the husband and affiliates with the family and relatives of the man. These conditions, comprehensible contributing to the already existing fact, that in patrilineal societies the man are the major decision-makers, and therefore strengthening the position of the man. Concerning the

⁸⁴ P. E. Peters, 'Against the Odds: Matriliney, Land and Gender in the Shire Highlands of Malawi', *Critique of Anthropology*, 17(2), 1997, pp. 189–210. doi:10.1177/0308275X9701700205, cited in N. Tschirhart, L. Kabanga, S. Nichols, p. 137.

⁸⁵ N. Tschirhart, L. Kabanga, S. Nichols, p. 139.

inheritance patterns of patrilineal communities, transfer of ownership and passage of title is traced exclusively through the male line, customary law therefore stating that:

Women can only access land through their husbands and sons. Upon divorce with the husband the woman loses rights to cultivate her field and has to return to her won village. Upon the death of the husband the woman as long as she is unmarried can use the land her husband owned as she grows old, as the sons grow old, she shares the land with her sons and may be squeezed out of land⁸⁶.

Women in patrilineal societies can obtain land mainly through marriage, daughters only being able to inherit land from their father, if there are no sons at the time being. But even if a daughter is able to inherit land from her father, the land has to be transferred to male members of the clan in the next generation. The access to land through marriage is also not quite uncomplicated for women, as there can arise a bunch of challenges for the respective women. The most common problems in this constellation are related to the subjects of divorce and death of the husband. In the case of a divorce the woman would be most likely sent back to her family by her now divorced husband. This meaning, that the woman loses her access to the land which she might have cultivated together with her former husband. As the woman returns to her village and natal family, she is not guaranteed that there is any free land available to which she can make a claim⁸⁷.

The death of the husband presents a widow as well with problematic constellations, as she is now very dependent on her relations to her in-laws, as they have usually all the

⁸⁶ G. Mutangdura, 'Women and Land Tenure Rights in Southern Africa: A Human Rights-Based Approach', Paper presented at the *Land in Africa: Market Asset or Secure Livelihood Conference on Gender, Land Rights and Inheritance*, London, 2004, <http://pubs.iied.org/pdfs/G00173.pdf>, (Accessed 1 September 2015), cited in N. Tschirhart, L. Kabanga, S. Nichols, p. 137.

⁸⁷ N. Tschirhart, L. Kabanga, S. Nichols, p. 141.

power to decide about the fate of the respective land, also being able to deprive the widow of the land she used to own together with her husband. Even if they do not expropriate her, they can decide to leave her only a part of her former entitlement, this part sometimes being only big enough for her house, but not for growing crops or farming. Furthermore this entitlement is almost always linked to the requirement, that the widow is not allowed to remarry, as this would bear the risk of a stranger getting access to the particular property of land⁸⁸.

Table 1: Dispossession of women's land-use rights in patrilineal research communities⁸⁹

Relationship to point of access	Point of access	Reason for dispossession	Dispossession typology
Wife	Husband	Polygamy	Partial
		Wife inheritance	Partial
		Divorce	Full
		HIV/AIDS stigma	Full
		Cannot bear children	Full
Widow	Husband's relatives	Husband's death	Partial/full
		Refusing wife inheritance	Full
		Widow remarries	Full
		HIV/AIDS stigma	Full
Sister	Brother	Land needed for another use	Partial/full

⁸⁸ N. Tschirhart, L. Kabanga, S. Nichols, p. 140.

⁸⁹ N. Tschirhart, L. Kabanga, S. Nichols, 'The convergence of HIV/AIDS and customary tenure on women's access to land in rural Malawi', *SAHARA-J: Journal of Social Aspects of HIV/AIDS*, vol. 12, no.1, 2015, p. 143.

Excurses: The effect of HIV/AIDS on Women's Land Tenure:

Concerning Malawi, HIV/AIDS has prevalence rates of about 10.8% among adults⁹⁰, affecting Malawi in various ways, economically as well as socially. In relation to women's land rights, there are also several different effects perceivable.

There is certain evidence available, that indicates that there exists a relation between land shortage, HIV/AIDS and poverty. Land Shortage and poverty are closely connected, as the lack of land and therefore the lack of livelihood makes it in many cases impossible for people to make a living for themselves, this leading directly to a higher prevalence of HIV/AIDS. Contributing to this interlinkage is also the fact that many societies in Africa are patrilineal, therefore the only way for women to exercise access to land is through the male counterparts of a family. When this access breaks away, due to the death of the husband of HIV/AIDS, so does the women's access to land, leaving her without any substantial food supply or source of survival⁹¹.

Dispossession of property is therefore one of the effects that are induced by HIV/AIDS, this of course depending to a very high extent on the fact if the respective woman is belonging to a matrilineal or patrilineal community. In a matrilineal community neither an infection of herself nor an infection of her husband will have any remarkable impacts regarding her land and property rights, as she is the one who inherited the land and therefore also is the exclusive owner of the particular piece of land. This differs in a patrilineal community, as, like already mentioned above in this section, in a patrilineal community women's access to land is very strongly depending on the men of the clan, if

⁹⁰ UNAIDS, HIV and AIDS Estimates, 2012, <http://www.unaids.org/en/regionscountries/countries/malawi/> (Accessed 1 September 2014), cited in N. Tschirhart, L. Kabanga, S. Nichols, p. 135.

⁹¹ S. Mbya, 'HIV/AIDS and its Impact on Land Issues in Malawi', Paper presented at the *FAO/SARPN Workshop on HIV/AIDS*, Pretoria, South Africa, 2002 (June 24-25), <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.448.1638&rep=rep1&type=pdf> (Accessed 1 September 2015), cited in N. Tschirhart, L. Kabanga, S. Nichols, p. 135.

the respective man dies, so does her access to land in most cases, as the husband is very often the only link between a woman and the respective patrilineal community⁹².

Another impact of HIV/AIDS in reference to women's land tenure is a quite reduced economic and agricultural efficiency, this effect occurring equally among patrilineal and matrilineal societies. There is also no differentiation regarding the extent of the impact, between men and women. If a woman herself is infected, this decreases comprehensible her own productivity, but also if her husband is suffering from the illness it will affect her work force, as women in Malawi are usually perceived as the ones who are responsible of the care-taking of ill relatives and family members⁹³.

Stigma is another common effect of HIV/AIDS, which has the power to influence women's access to land in a very negative way. A woman herself suffering from HIV/AIDS is seen by society as a discarded person, who will sooner or later die anyway, so there seems to be no need to supply her with any land of her own and even if the woman herself is not infected and only her husband, the underling assumption in society is, that the woman will be get ill soon too. Thus, there seems to be no value in establishing or enforcing mechanisms to grant women any access to land⁹⁴.

However, research findings suggest, that HIV/AIDS as an independent factor has not so much impact on women's land tenure or access as supposed, rather the combination together with existing resource shortage, population growth as well as cultural

⁹² N. Tschirhart, L. Kabanga, S. Nichols, pp. 142-143.

⁹³ N. Tschirhart, L. Kabanga, S. Nichols, p. 143.

⁹⁴ N. Tschirhart, L. Kabanga, S. Nichols, pp. 143-144.

inequalities embedded in customary laws and practices impede women's equal access to land⁹⁵.

