



Women's Land and Property Rights in Situations of Conflict and Reconstruction

A READER Based on the February 1998 Inter-Regional Consultation in Kigali, Rwanda

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UNIFEM is the women's fund at the United Nations. It provides financial and technical assistance to innovative programmes and strategies that promote women's human rights, political participation and economic security. UNIFEM works in partnership with UN organizations, governments and non-governmental organizations (NGOs) and networks to promote gender equality. It links women's issues and concerns to national, regional and global agendas, by fostering collaboration and providing technical expertise on gender mainstreaming and women's empowerment strategies.

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Preface

Executive Director
United Nations Development Fund for Women UNIFEM
Ms. Noeleen Heyzer

Women constitute the majority of small farmers, particularly in sub-Saharan Africa. Yet, in countries around the world, they continue to be denied the right to own the ground that they cultivate and on which they raise their families. This publication, “Women’s Land and Property Rights in Situations of Conflict and Reconstruction,” presents a diversity of views and experiences that describe the multiple strategies being used in countries worldwide to secure women’s rights to land and property.

Nowhere is the impact of unequal land rights more acutely felt than when women find themselves obliged to fend for themselves and their families as a result of conflicts which have cost them the husbands, brothers or fathers in whose name land and property was traditionally held and passed on. On returning home to the fields they used to work and the house they used to keep, women in many countries find themselves denied access, often by their former in-laws or neighbours. Without the security of a family home or the income and produce of their fields, women and their dependants may be pushed to the margins of society, further exacerbating their struggle to achieve health and well-being for their families and themselves.

Against this sombre background, the unstinting efforts of women at all levels to keep families functioning in adversity, maintain community dialogue and sustain the fabric of social development, go largely unsung. Against all the odds, women continue to organise to address their livelihood and empowerment needs, and increasingly to champion their rights. They want a place at the peace table. And they are lobbying for new legislation that can enable them to acquire land, property and credit facilities with which to restart their lives. Above all, they recognise that conflict, with its attendant trauma and displacement, has also honed their existing skills and taught them new ones. As returnees from refugee situations - or something like that, they are not prepared to revert to the status quo ante but wish to capitalise on the changes brought about in adversity.

In recognition of women’s determination to secure these new opportunities, UNIFEM, together with the United Nations Centre for Human Settlement (Habitat), the United Nations High Commission for Refugees (UNHCR) and the United Nations Development Programme (UNDP), convened the first

Inter-Regional Consultation on Women's Land and Property Rights in Situations of Conflict and Reconstruction. This took place under the aegis of the Government of Rwanda in Kigali, in 1998, barely four years after the genocide which tore an already divided society and its component communities apart. This ground-breaking Conference brought women from across Africa, South and Central America, the Balkans, the Middle East and the Asia-Pacific region to compare notes and exchange experiences. Striking similarities became apparent, despite the wide variety of contexts from which the case-studies were drawn. Despite advances in the international rights regime, persistent discrimination evident in the customary laws which regulate women's status in most traditional societies was a constant factor across cultural, social and political divides.

The case-histories and testimonies recorded by the Kigali Consultation provide an insight into changes in land and inheritance rights brought about by conflict and its attendant social disruptions. Out of the acute distress experienced by women caught up in such circumstances, has grown a new realisation by the women themselves of their resilience and strength in adversity. Their stories testify to a new determination to assert women's rights in their productive, reproductive and ownership roles, all three representing long-term investments in their future communities and societies.

The Kigali papers which follow represent only a snapshot of what has been taking place around the world, for the process is ongoing. Whether society will recognise these gains, secure them through new legislation -- as has since happened in Rwanda itself, -- capitalise on women's capacities, and allow them their rightful place at the peace table and in decision-making at all levels, is the subject for new chapters which are still being written. It is UNIFEM's role to assist in this process. I feel privileged, as one of many contributing to this work, to be able to salute the efforts of such women around the world working tirelessly and often invisibly to make these changes a reality.

-- Ms. Noeleen Heyzer

Foreword

Executive Director
United Nations Centre for Human Settlements (Habitat)
Ms. Anna Kajumulo Tibaijuka

The Kigali Consultation on “Women’s Land and Property Rights in Situations of Conflict and Reconstruction” was preceded by a series of other consultations on land and property, held in Zimbabwe, Côte d’Ivoire, Brazil, Costa Rica, Sweden, India, Turkey and Kenya. The question of women’s right to land and how this was affected by conflict had been raised in some of the consultations. Subsequently, in 1998, more than one hundred participants from twenty-five countries in Africa, Asia, Latin America, Europe, the Middle East and the Caribbean came together in Kigali. All had encountered, suffered from or worked on resolving the same problem: discrimination against women over property, land and inheritance rights and the serious implications of this during and after conflict. The slogan “No Homes Without Peace, No Peace Without Homes” which had been chosen by women in a similar consultation held during the Habitat II conference in Istanbul in June 1996 was carried forward into the Kigali meeting. This slogan captured both the immediate and long-term aspects of the theme of the meeting, recognizing the fact that conflict often exacerbates injustices existing before conflict.

For at the beginning of the twenty-first century, women are still excluded from many of the formal and legal structures of society and from full participation in economic life. In conflict and post-conflict situations, numbers of women-headed households often increase sharply as many men have either been killed or are absent. This has grave results: having no formal rights to land and property and little voice in governance, women are left without the means to create stable and sustainable livelihoods. This contributes to poverty and perpetuates social and political inequality that can lead to more conflict. Thus, ensuring equal rights for women is important for peace as well as the economic well being of all of society.

In recent years, women’s land and property rights have received considerable attention within the United Nations system. The Global Platform for Action emanating from the World Conference on Women held in Beijing in 1995 acknowledged that women’s right to inheritance and ownership of land and property should be recognized. The Habitat Agenda adopted at the Habitat II Conference held in Istanbul in 1996 includes commitments from governments to “providing legal security of tenure and equal access to land to all people,

including women... and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and ownership of land and other property..." Since 1997, the UN Sub-Commission on Human Rights have passed several resolutions on women's right to adequate housing, and to land and property. Further, the UN General Assembly has recently passed a resolution on the subject of women, peace and security.

UNCHS (Habitat) is undertaking various initiatives to address the issue of women's land and property rights. The Global Campaign for Secure Tenure launched in July 2000, advocates gender equality as one of its fundamental norms. Central to the success of the Campaign is the recognition of the equality of men and women and thus their equal treatment in respect of access to property, and title, including the equal right to inherit.

The United Nations Special Rapporteur on the Right for to Adequate Housing, appointed also in the year 2000, provides a direct link between the work of UNCHS (Habitat) and the United Nations Commission on Human Rights, and brings a rights-based approach to the implementation of the Habitat Agenda. One of the action areas already identified by the Rapporteur is that of women's equal right to housing, land and property, and the specific needs of women in conflict and post-conflict situations.

I am also happy to note that since the Kigali consultation, Rwanda has passed a succession law that explicitly recognizes women's right to inherit land and property. This is partly due to the government's recognition of the serious situation facing women after the 1994 civil conflict, but also because of the lobbying efforts of women's organizations, some of which were participants at the Kigali consultation.

The United Nations system continues to play an important role in promoting equality for women by formulating an international body of legal norms and by monitoring the implementation of international conventions and treaties and their incorporation into domestic laws and practice of member states. However, the specific problems of women in situations of conflict and post-conflict reconstruction have not received so much attention so far. The consultation in Kigali and the present publication begin to answer this need with situation reports and analyses from a range of conflict areas, as well as recommendations and commitments for concrete actions at national, regional and international levels.

UNCHS (Habitat) takes a keen interest in supporting governments, local authorities and civil society in promoting gender equality in human settlements development. The Centre is also committed to improving inter-agency cooperation as well as broad-based partnerships in promoting the equal right to

adequate housing. I welcome this publication as an important contribution in addressing an issue that requires our joint effort.

---Anna Kajumulo Tibaijuka

Foreword

Administrator,
United Nations Development Programme
Mr. Mark Malloch Brown

The United Nations Development Programme was proud to join with other UN agencies in sponsoring the Inter-Regional Consultation on Women's Land and Property Rights in Situations of Conflict and Reconstruction. Along with our sister agencies, our support for the initiative arose from the recognition that not only do the poor bear a disproportionate share of the impact of conflict and natural disasters, but that women all too often bear the brunt of the burden in picking up the pieces in the aftermath of crisis.

These are issues that UNDP has long been working to address, and our commitment was strongly reinforced by the publication last year of the Report of the Panel on United Nations Peace Operations, known as the "Brahimi Report," which recognized the need for greater UN involvement in conflict prevention and peace-building work. These are complex, long-term undertakings that call for real expertise, commitment and staying power. And by drawing on our worldwide country presence, the trust we have built up over time in developing countries, and our strong skills in institution-building, UNDP is able to provide all three, working in close partnership with our sister agencies.

This report points in particular to the challenge of addressing inequalities that women face in land and inheritance rights. But it also presents us with many encouraging examples of success in doing so, including the importance of community development initiatives that work directly with women to solve local problems. And above all it underscores the vital importance of building sound institutions and equitable laws that can provide a dynamic and sustainable framework for men and women to work together rebuilding lives and livelihoods. These are lessons we are now working to put into practice in crisis-affected countries across the world.

-- Mark Malloch Brown

Foreword

United Nations High Commissioner for Refugees
Mr. Ruud Lubbers

*“There is no greater sorrow on earth than the loss of one’s native land”
Euripides, 431 BC*

In 431 BC, Euripides wrote of the strong link between land and identity. For displaced people, refugees and returnees the possibility of having access to or regaining ownership of property and land makes a critical difference in the quality of life in exile and the ease of reintegration. Displacement and flight deny these people the enjoyment of this basic right. Even upon return to their homelands, property often remains in dispute. For women, loss of land and property is profound, particularly when they become the sole providers for their families as the result of violent conflict.

UNHCR has a keen interest in upholding the rights of women to inherit and own property, and especially land. For this reason, UNHCR was pleased to participate in the inter-agency Inter-Regional Consultation on Women’s Land and Property Rights under Situations of Conflict and Reconstruction. UNHCR has been concerned with the right of women to own and inherit property for some time. Given the need for long term and sustained commitment to change discriminatory practices that prevent women from owning or inheriting property, UNHCR recognises that gains in this area will only be achieved through active partnership with other UN agencies, NGOs and women themselves.

The report of this Inter-Regional Consultation offers useful insights on how women have worked within their communities to overcome barriers to their equal access to land and property. It also emphasises the fact that legal frameworks that respect the equal right of women and men to own and inherit land and property are vital.

It is hoped that the lessons gathered in this publication will be used in other situations, where land and property rights for women are still to be realised. UNHCR’s commitment to partnerships will help to ensure that these ideas are developed and built upon in future initiatives to ensure that women and men no longer suffer the sorrow of living without a land to call home.

--- Mr. Ruud Lubbers

Background Papers

Key Issues

Chaloka Beyani

Both Conflicts and Reconstruction Weaken Women's Access to Land and Property Ownership.

The position of women with regard to land and property ownership is further weakened by both conflicts and the ensuing reconstruction process in societies where their access to land and property is already precarious. The usual imbalance in power relations between women and men is sustained and even deepened throughout the conflict and continues up to the stage of reconstruction. Breakdown in social stability and in law and order leaves a socio-economic vacuum in which the subordinate position of women, their social support systems and their access to land and property are compromised by traditional and customary laws.

This paper raises some of the key problems which women face in relation to land and other property rights under situations of conflict and reconstruction. Two problem areas, amongst many others, can be singled out for consideration: one, the land tenure system - and in particular its impact on refugee and displaced women and the obstacles it places before women returning to their places of origin during the reconstruction of peace and society; two, traditional customs and attitudes towards women which deny their access to various forms of property, including housing, mortgages, loans and credit facilities.

The Role of the State in Different Land Tenure Systems in Africa

It can be argued that state intervention is necessary to alleviate the plight of women and to provide full access by women to land and other forms of property. However, the basis for and the forms of intervention must be informed by a suitable human rights approach which seeks to fully guarantee the human rights of women in general and those related to property in particular. The term 'property' is used here in broad terms to refer to immovable and moveable property, corporal and non-corporal interests - including shares, pensions and pecuniary interests.

The system of land holding and the conditions on which land is held are a key factor in understanding and exploring the problem of women's access to land and property in situations of conflict and reconstruction. To illustrate this point, this paper will look at the land tenure systems in former French, Portuguese and British colonies in Africa. In former French and Portuguese colonies, all land within the state is nominally owned by it, and the land system is such that

customary and traditional forms of land ownership (on the basis of a historical title by occupation) co-exist within the system of statutory land ownership.

By contrast, in former British colonies land tenure systems have evolved through a dual pattern of land ownership: state land on the one hand, regulated by either leasehold or freehold tenure in urban areas, and, on the other hand, communal or traditional lands regulated by customary laws in rural areas. However, in these countries land tenure systems have increasingly moved to attract title security for purposes of economic development. In the absence of appropriate safeguards, though, this process has the potential of displacing rural communities from their lands, since the customary land tenure system is likely to be replaced by the statutory one.

Whatever the differences in the systems in the different groups of countries, the point is that the vast majority of rural land is regulated by customary laws which do not recognize the capacity of women to own or inherit land and property in their own names except via a system of vicarious ownership through men –as husbands, fathers, uncles and brothers.

In theory, under statutory land tenure systems, women could own land and property in their own right. In practice, though, customary and traditional perceptions override this possibility to the extent that land registration systems require proof of a husband's authorization for a woman to acquire a title independently of her husband. The same applies to applications for mortgages, loans and credit facilities. Single women and single-parent women are obstructed from acquiring these on the basis that lending to women outside marriage or without the support of their husbands or male relations is considered a risk.

Problems Faced by Displaced and Refugee Women

Displacement of people obviously removes them from their land and property. In the case of customary land ownership, where proof of title and land ownership is by means of possession and occupation, the process of claiming land and property when the displaced people have returned and the reconstruction process has begun becomes subject to competing claims between the original owners and the new occupants. The problem faced by women is that the separation of families and the death of husbands, fathers, uncles and brothers, while fleeing or returning, leave them without a recognized capacity to inherit or claim the properties of their deceased male relations. As a consequence, these women live as perpetually dispossessed people until they marry or remarry. Socio-economic relations thus reinforce women's dependence on men, and even when the process of reconstruction comes, it largely focuses on male members of family households. Widows, mostly those with children, remain without access to land or property, unless they remarry.

Refugee situations markedly subordinate women as well. Refugee camps are often organized in structures that replicate those in the country of origin. These structures are headed by 'elders', headmen or chiefs, who, traditionally, are men. Traditional customs as formulated by these authorities apply to a wide range of issues, including marital and social disputes, violence against women as well as rape. The system of order in the camps revolves around the 'elders' and the male heads of households to whom land is officially attributed. Besides, women lie outside the framework of decision-making in matters such as food distribution. Yet they must take care of their husbands, brothers and male relatives. It is as if the subordinate position of women is a continuous process: prior to flight, during flight, in refugee camps and upon return to their home areas.

The Role and Social Position of Women during the Reconstruction Process

The reconstruction process should liberate women from the customary and traditional fetters which inhibit their full participation in it and their access to land and property. This calls for decisive measures of intervention on the part of the state. There are examples of such intervention in the inheritance laws of Ghana, Tanzania and Zambia, which are intended to provide a legal basis for women to inherit, to some degree, the family property upon the intestate death of their husbands and male relatives. However, these measures do not go far enough: they fall short of international standards for the treatment of women with regard to human rights.

The primary area for state intervention should be the position of the woman within the family, as it is the traditional family structure that holds down the capacity of women to acquire, own land, and inherit property in their own right. A combination of the following specific human rights standards is called for: non-discrimination against women in the enjoyment of civil, political, economic, social and cultural rights (including equal rights as regards family property and inheritance); and the removal of stereotype customary and traditional attitudes against women, in accordance with Articles 1, 5, and 16 of the 'Convention on the Elimination of all Forms of Discrimination against Women', adopted in 1979. (This Convention applies within the framework of the 'African Charter on Human and Peoples' Rights', which also guarantees the right to property in its Article 14.) A most appropriate form of state intervention would be the introduction of gender-specific and human-rights-based legislation, which would be enforceable in the courts. Such regulation is needed for social and economic relations between women and men within and outside the family, and in both the private and public spheres. But for it to be effective, there must be a public awareness of the plight of women in society, and of the need to bring about changes as a result.

Judicial enforcement of such legislation has a potentially wide-ranging consequence, in that decisions in specific cases subsequently bear on similar situations which may never have come before the courts. The Tanzanian case of *Ephraim v Pastory* is evidence -however limited - of effective judicial decision-making against traditional norms of behaviour which hinder women from owning land and property.

Women's Land and Property Rights in Three Eastern Africa Countries

Makumi Mwangiri

Introduction

Eastern Africa is a region that has known many conflicts. Some of them started as internal conflicts but later spread over national boundaries. The causes of these conflicts range from the struggle for self-determination and for the right to practise one's own religion in Sudan¹ to a rebellion against bad governance in Uganda, to less well-defined causes in Kenya.

Those conflicts are all protracted: they have now lasted sixteen years in Sudan, a dozen in Uganda, and about seven in Kenya. And even where they have abated, as for a time in Ethiopia and Eritrea, they have caused much destruction, thus creating the need for reconstruction. In Kenya, the conflicts of 1991-1993 at one moment appeared to have been settled, but they erupted again following the general elections of 1997. As a consequence, the reconstruction process that was under way has been disrupted.

Not only have all those conflicts caused deaths and other forms of destruction among the affected populations, but they have also adversely affected social patterns, among them access to land and property rights - which are precarious even in times of peace. It is in this context that land and property rights have been severely reduced. Conflicts can only make such a bad situation even worse. Unfortunately, even the reconstruction period does not necessarily come with effective measures to redress the situation.

This paper reviews the reality of women's land and property rights in three Eastern Africa countries: Kenya, Sudan and Ethiopia. It considers legal and other impediments hindering these rights in situations of conflict and reconstruction. It also outlines the practical problems faced by women in connection with the legal and traditional structures regarding land and property rights, and makes some suggestions about how the situation can be rectified.

In Kenya

In the customary laws of the ethnic communities of Kenya, women are

¹ For a poignant analysis of this conflict, see Peter Nyot Kok, 'The Ties that Will Not Bind: Conflict and Racial Cleavage in the Sudan' in P. Anyang' Nyong'o (ed.), *Arms and Daggers in the Heart of Africa: Studies in Internal Conflicts*, Academy Science Publishers, Nairobi, 1993.

granted access to land either through marriage or through inheritance. These customary rights to land do not necessarily entail rights to property. In any case, both types of rights have often been annihilated by conflicts. Thus, many women have, during reconstruction periods following conflicts, found themselves no longer with the land rights they used to enjoy. This loss of access to land has greatly reduced the possibilities of women whose economic activities are land-based, and who, therefore, find themselves legally and economically disempowered.

The position in statutory law is not much better. In Kenya, property rights of women are governed by the Married Women's Property Act², which is a statute of general application in Kenya. Although it tries to enshrine the principle of equality in property matters, this statute has not been effective in Kenya, where women weigh little with regard to decision-making and social status. In addition, the statute is not useful in conflict situations because it does not provide for cases where the property to which women used to have access has been appropriated by somebody else. Other statutes like the Judicature Act³ and the Magistrates Courts Act⁴ are hardly better: they require that matters of personal law, including property rights, be governed by customary law. But this law already discriminates against women. The Constitution of Kenya is also disadvantageous to women with respect to property matters.

The major conflict-caused obstacles and threats to women's land and property rights in Kenya can be summarized as follows:

- When conflicts occur, many women who own land jointly with their husbands lose any proof of joint ownership. So, in the post-conflict period, they will have lost the land access and user rights they previously had.
- Much of the land that was held by women before conflicts gets 'annexed' by other owners, thus dispossessing women who have lost the evidence of title to their land. And, unfortunately, the law seems unable to correct such a situation, either because a specific, ad hoc law does not exist, or because realistic conflict- management mechanisms are not applied by the authorities and the people concerned.
- For many women, previous access to land was through marriage. So, in cases where their husbands themselves had inherited this land as ancestral land, their widows are left in a precarious position when the husbands die. In many instances the husbands' relatives lay claim to the land, thus exposing the women to the likelihood of losing land access and user rights.

² Enacted in the United Kingdom in 1882, still a Statute of General Application in Kenya.

³ See *Laws of Kenya*, chapter 8.

⁴ See *Laws of Kenya*, chapter 10.

In the Sudan

The issue of women's land rights in the Sudan is complex. Before the conflict began, these rights were regulated by customary law. In the Dinka, Nuer and Shilluk communities, customary law ensured women's access to land and property by virtue of marriage. Otherwise, women could own land only in cases of direct inheritance from their parents or kin. However, because of the conflict, much of the land has never been subdivided, which has reduced the possibility of individual ownership by women.

What renders the situation even more precarious for women is that their powerlessness with regard to land and property rights is reinforced by the Constitution of Sudan, which imposes Islamic tenets. These are overwhelmingly biased against women in matters of land property rights⁵. Hence, as Carla Tangun, Chair of the Sudanese Women's Association in Nairobi, remarks,

land in most southern Sudan is owned traditionally by the community living there, because it has never been subdivided since colonial times. But customarily real ownership belongs to the male, and this dilemma is complicated by the Sudanese Constitution which is Islamic and tends therefore to disregard any ownership of land and property by women.⁶

After the original conflict in the Sudan was settled by the Addis Ababa Agreement of 1972, many women, still relying only on the precarious access to land stipulated by customary law, were able to acquire property and even conduct business. But once the current conflict began in 1983, much of that property was destroyed, as were their businesses.

One interesting development in Sudan is that, in areas of the country controlled by the Sudan People's Liberation Army (SPLA), some reconstruction has begun, especially in conducting business and farming. This has been possible because the SPLA has utilized traditional chiefs to ensure that returnees reclaim both their land and property taken away during the conflict. Reconstruction has been aided by organizations such as Oxfam and the Sudanese Council of Churches (SCC), which have provided the returnees with building materials, farming inputs, and so on.

For those women who have left Sudan as refugees, the position with respect to land and property rights is doubly detrimental: they have already lost access to their previous land, and they are not likely to inherit any from their

⁵ This is contested by Moslems. Some argue that in cases of succession under Islamic law, for example, the woman is not obliged to share her property. On this basis they argue that Islamic law does not discriminate against women. One Moslem woman makes such a comment in Kibwana (ed.), *Women and Autonomy in Kenya: Policy and Legal Framework*, 2nd edition, Claripress, Nairobi, 1997.

