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Commission on the Status of Women

PROPERTY RIGHTS OF WOMEN

Preliminary report of the Secretary-General

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INTRODUCTION

1. At its fourth session, the Commission on the Status of Women adopted a resolution on information on the legal status and treatment of women ^{1/} by which it requested the Secretary-General inter alia:

"(a) to circulate to Governments part II of the questionnaire, on property rights of women, and part III, on family law, with the request that they supply replies at the earliest possible time, but not later than 31 December 1951 in the case of part III and 30 June 1952 in the case of part II;

"(b) to forward copies of the questionnaire, together with simplified questions based on parts II and III, to specialized agencies and non-governmental organizations, and request their comments by 31 December 1950;

"(c) to prepare, for its next session, a survey of various legal systems, based on documentation available on the subjects included in parts II and III of the questionnaire, together with an analysis of replies thereto received from Governments and comments received from specialized agencies and non-governmental organizations."

2. The Secretary-General accordingly circulated to Governments part II of the questionnaire, requesting their comments by 30 June 1952, and forwarded to specialized agencies and non-governmental organizations copies of the questionnaire together with a list of simplified questions based on this part ^{2/} and requested their comments by 31 December 1950.

3. On the basis of replies received as at 1 March 1951 the Secretary-General prepared a preliminary survey of the various legal systems for the fifth session of the Commission on the Status of Women (Document E/CN.6/166).

4. In addition to the material which was analyzed in document E/CN.6/166 and presented to the fifth session of the Commission on the Status of Women,

^{1/} Document E/1712, paragraph 42 (a), (b) and (c).

^{2/} Document E/CN.6/W.1/Add.5

/the Secretary-General

the Secretary-General has received information from the following non-governmental organizations: the International Federation of University Women (for Australia, Austria, Finland, France, Germany, Greece, Italy, Netherlands, Norway, Scotland, South Africa, Sweden); the All-India Women's Conference (for India); the Alliance des Sociétés féminines Suisses ^{1/} (for Switzerland).

5. In the present report the Secretary-General has the honour to present to the Commission on the Status of Women an analysis of these replies.

/Chapter I

^{1/} This reply to the questionnaire was drafted by the Legal Committee of the Alliance des Sociétés féminines Suisses, in collaboration with the Association Suisse des femmes de professions libérales et commerciales, the Association Suisse des femmes universitaires, the Association Suisse pour le Suffrage Féminin and the Guilde des Coopératrices de Suisse.

Chapter I - Legal Capacity

Section 1 - Majority

6. The age of majority is the same for men and women in Australia, Austria, Finland, Germany, Greece, India, Italy, Netherlands, Norway, Scotland, Sweden, Switzerland and Union of South Africa. ^{1/}

7. The disability arising from minority is terminated under the same conditions for men and women and the effects of this termination is the same in Australia ^{2/}, Finland, Germany, Greece, India, Italy, Netherlands, Norway.

8. The Austrian law discriminates between "Unmundigkeit" (minority up to the age of 14) and "Minderjahrigkeit" (minority up to the age of 21). A precocious release from the paternal authority after the age of 18 is possible with the permission of the Court.

9. In France, however, the end of disability of a minor married woman does not produce the same effects as the end of disability of a minor married man.

The minor man acquires full capacity by the sole fact of his marriage.

However, the minor married woman, although being declared major by the sole fact of her marriage, is under a certain civil incapacity according to the matrimonial regime adopted by the spouses.

Section 2. Right of Action

10. An unmarried woman has the same right as a man to sue or defend in courts in Finland, Germany, Greece, India, Netherlands, Scotland and Switzerland.

11. Marriage has no effect on the right of women to sue or defend in courts in Australia, Finland, Greece, India and Scotland.

12. In Australia, a married woman has an equal right to sue or defend in courts and must state that she is married; only her separate estate can be taken in satisfaction of judgment or costs of suit.

/13. In

^{1/} In Austria, Greece, Norway, Sweden, Switzerland and Union of South Africa it is 21 years for both.

^{2/} Except that majority does not give women the right to jury service (except in Queensland).

13. In Germany, the husband may take action in the place of his wife, but is not obliged to do so. He may also represent her in certain cases of penal law (such as action for insult) and bring an action in his own name and in his own right.

14. In the Netherlands a married woman may only appear at court as plaintiff or as defendant represented by husband in case of community property; assisted or authorized by husband in case of a marriage settlement, except when she is at law against her husband in case of a marriage settlement, for a divorce a mensa et thoro; under judicial authorization when the spouses have clashing interests or when the husband is absent, and when in criminal cases, the wife is accused.