5.2 Excursus: The Lilongwe Land Development Programme:

As many countries in Africa nowadays, Malawi is also taking part in different land tenure reform processes, which are aimed at converting the formerly customary systems of informal land titles into officially registered and documented titles. Especially in southern and central Malawi, matriliney is the pre-dominant form of society, providing therefore also a customary framework concerning the passage of title and transfer of ownership regarding land rights. In Malawi, like in most African countries, people, especially women are depending very much on their actual access to land, in order to provide a living for themselves and their families. Circumstances which endanger this access of women to land in Malawi, are similar to the ones which can be observed all over the world, namely land market pressure as well as historical and political events like conflicts, which always strike women and children disproportionately hard, jeopardising their access to land and therefore their survival⁹⁶.

The village which will be examined at this point, is Chibungo, approximately fifty kilometres west of Lilongwe. Already forty years ago, the World Bank initiated a large development project, named *Lilongwe Land Development Programme (LLDP)*, which's aim was to establish a system of individual land title registration instead of the customary collective rights, which were based until then on matriliney principles⁹⁷. The major ethnic

⁹⁵ N. Tschirhart, L. Kabanga, S. Nichols, pp. 144-145.

⁹⁶ R. Kaarhus, 'Women's Land Rights and Land Tenure Reforms in Malawi: What Difference Does Matriliney Make?', *Forum for Development Studies*, vol. 37, no. 2, June 2010, p. 171.

⁹⁷ *ibid*, p. 172.

group in Malawi and also in Lilongwe are the Chewa, which's social structure is organised due to the principles of matriliney⁹⁸.

There are mainly two different forms of matriliney existing in present day Malawi, one being *virilocality*, meaning that after marriage the couple settles in the village of the husband, the other being *uxorilocality*, implying that the couple settles in the wife's village. In Malawi uxorilocality is mainly represented in the south, whereas in central region both forms of matriliney can be found⁹⁹.

The Chewa are known for practising uxorilocality, this often creating a loyalty conflict for both spouses. The wife on the one hand being torn between the loyalty to her husband, the man being torn between the bond to his wife and her village but also still feeling solidarity for his old village and clan. What might contribute to this problematic situation, is the fact that if the husband is staying with his wife in her village, he automatically falls under the so called "authority" of the brother of his wife, whereas in his village the husband would be able to perform such a role by himself¹⁰⁰. In solving this issue, the men of the Chewa created a middle course between these two options by marrying women within a five-kilometre radius of their own village, this enabling them to stay near their own clan without having to accept any deficits over there but also granting them the possibility to obtain land through their wives. However what really guaranteed men the most influence on both levels, was the permission to take the woman to his village, a solution which he could require best, by arguing that he holds in his village a very important or responsible position, such like the one of a chief or another authority, or by

⁹⁸ *ibid*, p. 177.

⁹⁹ K.M. Phiri, 'Some changes in the matrilineal family system among the Chewa of Malawi since the nineteenth century', *Journal of African History*, vol. 24, 1983, pp. 257-274, and E. Jul-Larsen and P. Mvula, 'Security for Many or Surplus for the Few?; Customary tenure and social differentiation in southern Malawi', Bergen: Chr. Michelsen Institute Working Paper, 2007, p. 9., cited in R. Kaarhus, p. 176.

¹⁰⁰ K.M. Phiri, 1983, p. 260., cited in R. Kaarhus, p. 177.

taking into consideration a certain welfare of the husband which was inevitably linked with his village. During such discussion between husband and wife, the man was usually in charge of the better bargaining position if the woman herself had very restricted access to land, because by this he could enforce his own position and relevance for his village, thereby pushing the woman to follow him to her village. This negotiating patterns over time led to the emergence of mainly virilocal marriages, the men usually being in a favoured position because of their special status in their villages or their extensive wealth¹⁰¹.

Another factor which contributed to the disappearance of matrilineal arrangements was of course also the colonisation, which pushed back matrilineal structures in the favour of patrilineal ones. Missionaries generally took the position, that men should be heads of households, therefore also supporting African men to increase their economic wealth and therefore their power in male-female relationships¹⁰².

The LLDP was established already in the year 1967, its main target being the conversion of customary informal land titles into now officially registered and documented ones. These to be established individual rights, should replace former customary land rights which were governed by matrilineal principles. The means by which this was to be achieved, included mainly the defining of new borders and thereby the creation of new areas of land. Subsequently certificates of this newly created parcels of land would be handed exclusively to the men to ascertain their now exclusive power over land, this however understandably destabilising matrilineal structures¹⁰³. As a consequence of this,

¹⁰¹ K.M. Phiri, 1983, p. 262., cited in R. Kaarhus, p. 177.

¹⁰² P. E. Peters, 'Against the Odds: matriliney, land and gender in the Shire Highlands of Malawi', *Critique of Anthropology*, 1997, vol. 17, no. 2, pp. 189-210., cited in R. Kaarhus, p. 179.

¹⁰³ C. Ng'ong'ola, 'Rural development and the reorganization of customary land in Malawi: some lessons from the Lilongwe Land Development Programme', *University of Malawi Journal of Social Science*, vo. 13, 1986, pp. 189-210, cited in R. Kaarhus, p. 183.

government officials started interacting exclusively with the male members of a family in matters of land rights, this weakening women's access and power even more in this regard¹⁰⁴.

The village of Chibungo was registered under the LLDP already in the 80's, this resulting in the dividing up of land, which was formerly belonging to the whole village, into individual land titles¹⁰⁵. Among the people of Chibungo Polygamy is quite common and also perceived and used by the men as a strategy to ensure them access to different resources, this resources belonging to different matrilineal groups¹⁰⁶.

The LLDP therefore led to the resolution of matrilineal structures, women no longer in many cases being aware of their rights and even if they are, having no means as how to execute their rights properly. This even resulting in the believe that they have no claim to their matrilineal lands, as these lands are no considered to belong to male relatives exclusively, leaving women no entitlement whatsoever¹⁰⁷.

The land reform of the LLDP together with an increase in land market pressure, contributes to a marginalisation of women's matrilineal rights, women losing constantly more and more their access to land, and being replaced by men¹⁰⁸.

¹⁰⁴ P. Peters, 'Against the Odds: matriliney, land and gender in the Shire Highlands of Malawi', *Critique of Anthropology*, vol. 17, no.2, 1997, pp. 189-210, cited in R. Kaarhus, p. 184.

¹⁰⁵ R. Kaarhus, p. 185.

¹⁰⁶ M. N. Compaore, *Gender Roles in Decsion-making on Allocation of Household Resources in Lungwena, Malawi*, unpublished M.A. thesis, As:UMB., 2005., cited in R. Kaarhus, p. 186.

¹⁰⁷ R. Kaarhus, p. 187.

¹⁰⁸ R. Kaarhus, p. 188.

Conclusion:

Regarding the land tenure of women in patrilineal communities, it seems quite evident that in these society forms women's land rights lack robustness and seem only temporary, especially referring to the cases of divorce or death of the husband, where women will be subsequently asked by their husband (divorce) or by her in-laws (death of husband) to return to her village and family. Women are therefore struggling to maintain long-term rights, as their property rights often have to be passed to men in the next generation or have to be "returned" in the case of a widow remarrying. Additionally women's land rights cannot really be considered as independent or autonomous, as the practice of these rights in patrilineal societies is in almost all cases dependant on the relationship with the in-laws and other relatives of the husband. Women's land and property rights are therefore characterised by negotiations and permissions and not by equality of access.

On the contrary, in matrilineal societies women are not faced with similar challenges as it appears in patrilineal societies. Women can inherit land from their ancestors without any constrictions, furthermore they are even preferred as heirs in comparison to men. Over and above, in cases of divorce or death of their husband, they are not threatened with expropriation and can continue to live on their land and cultivate it as they are used to. There exist also nor bargaining about land and women are not obliged to reach an agreement with their in-laws and are free to use, control and transfer their land as they like to. Additionally women are not affected as hard by HIV/AIDS in matrilineal societies as they are in patrilineal ones.