⁶ Carla Tangun, interviewed on 10 February, 1998.

parents while they are still abroad living as refugees:

I cannot participate in any level of decision-making ... I am affected because I have been separated from my people, parents and relatives ... My father owned large plantations of coffee crops and livestock, and even if [I was not married] I would have at least inherited something from him⁷

But the biggest sticking point in this respect is Sudan's Constitution, which, as already noted, legally discriminates against women. Indeed the question of the Constitution is one of the issues that are at the centre of the current conflict in Sudan.

In Ethiopia

Here the situation is rather different, as the end of the conflict in 1991 seems to have given much hope to women with respect to their land and property rights. During the socialist regime of Mengistu Haile Mariam (1975 - 91), these were virtually non-existent. Ethiopia's then socialist Constitution emphasized the role of men as the guardians of the means of production, basically land. No place or role was practically left for women, which could only adversely affect their land and property rights. The current Ethiopian Constitution addresses this problem:

Any Ethiopian who wants to earn a living by farming has a right, which shall not be alienated, to obtain, without payment, the use of land.

Ethiopian pastoralists have a right to free land for grazing and cultivation as well as a right not to be displaced from their own lands.

Every Ethiopian shall have the full right to immovable property he builds on the land and to the improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and where right of use expires, to remove his property, transfer his title, or claim compensation for it⁸

The Constitutional recognition of the right of women in Ethiopia to own land on the same basis as men has encouraged a lot of the women who were refugees in Kenya to go back and engage in the process of reconstruction. The general spirit appears now to be one of optimism:

I have heard from people [gone back] that now we can have back [much] of the land and maybe property confiscated from our parents and relatives by the Mengistu regime. Since we now have a new Constitution in Ethiopia which advocates for the right of women to own land and property ... I see the new

⁷ Anastasia Akujo, a Sudanese refugee in Nairobi, in an interview on 10 February, 1998.

⁸ Article 40, *Constitution of the Federal Democratic Republic of Ethiopia*, 8 December, 1994.

Ethiopia Constitution giving us women more hope in life than before.⁹

This spirit of optimism in the ability of the new Constitution to redress the situation is based on observations made on the ground:

The current Constitution of Ethiopia enhances the chances of women being more secure and [having] a major say in matters regarding property and land. This means that even if they inherit or acquire land and property through sale, their rights will be assured ... I have been to Ethiopia several times, and ... for those people who have settled back in their former land, the government is assisting them [in their reclaiming of the land] confiscated by [the Mengistu] government. In certain circumstances, state land formerly acquired from the people in cities like Addis Ababa and Dire Dawa [was given back to them, and] most people have succeeded in reclaiming land and property lost during the Marxist rule.¹⁰

However, the spirit of the new Ethiopian Constitution with respect to women's land and property rights is less clear than the letter of the law: if the process of helping women to reclaim their land and property rights is not done expeditiously, this may well help to defeat the intentions of the Constitution. Women should be given priority in land and property matters, since they have been hardest hit by the conflict that led to their loss of property rights in the first place:

The current Constitution should [put in practice] ... what it advocates [...] on matters regarding women's land and property. By granting women land and property which is rightfully theirs, women will be able to develop that land. Secondly, the process of [reclaiming the] land and property formerly owned or inherited by the displaced [people] should be carried out without any delay to ensure that women are given priority since they were the ones [most] adversely affected by the conflict.

Conclusion and Some Proposals for Reform

The customary laws of ethnic groups in the three countries covered in this paper do not allow women to enjoy their land and property. Although a woman has access to land once she is married, she is likely to lose it if a conflict erupts, especially if the husband dies during the conflict. Moreover, women who have been displaced from their land by conflicts are generally not able to reclaim that property during the ensuing period of reconstruction. In many countries, the written law has hardly alleviated the problem: their statute laws uphold customary law as a valid law for regulating the personal rights of women - including property and succession rights. The Constitutions of these countries, which should, as the supreme laws of the lands, regulate more directly the

⁹ Tsale Shimeles, in an interview on 11 February, 1998.

¹⁰ Abba Bekur, Chief Priest, Ethiopia Orthodox Church, Nairobi, interviewed on 11 February, 1998.

matter of women's land and property rights, do not do so. In Sudan, for example, the Constitution is Islamic, which further erodes the land and property rights of women. The new, (1994) Ethiopian Constitution is different in that it protects and promotes these rights. But even it does not legislate specifically for women: it deals with the right of all individuals in general, which might not be sufficient to regulate the peculiar problems that women face in relation to property rights, particularly in the current situation of reconstruction. Still, the fact that it guarantees inalienable access to land for all Ethiopians is a step in the right direction.

Now, since none of the laws or Constitutions in the three countries provide specifically for women's land and property rights in situations of conflict, and in particular for how these rights can be reclaimed during periods of reconstruction, the following proposals are suggested as a way of beginning to address such legal and statutory limitations:

- In the face of customary laws that are extremely biased against women, there is a need for legislation that defends firm and inalienable land and property rights for women. This requires new statutes.
- The Constitutions of the three countries, which are now silent on the issue, should provide specifically for the inalienable land and property rights of women. This would be a move towards affirmative action. In Kenya, for example, where a comprehensive Constitutional review will soon be under way, a strong lobby should be put in place with this aim in mind.
- Since, in the three countries, there are currently no laws dealing with the specific case of conflict situations, there should be some which would provide that an intervening conflict will not extinguish land and property rights of women. In particular, such laws should provide that in cases where the land was 'acquired' during a period of conflict, there should be a higher burden of proof by the new 'owners' of the legality and propriety of the transaction. Such laws would help the reconstruction process.
- It is clear from the Kenyan example that there are many conflicts about women's land and property rights during periods of reconstruction. And yet there are no mechanisms for managing such conflicts. It is equally true that most women affected have little access to the courts, as many cannot afford them. The law should provide for some alternative methods of resolving these conflicts.

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Socio-Economic and Cultural Factors Affecting Women's Rights to Land and Property in the Asia-Pacific Region

Asteya M. Santiago

Introduction

Asia has three major geographical sub-divisions: East Asia, Southeast Asia and South Asia. East Asia consists of the countries of Hong Kong, the Republic of Korea, Singapore, Taipei, and the Popular Republic of China; while Southeast Asia includes Indonesia, Malaysia, the Philippines, and Thailand. South Asia consists of Bangladesh, India, Pakistan and Sri Lanka, while Papua New Guinea is considered by the Asian Development Bank to belong with the Pacific Islands. These countries all have a wide range of policies, statutes and protocols that affect women's access to land and shelter. There is much variation, which arises from their respective historical, political, legal, economic and socio-cultural and religious differences.

The 1991 Report of the Asian and Pacific Development Centre entitled *Gender Sensitivity in Development Planning, Implementation and Evaluation*¹¹ presents a critique of the situation of women across several countries in Asia Pacific. The following broad summary of issues related to women's access to land and housing was culled from this report.

Impact of Laws and Policies

Legislation, as is generally acknowledged, is the basic instrument for effecting changes in the social, political and cultural structures of a given society. Unfortunately, experience has shown that women do not know how to use the law. In fact, many women involved in development activities believe that law reinforces women's subordination, contributing to the maintenance of the traditional male hegemony (Quintillian 1991: 29).

Specifically, there is a wide range of concerns of the legal system that affect women, such as land reform, industrialisation, credit, employment and health. Because these matters affect both men and women, the laws that are usually devised and passed are gender-neutral. However, in actual application, men and women may be affected differently when these supposedly gender-

¹¹ Rita Raj-Hashim and Noeleen Heyzer (eds.), *Gender Sensitivity in Development Planning, Implementation and Evaluation*, Asian and Pacific Development Centre, Kuala Lumpur, 1991.

neutral laws are implemented in a gender-biased society (idem, pp. 28-29). For instance, in Malaysia, structural adjustment policies are not gender-based and are targeted for the nation as a whole, thus without recognising that men and women are, in reality, not in the same position (see Raj-Hashim and Heyzer, 1991:50).

Another relevant dimension is the inherently complex nature of the policy-making process, its environment and structures. Women accordingly are advised not to remain mere passive subjects of these policies. They have to know and understand the different kinds, levels and degrees of influence they can exert on policies and resource allocation (Andrew 1991:17).

Socio-Cultural and Religious Constraints

Gender distinction is generally reflected in the social structure and the beliefs, attitudes and practices of patriarchy and of religion and culture that ascribe a subordinate position to women with regard to economic and social rewards and participation (Heyzer 1991:14). Raj-Hashim and Heyzer (1991: 45-52) provide interesting examples to illustrate this.

One example is that of Bhutan which, while it emphasises the equal status of women in the social, economic and employment domains, retains the traditional attitude of considering the role of women only as home-makers. This limited perspective has led to a lack of utilisation of the opportunities made available through this equal status.

A similar case is that of Burma: the Burmese government's Constitution and laws accord equal opportunities to women in various fields. However, prevailing cultural and traditional values hamper the faithful translation of that equality into reality.

The case of India shows well the negative effect of some socio-cultural practices on women's status. Despite the inclusion in the country's Five Year Plan of a number of programmes for the alleviation of poverty and for the enhancement of women's well-being, the female sector has not been able to improve its status owing mainly to societal constraints.

Still another similar example is that of Nepal. It has adopted progressive development policies affecting women; however, because of its patriarchal society, it will take some time before there is as appropriate recognition of women's perspectives.

Cases such as those mentioned above are good examples of traditionally conservative patriarchal societies, where even a slogan like 'integration of women in development' indicates that women are seen as peripheral, and being

outside the process of development, especially economic development (Jahan 1991:66). In Bangladesh, for example, their role has been confined to the home, severely constricting their opportunities to be more productive contributors to society (Ashan 1994: 142). Islamic law also has features whose effects on women are discriminatory. For instance, a woman cannot serve as a guardian because she herself is a ward of her husband. As far as inheritance is concerned, a daughter receives only half of her brother's share, and the wives only half of their husbands' (Jahan 1991:66).

Furthermore, certain approaches aimed at improving the women's situation tend to oversimplify women's lives, roles and experiences by, among others, treating them as an entity separated from men (Brouwer 1991: 19). It is a fact, however, that in the real world women's lives are inextricably linked to those of men.

Literacy and Education

The underdevelopment of women's education has been shown to have a negative impact on their overall development. This particular type of underdevelopment may be attributed mainly to an approach to women's education utilised in most politico-social and economic contexts labelled the 'social expediency model'. This model has a parochial perspective which focuses on how women can be more useful to the family (Usha Nayar (1991) in Raj-Hashim and Heyzer (eds.), p.32). For instance, all the development plans in Bangladesh stress educating women to fit their role as mothers of the nation's future leaders and not to fulfil their fundamental right to get educated (Ashan 1994:144).

Statistics reveal that in the least-developed countries of Asia and the Pacific, there are more illiterate women than illiterate men, and that the literacy gap between the male and the female population is widest here (Usha Nayar, op. cit., p.32). This situation is said to have a historical beginning where the colonial rulers are said not to have appreciated the role of women in the economic development of the country.

Since the 1991 report edited by Raj-Hashim and Heyzer was written, substantial progress in women's education has been noted. Much still remains to be done, though, especially in parts of South Asia where the gap remains wide. It has been reported that about 35% of the adult women in South Asia are now literate, constituting a 100% improvement from the 17% literacy rate in 1970. In 1992, eight out of ten girls in South Asia attended primary school, compared to only five out of ten in 1965. In East Asia, female enrolment in primary education has reached a record high, as countries in this region have increased the equity of access to education (ADB 1997:29).

Economic Opportunities

While many women in the Asia-Pacific countries work an average of 14-18 hours a day, their work has often been described as 'invisible, unpaid and unrecognised' (Narula 1991: 34). The meagre pay that these women get certainly affects their financial ability to obtain regularly even the most basic of their individual and family needs. And yet they are often overburdened with work. It is as if even the new technology introduced in work is not aimed at helping them. This particular predicament can be better understood against the backdrop of a manifest rise in female poverty also known as the 'feminisation of poverty'. Thus, of the estimated 1.3 billion people living in poverty around the world, 70% are now estimated to be women. (UN Department of Public Information 1996:2).

There are factors that contribute to making women economically dependent, and often rendering them helpless. One is that they face many structural impediments, including the fact that they are not allowed to own land and property, which are inherited by males. (Raj-Hashim and Heyzer, 1991:53). And even in countries where this right of access to land and housing exists, its exercise is fraught with difficulties.

For instance, it is said that many policy-makers and business leaders are guilty of harbouring a gender bias against women. Specifically, bankers have been perceived (rightly or wrongly) as not only anti-poor (because of the requirement of security or collateral for loans) but also anti-women. The latter claim is supported by the fact that it is usually the women who do not have property with which to secure loans. In addition to this, they also need to get their husbands' consent in filing their applications for loans. And yet the experience of the Grameen Bank in Bangladesh and its counterpart in other countries has shown that women are better users of credit and better borrowers, with a track record of high repayment rates (Getubig 1991:37-39).

It is also argued that bankers are anti-illiterate (due to the volume and complexity of requirements which banks demand, such as forms, which presuppose a certain level of literacy); and anti-rural, since most banking institutions are located in the urban areas. When it is recalled that most women are illiterate and are rural-based, then the discriminatory effect of these banking requirements on women becomes obvious. And yet it is the women's lack of access to land, productive resources and credit which seriously inhibits their ability to generate income (Getubig, idem).

Access to Land and Housing: Problems, Issues and Proposed Reforms

In relation to other regions of the world, the policies and protocols in Asia-Pacific countries may appear to be less discriminatory and disadvantageous to

their female populations. Most of the legislation in these countries generally grants women the same rights and privileges as men. This observation emerges from the fact that little or no gender distinction is made by that legislation. Nevertheless, statutes and policies in these countries generate problems similar to those encountered elsewhere.

This is to say that the problems in the Asia-Pacific region are equally serious. For, in many cases, what is provided for in legal documents and protocols is not necessarily what occurs in practice. There is wide gap between the two. In daily life, women in these countries assess their predicament in terms of the actual impact of these statutes and policies on their person, their families and their community. Understandably, they will take some comfort from comparing themselves with their counterparts in other countries or regions and realising that they are perceived to be in a better situation.

In some cases, discrimination against women may be deliberate; in others it may simply come from the policy-makers' ignorance of or lack of sensitivity to women's particular needs. An example of the latter is when policies are made equally applicable to men and women alike, when the latter obviously need a head start, or could only comply with the requirements with more difficulty. It is in such situations that 'unintended discrimination' occurs.

In other cases, too, political, socio-economic, cultural and other factors are indirectly responsible for the difficulties encountered in translating the so-called legislation 'of equal application' into reality. Thus, it has been said that 'even when women have legal rights to land and property, customs often prevent them from exercising such rights' (UNCHS 1994: iii). The case of India, already mentioned, clearly illustrates this. While women in India are reported to have considerable legal rights to own and inherit property, only very few of them are actually able to claim these. Because custom prevails over practice, it is further reported that of the small number who do own land, only a few are able to control its use or to realise its value (Menon 1994:1).

Another fact is that the socio-economic legislation and traditional community practices obtaining in countries in the Asia-Pacific region in effect hinder, instead of improving, women's literacy, mobility and financial standing. Such a hindrance in turn inhibits or disables women from availing themselves of the benefits of that legislation which promises equality. Part of the women's struggle in Papua New Guinea, for instance, is against a system that allows land transfers only among men. Their aspirations include their eventual recognition as rightful owners of land as part of the community, and their full involvement in decisions concerning land exploitation and development (UNCHS 1994: 22).

With regard to access to adequate housing, a telling example is that of Urban Bangladesh: as long as the private sector provides housing to the upper-

middle and high-income classes, access to adequate shelter is affordable only by a relatively small percentage of households. This will explain why the informal sector accounts for about 90% of all shelters. While some public sector agencies build housing units and serviced sites for all income groups, including low-income groups and slum dwellers, there is no significant housing programme for the female-headed low-income or poor households in urban areas. In Bangladesh there are also laws that make it difficult for single women to acquire property, as in some situations landlords may refuse to rent out dwelling units to single and/or female-headed families (Rahman 1995:6).

Another factor contributing to the difficulties experienced by women in trying to gain access to land and housing is that the laws governing land and property rights are quite complicated. In Malaysia, for example, the housing development approval process involves a rigorous system involving 16 to 20 government departments and 27 separate pieces of legislation (Singh 1992:25). There are also complicated legal aspects of land administration and cumbersome legal transactions. These disadvantage women more than men because the former have very limited means (in terms of education, time, funds) which would allow them to pursue their claims or rights to land and property.

Status and Impact of International Commitments

At the international level, there abound volumes of protocols and covenants recognising the equal rights of women and men to easy access to land, to stable land tenure, and to comfortable housing. All of these are supposed to be obtainable within the framework of what has been labelled 'equitable human settlements within a sustainable environment.' Such protocols and legal commitments have evolved through the years through a process of continuing national, regional and international interaction, one that has helped to identify many factors which have prevented women from obtaining adequate shelter, such as the persistent and increasing burden of poverty and the discriminatory policies affecting women (UNCHS 1996: pp. 4-5).

With reference to the specific topic of gender equality, international commitments have been made to do the following (see UNCHS 1996, Chapter III, Commitments, D. on Gender Equality):

- to integrate gender perspectives in human-settlements-related legislation, policies, programmes and projects, through the application of gender-sensitive analysis;
- to develop conceptual and practical methodologies for incorporating gender perspectives in human settlements planning, development and evaluation, including the development of indicators; to collect, analyse and disseminate gender-disaggregated data and information on human settlement issues,

including statistical means that recognise and make visible the unremunerated work of women, for use in policy and programme planning and implementation;

- to integrate a gender perspective in the design and implementation of environmentally sound and sustainable resource management mechanisms, production techniques and infrastructure development in rural and urban areas; and
- to formulate and strengthen policies and practices to promote full and equal participation of women in human settlements planning and decision-making.

In addition, in order to eradicate legal and social barriers to the equal and equitable access to land, especially of women and other vulnerable groups, governments, in partnership with the private sector, NGOs and other sectors have been exhorted to do the following (UNCHS 1996, Chapter IV-B, paragraph 78):

- to address the cultural, ethnic, religious, social and disability-based causes that result in the creation of barriers that lead to segregation and exclusion, by encouraging the education and training for peaceful conflict resolution;
- to promote awareness campaigns, education and enabling practices, regarding, in particular, legal rights with respect to tenure, land ownership and inheritance for women;
- to review legal and regulatory frameworks, adjusting them to the principles and commitments of the Global Plan of Action, and ensuring that the equal rights of women and men are clearly specified and enforced;
- to develop regularisation programmes and to formulate and implement such programmes and projects, ensuring the full and equal participation of women and taking into account the needs differentiated by gender, age, disability and vulnerability;
- to support community projects, policies and programmes that aim to remove all barriers to women's access to affordable housing, land property ownership, economic resources, infrastructure and social services and to ensure the full participation of women in all decision-making processes, with particular regard to women in poverty, especially female heads of households and women who are sole providers for their families;
- to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and

the ownership of land and other property, credit, natural resources and appropriate technologies; and

- to promote mechanisms for the protection of women who risk losing their homes and properties when their husbands die.

Many of the above commitments remain to be translated into workable national policies, legislation and protocols. The above covenants, which countries in Asia-Pacific have helped formulate and which they have adopted, could form the framework within which they could legislate and issue their own policies. For that purpose, they would have to take due consideration of their respective unique situations. Implementation of UNCHS's 'Habitat Agenda' is also expected to be undertaken through the formulation and execution of local, national, sub-regional and regional plans of action and/or other policies and programmes.

The Impact of Civil and Inter-ethnic Wars

The problems arising from the various situations of inequality between genders have been exacerbated by the eruption of political unrest and civil wars in many regions of the world. These human-made disasters have produced millions of refugees and displaced persons and have further marginalised the already disadvantaged sections of society, such as women and children.

Women living in insecure and violent situations as a result of large-scale displacement caused by wars or natural disasters have been the focus of much concern in recent conferences among women's groups. Living in such insecure and violent situations adds a further degree of risk to their other grave concerns, such as being forced to confront violence and danger as a result of poorly designed towns and cities, unfriendly infrastructure (especially of transport and city lighting) and poor housing designs. The recommended solution urging greater involvement of women in urban planning and housing design, and the imparting of necessary skills as part of the capacity-building, unfortunately cannot easily be applied to situations of large-scale displacement (UNCHS 1994: 44-45).

Unfortunately, very little is known about the existence, nature, and scope of policies or formal legislation affecting displaced women's re-access to land and property. This is possibly due to the relative absence of these policies and legislation. For it was only in the very recent past that world-wide attention was drawn to the cruel effects and heavy burdens that these civil wars have caused on the civilian population, particularly women and children.

There are relatively few studies documenting the indescribable misery and suffering which political turmoil and civil warfare leave in their trail. Available

statistics are concerned almost only with the scale of destruction and damage of physical infrastructure, the actual count and location of land mines and other remnants of warfare, and the number of physical casualties of the war. But there is hardly any accounting for the less visible, psychological and socio-economic scars left by the conflict and the fragile peace that follows it. It turns out that the biggest casualties of such an aftermath of wars are women and children. But since those effects are less visible, there is little provision made to take care of those who suffer them.

Furthermore, existing legal and institutional frameworks set up in times of peace may not be invoked or applied during war. Thus, for example, in situations of unrest it would be difficult, if not impossible, to uphold policies such as the following discussed at Habitat conferences: avoidance of interventions which stifle supply of and distort demand for housing; the need for the periodic review and adjustment of legal, financial and regulatory frameworks - including contract execution, land use, regulation and enforcement of building codes and standards; making available mechanisms for the clear definition of property rights (UNCHS 1996, Section IV - B, paragraphs, 72 a-h).

Among other concerns that are legitimate in times of peace but become anachronisms in times of conflict are these two: the simplification of procedures to make property transactions transparent and accountable, and the introduction of legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technologies (UNCHS 1996, idem).

In brief, all the structures and mechanisms mentioned above and intended to remove or reduce the discriminatory effects of law and policies on women become secondary when it comes to responding to the essential issues of survival, relief and rescue operations, economic recovery and physical reconstruction. In other words, in conflict situations what becomes urgent is the search for political and military solutions to them, while specific issues affecting a section of the population, like women, become peripheral.