Section 3 - General contractual capacity

15. Unmarried women have the same contractual capacity as men, in Australia, Finland, Germany, Greece, India, Scotland and Switzerland.

16. Marriage has no effect upon the contractual capacity of women in Finland, Greece, India and Scotland.

17. In Greece the only discrimination against women is that women are not admitted as witnesses in contracts, even though they may be lawyers, notaries, etc.

18. In Australia a woman can be held liable only to the extent of her separate estate. In practice this limits the number of persons who will enter into contract with her.

19. In Germany, generally, and in regard to legal responsibility, contracts binding the wife may only be closed by the wife herself. The position differs if the spouses have excluded the normal legal joint-property regime and have agreed to a different one.

20. In the Netherlands, in case of a marriage settlement the married woman may not enter into agreements without the assistance or authorization of her husband (in case of community of property she may enter into no agreements whatever) except for the ordinary everyday housekeeping expenses to which she is presumed to be authorized. The married man who lives with his wife may contract no hire-purchase without her approval.

/21. In

21. In Switzerland, in principle, married women have the same contractual capacity as men. The following are subject to exception: (a) her contributions to the joint estate under the regimes of united property (union des biens) and community of property (communauté des biens), which come under the husband's control; (b) the legal documents relating to her own contributions, which are subject to authorization by the guardianship authority (autorité tutélaire); (c) her obligations towards third parties in the husband's interest; (d) her right to assume liability as surety for someone.

Exception is made, however, for a man or woman listed in the commercial register as the head of an individual business, member of a partnership firm, responsible member of a limited partnership, director or managing director of a limited liability company, director of a share partnership company, or managing director and partner of a limited liability company.

The wife may act as **representative** of the marriage only for the everyday housekeeping requirements.

Upon dissolution of the marriage (by death of the husband, divorce or annulment of the marriage) the wife recovers her full contractual capacity.

Section 4 - Capacity to carry on a business, trade, industry or profession

22. An unmarried woman has full legal capacity to carry on a business, trade, industry or profession in Finland, Greece and Scotland.

23. In Germany, according to the Bonn "Foundation Law" (Grundgesetz) absolute equality is provided by law. Practically however this has not yet been carried out.

24. In Austria and the Union of South Africa, she is "protected" in certain industries. In the former, certain social legislation has stipulations for the protection of women workers, e.g. prohibition of occupation in mines, prohibition of night work, etc. Because of the latter certain trades are closed to women, e.g. printing trade, heavy industry and other avenues of employment governed by such legislation as Night Work Convention, dangerous trades etc.

25. In the Union of South Africa the wife under the marital power of her husband can only enter into a trade with the consent of her husband. If, while employed, the wife is under the marital power of her husband, the husband has the legal right to claim the wages earned.

/26. In

26. In Australia higher grades of government service (State or Federal) are not open to women. Further, a woman must resign from the service of the Government (State or Federal) upon marriage. Under the Licensing Laws in some States a married woman may not hold a license to sell liquor.

27. In India women cannot join the actual fighting units of the forces, but they may serve in the medical corps as Commissioned officers and in the technical branches. They do not as a rule officiate as priests, although there are exceptions. Married women are not encouraged to try for foreign service owing to the practical difficulties arising when they are sent abroad.

28. In Switzerland no distinction is made in the text of any law. It should be noted however that the professions of printer, notary, magistrate, priest or pastor are, generally speaking, closed to women under public law provisions. The husband's consent is necessary, but it may be tacit. When his consent is refused, the wife may bring her case to court.

29. In Germany the husband's consent is required for the wife to open a business or work at a trade or take up a profession. The consent however may be tacit.

30. Marriage has no effect on the capacity of a woman to carry on a business, trade, industry or profession in Finland, Greece and Scotland.

Chapter II - Property Relations of Spouses

General

31. The property relations of husband and wife are regulated by law and by contract in Finland, France, India and Norway.

32. In France, in the absence of a contract between spouses the law provides a matrimonial regime: this is the "communauté légale".

33. In Germany the property relations of husband and wife are regulated by law. This regulation by law continues even if the spouses, by marriage contract, have agreed upon property relations, because only certain property rights, listed in the Civil Code, may be agreed upon in the marriage contract.

34. In Greece property relations of husband and wife can be regulated by contract according to the dowry system acknowledged by law as the regime of separated properties.