Summing up, there are various effects and barriers existing in Malawi, which complicate and hinder women's free, equal and independent access to land as well as restricting their power of control over their land, such as shortage of resource, HIV/AIDS prevalence rates, and customary laws and practices, which are still nowadays explicitly favouring men over women. The most relevant parameter in regard to women's land rights however

is the criteria of residency of a woman, as the differentiation between patrilineal and matrilineal societies appears to be the most crucial element in assessing women's land rights.

5.3 Nigeria:

When looking at the situation of women's land rights in Nigeria, the Yoruba Women are a very good example of a progressive society regarding the aspect of property rights, as they possess quite a high level of autonomy and independence, which allows them to acquire property without their husbands having any claim to it, even despite the fact that the Yoruba are a patrilineal society. On the contrary they are not, by their customs, provided with a right to inherit property of their husbands¹⁰⁹.

Similar to Malawi, also in Nigeria people are depending very strongly on their access to land, as it constitutes their food and nutrition supply. When it comes to the process of acquiring land titles and property, there exist usually three ways, which include inheritance, government strategies and initiatives as well as cash purchase. Regarding women, the most dominant form is inheritance. However as already mentioned above, women can usually not inherit from their husbands, as customary law is not providing for such a provision, but only from their parents, sisters or brothers¹¹⁰. But even though patriarchal structures and perceptions may still be on the fore-front, Yoruba women have the possibility to obtain, own, control and transfer land and property on their own, without any male interference¹¹¹.

¹⁰⁹ Y.A. Aluko, 'Patriarchy And Property Rights Among Yoruba Women in Nigeria', *Feminist Economics*, vol. 21, no. 3, 2015, p. 56.

¹¹⁰ A. Adepoju, *Family, Population and Development in Africa*, London: Zed, 1997., cited in Y.A. Aluko, p. 57.

¹¹¹ Nina. E. Mba, *Nigeria Women Mobilised: Women's Political Activity in Southern Nigeria 1900-1965*, Lagos: Crucible, 1997., cited in Y.A. Aluko, p. 58.

Table 2: Sources of property among urban Yoruba women¹¹²

<i>Source</i>	<i>Land/Houses</i>		<i>Cars/SSB</i>	
	<i>Freq.</i>	<i>%</i>	<i>Freq.</i>	<i>%</i>
Inheritance	38	67.9	10	17.7
Personal	18	32.1	46	82.1
Total	56	100.0	56	100.0

Source: Based on author's fieldwork in Ibadan Metropolis, 2012.

Regarding the engagement of the Yoruba women in their community, it can be observed, that they get involved in a wide range of different sectors of society, including religion, culture as well as economy, the Yoruba women usually being very interested in their local economy. Women having already discovered, that greater economic power equips them with more influence regarding household decisions, therefore providing them with the possibility to spent a certain ratio of the common household income on their very interests, this usually being centred around the common wealth of their children and family, especially the health, nutrition and education¹¹³.

The Yoruba are living in the southwestern part of Nigeria and concerning Sub-Saharan Africa are probably in economic terms, the most industrialised group¹¹⁴. There are two

¹¹² Y. A. Aluko, 'Patriarchy and Property Rights among Yoruba Women in Nigeria, *Feminist Economics*, vol. 21, no. 3, 2015, p. 69.

¹¹³ R. L. Blumberg, 'Women's Economic Empowerment as the 'Magic Potion' of Development?', Paper presented at the 100th Annual Meeting of the American Sociological Association, Philadelphia, August 13-16 2005, cited in Y.A. Aluko, p. 59.

¹¹⁴ E. D. Babatunde, and M. F. Zeitlin, 'The Yoruba Family: Kinship, Socialization and Child Development', in *Strengthening the Family: Implications for Development*, edited by Marian F. Zeitlin,

main differences which distinguish the Yoruba from most other societies in this African region, on the one hand spouses, therefor also the woman of a couple, are required to make a living for themselves and to contribute to the household income quite equally, on the other hand, the income of both spouses is not combined as every part of the couple is expected to take care of their income ratio without any interference from the other one¹¹⁵. External factors which contributed also to the involvement of women in economy, were the economy crisis which is till the current day still lasting, requiring the women to add their own share of income to the family earnings. Women thereby have proven to possess quite a talented sense of financial skills, also acquiring credits and loans by themselves, spending the money mostly on the family welfare¹¹⁶.

The ways by which women can obtain land and property in Nigeria are quite similar to those in Malawi, the three major paths being: purchase, inheritance and government initiatives and projects, inheritance however being the predominant in Nigeria, as well as in Malawi. Although the inheritance rules in Nigeria are favouring the men in a comparable way than those in Malawi, making it almost impossible for women to gain access to land without a male. Women are therefore depending in a similar way on their male relatives, especially their husbands, as without them, women are very often isolated from their land rights as communities are not accepting women as sole right-holders¹¹⁷. As a clarification it is noted, that most women report that they inherited property and land from their parents, on the contrary almost no woman inheriting from her husband. Besides these customary inheritance practises, there exist nevertheless the rare but still possible opportunity for women to acquire land by themselves through purchase, this increasing to a high extent also their influence regarding family and household decision-making

Ratna Megawangi, Ellen M. Kramer, Nancy D. Colletta, E. D. Babatunde, and David Garman, 142–81. Tokyo: United Nations University Press, 1995, cited in Y.A. Aluko, p. 60.

¹¹⁵O. Odebode, 'Husbands are Crowns: Livelihood Pathways of Low-Income Urban Yoruba Women in Ibadan, Nigeria', *PhD diss., Institute of Social Studies and CERES Research School*, 2004, cited in Y.A. Aluko, p. 61.

¹¹⁶ Y.A. Aluko, p. 68.

¹¹⁷ Y.A. Aluko, p. 69.

processes. Additionally, the women of the Yoruba are engaging very much in their own enterprises, their husbands often not approving of this, but usually also not having a say in this matter as the women are managing their enterprises very independently from their husbands¹¹⁸.

Contributing to the already fierce relation between women and land rights in Nigeria, is the circumstance, that in wide parts of Nigeria, also among the patrilineal Yoruba, polygamy is a very common phenomena. This restricting additionally women's possibilities to gain access to land, as the husband might be responsible for two or three wives, while there would be in some cases, understandably hardly enough land to fit the livelihood needs of all family members. This situation therefore almost forces the women to take care of themselves and also their children by their own, as it would be even careless to some extent to rely exclusively on their husband. This stretches as far as some women are keeping their savings without their husbands having any knowledge about it, or even purchasing land and building houses on it, without their husbands being involved. However, this seems to be the only possibility for many women, especially in rural Nigeria, to take care for themselves and their children in a reasonable way, without jeopardising their livelihood and survival¹¹⁹. In the case of the man finding out about the private savings of his wife, the woman might face serious consequences, perhaps even being expelled from the family home. The husband on the opposite is not confronted with any such consequences, if he decides to put money aside from his family and decides not to send it on the collective welfare of the family¹²⁰.

Women therefore are facing a lot of private issues in addition to already existing customary and legal restraints, divorce being one of them. Although women are becoming

¹¹⁸ Y.A. Aluko, p. 70.

¹¹⁹ Y.A. Aluko, p. 71.

¹²⁰ Y.A. Aluko, p. 72.

in an increasing way more and more independent in Nigeria, socially as well as economically, traditional concepts and beliefs are still playing a major role, and divorce being linked to a social stigma in society. For this reason many women shrink back from leaving their husbands, even if they are suffering from domestic violence or other abusive behaviour in their marriage¹²¹.