Changes and Improvements Needed

The process of gaining (or regaining) access to land and housing and ensuring security of tenure gets much more difficult, contentious and fraught with legal, financial, and administrative difficulties in war and post-war situations. For example, in times of conflict there is little opportunity to decide on the 'best' or even 'good enough' location for one's home or community. For the choice is limited to areas which can offer a relatively safe haven from military operations.

And such areas do not necessarily offer good livelihood opportunities or even basic facilities and utilities.

The settlements established in times of conflict will always be temporary as long as the outcome of the conflict remains unpredictable. So, in such a context, issues such as security of tenure become an elusive concept. But it must also be noted that even during the reconstruction period; security of tenure may be irrelevant if well-thought-out plans are not used to resettle the populations.

The post-conflict situation also calls for a careful assessment of the level of social and economic damage and the traumas caused to the affected populations. These will react in a variety of ways to the same episodes, depending on their age, emotional maturity and individual experiences.

Given all that is said in the preceding paragraphs, it becomes compelling to propose an appropriate framework, set of objectives and approach for tackling the problems women encounter in re-accessing land and shelter in and post conflict situations.

Concluding Remarks

Owing to the complex history of countries in the Asia-Pacific region, there exists no single blueprint for change with regard to better access and opportunities for women, who unfortunately are bypassed by development. (Raj-Hashim and Heyzer, 1991:3).

In this regard, in its most recent (1997) research report entitled *Emerging Asia: Changes and Challenges*, the Asian Development Bank concludes that in some parts of Asia women's status has improved considerably during the past three decades, even as many barriers to equality remain to be removed. But the ADB report warns that, since the starting line for men and women is not the same, simply aiming for equality of opportunity may not be enough. This is because a past of discrimination is likely to limit the women's ability to benefit from a new scenario of equal opportunity (ADB 1997: 313). This report thus recommends the removal of long-standing laws and practices that have explicitly or effectively discriminated against women, such as those which restrict women's rights to own or inherit property or to secure credit. Admittedly, it will not be easy to uproot entrenched practices, because radical changes, even by legislation, are often not successful (ADB, idem).

Other relevant recommendations made by the ADB are summarised below:

- First, laws that violate women's basic opportunities to move toward equality with men should be removed. The limited effects of some initiatives taken in

this regard show how difficult it is to reverse long-standing and deep-seated practices.

- **Second, policies intended to equalise outcomes between men and women should be implemented. This can take many forms, such as of the granting of more subsidies to girls' secondary and tertiary education, the preferential hiring of women in certain occupations, and the fostering of institutions which provide credit mainly to women in rural areas.**
- Third, specific policies that assist women who combine outside employment with family responsibilities should be introduced. Among such policies are the provision for flexible working hours, the expansion of sick-leave benefits, job sharing, and provisions for maternity and paternity leave and child care tax credits. (ADB, pp. 315-316).

There is a convergence in recommended approaches, not only among international organisations, but also among groups and individuals working to improve the plight of women in the Asia-Pacific region. Invariably, no matter what the specific aspects of the women's situation are, their recommendations focus on the following:

- changing outmoded legislation, policies, covenants and practices which impede the improvement of women's meaningful and productive roles in society by obstructing their access to the necessary resources;
- related to the above, helping women to follow through whatever achievements have been made in upholding their basic rights of access to land and housing -this is critical to bolstering their self-esteem and self-respect and to attaining an acceptable quality of life for themselves and their families;
- closing the gap between the international and national and local covenants and protocols and assisting the countries concerned to honour their commitments to these covenants;
- impelling governments in these countries to sustain initiatives already mounted, but which flounder by reason of: a change of national agenda and priorities, wavering political will, and unstable and diminishing resources. It is feared that the recent region-wide currency crisis may further reinforce the effects of the above negative factors.

There are valid reasons to be optimistic in the light of the achievements of the past three decades. The framework for development has been established and commitments to it have been made, a world-wide consensus on many

critical issues and concerns has been reached, and the pre-requisites for carrying out the recommendations have been identified with certainty. Without doubt, the stage for implementing these has been firmly set. However, as is generally acknowledged, implementation is always the most difficult stage in any development process. The continuing international, regional and national consultation occurring in many places of the world provides hopeful signs of the common and serious intention to follow through the recommended agenda for change.

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Women's Property Rights and the Land Question in Rwanda

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Introduction

Access to land is one of the more worrying questions in societies where the majority of the population are farmers with insufficient land. The land problem is acute in Rwanda insofar as the area of available land is not enough to satisfy the needs of the rural population. Land has been divided to the extreme, and all that could be cultivated has been. The land problem is further complicated by the lack of appropriate legislation.

Access to land is a determinant factor with regard to the mode of agriculture in the country and has repercussions on the way of life of the population. The rural farming population depends for its survival on access to land. Protecting access to land thus constitutes a guarantee of their right to subsistence. The right to property is also linked to the problems of reconstructing a country devastated by armed conflict and to the further problem of its sustainable development.

In most African societies, including Rwanda, land is acquired through occupation: according to Rwandan custom, land belongs to its first occupant. However, even if the occupant is not clear about customary law regarding landed property in Rwanda, the relevant legislation is clear: all land belongs to the state, the rights of the occupant being simply confined to his use of the land and to the wealth it produces. He can, at any time, be displaced from this land by reason of its public utilisation, in return for a just compensation.

Property Rights and Returnees

The aftermath of the genocide and massacres of 1994 have aggravated a land problem which was already complicated owing to a lack of adequate land legislation and overpopulation. Following those events, the country saw a massive outflow of population to other countries. Then the return of refugees, took place in two waves: first, in July 1994, following the seizure of power by the Rwandese Patriotic Front (RPF), Tutsi refugees who had fled the country in 1950's and 1960's returned to occupy land abandoned by the fleeing Hutus. Hutu refugees returned to Rwanda in the second wave,

starting in mid-1996 with the repatriation of Hutus who had fled to Burundi, followed by those who fled Eastern former Zaire following the conflict that erupted there in September 1996, and later the return of those living in Tanzania.

The right of returnees to property is protected not only by national legal texts but also by regional ones. The Arusha Peace Accord recognises that the right to property is fundamental. In its section related to the Protocol on Repatriation of Refugees and the Reinstallation of Displaced People, especially in article 4, it recommends the restitution of land and houses to these two categories of people. This article states that:

The right to property is a fundamental right for all Rwandans. Therefore, refugees have the right to get back their property upon return. The two parties (the RPF and the then Government -- editor's note) recommend, however, that in order to promote social harmony and national reconciliation, the refugees that have left the country for more than 10 years should not claim back their properties already occupied by other people. In compensation, the Government will put land at their disposal and will help them to get reinstalled. Regarding properties that have been occupied by the State, the returnee has a right to just compensation from the Government.

The interpretation of this article is equivocal, at least as concerns the meaning of 'should not'. A literal interpretation of this phrase would suggest that reclaiming property is not an obligation, so much as a suggestion. However, the formal recommendation contained in the same instrument rules out any idea of suggestion and makes it instead an obligation. For the intention behind this clause was to pre-empt land disputes and find a solution to the problems of land claims that were likely to arise with the return of refugees - this being a solution tending to promote social harmony and national reconciliation. This solution finds expression in the time limit imposed on its legal validity, as land claims are allowed only for those refugees who have not spent more than ten years in exile. The place of the Arusha Peace Accord in the hierarchy of the legal texts obtaining in Rwanda reinforces the obligatory nature of the provision. This Accord, together with the Rwandan Constitution, constitutes the Fundamental Law of the Republic of Rwanda.¹² The obligatory nature of the provision appears also in practice: it has been observed that those returnees who have spent more than ten years away are aware that they should not reclaim their former properties when these have been occupied by other people.

¹² Article 1 of the Fundamental Law states that:

'The Fundamental Law of the Republic of Rwanda is irrevocably composed of the Constitution of 10 June 1991, the Arusha Peace Accord, the RPF Declaration of 17 July 1994 relative to the setting-up of institutions and the Protocol of Agreement between the RPF, MDR, PDC, PDI, PL, PSD, PSR and UPDR political forces on the setting-up of the National Institutions, signed on 24 November 1994.'

The Tripartite Agreement between UNHCR, the refugees' country of origin and the host countries (Tanzania, ex-Zaire, and Burundi) on the repatriation of Rwandan refugees, signed on 12 April 1995 in the case of Tanzania and on 24 October 1994 in the case of the then Zaire, requires that the government of the country of origin take all possible measures to allow repatriated people to settle in their regions of origin and to protect their movable and immovable property. The Rwandan Government has undertaken to put in place mechanisms for settling property-related disputes, and to guarantee returnees their right to enjoy equal social and economic rights as recognised under national and international law. This legislation has helped alleviate the problems incurred in claiming property and has thereby helped institute social harmony.

Concerning the land rights of the refugees who returned to Rwanda between March 1996 and January 1997, out of 4,444 families monitored by UNHCR, 3998 (90%) had no problem in recovering their land. Of the 446 (10%) families that had found their land occupied, 260 (6%) had got it back. With the 10% of cases of property occupied for a period of eleven months, the percentage of families that could not get their property back is relatively low.¹³

Within the context of finding solutions to land disputes arising from the massive return of refugees, the Government published a Provisional Directive on Settlement, in January 1997. This recommended living in villages in the rural areas as a way of solving the problem of land shortage and to ensure better land use. In the spirit of the Arusha Accord, this type of settlement was destined for the refugees of the 1950-1960's. However, faced with the problem of these refugees occupying other people's land and houses during the mass outflow of population and upon its return, the Government instituted the system of grouped settlement for all the rural population.¹⁴ This should make land available and should allow a more equitable distribution of land among all the populations present. It is the view of the Government that scattered settlement in the rural areas is an obstacle to good land use, and therefore that a settlement system must be put in place that allows them to solve the problem of land hunger.

¹³ UNHCR Protection Report for December 1996-January 1997, p.7.

¹⁴ Article 11 of the directive stipulates that 'the [type of] settlement accepted in the rural area is that of villages; all Rwandans are given plots to build their houses in villages'.

The Situation of Women in Relation to Property Rights

Rwandan women's right to property is linked to the cultural situation of the country. Women have always been sidelined on matters of family or conjugal inheritance. Custom does not allow them to inherit parents' or husband's property, and to date there is no law on inheritance and marriage settlements to rectify this situation. According to custom, land rights are passed on from father to son in accordance with the principle of patrilineal succession. Daughters may inherit land, as a gift or where there is no son, but there is no automatic right of inheritance. Daughters thus cannot benefit by inheriting their father's land. Custom allows a surviving widow only usufruct rights on the property of her deceased husband, and she is allowed this only if she remains in the matrimonial home; otherwise she will be denied it by her in-laws. This custom is manifestly discriminatory and contrary to the provisions of the Rwandan Constitution and the International Covenant on Economic, Social and Cultural Rights, which was ratified by Rwanda in 1975. Both of these instruments recognise the equality of rights between men and women. Effective protection of the right of access to land for women is made difficult insofar as no legislation on inheritance and marriage settlements exists as yet.

Consequences of Women's Lack of Access to Land

Land ownership being an indispensable condition for the achievement of the rights to subsistence and to family welfare, a woman without the right to land faces a violation of her most fundamental rights. Lack of access to resources on the part of women leads to extreme poverty, and this has negative repercussions on all those people who depend on her. Such a situation increases the socio-economic dependence of the woman, who is an active force of the country, and consequently reduces her participation in the process of human development.

The situation of Rwandan women worsened considerably after the tragic events of 1994: many women became widows and now have to take care of both their own children and orphans of other family members while at the same time being deprived of resources and social and economic protection. The genocide and massacres of 1994 have in fact affected not only human lives, but family property as well: houses were destroyed and property looted. The recovery of some of the husband's, or the family of origin's, remaining real estate property was a daunting task for the widow who at times had to face stiff resistance from her in-laws or the male members of her own family. Faced with this situation, widows needed active efforts to ensure their social and economic integration in order to regain hope. Various initiatives were undertaken, by the national authorities and by international organisations such as UNHCR.

Initiatives Taken by National Authorities to Improve the Woman's Property Rights

Sensitisation campaigns are carried out throughout the country, through meetings, conferences and seminars, by the ministry in charge of women's promotion and by NGOs promoting women's rights. These campaigns are essentially focused on the equality between men and women in the enjoyment of their rights, in the present case the right to property.

In 1996, the Ministry of Gender, Family and Social Affairs introduced a draft bill on inheritance and marriage settlements, the main innovations of which would be to allow the daughter to inherit landed property from her parents and the wife to manage conjugal property and to inherit her deceased husband's property. A commission from the Ministry initiating the project and another from the Ministry of Justice produced a single definitive draft document.¹⁵ This Bill passed into law in April 2000.

With the aim of resolving the problem of access to land by returnee women, a directive on provisional land management was issued in September 1996. This mainly regulates abandoned land (that is, land whose owners are absent), and acknowledges that wives and children are entitled to manage such family land until the return of the titular owner. While children are still minors, it accepts that their parents' property can be managed by their guardians. This has helped to improve the socio-economic situation of women and their child dependants and that of daughters. However, this gain remains precarious for the woman, if her husband should return and resume ownership of his property. She may also find herself repudiated, especially if she has no children, should her in-laws manage to produce proof of her husband's death.

With the current practice of land distribution, the woman is considered to be at the same level as the man. In Kibungo Prefecture, which is the most progressive in land distribution, the plot of land given to a man is equal to that given to a woman. This system was adopted after reconciliation seminars that took place throughout the Prefecture in March 1997, funded by UNHCR.

Sharing has been considered as a sign of reconciliation. It was made easier by the principle that the State has the right of property on all land except that land whose owners hold title deeds.¹⁶ During those seminars, the

⁴ see *Journal Officiel de la République Rwandaise*, 15 November 1999.

¹⁶ Article 1 of Statutory Order No.09/76 relating to purchase and sale of customary land rights or soil occupation rights stipulates that: 'All land that was not obtained through written law legislation, whether mortgaged by customary or soil occupation rights or not, belongs to the State'.

recurrent question was whether the property belonging to the land to be shared was compensated for. For, in principle, when a person is removed from the land that he or she occupies, he or she must receive compensation for all the property that is on it. But for the case in point of Kibungo, there was an understanding amongst the population that someone who possessed a plot bigger than the share reserved for each individual had to share it with others without compensation. It remains to be seen whether the same practice will be possible in other prefectures. It is important to underline, though, that this practice is not foreseen by any statutory or legal text, land-tenure legislation being still in preparation.

Initiatives Taken by UNHCR

Within its policy framework designed to promote the rights and condition of repatriated women and women survivors of genocide, UNHCR gives active support to the Government's initiatives aimed in particular at devising legislation on inheritance and marriage settlements, on gender equality and women's rights to land, and civil society initiatives (NGOs) and the work of parliamentarians.

In this respect, since 1995, UNHCR has supported a local association called Haguruka in its efforts to promote and defend the rights of women and children, notably by sensitisation and training on women's rights, especially the rights to property and inheritance. Such activities are directed at local authorities, women's associations and so on, using the production and dissemination of posters, legal aid with a view to securing these rights, production of legal education booklets, and training of para-legals to give basic advice on how to settle women's legal problems.

Since December 1996, UNHCR has provided technical support to the Ministry for the promotion of women in drafting the Bill on inheritance and marriage settlements. It also supports a local media women's association called ARFEM in its work to popularise women's rights. In 1998, UNHCR supported the Women Parliamentarians' Forum to strengthen its networking with other parliamentarians in Africa and Europe.

These are some of the initiatives supported by UNHCR within the context of the Rwandan Women's Initiative aimed at increasing the participation of women in the process of economic, social and cultural development; promoting women's rights and their position in the political, legislative, judicial and media arena; and combating violence against women.

Conclusion

The right of women to land is a fundamental right without which they cannot aspire to a decent life, inasmuch as land constitutes almost the only means of production for the rural population.

The situation of women with regard to the right to property has evolved slowly as a result of an inadequate protective legal framework. This is the ultimate requirement needed to empower women economically and socially. Therefore, speeding up the process of adoption of the law on inheritance and marriage settlements would allow women to know their rights and obligations, and to discard discriminatory customs. It is not enough to put legislation in place: women must be trained and sensitised about their rights and the laws protecting these, in order to allow them to claim and champion their rights.

Legislation that would regulate the use of land (but which is not yet in place), could, within the context of determining the legal succession of land, play a considerable role in the resolution of the women's problems of access to land.

The respect and protection of the right to land for returnees, a right recognised by many legal texts including the Arusha Peace Accord and the Tripartite Accords are an indispensable pre-condition for instituting social harmony and fostering reconciliation among the population. Effective implementation of these legal texts has to be ensured in order to respect commitments made.

Women's Land Rights in Post-War Mozambique

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Women are disadvantaged in the post-war struggle for land

A prolonged struggle for independence, followed by natural disasters, economic crisis and sixteen years' civil war, has led to the deep impoverishment and massive displacement of rural people in Mozambique. During the civil war, over one third of the nation's estimated 16 million people were forced to flee their homes (see Wilson 1992). Agriculture was devastated with the loss of livestock, trees, agricultural tools and seed stocks and the collapse of rural marketing. A Peace Accord was signed in 1992. With its national infrastructure in ruins and state spending tightly restricted by an IMF-guided structural adjustment programme, Mozambique's Government has emphasised a policy of persuading people to 'go back to the land'¹⁷.

After the war, there has been a gradual and partial return of refugees and displaced people to the lands they formerly occupied (see Waterhouse and Lauriciano 1994a, 1994b; Waterhouse 1997b; Dolan 1997). This has occurred in a context of increasing competition for the most fertile land with best access to markets (see Mario 1996; Myers *et al.* 1993).

As Mozambique pursues a liberalisation policy under IMF auspices, the new political and business élite have taken advantage of a weak and confusing legal-bureaucratic system (see Garvey 1994) to stake a claim on huge swathes of the country's best land (see ORAM 1996; Hanlon 1995). Meanwhile, even as they try to rebuild their lives from almost nothing, peasant farmers have been struggling to maintain their existing hold on the land.

Burdened with a historical legacy of secondary land and property rights, and relatively poor access to education, waged labour or legal advice, women peasant farmers are particularly disadvantaged in the on-going struggle for land compared to men.

¹⁷ An indication of this thinking was when, in response to a crisis in the cashew processing industry, threatening thousands of workers with job losses, the Mozambican Prime Minister argued (in October 1997) that the solution to their predicament was simple: the redundant workers should go back to farming.

I wish to illustrate some of the problems, but also opportunities, that Mozambique's rural women face in reconstructing their lives, through reference to a case study on gender relations and land rights, which I carried out in one village of the South - namely Ndixe, in the district of Marracuene.

Most women in Mozambique depend principally on subsistence agriculture, and thus on access to land, to ensure their livelihoods.

Through over a hundred years' colonial policy of forced labour and heavy taxation, men in the south of Mozambique tended to migrate for work, either to nearby towns or to South Africa. Women were obliged to stay home in the rural reserves, producing food for their families and for the market and ensuring the welfare needs of their children and sick or elderly male labourers (see Hermele 1986; First 1983). This legacy still informs gender relations today.

In recent history, the war forced hundreds of thousands of rural people to abandon their homes, often taking refuge near towns or in peri-urban slums. In Ndixe, following a massacre by the then rebel movement, RENAMO, on New Year's Eve, 1985, the village was completely deserted for eight years (see Waterhouse 1996).

With virtually no access to employment, many Ndixe women found urban life incredibly hard. After the war, they were often obliged to leave the small plots of land that sympathetic relatives or councils had allowed them to occupy. With no other means of survival, they made their way back to the village. One woman told me: 'I was a useless dependent in the city - the best thing I could do was to come back here, to grow food for my children'¹⁸.

Many women came back alone, or with young children. Some lost their husbands to the war. Many others were abandoned by husbands who went for work in South Africa or elsewhere. Others left their husbands in town, whilst they returned full-, or part-time to the village to ensure the family's food supply (see Waterhouse 1997b).

Married women have relatively better access to labour (through their husbands' work on the farm - and sometimes that of co-wives) or to capital (through their wages). But women heading households alone - over 40% of women in Ndixe - face particularly severe labour and capital constraints.

This is reflected in their food security situation. For six to twelve months of the year, married women generally have enough produce from their farms, but women heading households alone grow only enough food for around four

¹⁸ Interview with Alice Moamba, in Ndixe, 1997.

months, depending for the rest of the year on casual farm labour and gathering fruits, leaves and firewood (see Waterhouse 1997c).

This situation of gender inequality is exacerbated by the fact that, under widely practised customary law, men have direct inheritance rights to farm land, cattle and property -particularly housing - whereas women do not. Under customary law, women's access to all these resources depends on kinship or marriage: in other words, women acquire access to land and a house through their parents, brothers or husbands (See Waterhouse 1997a, Dominguez 1996, Junod 1962, and Loforte 1996). (Even though formal law establishes the legal equality of women and men, spouses are only fourth in line for inheritance¹⁹ - which is a problem for women, when traditional property rights are vested in men). Divorce generally means that a woman loses all access to the resources of her husband's household and, traditionally, even access to her children (see Waterhouse 1997c).

Women have only secondary land rights under a resurgent customary law; but the rules may be changing.

At national independence in 1975, the new Mozambican government (composed of the former liberation movement, FRELIMO) denounced customary law as backward and superstitious. The traditional leaders who underwrote it were dubbed collaborators with the colonial regime, and FRELIMO promptly deposed them from power (see Roque 1995). Nonetheless, customary norms and practices continue to be followed, especially at household level, for example in regard to inheritance rights and the division of labour and power between women and men²⁰. During the civil war, RENAMO rebels sought to champion the cause of some embittered traditional chiefs. Peace was partly achieved on the promise of some kind of formal reinstatement for traditional leaders (see Lundin 1996).

In the patrilineal south, under customary law men have primary land rights through inheritance and the right to request more land, if necessary, from the traditional authorities. Women's access to cultivated land depends on kinship (through male relatives) or marriage. When a woman marries, traditionally she moves to her in-laws' house, and her mother-in-law, or husband, will show her where to work. Although in northern Mozambique land is inherited through the matrilineal line, control rights over land are still vested in men, principally in a woman's maternal uncles and nephews.