35. In Italy property relations of husband and wife are regulated by a "convention of marriage" or by the constitution of the community property. In the absence of a matrimonial convention the law provides for the separation of property. In the cases of community property, separate property and dowry property, these are always administered by the husband.

36. In Scotland, unless regulated by contract, each spouse's estate belongs to him or her.

37. In the Union of South Africa property relations of husband and wife may be regulated either by law or contract.

38. In Sweden property relations of husband and wife are governed generally by law.

39. In India, under the Marumakkathayam Law (Hindu matriarchal system prevailing in parts of South India, namely in Malabar) it is regulated by contract.

40. In Switzerland the Penal Code grants husband and wife the right to regulate their property relations by contract. They are, however, required to adopt one of the regimes prescribed by the Civil Code, which are: united property, community of property, separate property (la séparation de biens). Within these regimes a choice of certain alternatives is provided for under the law: for instance, in united property, a different contractual distribution of profits; in community of property, community of acquired property; in separate

/property, the

property, the dowry system. The marriage contract must be drawn up in due form and can be invoked against third parties in accordance with the provisions of the register of matrimonial regimes. Marriage settlements made during the marriage are subject, in addition, to the approval of the guardianship authority.

Section 1 - Community of property

41. In Austria community property may be established by contract.

42. In France, under the regime of legal community of property, joint property consists of: (1) all effects, movable property and transferable securities owned by husband and wife at the time of marriage; (2) all property which they may be given or may inherit during the marriage, except immovable property; (3) income of any kind received during the marriage, transferable securities and immovable property purchased during the marriage. Upon dissolution of the marriage, the total joint property is divided equally between the ex-spouses or their heirs. The personal property of the husband of the wife consists of the immovable property they owned before the marriage and property inherited or given to them during the marriage. Administration of property: the husband is sole administrator of the joint property: he may sell and mortgage it without his wife's consent. He is also sole administrator of his wife's immovable property, but he may not sell or mortgage it without her consent.

Community of property limited to property acquired during the marriage is different from legal community of property in that everything owned by the husband or the wife (movable and immovable property) at the time of the marriage remains their personal property and must be restored to them or to their heirs upon dissolution of the marriage. As under the system of legal community of property, the husband is sole administrator of the joint property and the wife's property. He can therefore sell it without her consent, which is required only for the sale of her personal immovable property.

Under all the regimes of community of property, the husband being sole administrator of the joint property and of the wife's own property, the latter cannot sign any contract concerning her property without her husband's authorization. Moreover, she has no right of control over her husband's administration. As the current assets consist chiefly of movables which, in most cases, have to be sold in order to be administered, the husband acts in fact

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as the real owner. Upon dissolution of the marriage, the wife has no recourse in the event of bad administration by her husband, i.e. against squandering of the joint property. With regard to her own property, the wife becomes her husband's creditor, but, if he is insolvent, she cannot obtain restitution of her property.

43. In Switzerland husband and wife are subject to the regime of united property, unless they have adopted another regime by their marriage contract or are subject to the exceptional marriage regime (régime matrimonial extraordinaire).

In certain cases the law provides for the separation of property under an exceptional regime, for instance: (a) pleno jure, when the creditors of one spouse suffer loss on account of his bankruptcy; (b) by a decision of the court, at the request of the wife, the husband or a creditor.

Such part of a spouse's property as has been constituted reserved possessions (biens réservés) under the marriage contract, by gift from a third party or in execution of the law, remains his property and he retains the right to administer and use it. The following is reserved property by law: (1) effects for the exclusive personal use of the spouse; (2) property of the wife which she uses in her profession or trade; (3) money earned by the wife outside her domestic activities.

The husband may require the wife to allocate an equitable share of her reserved property to the financial burdens of the family. She must, as far as may be necessary, use her earnings towards the payment of the household expenses.

The system of united property covers all property owned by the spouses at the time of the marriage and property acquired subsequently, with the exception of the wife's reserved property.

Under this system the husband has the following rights: he is the owner of his own contribution to the joint estate and of all the property of the marriage other than that contributed by his wife, as well as of his wife's money, her other tangible assets, and her bearer securities not specifically identified as her own, for the value of which he becomes liable. He is the administrator and has the enjoyment of the joint estate as well as of the wife's contribution to the joint estate. After their separation the wife's income, as soon as it becomes payable, and the natural increment of her contribution become the husband's property, subject to the rules governing

/reserved possessions.

reserved possessions. The wife may not renounce a succession without her husband's consent. If at the time of liquidation of the marriage regime any surplus remains after the return of the respective contributions, two-thirds of it belong to the husband or his heirs.