Concerning the engagement and activism on the community level, women are taking a crucial position in its social infrastructure, as they are taking part in a variety of different functions. They are volunteering and helping the poor by educational support or training activities, furthermore they are donating money to orphanages or other collectives in need. Regarding the political engagement of women on the local level, at least the Yoruba women have lost a lot of illusions, as they perceive the political reality at their villages or communities as an institution that is reigned by corruption, thereby causing disappointment among many women and preventing them from practising any political participation. There might be an entitlement to political participation, but having suffered from a loss of trust in these institutions, women are tragically often choosing to refrain from any political engagement at all. Subsequently this situation only leads to a deepening of the already embedded inequalities in the legal and customary framework, as only the participation of women in decision-making processes regarding policies which have the target of improving and protecting women's rights, would really promote and advance women's empowerment on a large scale¹²².

¹²¹ Y.A. Aluko, p. 73.

¹²² Y.A. Aluko, pp. 74-75.

Conclusion:

The Yoruba women in Nigeria appear to be confronted with quite similar obstacles as the women in Malawi, the main barricade to an equal access to land being the discriminatory rules which are embedded in customary inheritance laws and are, at least in patrilineal societies, clearly favouring men over women. Although what seems to distinguish the Yoruba from the women in Malawi, is a very distinct sense for economic activities, the Yoruba engaging to a high extent in their local economy, as well as in cultural and social activities of their community. Furthermore, the Yoruba appear to have quite an intensive understanding of their self-awareness, moreover also being clear in their mind, that they are in many cases better off, by taking care of themselves concerning financial matters, than relying on their husbands. This circumstance is facilitated by the circumstance that, Yoruba women have the chance to acquire property to which their husband cannot lay a claim on.

Overall, it appears that the issue of discriminatory customary laws must be approached at the local level, additionally women must be provided with access to information regarding their land and property rights, as many of them not even have the essential amount of consciousness and awareness to demand the fulfilment of their granted rights.

6 Matriliny and Women's Land and Property Rights:

Asia

6.1 Nepal:

Introduction:

Women's land rights have been recognised more and more as a very effective tool to promote empowerment and development of populations as well as an increase of productivity in agriculture. There exist also profound evidence that children of women who have the final say concerning household and financial decisions are less likely to be underweight. This being a consequence to the fact that women who have their own and independent access to land are more likely to spend their income on the family welfare and food supply¹²³. The encouragement of women's land and property rights is therefore seen as an extremely successful instrument to promote human rights in general, economic growth and development¹²⁴.

When speaking of women's land rights, only effective lands are conceived, these are defined as

claims that are legally and socially recognized and enforceable by an external legitimized authorized, be it a village-level institution or some higher-level judicial or executive body of the state¹²⁵.

¹²³ K. Allendorf, 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1975.

¹²⁴ B. Argawal, *A field of one's own: Gender and land Rights in South Asia*, Cambridge: Cambridge University Press, 1994., cited in K. Allendorf, p. 1975.

¹²⁵ *ibid*, p. 19. , cited in K. Allendorf, p. 1976.

Comparable to Africa, most people in Asia, including Nepal, are depending crucially on access to land in regard to their livelihood and therefore survival, furthermore does land represent status and power for Nepal people, therefore eventually enabling to be part of the rural power structure¹²⁶. In recent times Nepal has been experiencing a “feminization of agriculture”, meaning that women are practically taking over the work in the agricultural sector, this being a result of different social developments in society, particularly the men migrating to the cities, or even outside of Nepal in search of employment, therefore leaving the women in charge of the field work¹²⁷.

Despite this increasing liability of women concerning their agricultural status, the still very often lack unlimited access to land, inheritance being the predominant form of property acquirement. Inheritance rules in Nepal are mainly bases on patrilineal systems, as a consequence women’s possibilities of inheritance are very restricted. Daughters for instance are only entitled to inherit from their father if they are unmarried, however if they marry later on they are obliged to return their inherited share in order to prevent their husbands from taking advantage of their inheritance. Widows in comparison have a slightly better position, they are entitled through the 11th amendment of the Civil Code to be the heirs of their deceased husbands and can also subsequently keep their inheritance within the same patrilineal decent line¹²⁸.

One of the major arguments in the discussion concerning the positive effects of women’s empowerment, is the element of welfare, meaning that women in comparison to men tend to spend a higher ratio of their income on the benefits of their family, children and

¹²⁶ R. Bhandari, *Land and labor markets among paddy producers in the Nepalese Tarai*, Unpublished doctoral dissertation, University of Massachusetts, Amherst, 2001., cited in K. Allendorf, p. 1976.

¹²⁷ Asian Development Bank (ADB), *Women in Nepal*, Manila: Asian Development Bank, 1999, and M.M. Cameron, ‘Transformation of gender and caste divisions of labor in rural Nepal: Land, hierarchy, and the case of untouchable women’, *Journal of Anthropological Research*, 51(3), 1995, p. 215., cited in K. Allendorf, p. 1976.

¹²⁸ K. Allendorf, p. 1976.

community. Women's income is therefore associated to a higher degree with well-being measures of a household and other positive effects regarding food supply and children's nutritional status and survival¹²⁹. Women themselves remark, that an unlimited access to land, free from any kind of constraints, would guarantee them more protection in the cases of their husbands dying or abandoning them¹³⁰. In this context, a Nepali woman observes that

The wife should get her property when her husband is still alive, so that she can make her own living even if her husband leaves her or treats her badly, and she doesn't have to depend on anybody¹³¹.

6.2 Nepal Demographic and Health Survey:

With regard to the linkage between women's land rights and child health, the Nepal Demographic and Health Survey (NDHS) which was conducted in the year 2001, will be examined at this point of the discussion, this being a representative cross-sectional survey, including the polling of around eight thousand households¹³². The women, who were interviewed in this survey were chosen due to the following criteria: they had to be married and still living in the same household with their husbands and furthermore working in agriculture. The survey was based on the examination of three measures:

¹²⁹ A.R. Quisumbing, L.R. Brown, H.S. Feldstein, L.J. Haddad & C. Pena, *Women: The key to food security*, Washington, DC: International Food Policy Research Institute, 1995., cited in K. Allendorf, p. 1977.

¹³⁰ B. Argawal, 1994., cited in K. Allendorf, p. 1977.

¹³¹ Panos Institute, *Mountain Voices: Panos Oral Testimony Programme*, www.mountainvoices.org, 2003., cited in K. Allendorf, p. 1977.

¹³² Nepal Ministry of Health, New ERA, & ORC Macro, *Nepal demographic and health survey 2001*, Calverton, MD: Family Health Division, Ministry of Health; New ERA, and ORC Macro, 2002., cited in K. Allendorf, p. 1978.

- (a) Land rights measure
- (b) Empowerment measures
- (c) Child health measure

these women were asked if they owned the land they were working on either by themselves or jointly together with their husbands, as the indicator to determine land rights is simply land ownership. Among the empowerment measures which were investigated in this survey, the respondents were asked the following questions regarding who has the final say in the household on

- (1) their own health care
- (2) making large household purchases
- (3) making household purchases for daily needs and
- (4) visits to family, friends and other relatives¹³³.

Regarding the child health measure, it was analysed, if the children of the respondent women were severely underweight or not, as child health status is measured due to the nutritional status of the child, this being a comparable parameter in international standards¹³⁴.

The results of the survey showed that, women who own land are more likely to have the final say in household decisions, rather than women who own no land or only jointly

¹³³ K. Allendorf, p. 1979.