In the south, women are particularly vulnerable in the case of divorce or separation from their husbands: the wife is obliged to leave the family

¹⁹ Article 2133 of the civil code.

²⁰ Interview with Ismael Ossemane, Vice-President of the National Peasants' Union of Mozambique (UNAC), 1996

homestead. If this happens, she loses all rights of access to the land, considered to be her husband's. Her main recourse would be to go back to the land of her parents or brothers. Yet, after the dislocation by the war, many women no longer see this as an option²¹.

Despite their secondary rights to farm-land, it is important to note that under customary law, women have independent rights of access to common lands, such as forest and scrub lands used for grazing and, particularly relevant to women, for gathering firewood, fruits and leaves²². See also Waterhouse (1997a).

In Ndixe, as in so many other areas of rural Mozambique, agricultural wealth was devastated by the war. Now, five years later, most families depend heavily on these common-land resources for their survival. However, until a new land law was passed, in June 1997, these rights were not legally protected²³. (See also Mazula (1996), Gengenbach (1997), and Wilson (1992)). Meanwhile, an interesting change seems to be taking place in Ndixe. Many younger women are now refusing to live with their in-laws, but insisting on having their own homes. This could partly reflect a loss of wealth and authority that elders in the rural south experienced during the war²⁴.

It may also reflect the fact that some women have achieved direct control over land, through three processes:

- the local FRELIMO secretary has redistributed valley lands that were abandoned after independence, or during the civil war, to local families, including those headed solely by women;
- in the absence of their husbands, widowed or abandoned wives have been able to return, unchallenged, to the land of their former husbands;

²¹ Interviews with women in Ndixe, 1997.

²² Bina Agarwal (p. 19) distinguishes between land rights based on individual or joint family rights, and those based on community membership.

²³ Under the former *Land Law of 1979* and its regulations of 1986, it was possible for family sector farmers to acquire either an individual or an association land use and a benefit title deed; however, these titles would not cover rights to uncultivated common lands (unless these could be clearly demarcated as the grazing lands used by individuals or association members). The revised *Land Law of 1997*, however, foresees the specific protection of common lands, under the clause allowing for community land titles, which reads as follows:

Article 9: Acquisition

The right of land use and benefit is acquired by occupation in the case of individual persons and local communities, in accordance with customary norms and practices provided that such norms and practices do not contradict the Constitution.

²⁴ Cabaco describes how in the early years of national independence, after 1975, Mozambique's FRELIMO party discredited tradition and the elder generation who upheld it, promoting instead a philosophy of the 'new man'. See B. Mazula (ed.) *The Long March of Mozambican Democracy and Development*.

- national unemployment levels being high and rising, a number of men have recently migrated into Ndixe, to take advantage of the firewood and charcoal markets in the nearby capital city, Maputo. Some of them have secured a place on the land by marrying local women - reversing the usual rule whereby wives live on their husbands' land (see Waterhouse 1997a).

Women have equal land rights to men under formal law, but most rural women are ignorant of these rights and hardly make use of them.

Under the Mozambican Constitution, all land is national property. The old law gave peasant farmers the right to continue farming land they 'traditionally' occupied, and to apply for 'land use title deeds' to cultivated lands²⁵. Although the title deeds were free, the costs of demarcation made it impossible for the vast majority of individual peasant farmers to even dream of acquiring a title²⁶. (See also Hanlon (1995).

The new land law of 1997 confirms the constitutional principle that women and men have equal rights to occupy and use land. It further spells out that women have the right to inherit land. And, for the first time since national independence, it recognises the right of 'local communities' to secure a collective title to their lands, including cultivated, grazing and common lands; it further foresees that such lands may be governed according to customary laws - so long as these laws do not contradict the Constitution of Mozambique²⁷.

As far as women are concerned, the terms of the law are progressive. However, its implementation is likely to be highly problematic. The first problem is that most rural women are ignorant, or make little use, of their formal land rights. Even when the national peasants' organisations, like UNAC, and other NGOs are able to carry this message to them, most towns, let alone villages, have no functioning court or tribunal. Local justice is usually meted out according to a mixture of formal law and custom, by male elders, traditional leaders, FRELIMO party secretaries or religious leaders, all of whom are almost exclusively male. Even in Ndixe, where male absenteeism is high and a large proportion of households are headed solely by women, until the time I began my research in 1996, women were not allowed to participate in local meetings on land management.

The new land law of 1997 offers land rights for all, on a 'the-user-pays' basis. The dual challenge is to secure women's rights of access to land under customary law, whilst promoting their formal rights to inherit and control land.

²⁵ See the '1986 Regulations of the 1979 Land Law'.

²⁶ Interview with Ismael Ossemane, UNAC, 1996.

²⁷ See footnote 7 above.

Women's secure rights of access to land under customary law have been eroded by the social disruption by war and the economic transition to an increasingly market-based economy. At the same time, however, as the experience of Ndixe suggests, new opportunities arise for women's direct access to, and control over, land.

In keeping with the national Constitution, the new Land Law of 1997 does not allocate rights on the basis of gender difference, but of equality before the law. Although it allows for local communities to follow customary law, this will happen only when the law in question does not contradict the Constitution.

Despite the apparently progressive terms of the law, there are likely to be serious problems with its implementation. The likely danger is that stronger actors in the market - such as private, commercial investors or speculators - have the best chance of securing land concessions and titles. This could reinforce peasant farmers' already marginalised position.

Meanwhile, at community level, the partial revalidation of traditional authority, and the shift to an increasingly market economy, opens the opportunity for a new power alliance between local government and traditional authorities, both of which institutions are heavily male-dominated.

Given peasant women's generally lower social status and weaker access than men's to labour and capital resources, they tend to be weaker players in the market, which reinforces their dependence on men and means that their relationships with men are a key aspect of their survival strategies. This aspect of gender relations should not be ignored. It suggests that strategies aimed to protect women's independent land rights, without associating men in the process, may not be successful²⁸. (See also Dominguez (1996).

A first step in defending rural women's land rights may be to secure their customary rights of access to land. One practical opportunity for doing this is to facilitate peasant farmers' access to collective land titles, which would protect not only cultivated, but also common lands from alienation. The significance of common land for women's livelihoods, in particular, has already been indicated.

This may be a first step, but it does not go far enough. Within local communities, further measures are needed to facilitate women's use of their formal rights, to inherit and directly control the land that they farm. This is a major challenge facing advocacy work in the future.

²⁸ Several studies in the south of Mozambique have found that women receiving land titles feel that the land actually belongs to their husbands. (Interview with Margarida Mejia, Centro dos Estudos, UEM, Maputo.)

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Organising for a change: Guatemalan Refugee Women Re-affirm their Right to Land.²⁹

Paula Worby

Enforced exile, a time of terror and disaster, is sometimes ironically an opportunity for change, organisation and improvement in the lives of refugees. That has been the case with the Guatemalans who fled a brutal counter insurgency war targeting the rural civilian population in the early 1980's to settle in refugee camps in southern Mexico. Guatemalan refugee women, virtually all rural and indigenous, embarked on a journey of self-discovery and self-help, organising themselves with assistance from NGOs and UNHCR. One of the tangible results was their decision to reclaim the right to be co-owners of land allocated to returning refugee families (but normally ceded formally through male heads of household). The struggle to directly co-own family land has been fought with difficulties and challenges. The results have sometimes been disappointing. However, through this process, UNHCR and the refugee women's organisations have learned valuable lesson about women's land rights in the Guatemalan context, that non-discriminatory laws are not enough, the importance of examining and changing the administrative regulations in the application of governmental land access programs, and how men from the community, and men in leadership roles, need to be involved from the start in education and organisational efforts. In addition, the case of Guatemalan refugee women who organised for their land rights illustrates the potential risk of "rollback" of women's gains once they have returned home and "peacetime" society colludes to put women back into their former (pre-exile) role with only limited, circumscribed participation.

It is the premise of this paper, based on UNHCR's experience with Guatemalan refugee women's organisations, that demanding direct access to co-own land was an outgrowth of women's learning and organising to affirm their rights in general and would not have gone forward without the existence of organisations of refugee women. While gaining direct exercise of land rights in some ways might have been considered secondary to their other needs (among them the urgency that the community as a whole be granted land), the demand responded to women's wider agenda to protect themselves and their children and be economically protected in the case of separation with their partner. A by-

²⁹ The author, consultant to UNHCR Guatemala, expresses special thanks to Terry Morel, UNHCR Mexico, for valuable suggestions and to Ana Grace Caberera, UNHCR Guatemala, for her additional comments. Views expressed in this paper are the author's own and do not necessarily represent UNHCR policy.

product of the mobilisation to gain direct land access, on the other hand, has been that women are seen as more important by men in their communities and are beginning to see themselves as necessary actors, as a result of institutions such as UNHCR continuing to insist on the importance of women's presence and formal inclusion in everything from informal meetings to the land acquisition process. However, where women have actually become co-owners only on paper, this is not enough: they and their organisations must continue to be strengthened so that male leadership can actually take them into account when making decision related to land and land tenure.

Violence and displacement: the Context of Land in Guatemala

Much has been written about the land issue in Guatemala. As popular belief would have it, the extremely unequal land distribution (among the worst in Latin America) lay directly at the root of an insurgency war that lasted over thirty five years until a UN-brokered peace agreement was signed in December 1996. Five hundred years after the Spanish colonisation, the indigenous Mayan majority found itself squeezed onto the most marginal lands. As a result, men, women and children migrated yearly, under exploitative conditions, to harvest the export crops grown by wealthy plantation owners. Land, in the Mayan world-view and in everyday practical experience, gives life - as rural families eke out a subsistence existence growing corn and beans on eroded hillsides. While rural women participate in many aspects of family land cultivation, harvesting and animal husbandry, men, and not women, are considered "farmers" and therefore seen as those responsible for the land and its control.

Poverty and the vague promise by revolutionary insurgents to help Mayan peasants gain land won over early supporters to guerrilla organisations in the early 1970's. Guatemala's military, in power through elections and coups d'état with only one interruption between 1954 and 1985, responded to peaceful assertion of people's civil and economic rights by organising repression, in the 1970's, first with selective and then increasingly widespread means. At its height between 1982 and 1983, the Guatemalan conflict provoked the internal displacement of more than one million people (of a total population of seven million) and of one hundred thousand or more to neighbouring Mexico, where forty-six thousand of them were eventually recognised as refugees in UNHCR-assisted camps.

As families grieved over the loss of loved ones killed in massacres or who died of hunger or illness while fleeing, they also lamented the destruction of their homes and belongings - as they worried about the future. Physical uprootedness meant the loss of livelihood from the land as well as of the spiritual value of the land itself. For some Mayans, the gods they pray to correspond to the surrounding hillsides and cannot be prayed to elsewhere. Women felt the loss of

family land as keenly as did men. In one interview, a woman recounted to UNHCR how it was the older daughters in her family who convinced her that they should abandon the border refugee camp and clandestinely return to their land in the conflict zone because they felt that their life held no future without their land (UNHCR 1996).

The Guatemalan refugees fled from rural border areas, for the most part of Mexico, and in a small number of cases for Honduras and Belize. The lands they left behind were in both ancestral indigenous regions in the area, known as the Western Highlands, and recently colonised lowlands. In the former, lands were mostly of marginal quality and insufficient in size, while in the latter they were new lands, which refugees left at the peak of production with cash crops ripening on them. Forms of land tenure in Guatemala include hereditary rights to collective lands, privately registered title, provisional title (not constituting ownership) of national lands, usufruct rights in municipally-controlled communal lands, and others. As a general rule, widowed women and occasionally other women without partners but with dependants, nominally control land when inherited from a father or husband with the original claim. All other women generally depend upon their husbands or partners for land access. Finally, lands are generally divided among siblings, either giving more land to sons than daughters, or giving none at all to the latter. Given that many people “disappeared” in the conflict (that is, they were taken from their homes at night and never seen again), and that others are presumed to have died during flight (but without their death being witnessed), there is a problem for those family members who may be heir to lands but cannot legally prove it as long as they cannot register their missing relative as deceased.

Organised and Collective Returns

In 1992, representatives of the Guatemalan refugees achieved what no other group of refugees had done before: direct negotiations of the terms of their repatriation with their own government. The organisation, called the 'Permanent Commissions of Guatemalan Refugees', after years of lobbying and negotiation, and with mediation of UNHCR and other institutions, had their chief demands accepted by the Guatemalan Government. While enjoying wide support among both refugee men and women (as the Commissions held out the hope of returning home in safety and dignity) the leaders were, and remain, virtually all men elected in all-male assemblies. Most of the contents of the “8 October 1992 Accords” (as the signed agreements are known), reiterate basic guarantees for the rights to life, physical safety, organisation, and expression. Given the ongoing conflict in Guatemala at the time, and the continuing human rights abuses, the strategy of the refugees was to capitalise on international support and draw attention to the violation of these constitutional rights by a government in which they had little trust.

The unique part - and most difficult to negotiate - of the 8 October Accords was the section on land that not only stipulated the government's commitment to help refugees recover lands occupied by others but generously offered to obtain lands for all landless adult refugees. National and private lands would be put at the disposition of the refugees through a special credit agreement, established in December 1992. The lands would be administered through a "soft loan" repayable to the communities' own organisations for investment in community projects. The government made the commitment as a way of demonstration its willingness to create the necessary conditions for large-scale refugee returns, given the extensive international attention focused on the Guatemalan refugees. Future administrations, however, had a more difficult time with the implementation of a model for buying up private lands and turning them over to refugee groups. Without the political possibility of agrarian reform measures or land expropriation, this model became expensive, it was questioned by other sectors in the country and became (from the government's point of view) a dangerous precedent for other landless groups in Guatemala. Nevertheless, the programme to purchase private lands for refugees became the lynchpin of the Guatemalan return process: slightly more than half the twenty-nine thousand people who returned after the 8 October Accords were assigned new lands, as many young families had no land to claim and other refugees were intimidated by the idea of recovering former lands or returning, in an isolated manner, to the communities from which they had fled.

Guatemalan refugee women unequivocally supported the return movement as called for by male leaders in the Permanent Commissions:

We women will support all of the necessary tasks to achieve our return ...[our refugee women's organisation] has always had a close relationship with the Permanent Commissions and ... has always had the objective of supporting and backing their petitions. (Mama Maquin/CIAM 1994)

but they were also clear about wanting

to continue the development of our own kinds of organisation ... to become active ... in social and national [level] projects, where women have the active role that should be ours, alongside men.

They also insisted that

it is necessary that the right of women to sign onto property titles be recognised once we have returned to Guatemala.

Women's Legal Right to Land under Guatemalan Law and Other Legal Instruments

When Guatemalan law is examined with an eye to women's right to be equal to men in general and their access to property and ownership in particular, it is clear that most legislation is neutral as regards both sexes. In some cases, explicit mention is made asserting women's equal rights, most strongly in article 4 of the Constitution, which states that

In Guatemala, all human beings are free and equal in dignity and rights. Men and women, whatever their marital status, have equal opportunities and responsibilities.

However, Guatemalan lawyers argue that women's access to family property is protected through marriage. An outright contradiction exists in the country's family code, though its article 79 states that "matrimony is founded on the basis of equal rights and obligations of both spouses," and yet article 109 gives the household representation to "the husband, but both spouses shall have within the home equal authority and considerations." Furthermore, a majority of Mayan couples live together under common law, recognised within their communities but not covered by statute law unless they are registered as such by a notary or municipal officer-holder, which is not a common practice.

Despite this and other discriminatory language in the Civil Code and the Penal Code, the Constitution is the paramount law and supersedes all other legislation except for international treaties ratified by Guatemala. It is worth noting that Guatemala ratified the Convention for the Elimination of all Forms of Discrimination Against Women in 1982.

Other legal instruments particularly relevant to the return process reaffirm women's rights of access to land and women's equal rights in general.³⁰ The 8 October Accords (which were never ratified by legislation but have been honoured by later administrations) use the (supposedly) inclusive terms "refugiados" and "retornados" in their text, but a preamble explicitly states that the terms refer to both *retornadas* and *retornados*, that is the feminine and masculine versions in Spanish. A subsequent credit agreement between the refugee organisations and the government specifies that family lands should be allocated on the basis of both the male and female heads of households becoming co-owners. The Guatemalan Peace Accords, negotiated as a series of

³⁰ Some of the texts mentioned in this paragraph, explicitly asserting and protecting women's rights, were included at the instance of outside institutional advisors to the negotiating processes where the different agreements were determined and where the refugees were only represented by men. In one case, for example, the reference to women's explicit right to land was included in the agreement during a late night negotiating session only to placate an UNHCR official. The point is that, in the absence (or alongside) women's direct participation in key decision-making forums, other advocates can still ensure ways to protect their rights or expand their options which farther along can be converted into an organising tool for and by the women themselves.

partial agreements between 1994 and 1996, were finalised in December 1996 between the government and the insurgent organisations. Three of the partial agreements regarding the resettlement of uprooted populations, the identify and rights of indigenous peoples and the socio-economic and agrarian accord contain explicit mention of the government's obligation to eliminate any legal or de facto discrimination against women in having access to land, housing or credit³¹.

Government land access programmes have non-discriminatory language in all cases with the exception of the National Land Distribution Decree in effect since 1951, which specifies that only one person will be the nominal title-holder for lands held in family patrimony. That person is always interpreted as being the man when two spouses head the family. In 1996, possibly due to pressure generated by UNCHR and women refugee organisations, an internal rule was enacted to include the whole family's names on the title, but this modification has yet to be implemented. The interpretation and implementation of this apparently neutral language have consistently been used to designate the male head of household as the one representative entitled to legally hold family land. Exceptionally, though, widowed or other women without partners have been so designated.

Speaking for Themselves: Guatemalan Refugee Women Organise³²

Through a long and difficult journey, Guatemalan refugee women have seen their words and ideas transformed during the fifteen years spent in exile. Coming from rural villages with no schools or tradition of educating girls, refugee women at first had few elements and little self-confidence with which to assert their rights. They were unable to communicate with each other because of their different languages and lack of knowledge of Spanish. The urgency of making the initial refugee camps function forced women into new roles. For example, after the installation of the camps, they were singled out to implement small economic projects, which, even when unsuccessful economically, brought refugee women together. NGOs, UNHCR and the refugee women's organisations eventually approached their work with an explicit agenda of empowering women as a necessary step to ensuring their participation in creating durable solutions for themselves, their families and the community. Once refugee women's organisations had been created (with support from international NGOs) a joint commission of UNHCR, the women's organisations and the NGOs was formed to

³¹ A limitation to the language employed in the Peace Accords regarding women's land access is the fact that these government commitments are not held to a deadline for implementation. Nevertheless, Guatemalan women's organisations are involved in formulating proposals to ensure that the commitments made on behalf of women in the Peace Accords in general be respected. The UN verification mission of the Accords (MINUGUA) is also following up on this issue.

³² This section is merely an overview. For more on this topic, see the paper by Maria Guadeloupe Hernandez, who herself is a Guatemalan refugee in Chiapas, Mexico.

closely co-ordinate their complementary agendas. UNCHR initiated a gender-based approach to its work with Guatemalan refugee women in Mexico, promoting, among other activities, the following:

- Literacy campaign designed with women's organisations and as a tool for raising women's self-esteem and contact with one another;
- Implementation of time and labour saving devices such as mechanical corn-grinders and fuel-saving stoves;
- Reproductive health services;
- Training in communication skills and radio access as a vehicle for spreading information and raising the capabilities of women involved;
- Protection and training in human rights (covering women's rights and land rights) and combating sexual and domestic violence - including how to report such violations to UNHCR and then receive follow-up (UNHCR/Lozano, 1996).

As already suggested, these programs were all undertaken with an explicit decision by UNHCR to work closely with NGOs and create an "open door" policy whereby both refugee women and men would feel comfortable approaching and working with UNHCR staff.

These and parallel efforts by other institutions, together with the growing enthusiasm of the refugee women, opened up opportunities: women spoke out more on community matters, derived pride from their having their own organisations, designated young women as promoters of health, education and human rights and sent their daughters, as well as their sons, to school. It is no coincidence, therefore, that among returning groups, girls have higher education levels and many choose to marry later and delay child-bearing, which allows them to vary the roles played by women and consequently increase men's recognition of their capabilities.

In the context of the overall refugee struggle for land, it was not immediately evident that women should also aim for co-ownership of it. This became evident only on analysing the outcome for women abandoned by their partners (and often deprived of the land or family belongings), and comparing it to the vulnerable situation that women and their children often find themselves in.³³ Another important outcome was the fact that many women, formerly fearful

³³ In some Guatemalan indigenous communities, family problems, such as a man's desertion of his family, may be brought before community authorities, including a council of elders (composed of men) respected by the community. Sometimes the man is instructed to leave the family house and/or land to his former wife and children, but women have no guarantee that the decision made by community authorities will be in their favour.

of taking formal responsibility for “credit”, realised that when their partners were irresponsible with family funds, responsibility for paying back the credit fell to the woman whether or not her name appeared as a formal beneficiary. Eventually, through consciousness-raising by the women’s organisations, the demand that women be taken into account as co-owners of land and property became an accepted part of the agenda of the refugees in general, and became a familiar and no longer shocking idea to the governmental and non-governmental institutions working with them.

The decision of the refugee women’s organisation to mobilise in demanding co-ownership of land was an outgrowth of their new awareness of women’s rights in general. It responded to the particular need to protect women’s economic rights in cases of separation. For UNHCR, moreover, supporting this demand was an important way to reaffirm and promote women’s importance in the community and in the eyes of the male leaders. In other words, the issue crystallised the strategy of promoting both women’s improved “condition” (economic and general well-being) and “position” in the community, that is, a recognition of their capabilities and contribution.

Institutional Limitations to New Models of Co-ownership

When the first organised group to receive new lands through the Guatemalan government was preparing to return in 1993, women were prepared to co-sign the legal document listing the beneficiaries. However, when they crossed the border in January 1994, only men and widowed women were listed on the collective title, and when the community formed a co-operative to which the property of the land was transferred, women with partners were again excluded. UNHCR was mystified at first as to what had gone wrong. Since then, investigating both the institution-level and community-level obstacles and the ways to overcome them has been ongoing and challenging process.