44. In Germany, with the exception of "Reserved Possessions", upon marriage all general property, including movable goods, becomes the joint property of the spouses.

The husband has the administration of the entire property and the right to take possession and ^{to} dispose of it. The wife's consent is required only in case the husband has engaged himself to dispose of the entire dowry-property, or for the disposal of real estate.

45. In the Union of South Africa if married under common law (i.e., in community of property) the wife is under marital power of her husband, who has sole control of the joint estate, and has no independent legal status.

46. In Finland after dissolution of marriage each of the parties get half of the community property, if there is no contractual agreement made before the marriage or during it.

Section 2 - Separate Property

47. In France the woman has the administration, the enjoyment and the freedom to dispose of all her property and income. She must contribute one-third of the household expenses from her income.

48. In Switzerland, under the special legal regime of separation of property, each spouse retains the ownership, administration and enjoyment of his own property and the earnings or his own work. The husband may require the wife to make an equitable contribution to the household expenses. In the event of disagreement as to that contribution, each spouse may request the competent authority to fix the amount. The husband is personally responsible for his debts prior to the marriage, and for debts incurred during the marriage, either by himself or by his wife in her capacity as representative of the marriage. The wife is responsible for her own debts prior to the marriage and for those she incurs during the marriage. In the event of her husband's insolvency, she is responsible for debts incurred by him or by herself for the upkeep of the joint household. The wife may also entrust to her husband the administration of her property under the regime of separate property. In that

case it is presumed that she relinquishes the right to require him to account for it during the marriage and surrenders to him the entire income to meet the household expenses. The wife cannot then claim any privilege in the event of her husband's bankruptcy, or in the event of seizure of his property, except as regards such of the dowry property as is handed over to the husband under the marriage contract.

49. In Germany, if no marriage contract is made between the spouses the property relations of "Administration and Benefit" defined by the Civil Code hold good, i.e. each spouse remains the sole owner of any property belonging to him or her, either as part of the dowry or acquired during matrimony; the husband however has the right of administration, of taking possession and of usufruct, with the exception of reserved possessions (personal property, such as clothing, jewelry, etc.)

50. In Greece, marriage has no effect on the economical independence of the spouses. The wife keeps all rights of ownership, administration and disposition of her property. Because of these rights she has certain obligations: e.g. to contribute to the family and home necessities; to support her husband if he is not able to; to constitute a dowry to her daughter if the father is not able to do so.

51. In India the husband and wife each keep their own property.

52. In Norway, in the case of separate property (provided for by contract between the spouses) the rights and duties of the wife are also the same as the husband's. Upon dissolution of marriage, or by death of one of the spouses, each spouse will take what, according to the contract, is his or hers.

Section 3 - Dowry regime (Régime dotal)

53. In Austria, concerning marriage-portion (Mitgift, dowry), "Widerlage" (subsidy, contribution of the husband or a third person to the dowry) and "Morgengabe" (gift of the bridegroom to the bride the day after marriage) there exist legal stipulations (1218-1232 ABGB Civil Code).

If the marriage-portion (dowry) consists of properties (goods, belongings), immovables, rights, the profits (Fruchtgenuss) and the accretion belong to the husband, but the wife remains the owner. The husband is entitled to take charge of the affair to a determined price. After the death of the husband, the marriage-portion falls to the widow or her heirs. The woman has no usufruct of the "Widerlage"; only upon the husband's death does the "Widerlage"

/ pass into

pass into her property. The "Morgengabe" is a gift to the woman and becomes therefore her property.

54. In Germany the husband is not allowed to dispose of the wife's dowry-property without her consent, neither is the wife allowed to dispose of her dowry-property without the husband's consent. The husband is held to bear the taxes on dowry-property (interest and tax). He has to bear the costs of any legal proceedings in regard to the dowry-property or of the proceedings his wife may personally take, as well as the expense of the defence in any penal proceedings against his wife. If the wife enters into a lawsuit without her husband's consent, the decision of the Court in regard to the dowry-property does not affect the husband. The husband's creditors have no claim on the dowry-property of his wife.

55. In Greece in the case of dowry, the contract grants the husband property rights or usufruct, etc., administration and disposition of the profits when he acts with the consent of his wife, except in special cases, stated by law (article 1406, Civil Code). During the marriage, in case of "risk", the wife has the right to bring action asking the court to allow the separation of her dowry (article 1431). The separation of dowry during the marriage is effected ipse jure in case the husband, if he is a merchant, becomes bankrupt. In this case all rights accorded to the husband by the dowry contract are eo ipso transferred to the wife. (article 1432 Civil Code, and 115 of the Introductory Law of the Code).