¹³⁴ *ibid*, p. 1979.

together with their husband. The underlying assumption is, that the more decisions a woman can make on her own, the more influence she has, thus more empowered she is¹³⁵.

Table 3: Percentage of women having the final say on household decisions and percentage of children who are severely underweight by women's land ownership¹³⁶

	Has final say on at least one decision alone or jointly (%)	Has final say on all four decisions alone or jointly (%)	Has final say alone (%)	Child is severely underweight (%)
Lives in landed household	47.9	12.1	20.2	13.7
Owens land herself	69.5	23.1	36.6	8.1
Lives in landless household	59.7	15.4	29.9	14.2
Total	52.3	13.8	23.7	13.5

The survey also included other elements which might encourage empowerment, such as education, employment remuneration and the position of a woman in her specific family structure¹³⁷.

¹³⁵ *ibid*, p. 1980.

¹³⁶ K. Allendorf, 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1980.

¹³⁷ *ibid*, p. 1981.

Table 4: Descriptive statistics for variables used in models predicting

women's empowerment and children's health¹³⁸

Variable	4,884 women empowerment sample (%)	3,770 women with children health sample (%)
Empowerment scale	mn: 1.18 sd: 1.44	mn: 1.01 sd: 1.41
Final say alone	24	20
Child severely underweight	n/a	14
Urban residence	4	2
Hindu	86	83
<i>Caste/ethnicity</i>		
High caste	32	30
Tibeto-Burman	24	25
Other	44	46
<i>Household wealth</i>		
Highest	11	7
Intermediate high	20	18
Middle	20	19
Intermediate low	23	26
Lowest	26	30
Wife of household head	77	75
Age	mn: 32.2 sd: 9.0	mn: 28.7 sd: 6.5
<i>Employment remuneration</i>		
Unpaid	77	78
Paid in kind only	16	15
Paid in cash	8	7
<i>Education</i>		
None	80	81
Primary	13	13
Some secondary or more	7	6
<i>Husband's education</i>		
None or unknown	43	43
Primary	27	28
Some secondary	21	21
Completed secondary	9	9
<i>Land rights</i>		
Lives in landed household	71	74
Owns land herself	9	6
Lives in landless household	20	20
Owns livestock	29	27

percents are rounded to the nearest whole number and, thus, do not necessarily add to 100

¹³⁸ K. Allendorf, 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1981.

However the results showed in a very impressive way that there is a direct linkage between women owning land and having the final say on at least one or more major household decision concerning food purchases and health care. On the contrary it is also evident, that women who own no land have demonstrably less influence regarding household decision-making processes¹³⁹.

In addition, the above mentioned criteria of employment remuneration also have a remarkable impact on empowerment, as well as education, increasing the chances of women being able to take family decisions on their own or at least participating in the decision-making process. When comparing land ownership to the parameter of education and employment, it is quite obvious, that land ownership is the more powerful instrument when compared to primary education or being employed without cash payment but only being paid in kind. However, compared to secondary education, it appears that land ownership is not quite as potent a factor, suggesting that elevated levels of education might be a more intense element to encourage empowerment than land ownership. In relation to cash payment, land ownership seems even weaker, illustrating that being paid in cash, provides women with more influence regarding family decisions, than owning land, even revealing that cash payment equips women with the capability to not only make more household decisions but also to be able to take them entirely *alone*, therefore not even jointly with their husbands¹⁴⁰.

¹³⁹ *ibid*, p. 1982.

¹⁴⁰ *ibid*, p. 1983.

Table 5: Odds ratios from the ordered logit model of the empowerment scale and the logit

model of the final say alone dummy, N = 4,884¹⁴¹

	Empowerment scale OR	Final say alone OR
Urban residence	0.98	1.32
Hindu	1.33**	1.29*
<i>Caste/ethnicity</i>		
High caste	0.91	1.31*
Tibeto-Burman	1.31**	1.91***
Other (ref)	1.00	1.00
<i>Household wealth</i>		
Highest	1.52***	1.49**
Intermediate high	1.32**	1.31*
Middle	1.31**	1.34**
Intermediate low	1.19*	1.29**
Lowest (ref)	1.00	1.00
Wife of household head	4.60***	4.27***
Age	1.03***	1.02***
<i>Education</i>		
None (ref)	1.00	1.00
Primary	1.17*	1.41**
Some secondary or more	1.74***	1.82**
<i>Employment remuneration</i>		
Unpaid (ref)	1.00	1.00
Paid in kind only	1.25**	1.42**
Paid in cash	1.44**	2.25***
Owns livestock	1.32***	1.45***
<i>Land ownership</i>		
Lives in landed household (ref)	1.00	1.00
Owns land herself	1.50***	1.48***
Lives in landless household	1.18	1.26
-2 log likelihood	12,923	4,873
Model χ^2	566.6***	362.4***

* $p < 0.10$.** $p < 0.05$.*** $p < 0.01$.

¹⁴¹ K. Allendorf, 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1982.

The most striking factor of empowerment however is the position of a woman in her family union and hierarchy, as this appears to be the major source of empowerment, granting women with the possibility to have a lot of influence in family decision-making processes. This element is seems to be really the most influential criteria with regard to empowerment, leaving the indicators of employment remuneration, education and even land ownership far behind¹⁴².

Concerning the measure of child health, it is also quite evident that if woman own land on their own, the risk that their child is severely underweight, is reduced by half. On the contrary, the risk that the child is faced with malnutrition or food shortage increases by 10% if the mother does not own land. The link between women's land rights and an increase in child health and nutrition therefore seems to be empowerment, as empowerment in this context particularly means that the women have direct influence on household purchases related to food and nutrition. Furthermore it has to be taken into account that land ownership also usually means an increase in income and resources, this subsequently guaranteeing the possibility of better food supply and health care¹⁴³.

¹⁴² *ibid*, p. 1983.

¹⁴³ *ibid*, p. 1985.

Table 6: Odds ratios for logistic regression models of severely underweight children ¹⁴⁴

N = 3,770

	Model 1 OR	Model 2 OR	Model 3 OR
Urban residence	1.12	1.12	1.13
Hindu	1.19	1.19	1.20
<i>Caste/ethnicity</i>			
High caste	0.62**	0.62**	0.62**
Tibeto-Burman	0.39***	0.38***	0.39***
Other (ref)	1.00	1.00	1.00
<i>Household wealth</i>			
Highest	0.42***	0.43***	0.42***
Intermediate high	0.61**	0.61**	0.62**
Middle	0.47***	0.47***	0.47***
Intermediate low	0.75**	0.75**	0.75**
Lowest (ref)	1.00	1.00	1.00
Mother's age	1.02**	1.02**	1.02**
<i>Mother's education</i>			
None (ref)	1.00	1.00	1.00
Primary	0.85	0.84	0.85
Some secondary or more	0.61	0.60	0.61
<i>Father's education</i>			
None or unknown (ref)	1.00	1.00	1.00
Primary	0.93	0.93	0.93
Some secondary	0.61***	0.61***	0.61***
Completed secondary	0.46***	0.46**	0.46**
Mother owns livestock	1.03	1.03	1.04
<i>Land ownership</i>			
Lives in landed household (ref)	1.00	1.00	1.00
Mother owns land	0.53**	0.51**	0.54**
Lives in landless household	0.78	0.78	0.79
Mother's empowerment scale		1.05	
Mother has final say alone			0.85
-2 log likelihood	2,812.8	2,811.0	2,811.3
Model χ^2	78.7***	90.3***	79.1***

* $p < 0.10$.** $p < 0.05$.*** $p < 0.01$.