When it was clear that legal limitations were not at issue in this or in ensuing cases, the corresponding state agencies were asked to issue statements to this effect. As a result, UNHCR devised a strategy whereby the (male-dominated) refugee organisations, through their legal advisors in conjunction with the UNCHR office in Guatemala, signed a document affirming that there were no legal impediments and, furthermore, that they wanted the equal ownership of land between men and women to be negotiated. This document was subsequently analysed in a workshop with refugee women leaders and made public in a conference where the corresponding state agencies were asked to formally respond to the women’s request to be co-owners of land. This process of clarification of institutional policies and public debate did three things:

- It revealed the clear and discriminating bias against women in the interpretation and application of institutional policies by government officials

(most, but not all, of whom were and are male), and the need for appropriate forms and models of preparing and implementing the process of land acquisition;

- It forced the male-dominated refugee organisations to publicly promote the inclusion of women;
- It reinforced the decision of women to continue to struggle for their right to co-own land.

Community Opposition and Practical Obstacles among Returnee Communities

The other side to understanding “what went wrong” in bridging the gap between women’s expectations as refugees and the reality of their communities as returnees in part responds to two important dynamics. Firstly, in the last eight years, the creation and promotion of women’s refugee organisations, was not only permitted, but also promoted, by male leaders, although for reasons of political opportunism: the fact of having women demand the right to return home with a political platform stipulating conditions, rejecting the role and presence of the army, and demanding land, made for a powerful impact in the media and with international organisations and foreign embassies. Women were thus manipulated by male leaders who were actually responding in part to the agenda of the guerrilla organisations that sought to use the refugees’ genuine wish to return home as fuel for a larger political struggle -- which many individual refugees agreed to. However, when women began to take charge of their own organisations and consciousness-raising campaign to demand visible and formal roles in decision-making, this seems to have been perceived by men, consciously or unconsciously, as overstepping the acceptable limits they had prescribed for women’s roles.³⁴

Secondly, a natural tendency has developed for both women and men to seek a sense of “normality” in returnee homes, as compared to the extraordinary moment of war and displacement and that of the political struggle to return. Whereas individual women may have felt caught between conflicting desires to

³⁴ In early 1997, the formerly covert antagonism in some returnee communities against the women’s organisations became explicit and even violent. A group of male leaders in the region known as 'Ixcan'; publicly denounced the Guatemalan guerillas as interfering with community life through those who sympathised with them. (The guerilla was demobilising their combatants in compliance with the Peace Accords at the time). Those leaders openly accused returnee women involved in the women’s organisation brought from Mexico as being too closely allied with guerillas. At the same time they declared any group meeting in the community without their permission to be “illegal”. Many women who had been active in the women's organisations were intimidated into dropping out of these by their husbands or neighbours. A mob in one village, clearly under the control of village authorities, went so far as to physically destroy the structure where the women had their office and meeting place - the place being perceived as an apt symbolism for the threat to male structures, which organised women had become.

return to normality while simultaneously wishing to re-affirm the roles that had become second nature during the years in exile, many male leaders have explicitly stated that the women's organisation was important when they needed to return to Guatemala, but that it was no longer "necessary" afterwards. This overall message easily reflects the potential tension felt in each household, as the majority of men demand that their partners continue their "duties" of maintaining the household, taking care of children, etc. It is ironic, but not expected, that male refugee leaders should continue upholding the universal primacy of human rights as a precept and demand it of the state, while at the same time they continue overlooking such basic rights when it comes to women in their homes and communities.

It was a positive thing that promotion of women's rights to co-own land was carried out by Guatemalan institutions, male refugee leaders and the men and women members of organising return groups. This eventually allowed women to co-sign the document used to solicit the funds for land purchase in different cases during 1997 - thus making them co-owners of the purchased land. Nevertheless, when these returnee communities began to form co-operatives, with the intention of transferring land ownership from a collective title of individuals to the co-operative as an entity-assumed ownership, women -- especially women with partners, but also sometimes widows and women-headed families -- were discouraged or otherwise prevented from becoming co-operative associates.

Below is a summary of some of the concrete problems encountered and possible solutions to them:

Problem encountered	Possible solution
In the return process, women are separated from the women they lived and organised with in exile. The leaders they identified with are no longer present. With sometimes limited communication with other women in their new community (generally from other camps and language groups), the returnee women feel isolated.	NGOs and UNHCR can do more to assist women's organisations in recreating the feeling of unity and common purpose felt in exile. Programmes to strengthen the capacity of these organisations at the grassroots level would be important, as would be building skills among individual women.
They are unprepared for their role in the new communities that are no longer refugee camps. UNCHR and the NGOs do not have the same level of presence in backing the exercise of their rights.	Those concerned should ensure that women are trained as early as possible on community development and women's role and contribution in these processes.

Problem encountered	Possible solution
<p>Having often been excluded from the preparation phase of the return process - that is from the negotiations related to land, return conditions, future projects - they have little reason to feel comfortable in forging their participation in community decision-making structures and processes, given that they do not have sufficient information on what was already initiated.</p>	<p>From the earliest stages of planning and negotiation, there should be institutional support to allow women to be actively present. The recent reinforcement of refugee women's participation in so-called "land visits", wherein refugees visit their country of origin to identify possible settlement sites and negotiate the terms of their groups' "ownership" of the process. It is also important to promote and make visible women's role and potential contribution to peace agreements and reconstruction phase. All institutions, agencies and NGOs should insist on their participation in all levels of negotiation.</p>
<p>There is a frequent desertion of women in leadership roles, particularly when these imply travel away from the camp and returnee community, often in the company of unrelated men. Such travel provokes accusations and rumours and gossip.</p>	<p>NGO representatives should accompany women in restoring their credibility in the community. Consciousness-raising with men to counteract accusations.</p>
<p>There is a tendency for returnee communities to change relatively participatory models formed in refugee settlements for authoritarian, centralised structures, via co-operatives, which to date are all composed of virtually only men, and often men who use their centralised power to exclude others -- men and women -- on the basis of minority political opinions and/or personal behaviour.</p>	<p>There should be joint efforts by national, international state, private actors to promote civic education as to freedom of organisation, expression etc. as compared to co-operatives. Other decision-making structures and authorities within the returnee communities should be strengthened.</p>

Problem encountered	Possible solution
<p>There are women's self exclusion and imposed exclusion from the land-owning and/or productive co-operatives, membership of which is traditionally characterised by:</p> <ul style="list-style-type: none"> • there being one representative per family (male, if a male head of family is present.) • being made up of those who are "capable" of "community work", that is work considered equivalent to heavy physical labour such as road work or building construction. • the concern that fines for missing meetings will affect women who must stay home with children. 	<p>There should be promotion of the concept of family participation in the co-operative whereby two members, instead of one, are co-operative associates, and the family quota for funds covers both persons, half in the woman's name and half in the man's name. A new model should be created of each family "contributes" community and co-operative labour days. This means that each couple decides how to divide the family and private tasks of agricultural and domestic activities with the understanding that if the man does not sufficiently take part in the domestic/reproductive tasks, he will do more of the families' community and public tasks. There should be greater recognition of women's "community" tasks such as preparing food for community events, caring for animals or crops in community projects, carrying water etc. for community infrastructure.</p>

Legislative/administrative obstacles

Problem encountered	Possible solution
<p>The civil (family) code legislation is unconstitutional and discriminatory against women. Joint ownership between spouses, while not prohibited by law, is not foreseen in the administrative forms of the corresponding institutions.</p>	<p>There should be appropriate reforms legislation, which would provide space for both spouses. A model version of co-operative internal norms should be adapted by a co-operative institute that uses a non-traditional interpretation that validates forms of community work undertaken by women and other rules which recognise and compensate for the specific challenges that women face in being co-operative members.</p>
<p>There is lack of male understanding of why women's participation is essential and beneficial to the development of the family and community.</p>	<p>Awareness-raising work should be undertaken with men and women together, and separately, on all the above-mentioned issues.</p>

A Summary of Lessons Learned

It is necessary for women to organise in order to be able to take on the kind of issues raised above in any serious way and to be able to face and overcome obstacles and opposition. It is also necessary to clarify legal processes and prepare for administrative, normative and cultural obstacles in order for women to be able to exercise their rights. In this regard, a strategy to work at all levels simultaneously and involve all the relevant actors early on is critical.

Institutional support clearly plays an important role in furthering and strengthening the cause of women in working towards gender equity through women's organisations. It must be recognised that such activities require long-term commitments from UN and other funding agencies and cannot be limited to one side of the border or the other. Processes, and not projects, are at stake, particularly where women are culturally marginalised.

Forming women's organisations without parallel work on the traditional male structures will not necessarily lead to long-term overall change. For sustainable empowerment to be achieved, it is important to work with both women and men, separately and together. Greater understanding of gender-based power relations is required. Any strategy must consider men's contribution, role, fears and reaction.

Public affirmation of women's rights (through forums) and formal affirmation (through accords and documents) have multiplier effect, when institutions and governments are seen to be publicly committed and written agreements provide an organising tool for women. Moreover, where women's organisations are responsible for the content of an agreement or commitment, their pride and confidence in their own abilities rise, especially where women have a direct voice in expressing their demands. Specific actions must be taken to strengthen women technically and politically at a grass roots level.

Small economic projects in refugee camps bring women together and help validate women's skills and allow women to share experiences despite their differences. On the other hand, where these projects fail, women's confidence may drop and their initiatives lose momentum. Therefore, women's outright ownership and direct control of their projects is an important step towards building confidence and models for joint ownership of community projects and co-ownership of land.

Women were given "space" by men, owing to the "extraordinary" nature of war and displacement, and to new needs -- the fact that there were more widows -- and also to the manipulation of women's new role for political ends. To the extent that men were made not only to accommodate but also to

appreciate the advantages of dividing up gender roles, these became lasting gains after the return.

The challenge remains how to form strong, fully autonomous women's organisations which have a recognised decision-making role within the community, and in which women's role in the decision-making structure is accepted and understood. In this connection, the question is: will women's organisations always be seen as either an appendix to the male structure or a challenge to male power?

Minimal Demands by Guatemalan Women Victims of Violence

A group of Guatemalan women who have been displaced, widowed or otherwise affected by the years of political violence in their country, have demanded of the government and institutions that sponsor programs of land or housing acquisition

- that the concept of co-ownership of the man and woman be accepted, without taking into account whether or not they are legally married or in a common-law relationship, so that women are protected in case of abandonment.
- that women be provided with information about their obligations and rights in the case of acceptance of co-ownership of the property acquired through a project, in order to avoid the misunderstandings that arise when a woman is made to feel that she has no right because she "does not work", since, in reality, she contributes with unremunerated work to family income.
- that single mothers and divorced or abandoned women who live with other family members be considered as project beneficiaries separately from the family with whom they might be living, in order to help them generate the conditions for the development of their own family.

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The Problems of Displaced and Returnee Women Faced with Current Land Tenure Policies in Burundi

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Burundi

Introduction

Since the French Revolution of 1789, there exists an assertion of will which can be found in Article 1 of the 1948 Universal Declaration of Human Rights: 'All human beings are born free and equal in dignity and rights.' This moral assertion, moving in its lyricism, posits two big principles straightaway: that human rights are natural, and that they are universal.

It is this principle of the universality of human rights that has inspired the various fundamental laws which Burundi has known. These have always asserted that 'all Burundians are equal in rights and obligations, without distinction of sex, origin, colour, religion or opinion.' However, it is sad to relate that the human rights thus proclaimed by the UN Human Rights Charter and the various fundamental laws are neither natural nor universal in relation to women. As far as this category of human beings is concerned, the texts are merely declarations of intent, for women will always have to fight and sweat to achieve even their most basic rights.

We cannot cite here all the human rights violations that Burundian women have suffered; so, for now, let us stick to the violation of the right to land ownership. In Burundi, this right belongs to the man only. As a matter of fact, the natural way to have access to land ownership is by inheritance. This right is governed by the notion of collective property belonging to a clan and not by that of private property as in the western world.

With the patriarchal Burundian family, the daughter, destined to start a home and family outside her parents' family, is considered not to belong to it in the same way as her brother. The inheritance system is thus patrilinear and sanctions masculinity as a privilege. The rights of girls and women to acquire land the most natural way, that is through inheritance, are almost non-existent. After all, the daughter will inherit her father's property only in the absence of any other male

descendant. And the crisis into which Burundi has been plunged for many years now has only aggravated a situation that was already precarious for the Burundian woman.

A Situation of Ongoing Crisis

Burundi is a country that for many years has been shaken by socio-economic crises, the most severe of which has persisted since 1993. Thousands of people have perished during this time. The rights to life, personal security and physical integrity have all been violated. Men have perished to a greater degree than women, which has increased the number of widows (26%) and unmarried women. These women have been forced to abandon their farmlands and to wander with orphans to support, thus becoming heads of households, a role for which they were never prepared. Nor is it easy to fulfil, if one takes into account the traditional custom whereby the woman does not appear in the public arena as she is always represented by her husband.

The table below shows the age and sex of household heads in camps for displaced people:

Table 1: Distribution of 100 household heads of either sex by age group in percentages

Age groups	Males	Females
Less than 15 years	3.9	1.4
15-19	3.0	3.3
20-24	8.4	7.3
25-29	11.8	9.3
30-34	16.3	13.7
35-39	14.3	12.8
40-44	11.8	12.2
45-49	8.3	8.4
50-54	8.2	10.9
55-59	4.5	4.3
60-64	4.6	6.8
65-69	1.9	2.3
70 and +	4.8	7.2
Total	55.9	44.1

The Burundian tradition requires household heads to be adult men rather than women. During the 1990 census, it was observed that the minimum age of a household head was 15 years and that 75.3% of households were headed by men,

while 24.7% were by women. By way of contrast, in camps today, 44.1% of households are under the responsibility of a female head.

The table above shows that the highest numbers of household heads are aged between 20 and 55. The most striking phenomenon is that nowadays there are household heads who are below 15 years of age, that is 3.9% male and 1.4 % female. This happens in households made up of orphans. One might ask how such a young child can take on such a heavy responsibility. This is a worrying social situation, requiring urgent attention.

The high percentage of women household heads suggests how far they should be involved in the management of the consequences of the crisis. This new responsibility which the displaced-refugee woman must assume owing to the crisis should be a concern for the government and should be taken into account in planning the reconstruction if they want to give the population every possible opportunity for rehabilitation.

Burundian tradition requires the search for land to be the responsibility of men. Yet, because of insecurity, the general tendency is for the survivors living in camps to look for lands elsewhere, far from their home districts. That is why one wonders whether women directly in charge of households will be able to look for new lands as the men do. We think not. Government should be focusing its attention on this category of the population - who have been so abruptly weaned from their former roles.

In addition to insecurity - a factor common to both men and women - which drives people to search for new lands, the woman lives a situation that is particular only to her. It is not uncommon to find that a woman who is the only survivor of her own family cannot return to her former property even when security has returned there, because her surviving brothers-in-law took over the land that she used to farm, obliging her to remain in the camps for displaced people and returnees.

As she cannot inherit land from her own father, her brothers and sisters-in-law will not want to take her back, for fear that this would lead to a diminution of their already insufficient land. The very survival of the displaced or returnee woman is therefore at stake, when she has no other source of wealth than her physical force to work the land.

Socio-Economic Characteristics of Displaced and Refugee Women

Their Professional Activity

In Burundi, farming is the predominant activity: it occupied 98% of the active population before the crisis, according to the figures of the 1990 census. It is

thus normal that farming is still the main activity of people in camps for the displaced. However, with living conditions being very difficult and people not living in their customary setting, it is not surprising that there is a great difference between their current activity and that which prevailed among the same population before the crisis. It is normal in these circumstances that displaced and refugee women, active farmers in the majority, have adapted by taking to farming in spite of the difficult environment around them. There are farms around the camps, in fact. One way or another, displaced and refugee women have managed to have access to plots for farming.

Table 2: *Distribution of 100 displaced women aged 15 and above according to their current professional activity in camps and before the crisis:*

Activity	In camps	Before the crisis
Farming	61.4	87.3
Handicrafts	0.6	1.0
Public Employee	0.9	0.9
Private Employee	0.5	0.5
No Occupation	30.5	1.6

The table above indicates that in the camps farming activity has deteriorated. Naturally, the rate of 'no occupation' has become extremely high (30.5%), whereas it was 1.6% before the crisis. This is due to the fact that displaced women cannot have access to a plot of land for farming as easily as in the past, and do not have other professional skills. Thus they have few possibilities to take on alternative economic activities. This inactivity on the part of displaced women is considerable and very worrying. It should be taken into account, as it can lead to deep disturbances of both economic and social structures in Burundi.

Even if it can be observed that 61.4 % of displaced women work in agriculture, it is not the agriculture we know. It is just small plots of land around the camps, which do not even belong to them. The problem of arable land is extremely acute for the displaced woman, who was used to working and all of a sudden found herself forced to live in inactivity, as she is not capable of returning home or finding herself new land.

Table 3: Levels of education of displaced people by sex

Level of education	Males	Females
No Education	6.9	38.5
Literate	13.5	19.9
Primary	54.0	38.8
Secondary	5.1	2.5
Higher	0.5	0.3
<i>Total:</i>	100.0	100.0

This table tends to confirm the fact that farming is the most important occupation among displaced people. With a low level of education, there are indeed great chances that the level of vocational training is weak. As a consequence, the farming sector is the only one accessible to them.

Nevertheless, it appears from the data above that women, in spite of their weak involvement in the conventional schooling process, are still literate enough. It is a sign they are definitely disposed to acquire appropriate new techniques so that they can participate in activities promoting their status in this particularly difficult context. This information could serve as the basis for a policy for the rehabilitation of displaced women.

Numbers of Displaced and Returnee Women

Displaced Women

In 1998, Burundi had more than two hundred sites for displaced people. The 1990 census records that there were 95 men for every 100 women, but in camps for displaced people there were 92 men per 100 women. Generally speaking, there were more women than men in these camps, especially women of active age and in the period of active reproductive life. This is a striking gender imbalance in the camps, which is likely to remain a source of multiple problems in the structuring of the traditional division of work, and which will cause imbalances in other domains as well. After all, we know that in Burundi, social and economic life is organised essentially around the family nucleus. And yet this has been broken apart by the war. We may then ask what will become of this surplus of women subsisting in the remaining camps without land.

Returning Refugee Women

In Burundi, repatriation of cross-border refugees has taken place through the border posts of Kobero, Gisuru, Cankuzo and Gatumba. Of these, only

Gatumba has a transit centre. On arrival, returnees are directly taken to their families and given a return package for three months. Their life after this does not seem to be of concern to the authorities. Since these women are taken to their families, it has been difficult to obtain statistics of household heads by sex or by professional activity.

Nonetheless, if we consider those we found in the transit centre of Gatumba, their level of education was very low and their professional activity mainly farming. Our investigations revealed that returnee women have the same problems as the displaced ones. While fleeing to seek refuge, they had to abandon everything. Currently, their problems have to do with insecurity after returning to their home villages and with finding cultivable land. This situation is confirmed by the fact that a lot of returnee women seek to change their addresses and to emigrate to other districts.

At the transit centre in Gatumba we found 689 women, 733 children and 635 men, who are considered as people without land for resettlement. All these women, representing 33.49% of the total, are heads of households. From November 1996 to 20 January 1998, the following numbers were repatriated, registered and returned to their original families:

- through the border post of Kobero: 23,525 persons, of whom 8,061 were women and 8,618 children dependant on these women (who represent 36.63% of the repatriated population);
- through the border post of Cankuzo: 2,648 persons, among them 908 women (34.29%) and 969 children (36.59%);
- through the border post of Gisuru: 37,970 persons of whom 13,115 women (34.54%) and 13,813 children (36.37%);
- through the border post of Gatumba: 38,385 persons of whom 12,865 women (33.51%) and 13,675 children (35.62%).

Some Observations

From the situation described above, we realized that the problems facing women from conflict areas, whether displaced or repatriated, are the same. All these women have a common denominator: the problem of cultivable land that would allow them to satisfy the needs of their families for which they are in sole charge. Admittedly, even before the crisis they did not own land, but they could at least use it peacefully.

Before the crisis many women indeed did not own private land, but they were not aware of this because they did not encounter any problem in the use of the land they farmed. The married woman farmed property shared with the husband, the family land. She behaved like a land- owner and, as long as she was on good terms with the husband, did not have anything to worry about. The

widow, for her part, farmed, through usufruct, the land left to her by her husband. She behaved like a land-owner and society acknowledged that she had all rights except that of alienation. But even here she did not encounter any problem because she knew that the land belonged to the family.

Today, the displaced or refugee woman has neither usufruct nor co-ownership of her land; she is deprived of everything, and, most often without hope of recovering her rights. And yet, as we have seen in Table 1, Burundian women have, since 1993, constituted 44.1 % of household heads. This is a new responsibility for them. We know that they do not have the means to fulfil this responsibility. Table 2 shows us that farming is and remains the predominant economic activity. We would expect women to assume these new responsibilities of household head through farming income. However, the farming done around camps is not enough to provide this. The data mentioned above indicate the basis for the concerns of women regarding access to land while this is in full ownership. Non-access to land jeopardises the woman's future and that of her offspring.

The displaced or returnee woman will certainly have access to land within the context of resettlement. It has, however, been observed that the Government appears more concerned about the problem of housing. Besides, in view of the problem of finding free land, will the Government be able to find enough arable space for all these displaced people? We think not.

There may, however, be another, more natural, means of access to land, but one which does not seem to interest governments: it is that of inheritance. This is still governed by customary law, though, which excludes the woman. Can we, at the dawn of the 21st century, still continue along this path? Continuing to exclude the woman or young girl from inheritance is likely to create frustrations among this numerically important category of the population. It is our conviction that reconstruction would be better accomplished if the authorities got down to further promoting a society founded on equity, and not by contributing to the marginalisation of this one group.

For many years symposia and seminars have been held to reflect on this issue and it has continually appeared on the agenda of some government departments, but without arriving at any result. That is what has led us to believe that the question of inheritance in Burundi is indeed problematical.

Realising that the issue is particularly difficult for women in camps for displaced people and returnees, the Burundi Association of Women Lawyers decided to bring the question back into the public arena. That is why since November 1997, members of the Association have been going around the various districts of the capital, Bujumbura, in order to sensitise the population on this issue. Public authorities have also been sensitised and they have pledged their support.

A seminar to review inheritance, marriage settlements and civil liberties was planned for January 1998 for the province of Urban Bujumbura. In this sensitisation task we insisted on the participation of all women's associations, human rights organisations, the ministry in charge of women's affairs, the ministry for human rights, women parliamentarians, university lecturers and magistrates. The Association hopes to organise the same kind of work in the remaining fourteen provinces of the country.