56. In India, under Hindu Law, what is given to the wife as "Stridhan" (Stri: woman, dhan: property) is her absolute property. In certain other types of property which may come to her, a woman has a limited estate. This is now sought to be abolished under the Hindu Code Bill. Under Muslim Law, an essential in a marriage contract is "Mahr" which is a dower by the husband to the wife. (Mahr comes into operation in the event of a divorce or upon the death of the husband. No divorce can go through without payment of the amount of the Mahr to the wife. In the case of the husband's death, the Mahr is the first claim on his property. The wife can, if she pleases, "forgive" the payment of the Mahr.)

57. In the Netherlands the dowry regime is unknown.

Chapter III - Law of Succession

58. No distinction exists between the rights, duties and liabilities of men and women regarding intestate and testamentary succession in Australia, Finland and Germany.

59. In Scotland there is no distinction between the rights, duties and liabilities of men and women regarding intestate and testamentary successions, apart from succession between spouses.

60. In France men and women, married or unmarried, have the same rights, obligations and duties with regard to intestate succession.

Men and women, married or unmarried, have the same rights, obligations and duties with regard to testamentary succession, but with regard to community property, it is the husband who exercises all the rights of the woman.

61. In Switzerland men and women, whether married or not, have the same rights, obligations and duties with regard to testamentary successions or legacies, with one exception as regards the transfer of an agricultural undertaking, in which case sons have priority over daughters.

62. In India men and women, married or unmarried, do not have the same rights, liabilities and duties with regard to intestate succession. Under Hindu Law, males are preferred to females in the same degree of relationship:

(i) a widow gets a share equal to that of a son; (ii) a married daughter cannot inherit at all in her father's property; (iii) an unmarried daughter does not inherit, but has the right of maintenance until marriage and it is the duty of her male relatives to arrange a marriage and to pay all marriage expenses. As regards duties, those who inherit ancestral property have some duties (e.g. maintaining unmarried sisters) imposed on them.^{1/} Under Muslim Law the daughter gets half the son's share. The widow, too, is a sharer, the proportion varying in different schools, but in any case her share is less than the son's. Under Parsee Law the share of the daughter is half of the son's in her father's property and equal in her mother's property. The widow gets a share equal to that of a son.

As regards testamentary succession or legacy, men and women have the same rights, liabilities and duties.

/Chapter IV

^{1/} The Hindu Code Bill seeks to equalise rights between men and women and as it is drafted, provided for sons and daughters being equal sharers in their parents' property, and for the effects of the joint family system to be abolished.

Chapter IV - Pension Rights

63. Pension rights are not the same for men and women in Finland, Germany, Greece and Italy.

64. In Finland the widower is entitled to a pension after the death of his wife who has been a public servant only if he has no personal means or is unable to earn his living.

65. In Germany after the death of the wife the surviving husband does not receive a pension or other emoluments. On the other hand, on the death of the husband, the wife receives a part of the pension or emolument.

Men and women have the same rights concerning old age and disability pensions.

66. In Greece the rights of a surviving husband with regard to pension after the death of his wife are limited. On the contrary, the surviving wife and children (if any) have more rights to pension on the death or incapacity of the husband and father.

Men and women have the same rights concerning old age and disability pensions.

67. In Italy the differences between the pension rights of men and women are established by special rules. Men and women have old age and disability pension rights, but in different proportions.

68. In Switzerland the surviving wife or husband does not have the same rights as regards pensions or other benefits after the decease of the other spouse. The federal law on old age and survivors' insurance grants an allowance only to widows. The federal law on sickness and accident insurance grants benefits to widowers and widows.

In principle, men and women have the same rights concerning old age and disability pensions.

69. In Scotland pensions usually derive from employment and service, and the position regarding the surviving spouse would depend on the conditions of the pension. Regarding old age and disability pensions men and women have the same rights.

70. In the Union of South Africa pensions relating to employment depend entirely on the employer concerned. Regarding old age pensions the amount of pension is the same for both sexes depending upon the income; while the age of eligibility for men is 65 years, for women it is 60 years. As for disability pensions there is no distinction between men and women, depending upon disability; they may be paid to persons of either sex over 16 years of age.

71. In India pension rights seem to cease on the death of the pensioner, in cases where they exist.