¹⁴⁴ K. Allendorf, 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1984.

Although surveys like the one mentioned above demonstrate in a quite obvious way, that it appears, that there are only advantages resulting from an increasing empowerment of women and their land rights, this issue is also faced with a lot of controversies among the local population of Nepal. Besides traditional and cultural believes, which also might impede the development of women in Nepal, one of the major obstacles on the way to strengthening women's land rights is the fact that land is a finite resource, implying that if women are granted more access to land and also exclusive land ownership, this can only happen by taking land away from men. In Nepal, as in most Asian and African countries, the possession of land is key-factor regarding dominant and traditional power structures of a country, the loss of land therefore linked inevitable with the loss of power, an fact which makes it so difficult to rearrange land ownership systems towards are more equal access for both gender¹⁴⁵.

Conclusion:

The results of the above displayed survey create a clear image of the relevance of women's ownership of land and the correlation between women's property status and an increase in the measures of child nutrition and child health. According to the NDHS, it is visible that women who own land, thereby creating a salary that is independent from their husbands income, tend to spent a relevant higher ration of their earnings on family welfare, mainly including nutrition and medical supplies.

In addition, there is also a certain increase of the economic productivity and efficiency detectable, women more likely than men to spend their earnings on agricultural devises and vehicles, thereby understandably increasing the agricultural output and also the economic profit.

¹⁴⁵ ibid, p. 1985.

6.3 India:

Reviewing the assumption that women supply more public goods than men, at this point of the research a survey is analysed, which was conducted among three different North East Indian societies, two being patriarchal, one being matrilineal¹⁴⁶.

As a matrilineal respondent group, the Khasi of Meghalaya were chosen, their society structure, as in all matrilineal societies, organised around the clan house of their mothers of society, them being the main decision-makers regarding household decisions. As patriarchal societies, two different Assamese villages were chosen, which are situated close to the Khasi villages in the Guhuwarti region. Concerning the religion of the respondent groups, there exist quite an obvious variety, the Khasi being mostly Christians, while one of the patriarchal societies was Hindi, the other being Muslim¹⁴⁷.

Regarding the marital status of the respondents, it was quite even, although there were slightly more married participants among the Khasi group. The age range was between 25-30, with the Khasi being slightly older, the male/female ration was quite balanced with slightly more male attendees among the Assamese Hindu society¹⁴⁸.

In total the survey was conducted among 191 participants- 79 Khasi, 61 Muslim Assamese and 51 Hindi Assamese. All participants of the survey were told to each distribute 60 rupees to an individual exchange as well as a group exchange. The actual survey then was conducted under two frames, a positive frame and a negative frame. Regarding the positive frame, participants were told that every rupee they spent on individual exchange would return them one rupee, but every rupee spent on the group exchange would return every group member one and a half rupees. Under the negative frame, participants were told that, every rupee assigned to the individual exchange would

¹⁴⁶ S. Andersen, E. Bulte, U. Gneezy and J. A. List, 'Do Women Supply More Public Goods than Men? Preliminary Experimental Evidence from Matrilineal and Patriarchal Societies', *American Economic Review: Papers and Proceedings*, vol. 98, no. 2., 2008, p. 376.

¹⁴⁷ *ibid.*, p. 377.

¹⁴⁸ *ibid.*, p. 378.

return them a rupee, but every rupee spent on the group exchange would diminish the income of every group member by one-half rupee. The underlying assumption of this experiment is quite obviously the fact that the individual exchange represents merely selfish interests of the respondents, whereas allocating the money to the group exchange demonstrates quite altruistic behaviour¹⁴⁹.

The results of the experiment can be broken down to three main conclusions. The first one being that in the respondent group of the matrilineal society, evidently fewer selfish attitudes (in this specific survey this behaviour is referred to as “*free-riders*”) are to be found, than in the other two patriarchal groups. When comparing this result with the Assamese Hindi group the difference is not as quite as striking as when compared to the Assamese Muslim group, where the gap is significantly much wider concerning generous and selfless behaviour versus selfish characteristics¹⁵⁰.

The second main conclusion which can be extracted from the experiment, is the fact that members of the matrilineal group are more likely to contribute to public goods than any of the other two analysed groups¹⁵¹. However a very interesting fact was revealed during this stage of the experiment, namely that among the respondent group of the Khasi, it were not so much the women but apparently more the male group members who tended to contribute much more of their “income” to the well-being of the collective than their male colleagues from the two patriarchal survey groups. This result leads also directly to the third conclusion, namely that the higher interest into the common-welfare, which can be detected among the Khasi participants, is not due to the female members of the Khasi society but can be linked much more to the male members¹⁵².

¹⁴⁹ *ibid.*, p.378.

¹⁵⁰ *ibid.*, p. 378.

¹⁵¹ *ibid.*, p. 378.

¹⁵² *ibid.*, pp. 379-380.

Conclusion:

The overall conclusion of the experiment therefore can be summarized as follows: There is certainly a linkage between women as decision-makers of a society and a higher ratio of public goods being provided by them. However this connection can not be solely based on the actions of women in the respective societies but also on the activities of men in the certain society¹⁵³. Although it seems quite evident, that in female-organised and structured societies there is a stronger towards the collective welfare than in patriarchal societies, this effect even extending to the men of matrilineal societies.

The Influence of Ownership on Domestic Violence in Kerala:

As elaborated above, women's property status has an influence on a variety of different elements and other Human Rights, such as adequate housing, education and food but also health. Considering the aspect of health, there exists another interesting assumption, namely that the pure existence of ownership of a women will reduce her risk of being a victim of domestic violence due to different reasons which are interlinked with her specific property.

Domestic violence is a very multi-layered issue, as it is by its nature, very difficult to recognise and perceive from the outside and also the factors which provoke it, vary across cultures and societies. There exists a rough estimation regarding physical violence, its prevalence assumed to be between 10-50%¹⁵⁴, on the contrary there exist hardly any estimations concerning psychological violence, as, by its nature, this type of violence is even more difficult to detect¹⁵⁵.

There are many interesting elements which contribute to the fact that women's ownership, especially in reference to immobile property (land or house), is indeed an appropriate

¹⁵³ *ibid.*, pp. 380-381.

¹⁵⁴ Population Reports, 'Ending violence against women', *Issues in the World Health*, vol. 24, no. 4, 1999, pp. 1-43, cited in P. Pradeep and B. Argawal, Marital Violence, Human Development and Women's Property Status in India, *World Development*, vol. 33, No. 5, p. 824.

¹⁵⁵ P. Pradeep and B. Argawal, p. 824.

means to reduce the prevalence of marital violence. One of them being, that a house, in comparison to employment, is a visible sign of empowerment and independence of a woman, moreover, it is providing her with an immediate escape option in the case of domestic violence. A further parameter which distinguishes immobile property from employment is the fact that a house is a stable insurance for a woman, whereas employment can be quite unsteady as it is depending on the conditions of the labour market. Furthermore, land symbolises a very important resource for a woman, as it provides them with a possibility to take care of themselves in reference to livelihood and supply with the essential food¹⁵⁶. The mere existence of a house belonging to the woman, might be sufficient enough to deter the mans' tendency towards violence, as a woman who owns property by herself is more likely to tolerate any violence in her marriage than a property less woman, whose only escape option might be the choice of homelessness¹⁵⁷.