Within the context of reconstruction, even if no particular attention is being paid to women, we note with full satisfaction that houses and arable areas given to women are given for full ownership. Women are accorded the same rights as men. Nonetheless, there is still a long way to go.

The State of Inheritance in Burundi

The rules of customary inheritance law have been applied since the existence of Burundi as a political entity. They have remained the same in essence. Thus, for the traditional Burundian, the transfer of property by inheritance from the family of the deceased to the family-household of his daughters is simply not conceivable: the full ownership of inheritance passes to his sons; the inability of the woman to inherit property is the rule. The allocation of property after the husband's death is thus not governed by the notion of private property, but by that of a collective property belonging to a clan. Thus inheritance rules are based on patriarchy.

Consequently, inheritance is patrilinear and sanctions masculinity as a privileged state. When daughters of the deceased are given to enjoy some inherited rights to land, these are valid only for as long as the daughters live, even when they have been obtained through legal inheritance. The key rule remains the fact that it is close relatives of the deceased on the father's side who are called to inherit property, to the exclusion of the women descended from this branch and their descendants, as shown by the line of succession below.

Succession Line

In the customary succession law of Burundi, the ab-intestate succession is the most frequent. This comprises two categories of heirs: legitimate and irregular heirs. The legitimate heirs are those related to the deceased through legitimate kinship. The inherit property in the following order:

- 1st: the male children of the deceased and their male descendants;
- 2nd: the father and mother of the deceased;
- 3rd: the brothers of the deceased and their male descendants;
- 4th: the paternal uncles of the deceased and their male descendants;

- 5th: a daughter, sister, paternal aunt, female cousin, paternal niece or other relative in the paternal lineage.

After the legitimate heirs come the irregular heirs, who are ab-intestate successors not linked to the deceased through kinship. They inherit property in the following order:

- 1st: the surviving spouse, that is the surviving husband, inherits property from the other;
- 2nd: the daughters of the deceased: unmarried, divorced, widowed, married domiciled at their father's or their husbands';
- 3rd: natural or adopted children;
- 4th: aunts, paternal sisters of the deceased: unmarried, divorced, widowed, domiciled at the home of the deceased or living in the home of their husband;
- 5th: legitimate children whose parental rights are guaranteed by the maternal family (this is the case of the children called '*Nkurinkobwa*' in Kirundi);
- 6th: the State and abnormal successors.

It can be observed from the above that daughters are not considered as legitimate children on a par with their brothers. It is as if they were not directly blood-related to their father; that is, as if they did not belong to their paternal family. In fact, in the category of legitimate heirs they come in fifth position, whereas their brothers come first. And in the category of irregular successors they come in second position. Can we say that daughters are irregular children in their family? I think not.

The Inheritance Calling of the Daughter

Under this heading we shall talk about the situation of the young girl and the unmarried woman, the married woman, the widow and the divorced woman.

Talking about the young girl and the unmarried woman, the daughter who lives in the paternal home enjoys the same rights as her brother whatever her age is. She is loved, maintained, and provided with education. When she is of marriageable age her parents can even give her a small plot of land (called '*icibare*') to allow her earn some income to maintain herself. That is, as long as the daughter still lives in the paternal home, she has nothing to worry about. The problem arises when she gets married. On her wedding she is 'offered' to her in-laws' family with some household effects. Note that even this results from a recent evolution, for some years ago she would carry only her clothes, which she would surrender afterwards. Upon her marriage, the daughter receives mostly advice and blessings from her parents. Then the problem of settling begins. Following Article 123 of the Family Code, parents have the obligation to settle their children. Even though this article is not very explicit, we think that settling a child consists of

providing the means of existence to the young man and young woman who are about to start a family.

In the rural areas, the settling share for the son often corresponds to that of his inheritance. This is a portion of paternal land with its banana, coffee plantation and other goods. Settling the young woman consists in offering her to the in-law family with a big package of blessings and advice - as indicated above. Marriage thus ipso facto excludes her from parental inheritance. In fact, her parents have already often told her that from now on she belongs to her in-laws' family.

On her wedding, the young woman does not ask herself many questions about her future; she just knows she is now engaged, for better or worse, to her bridegroom. She is not preoccupied by the marriage settlement of their property, and rightly so, as she owns no property except her ability to work.

Customary law accepts, however, that a father can reward his daughter for a meritorious act by making her his 'son' and hence co-heir to his property on his death. But this is a rare case of willed inheritance. We may wonder what types of acts count as worthy of such merit, so that daughters might know how to perform them as often as possible.

The daughter who has remained single in the paternal home will inherit the portion of land left for the parents after settling her brothers. Even if she does not start a family outside the paternal home, she does not qualify for an ab-intestate inheritance. For her subsistence she will use, in usufruct, that portion of land for as long as she is alive. And if in the meantime she has had children, her offspring will inherit property only in the line of irregular successors or will simply inherit nothing at all!

By excluding daughters from inheriting property from their fathers, the custodians of Burundian tradition were inspired by fear of inherited property going to a different clan, the one where the married woman finds the heritage of her husband whom she would succeed. But it is wrong for the custodians of custom to assume that the wife would succeed her husband.

When a couple live a calm life together, the wife is not concerned with inheritance problems. With her husband she has at her disposal land that she farms with all her strength and good will. The couple till the land together, decide on the use of the harvest and other income, and that is that. One may then ask: Does the woman own the land she farms, the cattle she looks after, the house that shelters her? The answer is No. She simply uses such goods. She only has a usufruct right, with all the conditions that are attached to it. Let us look at this right, in order to be aware of the reality.

Usufruct is a real temporary right that allows its holder (the usufructuary), as a good family member, to use and enjoy property belonging to somebody else (the owner without usufruct) while being in charge of maintaining its substance. It follows from this definition that the usufructuary has rights and obligations. A widow usufructuary enjoys two prerogatives of property rights, namely: the '*usus*' and the '*fructus*'. She uses and enjoys mortgaged property in the same way as the owner. Thus she can rent it and sell its fruits. She has the right to natural, industrial or civil fruits. She may consume them or dispose of them free of charge or in return for payment. She can use the thing for her personal use, for example to maintain her under-age children. We should be careful here, though: this right of use never entails the power of disposal.

In contrast to French and Belgian law, Burundian customary law does not allow the widow to transfer her right to a third party. Her right is thus a right of sole use. Heirs have the obligation to respect her user rights, but this is not always the case. Those heirs cannot dispose of the property without her approval. In principle, property owned by a widow by way of usufruct must be left as her own for as long as she wishes, until her death.

The obligations of the spouse-usufructuary in our customary law are the following:

- use of the property, the preservation of its substance, and participation in paying inheritance debts;
- use of property, as a good household head, consists in maintaining and preserving the property;
- the obligation to preserve it implies that the usufructuary has at his or her disposal only the powers deriving from the administration and management of the property -- the powers of disposal are beyond him.

The usufruct of the widow is founded on the one hand on the post-mortem extension of the obligation, between spouses, to assist each other, and, on the other hand, on the presumed affection that the spouses must have had for each other. It would be unbecoming if, on the death of the husband, the widow, who had always taken care of him, was condemned to misery. This usufruct right is thus granted to the surviving spouse with the aim of allowing her a standard of living equivalent to what she had during marriage.

From what we have just seen, it is clear that a usufruct right is, by its nature, just a right to earn one's living. It is in fact a post-mortem extension of the duty, between spouses, to assist each other. It is a life annuity that dies with re-marriage. The usufruct given to the widow is not an inheritance right, but rather a survival allowance. Her full enjoyment of this will depend on the goodwill of her grown-up children or her brothers-in-law.

The divorced wife, for her part, does not even get that usufruct from her spouse. Nonetheless, in our customary law, a wife who has got '*decujus*' children may be called on by members of the family to continue their education. But this is a very rare case that will happen only when these family members realise they have nothing much to inherit and that those children constitute a burden they cannot cope with. But even in this case, she is not an heir to her ex-husband, but only receives a credit to allow her to earn a living, because of her children.

Some jurisprudence accepts that the widow cannot be deprived of her usufruct when death has occurred in the process of divorcing. In fact, heirs are not qualified to institute divorce proceedings, as these are strictly a personal matter between spouses, which is closed when one of the two dies. Nevertheless, it is not rare to see heirs pursue the matter in lieu of the '*decujus*' children, and often with more determination than the deceased himself would have done.

We have seen that the ab-intestate inheritance mode is the most frequent one in Burundi. It is based on a custom that gives greater importance to masculinity. It was observed that the daughter inherits from her father only in the absence of other male descendants, or if the father has wanted it that way in his will. But the daughter can also inherit property following a judicial decision.

The change in custom is dependent on a change of mentalities. It is thus fortunate to see that the judge can change in his positions. He no longer sticks to the old custom that does not grant any favour to the daughter or the wife. Already, in 1945, the chief's court of Barusasiyeko decided to grant daughters the right to inherit property from their father if he decided it should be so while he was still alive. In 1960, the court of the *Mwami* (the King) decided to grant daughters the right to inherit property from their father in the absence of sons, without resorting to paternal uncles. In 1964, Burundi's Court of Cassation recognised the right of single or divorced daughters to inherit property in the same way as male heirs. The right of inheritance was also recognised for childless widows returning to live with their father.

According to judicial practice, the daughter who is an only child inherits property from her father by substitution. We are certainly aware that courts and tribunals are changing their way of returning verdicts regarding customary inheritance law. However, this is not enough. The daughter and the wife should not always have to resort to courts and tribunals in order to obtain their basic rights. We therefore must evolve towards written law, recognised by the entire society.

Conclusion

It will have been noted above that the daughter inherits from her parents only advice and blessings; and that the usufruct right that the wife receives from

her late husband is nothing more than an allowance to earn her living. Can we, in such conditions, continue to proclaim the equality of sexes?

It is known that the custodians of Burundian tradition refuse to allow the daughter to inherit property from her father because of fear inspired by the fact that she would go to another clan where she finds the heritage of her husband. And yet, in this other clan, the daughter who has now become wife is nothing more than a labourer, who gets food to eat by the sweat of her brow and who, later, will have the obligation to take good care of the property and children of this clan.

In view of this situation, can the exclusion of the daughter from paternal inheritance continue? To refuse her the right to inherit is to refuse her one of the fundamental rights to her survival. It is in fact denying her very right to existence!

Furthermore, for a good number of Burundians, inheritance tends no longer to mean a farm that cannot be evaluated in terms of money, but to be money itself. More and more it becomes a capital good, much more easy to share, such as a business, real estate and personal property. Cattle, which are so precious for the traditional Burundian, are now viewed as capital goods.

Nowadays, customs have evolved in many domains and are already pegged to legislative texts. The legislative power in fact functions following strict rules of written law. The field of inheritance, which was up to now governed by custom, should likewise be the subject of legislation that is adapted to the national realities of the day.

In this difficult task of codification, the 1980 Family Code paved the way for a change of custom vis-à-vis the woman. It is this Code that recognised her right to exercise parental authority and to legal management of her children's property, in conjunction with the father, and, in his absence, with the help of the family council. Decree-Law No 1/024 of 28 April 1993 reforming the Family Code was introduced to make good the imperfections of 1980.

Our wish is that customary inheritance law follow the same evolution as civil law. The codification of inheritance law must not be an inventory of existing customs, but must be based on the fundamental principles of human rights, which recognise gender equality. This codification should therefore recognise the right of the daughter to inherit property from her father in the same way as her brother.

The Impact
of War and Reconstruction
on Women's Access to
Land and Property:
Testimonies

Concessa Nibogore

Pro-Femmes Twese Hamwe
Rwanda

My life has been very bad since my parents died. I had never left my home. I had twelve children on my land, seven are still alive. I needed that land so I could be able to look after them. I have suffered a lot. Since my mother's death I have never had access to my forest, nor to my fields.

When I went to court I was told I had lost, even before they started my case. I was not given the chance to speak. There was discrimination against me. I was put in prison eight times, once for six months, once for two months. When I said I would stay on my father's land, since my father has given it to me, I was put in prison just because I owned my own property. I was told I would stay in prison. I was badly cut up, and slashed on the head. When I went to court the judge asked, 'Why did you cut this woman?' They said it was an accident. When I came here, I couldn't even cut a tree on my property or grow a potato. I was given a small piece of land instead.

Then I was told there was a woman named Inyumba who takes care of people who are going through much suffering. I met her and a nice gentleman called Kabare who listened to me with an open heart and who asked me why I had been chased from my father's land. I asked her organization to defend me as I am looking for justice. We went first to Kigali, where years ago I had been told I had lost the case even before I opened my mouth.

Kabare sent someone to my home. He asked my relatives: 'Why should she be chased from her father's land? Can a daughter not inherit land? What about all the work she has done? Are you going to pay for her for all the work she has done since her youth?' 'No,' my nephews said, 'She just has to go.' They said no woman has ever inherited land.

But ever since I have been to the ministry headed by Minister Inyumba, I have not had a problem. As you can see, the situation is improving since I talked to Kabare at the Ministry of Gender. They sent me back to my district and now I have been given help. These days I am no longer attacked. I am still sad because I can't have the rest of my property, but in January when I came to Gitarama they told me not to worry because I have been listened to and because of the help and support I was receiving and I have even been given food by

Jacques Kabare. God bless all who helped me, please keep it up. I wish all of you the peace of Christ.

Anette Occeus

Comité de Réflexion des Femmes du Bas,
Haïti

I am an educator and a farmer. I come from one of the nine provinces in the country, where I participate actively in development activities as an active member of many organisations. Through my experiences as a woman activist, I noticed that the situation of women in my country was not good, which prompted me to set up an organisation that would belong only to women. At the beginning I looked for support from men with whom I had worked in other organisations, but unfortunately they did not respond positively to my invitation. So I addressed myself directly to women, to make them aware of the need to get together. This was how I came to set up a women's organisation that is quite strong and works towards changing the situation of women.

I sit on the Women's Committee, set up by Haiti's Ministry of Women's Affairs and Women's Rights. The committee is made up of eleven people, representing different communities, and it enables women's organisations at the grassroots level to communicate with the Ministry of Women's Affairs. Its main objective is to sensitize all the people in the communities that it represents about gender issues and about women's participation in the agricultural reform undertaken by the current government. It sensitizes women at various levels about their role in decision-making. The slogan we use is 'Women are the salt of the earth'.

Because the process of land reform was set up in a conflict area, a study was carried out by the committee, using a participatory methodology involving women's groups. This came up with recommendations that were presented to the Ministry of Agriculture. The aim of this exercise was to make sure that women benefit from the land distribution being carried out by the National Institute of Land Reform, and to enable women to have access to the various structures for their activities. One of the reasons which led the Ministry of Women's Affairs and the committee to carry out such a study is that the government was building structures without the participation of women. The Ministry found it necessary to correct this situation. The main problem in Haïti is one of money, and women are the last to benefit from any budget allocation.

Lobbying for Legislation to Overcome Discrimination against Women in Inheritance Law in Liberia

Jeanette Ebba-Davidson
Liberia

I represent the Association of Female Lawyers of Liberia, an organisation which advocates for the rights of women, children and indigent residents. Our motto is 'Equal Rights under the Law'. It is a new organisation which came into being in 1994. It grew out of the war, when all the other lawyers in the previous organisation had left the country. As we could not find the charter of this latter organisation, we went ahead and provided ourselves with a new one. And what we did, in 1995, was to look at our laws with regard to inheritance and the right to property ownership. In the process we noticed a dichotomy: women married under civil law can inherit property - there is no problem there -; but when it comes to customary law, women face all problems: they cannot inherit property from their fathers, brothers, husbands, uncles - any male relatives, in fact. The rationale behind this is that they are considered as goods and chattels. Now, taken for these, they cannot own property.

What the Association did was to hold a workshop to sensitise women. At this particular point we could not go into the countryside because everybody was dislocated. We had a seven-year civil war, which culminated in 'peaceful' presidential and legislative elections last year and the installation of a new government. We sensitised them to the need to do away with that dichotomy in order to have one law in the books, so under both systems (the civil and the customary law) they can both inherit and enjoy the same rights. Some of the women were not too happy about it. Despite this, though, now I can tell you that they are highly interested because after the war they are going back to their various places. Their husbands have been killed, and other male relatives are no longer there to take care of them. The land that was left for them is thus at risk. Children they never knew of have come up to say, 'That is my father's property and you have to leave.'

What we have been doing is to take the draft legislation we have devised and present it to Parliament (we call it our House of Legislature). But when it is taken to the Probate Court, the court that settles estates, the judge says 'That,

madam, which you have in your hands, is no law, but rather a draft legislation that has not been passed.' So, women have been lobbying their own representatives in the legislature to turn up and pass this bill. We were invited by one legislator whose relative is affected by this situation in Liberia, who asked us to explain this whole draft bill to her because she was highly interested and would be one of its sponsors. Hopefully, they will enact the bill before Easter this year.

Gloria Cuartas, F

Former Mayor of Apartado
Colombia

I want to share a local experience in the exercise of public administration in a war zone, where there are paramilitary groups, guerrilla groups, criminal gangs, and government troops as well. This conflict zone is located in the municipality of Apartado in Colombia. It has an area of 1,000 square kilometres and about 100,000 inhabitants. 20,000 hectares of land have been affected by the conflict. From 1970 to 1995 there were selective killings, followed by intensification of the conflict from 1995 to July 1997.

When I was appointed mayor of Apartado it was an important moment for me. There were 14 political parties that were unable to reach a consensus. So, they had to find a candidate from an organisation that was not politically connected and had no alliance with the armed groups. That is how I was chosen as mayor, and I accepted. By 1994, the Colombian leftist groups and traditional groups had a programme of government that included the idea of the organisation of civil society by the community. Previously, both women and men worked the land. But when peasants had to leave the land, the women's position in politics was no longer at the front. Now she was left behind in the house, cooking, going to school with the children, looking after their health, while the man participated in policy-making organisations in the community.

In 1995, there was an operation against the insurgents in an attempt to finish the Colombian guerrilla war. Groups of businessmen brought in hired men who infiltrated the countryside and started assassinating the women and men involved in social service organisations. In three years they assassinated 1,200 people who were in charge of education, health and housing. The issues of human rights, women's rights, reconciliation and the protection of civil society were turned into a war issue. People were afraid to attend public meetings, and preferred not to talk about it; children were badly frightened, their teachers never asked them what had happened, even though they knew it had to do with the war; men went to work – preferring to ignore the problem completely. We saw it, we heard it, but we did not acknowledge it. The social organisations got destroyed, families were destroyed, many people were assassinated, and the peasants moved to the towns.

There were two possible solutions: either to make everybody go to the big cities or conceive another approach. As mayor, I decided to seek the help of

international organisations. I looked at it from the point of view that there should not be any conditions on protecting my people, and that, as mayor, I should protect people's rights to health, housing and education. The Colombian Constitution of 1991 proclaimed the rights to peace, rights of the family and rights of women. I went everywhere, and without an escort: I wanted to create a new image of a non-violent reaction, going into schools unarmed, visiting hospitals without armed escort.

They destroyed everything we had; they burnt our houses; they killed 17 of my companions. How could we continue working if they were killing our people? We had to come to a consensus, that this had to stop. We did a lot of work with women (1,200 women in one network), trying to set up a new process. Today, we still have not effected a great transformation, but with our children, one day we shall succeed.

I went to a school, to speak to the children, every Wednesday. In this way, they could tell us what they had seen in their towns. But once when I was with them, the paramilitary groups came: they cut off the head of one of the children. They cut it off and threw it to me. This was their way of telling me that I should not be working with the community. For three hours they were shooting around us. The children hid me: they put me under a bed in a neighbour's house, and told me, 'Mayor, we children will not let you be killed.' This is the message that told me we had to continue seeking a negotiated settlement, not an armed solution.

For three years the guerrillas were in possession of the municipal budget. I used to share the budget with everyone in the field, what we were going to do for the year, how much money we had and how we were going to spend it. I did this because I wanted to make sure that if people chose to destroy something, they would know what they were destroying. I used to work with children, and to offer them lots of recreation, so that they could understand that although there was a conflict, there were also people who were not being killed, and that even if there was a crisis in the town, there were also people helping them to grow.

We set up a committee to observe and assess the violence. We had statistics of how many people were assassinated: 80% were men, 20% women. We also studied the impact of violence on the family and against children and women. This committee comprised a family lawyer, a family welfare representative, plus the state institutions responsible for the family -- so that they could know what was happening, what the status of human rights was.

Colombia does not need war. This would be the conclusion, I think, of the network of women and international NGOs. Colombia needs information to strengthen the network. Let me ask a very simple question: how can we Latin

Americans trust each other? We have experiences both of war and of peace. How can we share the experience of peace? We would like to encourage solidarity with us: Africa can be with us. I was very encouraged when people came to share our pain; that made us feel that there were other people who were also suffering. We women have historical responsibilities in common; we have to join together in spite of our differences.

Yasmin Fofanah

Sierra Leone

Sierra Leone is a country where women have always been very organised through their professional groups and their secret and ritual societies. Women are used to working in groups that are very influential. However, during the last thirty years of independence, it has been very difficult to unite these groups under a single umbrella. The very fact of advising them to come together was reason enough for each one of them to disappear, as they were afraid that their groups, which were usually quite independent of government and state institutions, might lose their independence. In 1995, though, a historical event happened: women of Sierra Leone established an informal network which was very influential in bringing about the progress that ultimately brought a temporary end to the crisis in our country and restored democracy.

Since 1991, Sierra Leone has been involved in what everyone agrees is a senseless war. The rebels have no clear political agenda. They claimed to be opposed to a particular government, but although we have had three separate governments since the war started, the rebels have simply changed the enemy and continued to fight. A series of negotiations and demands for them to state their agenda or their reasons for fighting have been met by silence. The most significant feature of the war was that both sides, namely the government troops and the rebels, took to targeting innocent civilians rather than fighting each other. Since the beginning of the war, there have been many reports of mass arson, amputation of limbs, looting, abduction, rape and other sexual offences against women, committed against civilians by both sides. Your home would be raided by one side, and no sooner had they withdrawn than the other side would come and commit the same crimes. In 1992, the military intervened and took over the government with the stated objective of ending the war. But fighting continued and the atrocities in fact escalated. Yet, most people took very little interest, except for the south and the east of the country where the war was raging. Then, as a result of continued reports and complaints from the women in these regions, public awareness began to grow, especially among other women.