In this section of the research, a household survey will be analysed, which was conducted in the province of Kerala in India in the year 2001, Kerala being a very interesting model as wide parts of it formerly were matrilineal, therefore also transfer of ownership was traced through the female line exclusively¹⁵⁸, this understandably empowering the women in the respective regions and even having impacts to some extent on the areas, where there was no matrilineal structure dominant. About 40% of the survey households were organised due to a matrilineal concept, the other half of the respondents being therefore non-matrilineal¹⁵⁹. Approximately 34% of the respondent women owned immobile property, most of them living in urban areas, and only about a third living in the countryside¹⁶⁰.

¹⁵⁶ B. Argawal, *A field of one's own: Gender and land rights in South Asia*, Cambridge: Cambridge University Press, 1994, cited in P. Pradeep and B. Argawal, p. 825.

¹⁵⁷ P. Pradeep and B. Argawal, p. 825.

¹⁵⁸ *ibid.*

¹⁵⁹ P. Pradeep and B. Argawal, p. 826.

¹⁶⁰ P. Pradeep and B. Argawal, p. 829.

The outcomes of the survey showed that the prevalence of physical violence is significantly higher in rural areas, as is the frequency of violence. Psychological abuse on the other hand being more predominant in the cities¹⁶¹.

Considering the element of employment, it is mainly the husband's employment versus his unemployment, which makes a difference according to the prevalence of physical violence, unemployment understandably increasing the incidence of violence. When comparing the situation of employed women to those of unemployed, the only notable difference is those between regular and irregular/seasonal work. The underlying explanation might be that regular employment is also linked to a higher education, a better standard of living, whereas seasonal work is linked in most cases to poverty and less education, this being indicators for violence¹⁶². Considering the decrease of violence which is caused by the parameter of the regular employment, the effect of immobile property of a woman however is much stronger for various reasons. One of them being that, even if a woman is employed on a regular basis, she is very likely to be facing challenges upon deciding to leave her husband and take an accommodation of her own, these challenges being economically as well as socially, therefore creating an atmosphere of insecurity for the respective woman¹⁶³. As already mentioned above, the outcome of this survey suggests, that the most powerful factor to deter violence against women, is undoubtedly property ownership. The collected data present a remarkable decrease of violence, physical as well as psychological, in cases of women owning a house and land, or at least one of those. This phenomena is consistent in urban areas as well as in rural areas. In reference to dowry related struggles, women's ownership also seems to have a certain relaxing function, as women who are able to dispose over property are experiencing traceable less dowry-related harassments and violence by her husbands¹⁶⁴.

¹⁶¹ P. Pradeep and B. Argawal, p. 829.

¹⁶² P. Pradeep and B. Argawal, p. 834.

¹⁶³ P. Pradeep and B. Argawal, p. 833.

¹⁶⁴ P. Pradeep and B. Argawal, p. 836.

Table 7: Long-term physical violence by selected characteristics (percentages)

Characteristics	Total	Rural	Urban
<i>Per capita expenditure (Rs./yr)</i>			
<6,000	73.3	76.6	58.3
6,000–11,999	24.6	21.8	32.3
12,000 & above	18.5	23.8	17.5
<i>Sociodemographic features</i>			
<i>Age of woman respondent (yrs)</i>			
15–24	46.6	49.0	40.9
25–34	34.4	38.5	29.0
35–49	33.0	41.7	19.7
<i>Duration of marriage (yrs)</i>			
<7	42.4	46.1	37.1
7–14	34.2	39.1	26.1
15 & above	31.1	39.8	18.8
<i>Spousal age difference (yrs)</i>			
<5	40.1	32.1	30.0
5–8	37.2	44.4	25.8
9 & above	28.4	30.2	26.8
<i>Number of children</i>			
0	42.9	48.4	33.3
1–2	33.9	38.5	26.6
3 & above	39.3	51.1	25.6
<i>Education (yrs)</i>			
<i>Woman respondent</i>			
<6	57.7	61.7	44.4
6–12 (secondary)	34.7	38.8	26.0
>12	22.7	17.9	24.4
<i>Husband</i>			
<6	46.2	50.0	31.6
6–12 (secondary)	36.7	39.2	31.7
>12	23.1	33.3	20.0
<i>Spousal educational difference</i>			
Wife = husband	33.3	32.9	33.8
Wife < husband	42.9	58.0	20.3
Wife > husband	32.2	35.7	26.0
<i>Employment</i>			
<i>Woman respondent</i>			
Unemployed	35.1	39.0	29.6
Regular employment	28.0	37.2	20.0
Seasonal/irregular employment	49.3	52.5	25.0
<i>Husband</i>			
Unemployed	70.6	92.3	57.1
Regular employment	31.3	36.9	23.7
Seasonal/irregular employment	45.2	48.2	16.7
<i>Spousal employment difference</i>			
Wife = husband	34.9	42.9	27.0
Wife < husband	34.4	39.5	25.8
Wife > husband	68.8	72.7	60.0

(continued next page)

Table 7 - continued¹⁶⁵

Characteristics	Total	Rural	Urban
<i>Ownership of property by women</i>			
None	49.1	51.6	43.8
Land only	17.9	25.0	0.0
House only	9.9	8.3	13.0
House & land	6.8	0.0	7.8
<i>Woman's social support</i>			
None	49.8	58.8	36.6
Natal family	21.3	20.6	22.9
Natal family & neighbors	27.1	39.0	15.3
<i>Woman witnessing father beating mother in childhood</i>			
Did not witness	29.1	35.6	22.9
Witnessed	47.7	47.9	47.1
<i>Specific characteristics of husband</i>			
<i>Alcohol consumption</i>			
Teetotaler	24.7	26.8	21.9
Drinker	45.9	53.7	32.6
<i>Witnessing father beating mother in childhood</i>			
Did not witness	26.6	30.8	22.2
Witnessed	57.0	57.5	55.2

¹⁶⁵ P. Pradeep and B. Argawal, Marital Violence, Human Development and Women's Property Status in India, *World Development*, vol. 33, No. 5, p. 835.

Table 8: Women's property ownership, long-term physical violence and various characteristics (percentages)¹⁶⁶

Characteristics	All women (502)	Propertyless women (330)	Propertied women (owning land or house or both) (172)
<i>Matrilineal caste status and long-term physical violence</i>			
Matrilineal households (216)	26.4 (57/216)	57.3 (43/75)	9.9 (14/141)
Non-matrilineal households (286)	42.7 (122/286)	46.7 (119/255)	9.7 (3/31)
<i>Women who left home, returned, among those facing long-term physical violence</i>			
Women left home (43)	24.0 (43/179)	19.1 (31/162)	70.6 (12/17)
Women returned home among those who left (24)	55.8 (24/43)	67.7 (21/31)	25.0 (3/12)
<i>Women who faced dowry demands at the time of marriage or after marriage</i>			
	47.8 (240/502)	45.2 (149/330)	52.9 (91/172)
<i>Women beaten by husbands or in-laws for inadequate dowry (among those facing dowry demands)</i>			
	28.8 (69/240)	44.3 (66/149)	3.3 (3/91)

Figures in brackets give the absolute numbers.

The displayed result support the suggestion that ownership not only serves as an indicator to decrease the probability of different forms of violence but also has a way-out function in cases of already occurred violence by providing the women with the possibility of an accommodation¹⁶⁷.

Conclusion:

The importance of this survey plays a crucial role in the view of future policies and decision-making processes which are dealing with women's property rights and have the objective of enforcing and strengthening women's access to land and property. The advantages of an intensified and consolidated access to land and subsequently the

¹⁶⁶ P. Pradeep and B. Argawal, Marital Violence, Human Development and Women's Property Status in India, *World Development*, vol. 33, No. 5, p. 838.