The women were finally jolted into action towards the end of 1994 and the beginning of 1995, when a fresh rebel offensive brought the fighting to within twenty miles of the capital: women's groups came together and started advocating for a peaceful end to the war. For the first time in many years, civil society, led by the women, held a peace march and demonstration calling for an end to the violence. This demonstration was significant because the only type of street demonstrations that had previously taken place in Sierra Leone were

stage-managed by the government whenever they wanted to make a point. But for these women to stand up and say to both the government -- which claimed it was fighting for the civilians -- and to the Revolutionary United Front, that they needed to stop fighting and to stop targeting the civilian population, was quite a novel experience because they were clearly non-political and non-partisan. The population was very impressed by the women's action. That is how the movement for peace and a non-violent end to the crisis was born.

However, in spite of their demonstrations, press conferences, prayer meetings, public meetings and letters written to try to contact both sides and plead with them to stop the conflict, it became increasingly clear to the women that there was no political will on the part of the military government to bring the war to an end. Although they had stated that their intention was to end the war and hand back power to a civilian government, they seemed now to have changed their agenda: they merely wanted to stay in power.

Therefore, in the middle of 1995, we women embarked on a new campaign for the return of an elected, civilian government, which we believed would move the whole process forward. A national consultative conference was held which no one took seriously until women insisted on proper representation. We originally had only four representatives out of a total number of eighty, but in the end we managed to get twenty delegates. It wasn't enough; but it was a good start. We brought women from all over the country. We elected our delegates on our own to show that we were committed to elections; we carried out national consultations among ourselves and finally agreed upon a national position paper.

After the consultation, during which we had insisted that the date for elections was not to be changed without a return to another consultative conference, we mobilised people to register. We undertook voter education in our various groups. This is where all the women's groups coalesced into the Women's Forum. We worked together because of our various commitments to peace and democratic elections. Displaced women's groups, professional women's groups, market women's groups, all came together, throughout the country, and took concerted action on this single issue. We continued working until February 1996.

But, just two weeks before the elections, the military government announced that it intended to postpone them. And for the first time we women entered into direct confrontation with the military government. We organised another march to insist that our date of 26 February be respected and to repeat our decision that only the national consultative assembly could change the date. We went to the National Consultative Assembly to lobby the delegates. We went there clad in black to show our solidarity in mourning for our hoped-for democracy. Women went in huge numbers and fought with the soldiers who

tried to stop them from attending. After a very heated debate, the decision was taken to go ahead with the elections. These indeed took place on 26 February, with women acting as presiding officers and election observers, and going out to mobilise people to vote. After the vote, the women stayed in the polling stations to protect the ballot boxes and materials against intruders who, we feared, would come overnight and take them away.

Having instituted our elected government, we now turned our attention back to the peace process, which had been the starting-point for our intervention. We continued to advocate not only for women to be involved in the peace process, but also for them to be involved in the reconstruction of our country. But very often we were simply told that bilateral organisations and the government had already put in place plans and that all that was left for us to do was to try and take part in their implementation if we were able to. It is very important for the international community to support local women's initiatives because, when they face big international organisations and government, there is often an attempt to squeeze them out and keep them merely in the position of beneficiaries rather than actors on the public stage.

Moreover, Sierra Leone has one of the highest numbers of displaced people on the continent. This is an important fact because under our customary law land belongs to an entire chiefdom, not to an individual, and thus, people from outside the chiefdom have no right to land. So, if you have moved away from your own chiefdom, you don't have access to land in the new area. We have had an experience where women were loaned land to farm and at harvest time it was taken back. Once they are displaced, people can not re-establish themselves or take care of themselves. Displaced and refugee women find it very difficult to have their voices heard, and this is why the women's committee was important because they spoke for all women, mobilising collective women's action on issues that otherwise would not have been heard.

Women in Conflict Zones: the Case of Palestinian Women and their Right to Access to Land, Property and Inheritance

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Israeli Occupation

Palestinian women living in the Occupied Territories (the areas of Gaza and the West Bank, including East Jerusalem, occupied by Israel after the 1967 war) are particularly vulnerable to violations of their right to a full and equal access to economic resources, including their rights to inheritance and ownership of land and property.

The violations, resulting from the Israeli occupation, which impede women's realisation of their right to access to land and property include:

- demolition and sealing of homes;
- evictions, violence and insecure living conditions related to the building of Jewish settlements;
- the military closure of the West Bank and Gaza from Jerusalem in effect since March 30, 1993, which impedes freedom of movement and separates families;
- military raids on villages and homes for arrests and executions of wanted Palestinians, resulting in death, injury and the terrorising of women and children;
- residency regulations which separate families;
- the confiscation of Jerusalem ID cards by those holding foreign passports, thus forcing Palestinians to relinquish their right to live in Jerusalem;
- economic under-development resulting in inadequate standards of living and often prolonged separation of the primary breadwinner from the family;
- the exploitation of natural resources and the discriminatory provision of infrastructure to Jewish settlers and Israeli citizens to the detriment of the indigenous Palestinian population.

Evidence of Israeli practices can be found in the Protest Camp of the Homeless in East Jerusalem.

Case 1: Protest Camp for Homeless Palestinians in East Jerusalem
At issue: Resistance to Israeli Policy

On 19 August 1997, approximately fifty Palestinian families settled in tents on the slopes of the Mount of Olives in East Jerusalem in order to protest against the threat of losing their Jerusalem residence.

Palestinians who were not registered in the 1967 Israeli census as residents of Jerusalem and their descendants must apply for a permit to live in Jerusalem. Reunification permits are expensive and difficult to obtain. The process takes years to be completed. Currently, 10,000 Palestinian families have pending applications for family reunification, and they are not permitted to live together legally in Jerusalem. As a result, tens of thousand of Palestinians, driven outside the municipal boundaries, are in the process of losing their legal status as Jerusalemites.

The protesters will not evacuate the tent site until a solution is offered. They are determined not to leave until their right to live in Jerusalem is reinstated. In the meantime they are subject to harsh conditions - exposed to the winter elements - and are at risk of forcible eviction by the Israeli military.

This case clearly illustrates the Israeli authorities' rampant disregard for international human rights instruments, as they continue their policy of forcible eviction of Palestinians from East Jerusalem. This and other factors related to housing and property rights have been discussed in previous forums, including Habitat II in Istanbul, and a more recent meeting in Apartado, Colombia. Because of these discussions this paper will examine, instead, the primary ways in which culture and tradition discriminate against the right of Palestinian women to equal access to land and property. Women face both the repercussions of military occupation and the lack of rights to property in general, as well as the particular obstacles emerging from traditional practices in a patriarchal society.

Case studies, taken from both rural and urban settings, will identify the presence of violence against women in many of the cases related to property rights and inheritance. Examples of attempts by women to gain access to land, property and inheritance, using the legal system and other methods, will suggest ways in which Palestinian women can take action to protect their rights.

Customs and Traditions

In Palestinian society it is the gender, marital status, kin relation, and the presence of contending heirs which determine inheritance rights. Under Islamic law (see Annex 1) a widow is entitled to a fixed share of one-eighth of her late husband's estate if he had children (not necessarily by her), and one quarter if not. A widower would take twice as much; one quarter and one half of his wife's estate respectively. Daughters would receive a fixed share if the deceased has no sons; one daughter is entitled to half the estate, two or more sharing two-thirds of it. If a man dies without leaving sons, a considerable part of the estate goes to the male relatives, usually his brothers.

The following are other elements related to ownership, inheritance and property rights in the Palestinian society.

any women waive their rights of inheritance to their brothers in order to strengthen their kinship ties. This increases the brother's status and obliges him to keep the sister financially. Even after marriage women tend to identify with their own kin and look to them for financial security.

If a woman demands her share of the inheritance, this might be viewed as a hostile act and could irreparably sever her from all family links. In most cases the family would no longer feel obligated to provide her with any financial support.

When there is a marriage of different religions or sects (e.g. Coptic and Greek Orthodox, Muslim and Christian, Muslim and Jew) Palestinians apply the Islamic law of succession with regards to inheritance.

Generally, property rights are better protected in the case of real estate and property rather than in agricultural land. Women stand a better chance to inherit land if this is individually owned rather than collectively held.

In the many cases where the daughter or wife is given her share of the inheritance, it is more likely to come in the form of cash rather than in title to property. Generally, the cash settlement is far less than the value of the property.

In a 1996 survey of living conditions for Palestinian women conducted in a village outside Hebron in the West Bank by PHRIC's Women and Housing Rights Project, the following statistics were compiled:

- 97% of the women do not own their own home: the title is in their husband's name.

- 77% of women answered that they believe there is discrimination in ownership of land, house or property. They contended that the most common reason for this is the fear that the money may leave the family. (If a daughter marries outside the family and asks for her inheritance, her husband gains the money.) There is pressure to follow tradition.
- 80% responded that they had problems in receiving their inheritance.
- 75% said that they participated in the actual building of the house.

Customs, traditions, and gender-biased laws which exclude women from renting, owning or inheriting land or property expose women to forced eviction, poverty and homelessness, and make them vulnerable to violence.

The following case studies illustrate the various strategies women adopt with respect to their inheritance rights, strategies varying from renouncing their rights to actively seeking their inheritance.

Case 2: West Bank village (outside Tulkarem)

At issue: kinship relations, lack of security of tenure, lack of institutional support, violence against women, a woman denied the right to see her children.

Mona is 27 years old, married since 1989, with three boys and one girl. She comes from a well-known land-owning family. She lived in a one-room home with her family and with her mother-in-law. In 1985 her father died. After that, her brother came from the Gulf and asked her to relinquish her inheritance and to sign a paper to legalise this. (Her family consists of four brothers and four sisters.) She signed, but denied doing it when her husband asked. Her husband went to her family after one month and asked about her inheritance. Her brother told him that she had relinquished it. He was very angry. He went home and cracked her head against the wall and she spent 20 days in hospital. The police questioned her but she did not denounce her husband. Her brother told the police what happened and a big family fight ensued. Then her husband divorced her. Mona's brother came and took her to his house. Her mother died after she divorced. Mona fought repeatedly with her sister-in-law about bringing her children home for visits (her husband has legal custody of the children.) Her sister-in-law evicted her from the house. She then returned to her ex-husband and offered to be his domestic servant as she had nowhere else to live. Her ex-husband overworked her by bringing all his family chores to her. When her brother discovered this he beat the husband. Mona now lives in poverty with an old woman, a distant relative, and works in olive fields. She is not permitted to see her children.

Case 3: Jerusalem

At issue: early marriage, refugees, the legal system.

Dina was married when she was 11 years old and is originally from Jerusalem. She married a man from Jerusalem and had three boys and one daughter. When she was pregnant with her last son in 1971, her husband died in an accident. According to tradition, if a woman is pregnant when her husband dies, she must stay in her husband's family. Dina's father-in-law asked her to marry her brother-in-law but she refused. Because of this, his family refused to support her. They beat her, and when her father heard of this he came and took her to live in Amman, where she worked at the airport. Recently, her son returned to Jerusalem to marry one of his cousins. After this, he went to ask for his inheritance of his grandfather. They told him he did not have any rights. Because he married his cousin, he and his wife share the same grandfather. So he asked her to be a witness for him in the court, against the grandfather. He decided to sue the grandfather in an Israeli court, which granted him the right of inheritance for his entire family.

There is a problem now with the son and his wife. The grandfather blames the latter for having acted as a key witness in court. As after four years they still do not have children, the grandfather is pressuring his grandson to divorce her.

Case 4: Shufat Refugee Camp in Jerusalem: the case of the Abu Zneid family³⁵

At issue: forced eviction, refugees, kinship relations, heirs, success due to awareness.

In 1967, the Abu Zneid family, including eight children, was evicted from the Maghrebi Quarter, among over 6,000 Palestinians who were removed from the Old City following the 1967 War. The entire Maghrebi Quarter was levelled by the Israelis to make room for a plaza in front of the Wailing Wall. Two mosques were also destroyed in the process. The family settled into a one-room house in the UNRWA-directed Shufat Refugee Camp, the only one within Jerusalem's municipal borders. The living space in the camp is roughly 1.9 square metres per person.

The family now consists of six daughters and five sons; the eldest son living in the United States.

³⁵ In UNRWA- directed refugee camps, houses must initially be registered in the name of the father since he is head of the household. After his death, the house may be transferred to the name of the wife provided that she is a refugee. If she is not, then to the name of the eldest son.

In 1992, the daughters renovated the home and during that same year the father went to the United States for medical treatment. The eldest son, who did not contribute at all to its renovation, asked for the house to be transferred to his name. As the father was worried about his daughters, he refused. Several fights broke out within the family, often ending in beatings of some of the daughters, as the father's decision to put the house under his daughters' names broke with tradition.

The father died three years later. But prior to his death, there were attempts by the sons to reverse his decision and to put the house under the name of the eldest son. The father had refused to put the home under the name of his wife because upon her death the same argument would have arisen, and again the daughters would have been faced with possible eviction.

This case illustrates how heightened awareness, derived from years of working in human rights and housing issues, helped to formulate an effective strategy for dealing with unfair laws of succession and successfully protect the property rights of the women in the family.

Recommendations

Over half the 2,000,000 Palestinians currently living in the Occupied Palestinian Territories are refugees from the 1948 war and the years immediately following the establishment of the State of Israel. Sixty percent of the population are children --sixteen years old and younger--, and Palestinian women carry the heaviest responsibilities for the care of the children, the home and the family.

Palestinian women are particular vulnerable to violations of their rights to land, property and inheritance owing to gender-biased laws, the Israeli occupation, and pressure to conform to customs and tradition. They need greater access to legal resources, human rights information and education, so that they may push for the establishment and enforcement of laws and policies to protect women's land, property and inheritance rights.

Campaigning at the International Level

Recently, the United Nations Sub-commission on the Prevention of Discrimination and the Protection of Minorities adopted the first resolution on women and the right to adequate housing, property and land. Below are the key excerpts.

Paragraph 5 notes that

Women's inability to secure and maintain the right to adequate housing is a result of gender-biased laws, policies, customs and traditions which exclude women from acquiring land, security of tenure and inheritance rights to land and property.

And the preamble to paragraph 7 states that

[...] continued discrimination faced by women in all matters [related] to land and property is the single most critical factor in the perpetuation of gender inequality and poverty.

The Palestine Human Rights Information Centre (PHRIC) and the Palestine Housing Rights Movement (PHRM), in co-ordination with Habitat International Coalition, continue to lobby the Sub-commission and the Committee on Economic, Social and Cultural Rights and other UN bodies on behalf of Palestinians in East Jerusalem. There must be a greater effort on the part of the PHRM to lobby relevant UN bodies on women's housing, land and property rights.

Campaigning at the Local Level

Effective local campaigning could include the following: lectures -- in villages and rural areas -- explaining women's rights to property, land and inheritance, and explaining the legal aspects concerning culture and tradition; a greater use of surveys and questionnaires to prompt discussion; radio panels and other use of media; access to legal resources related to cases of inheritance and access to land and property; focus on marginalized groups, mainly the single, the elderly and the divorced, who, because of their social status, lack security of tenure; forums of women to discuss personal experiences; need for information centres, community lectures, advice on utilising the legal system, and so on.

Annex: Chapters of Islamic Law Relevant to Rights to Inheritance and Property

Chapter 9: Rights of Inheritance

The Injunctions of the Qur'an

The verses of the Holy Book regarding the rights of women to inheritance and succession are the following.

From what is left by parents and those nearest related is a share for men and a share for women, whether the property be small or large - a determinate share. (4:7).

Allah [thus] directs you as regards your children's (inheritance): to the male, a portion equal to that of two females; if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions adorned by Allah and Allah is All-Knowing, All-Wise. (4:11).

In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child. But if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question has left neither ascendants or descendants, but has a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to anyone). Thus is it ordained by Allah, and Allah is All-Knowing, Most Forbearing. (4:12)

They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance; if (such a deceased was) a woman, who left no child, her brother takes her inheritance; if there are two sisters, they shall have two-thirds of the inheritance (between them); if there are brothers and sisters, (they share), the male having twice the share of the female. Thus doth Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things. (4:176).

Chapter 13: Rights to Property

From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, a determinate share. (4:7)

And in no way covet those things in which Allah hath bestowed His gifts more freely on some of you than on others; to men is allotted what they earn, and to women what they earn; but ask Allah of His bounty: for Allah hath full knowledge of all things. (4:32).

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Towards Good Practice

Women's Access to Land and Property Rights in Eritrea

Tsehainesh Tekle

Background

It has been six years since Eritrea emerged from a lengthy war which claimed the lives of an estimated 200,000 Eritreans and displaced over 500,000 others. In addition, it dismantled the social fabric and left behind some 90,000 orphans and over 10,000 disabled persons. During the war, women composed over thirty percent of these on the battlefield, as commando and assault troops, as tank drivers, truck drivers, mechanics, doctors, and teachers.

The Eritrean People's Liberation Front (EPLF) was firmly committed to women's emancipation and supported women's rights to participate as free individuals in the struggle and the construction of a new Eritrea on an equal footing with men.

Legal Civil Rights

Eritrean society is predominantly patrilineal and patrilocal in inheritance and residence patterns, which puts women in a subordinate position in relation to men. The reasons for this gender inequality lie to a great extent in kinship and inheritance systems. Women's unequal status to that of men is seen most sharply in the private sphere of marriage. The roles which women play and which are not shared by men are regarded as inferior. Women's unequal status in marriage and the family is based on traditional, customary and religious attitudes that confine women to particular roles and place a higher premium on the male than the female.

The situation in relation to owning land is that, generally, land is owned by men, not women; but a woman might own land if she is widowed, divorced, or, exceptionally, if she is an unmarried, but mature, woman.

Property Rights

The legal dimensions of property relations in Eritrea are far from simple because different legal traditions coexist. Property rights are governed by customary law as well as by contemporary state laws that aim to promote equal rights. Nowhere is this apparent incompatibility more striking than on the question of land and inheritance.

In customary law, the main rights guaranteed to the woman pertain to the defence and safety of her person; they do not guarantee her social rights regarding property ownership and inheritance and rights to her domestic autonomy: she cannot inherit land from her father; her husband looks after her. It is a patriarchal society structured on the father's house, the paternal descent line and paternal village.

The contemporary law, for its part, states that equal status at marriage extends to equal access to land and capacity for owning it; it also requires the removal of any discrimination in property-sharing upon divorce or death, with the acknowledgement of the right of the wife to half the marital property irrespective of whether she contributed financially to its acquisition or not. However, this does not apply to Muslim women, who are governed by Sharia law. Their case is in the process of being reviewed.

Customary Land Laws

The customary land tenure system is based on three types of land ownership: by the extended family (a system locally called *tsilmi*), by the village (a system called *diesa*), and by the state (a system called *dominiale*).

With respect to land inherited by descent (i.e. *tsilmi* land), each individual family within the large kinship group has a certain plot of land or a number of plots corresponding to its size and needs. This land is held in quasi-absolute ownership for life. It is worked by a man, his wife and his unmarried sons and daughters. Sons who marry and start families of their own apply for new land, through their father, to the family council charged with the administration of hereditary lands.

Land Inheritance by the Extended Family

The main heirs of *tsilmi* land are invariably the sons; only where there are no sons can brothers inherit it. In some cases, where male issue did not arise, daughters and sisters can claim a share in the paternal estate instead of a dowry. (This implies that the dowry is given in lieu of inheritance).

Tsilmi land represents much more than merely an economic benefit. The fact that it is derived from an original first occupation lends it an important social significance, that of qualifying for enhanced social status.

Tsilmi land invests the man permanently with the status of a member of the local hereditary families, almost a landed aristocracy that looks down upon the new-comers who came later and had to acquire land by purchase or lease.

Traditionally, only a person entitled to *tsilmi* land, known in Eritrea as a *restigna*, is eligible for the office of village chief, a right known as *chikkenet* or *helkinet* - both terms being titles for head of village, with *chikkenet* including legal responsibility.

Land Ownership by the Village

This form of ownership - the *diesa* - is mainly found in Akeleguzai and Hamasien. Both the *tsilmi* and *diesa* systems were in existence in the highlands before the coming of the Italians; the *tsilmi* was the more dominant form. In the 1930s, the Italians effected the shift from *tsilmi* to *diesa* in these regions. Their stated reason was to put an end to inequalities of the *tsilmi*, which was also becoming the cause of endless litigation.

Descent plays a part in this type of land title, which is based exclusively on residence. Under this system, all arable village land is distributed equally to all households in the village, regardless of their size and their needs. Since, in customary law, it was traditionally only married men who headed households, by implication land was shared among men only. But today women head 46% of households in Eritrea, and under the *diesa* system these female heads are entitled to a share of village land.

This system, like others of the communal type, had definite advantages over the *tsilmi* one. For, in the *diesa* system, ownership rights - and by ownership is meant community control over the distribution and other forms of disposal of land - were vested in specific villages with clearly known and demarcated boundaries. Inland, the system gave adequate security to village members, and each new independent household could expect a share of land. The system even accommodated outsiders seeking refuge or marrying into the village. Unlike the *tsilmi* system, its redistribution mechanisms were not meant to allow any differentiation in the amount of land individuals could hold and, therefore, it was believed to be fair and egalitarian.

Under the *diesa*, land is distributed and redistributed approximately every seven years and is strictly divided among villagers. Both the *diesa* and *tsilmi* systems were exclusive, in the sense that outsiders were denied access to land, and women generally gained access to it only under exceptional circumstances.

Land Ownership by the State

In 1919 and later in 1926, the Italians declared almost all lowland (that is pastoral Eritrea, covering four-fifths of the country's land surface) and chosen parts of the highlands, the state domain - or the *dominiale*. Traditionally, every pastoralist clan or village had territory it considered its own. This created two conflicting legal situations: the overall ownership of land by the government and the de facto control of the same land by the various clans.

The people in the lowlands have always been conscious of and had negative feelings towards the double standards and unfairness inherent in the system in general. Demands for the lifting of the relevant ordinance have been voiced. For the EPLF, and now the Government of Eritrea, the removal of the discrepancy between the highland and lowland tenure systems has been a matter of priority. (Persistent drought has greatly decreased the number of livestock and impoverished families are seeking refuge in settlements to gain easier access to facilities. Repatriated refugees, long removed from the pastoral way of life and now in many cases agro-pastoralists, are starting settled farming lives).