¹⁶⁷ P. Pradeep and B. Argawal, p. 838.

protection of already implemented rights are ranging from an decrease in physical and psychological to capability enhancement and empowerment of women.

Moreover the displayed survey demonstrates that the prevention of violence towards women is conducive in ensuring a fulfilment of the Right to Health in regard to women, access to property being an appropriate tool on this way.

7 Conclusion:

7.1 Results and Outcomes:

The overall motivation of my research and the choice of my topic was due to my specific interest into the question if there really exists a perceivable difference in matrilineal societies in reference to the actual execution of property and land rights in comparison to non-matrilineal societies.

After examining the situation in the matrilineal societies, I wanted to compare them to patrilineal societies, to see if there are any differences between these two types of societies and how they affect women's everyday life. Drawing these conclusions, I wanted also to look at the possible root-causes of inequalities in patrilineal societies- assuming I would detect such- which impede women's equal access to land and property rights.

As a whole, my major objective was to find out, and if so, subsequently proof, that women's equal access to land is directly connected to their empowerment, economically as well as socially. Additionally identifying how this process of empowerment, deducted from land ownership, works and what the exact conditions of it might be.

After examining this process, I wanted to investigate, if in addition to the empowerment of women, there would be also positive effects traceable in reference to the families and children of the empowered women but also in regard to the community of the women.

Finally, combining all my conducted research, the major target is to identify and develop suggestions and initiatives for future policies and laws, which have the goal to empower women in an effective and substantiated way as this would not only benefit the empowered women but also whole communities, if not even, whole states.

Starting with my Master Thesis, I commenced by getting involved with the inscription of the Right to Property in the different legal frameworks worldwide, and by looking at the realisation of it, especially in matrilineal societies. My results represented clear evidence, that there exists in fact a direct visible connection between an extensive realisation of the right to property and the empowerment of women. The conditions of this linkage are quite multifaceted, ranging from economical to social to personal effects. The fact that a woman has access to land, without having to overcome any barriers or obstacles, provides her on the one hand with the possibility to build a house for her own and therefore a secure accommodation, on the other hand it enables her to cultivate and harvest the land, by this means assuring her livelihood and survival. Furthermore, direct access to land permits a woman the chance to participate in the local and regional economy by selling her crops and harvest. All these factors are strong conditions for women's independence, as they guarantee that women do not have to rely on men or other family members to earn a living for themselves and are provided with the essential tools to create a live in accordance with their own imaginations and beliefs.

Access to land and the possibility to not only own it, but also control the production on it, seems to be the crucial element on the way to the empowerment of women, as the resource of “land” across all regions and cultures seems to be a real power indicator.

As already elaborated above, the positive consequences of equal land and property rights of women, are not only measurable along the economic sector, but also in social matters and issues of domestic violence. The outcomes of the results of the survey on marital violence in Kerala, India, delivered clear evidence that immobile property serves to deter domestic violence, by decreasing on the one hand the probability of marital violence itself, on the other hand by decreasing women’s willingness to tolerate violence.

In addition to the empowerment of women, in some of my findings I found explicit evidence and data, which proof, that in societies where there is a relatively high number of women in charge of land rights, also other Human Rights, such as the Right to Food, the Right to Adequate Housing and the Right to Health are realised and fulfilled to a higher extent. This seems to be on the grounds of women’s tendency, in comparison to men’s attempts, to spent more of their income on the family and collective welfare. The measurable outputs of this findings include a more advanced nutrition status of children, which therefore in the long run results in a better health status of the whole population.

7.2 Outlook:

Coming to the conclusion that, women’s land rights represent a major condition and indicator on the way to empowerment and development, the question arises how the property rights of women can be guaranteed and protected on a larger scale and which obstacles exactly hinder this process.

My findings suggest that the underlying problem is not so much a legal one in the common sense, but more a practical one. International legal frameworks and Human Rights instruments have already achieved quite a remarkable effort and progress in regard to assuring women equal access to land and property rights, the problem therefore in my opinion is not resting on the international level, but much more on the regional and local level. Even if national governments and authorities have obliged in implementing international policies and Human Rights standards, in many countries, especially in Africa and Asia, besides the official legal system, there also exist a customary framework of laws, especially concerning inheritance laws. People still preferring in many cases to oblige customary rules, thereby to some extent neglecting international policies dealing with equality and the advancement of women.

In my opinion this issue can only be tackled, by addressing people on the local level through campaigning and educational initiatives, by rising attention and awareness in reference to the importance of women's equal access to land but also to the advantages which arise for whole communities, if women's land and property rights are enforced and realised to their full extent.

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9 Appendices:

Table 1: N. Tschirhart, L. Kabanga, S. Nichols, 'The convergence of HIV/AIDS and customary tenure on women's access to land in rural Malawi', *SAHARA-J: Journal of Social Aspects of HIV/AIDS*, vol. 12, no.1, 2015, p. 143.

Table 2: Aluko, A.K., 'Patriarchy and Property Rights among Yoruba Women in Nigeria', *Feminist Economics*, vol. 21, no. 3, 2015, p. 62.

Table 3: Allendorf, K., 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1980.

Table 4: Allendorf, K., 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1981.

Table 5: Allendorf, K., 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1982.

Table 6: Allendorf, K., 'Do Women's Land Rights Promote Empowerment and Child Health in Nepal', *World Development*, vol. 35, no. 11, 2007, p. 1984.

Table 7: Pradeep, P., B. Argawal, Marital Violence, Human Development and Women's Property Status in India, World Development, vol. 33, No. 5, p. 835.

Table 8: Pradeep, P., B. Argawal, Marital Violence, Human Development and Women's Property Status in India, World Development, vol. 33, No. 5, p. 835.

Kurzfassung:

Das Forschungsinteresse welches meiner Masterarbeit zu Grunde liegt, konzentriert sich auf die Verwirklichung des Recht auf Eigentum in matrilinearen Gesellschaften. Ich wollte untersuchen, ob es einen Unterschied zwischen der Verwirklichung des Rechts auf Eigentum in matrilinearen Gesellschaften im Vergleich zu jener in patrilinearen Gesellschaften gibt. Des weiteren wollte ich die Gründe und Bedingungen für einen eventuellen Unterschied untersuchen. Zu diesem Zwecke habe ich matrilineare Gesellschaften in Afrika, insbesondere Malawi und Nigeria, sowie Asien, Nepal und Indien, miteinander verglichen. Ebenso habe ich die Auswirkungen untersucht die das Recht auf Eigentum auf andere Menschenrechte in der gleichen Gesellschaft hat, insbesondere auf das Recht auf Gesundheit und das Recht auf Nahrung.

Meine Forschungsergebnisse haben einen klaren Zusammenhang zwischen dem Recht auf Eigentum und der Förderung der Stellung der Frau in diesen Gesellschaften ergeben. Auch konnte ein Zusammenhang festgestellt werden, welcher belegt, dass Frauen, die über Eigentum verfügen, auch die Förderung anderer Menschenrechte unterstützen.

Abstract:

The underlying research interest of my Master Thesis is dealing with the implementation of the Right to Property in matrilineal societies. I wanted to examine if there exists a difference between the execution of the Right to Property in matrilineal societies in comparison to patrilineal societies. Further I wanted to research the conditions and reasons of a potential difference. In doing so, I compared matrilineal societies in Africa, especially Malawi and Nigeria, and Asia, Nepal and India. Also I wanted to examine which other Human Rights might be affected by the Right to Property in the same society, especially the Right to Health and the Right to Food.

My research results showed a clear linkage between the Right to Property and the empowerment of women in the same society. Additionally a connection between the Right to Property and the realisation of other Human Rights was detectable.