Women's access to land varied from place to place. Generally, however, once married a woman was excluded from a share of her own ancestral land - being now considered as attached to the husband's domain. Widowed or divorced women were sometimes allowed to opt for ancestral land. In one province, Seraye, in the highlands, women were allowed to inherit the mother's land, not the father's. Once married, a woman moves to her husband's village and, as a rule, shares his land.

Eritrean society is male-dominated, and its kinship systems tend to have a bias towards patrilineal descent. Social practices value males greatly. When a woman is married, she is considered her husband's ally. She is therefore expected to look out for his interests and hence those of his descent group as opposed to those of her parental descent group. If she were allowed to inherit property, it would mean that her husband, by inheriting her property, would be inheriting land belonging to another descent group.

Legal Reforms

During the transition period (1991-95) to that of a constitutional government, the Government of Eritrea has instituted new amendments to the Civil Code which have fundamentally altered the status of women in Eritrea. Some of these amendments include changes such as:

- Women now have the legal right to own and inherit land.

- The legal minimum age of marriage has been raised from 15 years to 18 years.
- The man and woman in marriage have the same rights within the family.
- Dowry and bride price have been prohibited.

Problems of Traditional Land Tenure

Eritrea's customary land laws have been the subject of intense study and attempts at reform since the Italian colonial period. These laws, in their written forms, date back to the 15th and 16th centuries, but are still in use to the present day. Attempts to reform them involved changing the extended family ownership into village ownership in highland Eritrea. In the former type of ownership, access to land was acquired through membership of a common descent group, whereas in the latter village residence was usually the only requirement. Moreover, in the former, land was inherited, while in the latter it was periodically redistributed among villagers. The strong point of both systems had always been the security of tenure they accorded to beneficiaries.

The right of access to the use of land (and not ownership of it) by every member of a given community in all parts of the country, has been the basis of community control of land in all its forms. This has been the case whether under *tsilmi*, *diesa* or tribal land under the umbrella of the *dominiale* in the lowlands. The Eritrean economy is predominantly based on subsistence agro-pastoralism which involves over eighty percent of the population, with the majority of them (an estimated sixty percent) residing in the highlands.

The traditional agrarian sector in Eritrea contains some fundamental characteristics, which are inherently detrimental to growth, both economic and human. A major detriment is the outdated farmland use management, which is based on communal ownership and allows for absentee ownership to community members who reside outside the community and do not necessarily live off the land. Also as a result of population growth and periodic increase in the number of eligible claimants, the size of plots allotted to individual farmers has been decreasing over the years, to the extent that plots have been rendered economically non-viable. Under the *diesa* tenure, such land is also allocated to individuals for a relatively short seven years, after which time the community takes stock of available land and reallocates it to both old and new claimants. Such an arrangement precludes any long-term investment in and improvement of land.

The Thinking Behind the Eritrean Government's Land Proclamation

The restructuring of the Eritrean land tenure system had to be done within the general socio-economic framework under which the old systems operated.

Eritrea still is a nation of individual peasant farmers and pastoralists closely attached to the land. They still form the backbone of the Eritrean economy.

A Land Commission was set up by the Provisional Government of Eritrea (PGE) in September 1992. The new system had to cater to traditional individual needs for land while not losing sight of the demands for development and national reconstruction. Two alternatives crystallised after the lengthy research and deliberations of the Commission: reforming and universalising the *diesa* system on the one hand, and declaring all land government-owned and allowing usufructuary rights on land to individuals on the other hand. The latter prevailed.

Great caution had to be taken to make absolutely sure that vesting the right of ownership on the government in no way meant its nationalisation in the Socialist or Marxist sense. The government was to take over the distributive and administrative duties formerly reserved for villages and clans without upsetting the right of the individual to access to land. There was a need to find a middle ground where the dynamics of tradition and the demands of modernisation could meet and be carried on.

Land is one of the determinants of all property relations, but diversity in these relations has to be taken into account. Eritrea is emerging as a mixed economy where all forms of property arrangements exist and interact. At least in this highly crucial, transitional stage, the country cannot afford to give up its land to pressure groups --be they villages, clans, large private owners, speculators, associations of various colours, etc. The dynamics that sustained the *tsilmi*, the *diesa* and other traditional forms of tenure have to be maintained at the base. The super-structure has to change, though. This is the logic, indeed the challenge, behind the new Eritrean Land Proclamation.

Under the traditional arrangement, access to land was limited to only the male members of the community. Women (unless widowed, or as heads of single-parent families) were not entitled to land. However, the new proclamation disallows any discrimination based on sex, ethnicity or religion: access to land is an entitlement to be enjoyed by all eligible claimants. Some of the reasons for the Government to be able to reclaim land include (a) the beneficiary's failure to utilise the land without acceptable justification, (b) his or her moving away from the locality, (c) his or her death without leaving heirs.

Another major contribution of the new Proclamation is the ending of periodic redistribution of land. Under the new laws, land will be allocated to claimants for life. Such long-term allocation of land is expected to allow for investment in land and inputs into it for longer-term benefits.

The Basic Tenets of the Land Proclamation

The right to ownership of land is vested solely in the Government. This is not an unrestricted right, as it restrains the Government from selling and giving land in ownership. This right is more custodial than absolute in nature, as the Government is merely taking over rights of communities, but at the same time retaining the principle of direct control of former community land by individual citizens.

There are now two broad classifications of government land. The first is land allotted to Eritrean citizens in lifetime usufruct rights. Almost all of this is land previously held by extended family, village and clan units throughout the country. The second classification is land directly controlled by the Government. This includes the land previously in its hands, the land left over from allocation to citizens, expropriated land and land reserved for different purposes by legislation, e.g. mine and forest reserves, etc. The Government may use the land it directly controls for whatever purposes it deems fit, including leasing it to all types of investors.

Lifetime usufruct rights to land are those attached to Eritrean citizenship. Only citizens above 18 years of age (and in the case of farmland in direct use) have access to land in this category. Land for residential purposes in the village of origin is open to every citizen. These rights allow no form of distinction based on sex, religion, origin, etc. The village is still the springboard for land allocation. But it has no collective claim to its former farming areas as the Government now owns such land. The village, however, still collectively controls its own grazing area, woodlands and roads, and retains its water rights.

Land held in usufruct can neither be sold nor passed on in inheritance. But the Proclamation allows the following ways for land transferability: a deceased usufructuary's allotted land automatically passes to his or her children if they are minors. They have the option of retaining it when they reach the age of majority. A special provision allows usufruct beneficiaries to change their tenure from one of usufruct to one of lease. This is attractive for those who would prefer a long-term lease arrangement in order to exploit the land allotted in ways other than those permitted by the Proclamation. Thus, land leased in this manner may be heavily invested in and turned into a site for business that can be sold, inherited, etc. According to the Land Commission, the idea is to introduce new ways of exploiting the land and attracting the movement of capital into farming communities.

An important aspect of the Proclamation is its recognition of the equal rights of women to access to land. No distinction whatsoever is made between men and women in all the provisions of the new law. In this matter, all traces of customary prejudice against women have been eliminated. The Proclamation also serves as an instrument for environmental protection in Eritrea. The Government has been

provided with the right to issue land use policies, to make improvements on the land and to determine forest and animal reserves.

The Government's power of ownership is not absolute, though; its role is custodial. (As Part 3 of the Proclamation clearly provides, the Government shall not take land away from its occupiers, be they usufructuaries or leaseholders, without the payment of fair and adequate compensation).

The big improvement of the Eritrean Land Proclamation is the equal rights of women to access to land. This is not a mere declaration of good intentions nor is it a future wish or possibility. It is a commitment whose implementation has actually started in the pilot areas.

Implementing the Land Proclamation

The process of implementing the new Land Proclamation is being accomplished in phases that have already taken some years and will still take some more to complete. Initially, customary laws not in contradiction with the basic principles of the Proclamation were allowed to continue on a transitional basis, as a national educational campaign was being conducted which aimed at explaining, in detail, the content and intentions of the Proclamation, and as this was being test-implemented in selected pilot areas.

The general implementation took place as follows: the different legal systems existing in Eritrea (formal codified laws, customary laws and, among some groups, religious laws as well) sometimes run parallel to each other and sometimes are in conflict. In such circumstances, there is a battle to implement the new law. However, in many instances the internalised informal code is more powerful and binding than the formal law. The new civil laws do not all apply to all Eritreans, though. For Muslims it is Sharia law that is practised as regards inheritance and marriage and divorce matters. For example, a woman keeps the wealth she brings with her to the marriage but has no right to an equal share of family property upon divorce. New land inheritance laws, if fully implemented, will give women more economic autonomy.

The implications of women's land inheritance for the position of women are very far-reaching. If land inheritance became a generalised feature of Eritrean society, it would be a powerful agent in the empowerment of women, as it would increase women's economic independence. It is probable that most women in Eritrea are not yet aware of how the new land laws affect their rights and those of their daughters. It is important, therefore, to make information about land laws and their implications widely available.

At this early stage there is a gap between the legal reforms of the EPLF (now the Government of Eritrea) and on-the-ground realities. The implementation of the new laws is not proving an easy matter. For example, ignorance of the law is, along with cultural preferences for early marriage, one of the factors contributing to the continuing pressure to provide a dowry. Also, in spite of the new laws prohibiting discrimination against women, men are still refusing to give them land to which they are legally entitled.

Customary law dictates most rights and restrictions within the community. The latter often conflict - and will do so increasingly - with the new civil code and the provisions of the newly proclaimed Constitution. The implementation of the new land law is a big challenge. In order to speed up the process, the Land Commission should be made stronger. Women's awareness of their rights must be strengthened, too. And the means and support to follow through the complex and lengthy legal processes must be provided to women, if they are to improve their condition by legal means. The new Constitution does not negate the value of customary law, but it aims to ensure equality for women.

A Gender Analysis of Recent South African Land Reform

Fanelwa Mhago and Melanie Samson

Background

After South Africa became a union in 1910 there was a change in the policy of direct rule to indirect rule with control and segregation. The first important shift was in the passing of the 1913 Land Act, which set aside restricted land as the Natives' Reserves - which were set aside from the rest of South Africa for exclusive purchase by African people. This act restricted the amount of land that could be owned by African people to 8%. Later, there was the Native Administration Act, and which was passed in 1927 and which resurrected the black rule in all black-owned rural areas. This act was amended in 1952 by the Bantu Laws Amendment Act, which provided that the chiefs and headmen constitute the first level in the rural government with powers to allocate land. What is interesting is that this system of chiefs and headmen later became the government system into the homeland system. The homeland system in South Africa was the system whereby all ethnic groups of black people were put into the rural areas so that they were given powers to rule and control themselves: the Xhosas were in Eastern Cape, the Zulus in Natal and the Tsutu in the north. In that system the central government had the overall power to control the budget.

In 1936 the establishment of the South Africa Native Trust -- better known as 'The Betterment System' -- aiming at the control of environmental degradation where the areas were separated according to residential areas, grazing areas and arable land, determined which homeland was given an equal piece of land for residential areas and arable land. All homelands had a communal grazing system.

Tenure Arrangements

South Africa is a very patriarchal country with different tenure systems operating in different areas. These systems evolved over time in line with the social, political and economic factors that have affected black communities. The different tenure systems are the following:

- a freehold tenure system, or the church land system, with the church having a full right of ownership with free obligations to the state other than what was specified in the title;
- a quick-rent tenure system, which means one has to pay a rent in lieu of services. This is a type of leasehold where land is utilised and occupied subject to a rental. This type of tenure was introduced by the British colonial government in the early 1700s. It is the one that is granted to African people, but granted subject to some conditions like 'Rent to be paid annually', 'Land could not be leased or sold', 'Land to be devolved according to male succession', 'Fee should be paid at the deed office', 'Title could be forfeited under any number of conditions like non-payment of rent and leasing the land', and so on.
- **The type of tenure system is the permission to occupy. This is for individuals, subject to the condition that land cannot be transferred to a widow or a daughter on the death of the husband. The system originated in the 1960s as a means to give personal land rights to black South Africans when the 'Betterment System' was imposed; it was finalised in Proclamation 188 of 1969.**
- And then there is the labour tenancy system. This is defined as the use of land by a
 - person for a specific reason in return for rent or payment which could be in different
 - forms. This is where two persons enter into an agreement or contract undertaken by
 - the tenant to supply the owner with labour. In exchange the owner provides the tenant
 - with land which could only be used for the agreed purpose or within those limitations.

Women and Land Tenure

In South Africa as elsewhere women are not homogenous entity. There are black rural women, black urban women, white women, Indian women, coloured women, and the women on farms. And in all of these categories we have the haves and the have-nots, as we also have educated and illiterate women. Since tenure can be understood as the process that defines the kind of household that qualifies socially and politically for land, it therefore can be understood as a social and political process rather than a system of laws and rules. But this is also subject to discussion.

A large part of the context on tenure systems is governed by the values of the community and by prevailing power relations. Women are disadvantaged by social assumptions and informal land practices that

are not controlled by laws. Tenure and power relations appear therefore to bear harder on women in South Africa. That is why it is very important to think carefully about what the issues are in relation to women's rights to land; this should be looked at in relation to women's empowerment. And we must know that the claim to land rights has an immediately obvious emotional dimension. It is important, therefore, to go beyond this and ask what land rights are and why women should have them, and then look at the future prospects for women in this regard.

Customary Marriages

Customary marriages are not fully recognised as valid marriages, as far as the common law of South Africa is concerned. They are only recognised in the court of traditional leaders. The discussion is then about whether customary marriages should be fully recognised. Another problematic area is that of dual marriages. The spouses of an existing customary marriage may remarry one another in church or before a magistrate. *Lobola* (bride price) plays an important role in maintaining African culture. Registration and other formalities in the customary marriages are not compulsory in South Africa. That is why the South African Law Commission is of the view that all customary marriages should be registered. This is also still under discussion. We have polygamy. Under customary law a man can marry as many wives as his strength will allow. Concerning property relationships and property management, customary law has no clear rules about spouse relations over property,. Therefore, wives can find themselves disadvantaged on the dissolution of marriage. The wife has no full rights to own and control property.

The Land Issue after Apartheid

The complexity of the land issue under apartheid must indeed be emphasised. It was a very difficult situation in which to commence land reform. The main political motivation for land reform was to redress past injustices, but the ANC government also had three other motivations - some of which are contradictory - for embarking on a process of land reform: reconciliation, stability to underpin economic growth, and improvement of household welfare. This emphasis on the household is something important. Land reform needs to be understood within the broader context of South Africa's policies. The Constitution has a formal commitment to gender equality, which places requirements on other forms of legislation. In it there is a commitment to land reform as well, but this is accompanied by a private clause. There was intense political battle over that, and organisations like the National Land Commission, which opposed the private property clause, lost out. Private property was entrenched very firmly in

the Constitution. So, this combination of a commitment to reform land and to uphold private property, and to expropriate people only when necessary and to pay market-related prices, has led to a market-based system of land reform in the country.

The other component which is important in South Africa's Constitution is that traditional law is officially recognised. However, a caveat is put in place that it cannot contradict the Bill of Rights, which is the one of the most progressive bills of rights in the world. There is tension because up to now women have been prejudiced by traditional law; we have yet to see how the two systems are put together. The other major context for land reform in South Africa has been the shift in the past few years from the reconstruction and development programme -- the ANC's election development plan -- which was a social welfare type of approach to development. In 1995, the ANC Government adopted a macro-economic strategy entitled 'Growth, Employment and Redistribution Strategy' or 'GEAR'. This is a neo-liberal policy very similar to structural adjustment policies implemented elsewhere in the world, and which has reinforced the emphasis on market approaches. In this context, a 1997 White Paper on Land Reform was produced. As with all South African legislation, it went through several stages of consultation where members of the public were allowed to give their analysis, input and recommendations. South African women were mobilised around this; they appreciated the commitment to gender equality in the earlier drafts of the White Paper, but noted that women's views were not listened to. So, although there was an opportunity for consultation, it did not result in substantial gains for women.

The three main components of South Africa's land reform are: restitution, redistribution, and tenure reform. The objective of the restitution programme is to restore land and provide other remedies to people dispossessed by the racially discriminatory legislation of 13 June 1913. People dispossessed before that date have no right to restitution. The restitution policy has a limited lifetime; it expires in 1998. People had only three years to launch their claims. There have been several claims launched, but very few have been processed. And we found at the National Land Committee that under restitution people do not pay for their land, while they do under the redistribution programme. The restitution programme is going slowly, so the Department of Land Affairs officials in the field are actively encouraging dispossessed communities to drop their claims for restitution and trade them for claims for redistribution instead. And people are so desperate to get land that they are doing this. But the result is that they must pay for the land because under the redistribution programme the objective is to give poor people access to land.

The main mechanism for people to get land is that eligible individuals can apply for a 15,000 rand once-in-a-lifetime grant to purchase land, under the redistribution programme. Eligible individuals are defined not as individuals but

as adults, in married relationship or with dependants. And in the married relationship, in the household, you must have a joint income of less than 1500 rand a month to qualify. Who qualifies as an eligible individual is the main problem gender activists have with this piece of legislation. The other thing to note about the redistribution programme is that it is based on a 'willing buyer, willing seller' policy, such that when you purchase the land you must pay a market price. 15,000 rand is approximately US\$ 4,000, which is insufficient to purchase land with. So, this market-related price becomes very problematic.

The last programme of land legislation is tenure reform. This is a very complex process meant to provide equal and secure tenure rights to all South Africans. Within the legislation there is a specific commitment to gender equity, and the Department of Land Affairs has followed through on some commitments in establishing a sub-directorate responsible for gender affairs. For this reason South Africa is seen by many as a role model for entrenching gender rights. Much as we value that, we do however have some deep concerns about the process. And we would like to outline these briefly before we propose some recommendations.

Criticisms of the Legislation

The first criticism is that the sub-directorate on gender has only two staff. One resigned, so there is only one woman responsible for gender issues and land in the entire country. We can now see the seriousness of this commitment on the part of the Government!

Our criticisms of the land reform process from a gender perspective are based on a particular understanding of what the relationship between gender and land reform should be. The typical way of looking at this issue and the way it is entrenched in our legislation is to see how gender differences will affect land reform. But we want to turn that on its head and ask: 'How will land reform affect gender relations?' Will land reform be a tool to empower women and to shift power relations in their favour? We ask this because land is a critical component of women's cultural, social and political power as well. Or will the land reform process in South Africa maintain the status quo? Or, worse, will it marginalise women still further? We fear the latter will happen.

Our first main criticism of the legislation is that it is based on a very inadequate understanding of gender. It slips from talking about gender to talking about women. It holds women as a homogenised, separate category: it talks about labour tenants, farm workers, dispossessed people, etc, and women, as if none of those communities has a gender element in it. Concerns for gender are not integrated into the policy.

In South Africa the commitments to gender are restricted to the sections of the White Paper which look at objectives and principles, but when we get to sections on implementation, monitoring and evaluation, economic considerations, constraints to land reform, etc, gender is not mentioned. This leaves much to officials in charge of implementation. Pilot programmes in at least three countries have shown that in fact no considerations for gender have been integrated into planning, monitoring and evaluation. So, this broad and grand vision has not been made operational, and, most likely, will not be. The approach to gender in the document is highly legalistic and, although it acknowledges cultural and social power it does not address it at all.

As mentioned above, an 'eligible individual' for a grant is not an individual at all. He or she is defined in relation to others. The reason they used this strange term is that gender activists had criticised the use of 'households' as the beneficiary in the original legislation. Policy makers then tried to placate them by taking the word out, but the household paradigm remains. In South Africa we need to ask what a household is. It is complex in many countries and it is very complex in South Africa, because of the system of migrant labour where women remain in the homelands and their male partners work at vast distances. As already highlighted, there is polygamy. Now, do all six wives count as being part of the same household? Households in South Africa are stretched in terms of space and are permeable, flexible. The White Paper thus promotes different kinds of flexibility, which further discriminates against women.

Because access to the land acquisition grant is once in a life time, if my partner and I were to apply for a grant jointly, and if I then wanted to leave him, I would never be able to have access to a land acquisition grant again. I would in effect be rendered landless. This grant is therefore creating extra reasons for women to stay in marriage relationship. It is also causing households to divide. Extended families are deciding that, even though they have chosen to live together, they now separate so that more adults can have access to land. Communities are being encouraged to form community property associations where eligible individuals pool their money and buy land together, and must form a body for the association with a constitution defining which individual is eligible to join them. Although, for example, single women with children legally are eligible, many community property associations exclude them because there isn't enough land and they have to find some way of limiting who has access to it. In some instances, married women have supported this because they fear the unmarried women in the community. What do you do in that kind of situation?

The legislation is also creating incentives for new families to be born. There are cases of young single women becoming pregnant in the hope of becoming beneficiaries of the community property association. There are also cases of Department of Land Affairs' officials creating families in the sense that when they see a single individual without a child on the list, they will say that A

is not married and has no child and B is not married either and has no child, and so they will put A and B together in a family so that A and B have to share the land. As you can understand, people are very disturbed by this.

Another related issue is the question of what constitutes tenure security for women. This legislation assumes that it is providing tenure security, but research has shown that women define tenure security not just in terms of having access to land as part of a household; they want to know they have independent access to land in order to provide themselves with physical, social and psychological security in addition to economic security. The current land legislation does not provide women with what they consider to be tenure security; it provides them land only if they stay with their partners or with their children.

The Relationship of Land Legislation to Customary Law

As already mentioned, there is a commission that is now looking into how to make customary law and the Bill of Rights compatible. One concern that has been raised recently is that even if women gain independent rights or access to land through acquisition grants, if customary succession is followed, that will be only for one generation. In a sense our example can be seen as being the flip side of the Mozambican one, in that we perhaps have a strong formal commitment to legislation, but there is no strong rural social movement in South Africa. There is no rural women's movement, except one, confined to the former Transvaal. There is no grassroots movement to lobby for and further entrench these rights.

Recommendations

We have learned that policy must be unambiguous in its commitment to securing women's right to land and property, and must include measures to ensure this, to prevent officials, communities and even women themselves from excluding women from the implementation stage. The commitment to gender policy needs to be accompanied by the training of officials at all levels and rigorous monitoring and evaluation of the work agenda. Sophisticated and creative evaluation and monitoring criteria are urgently required which go beyond counting percentages of women who have access to land and participate in structures, and should include an evaluation of shifts in gender and power relations. This may require in-depth case studies.

NGOs also need to do more capacity- building with women at the local level so that they know their rights and can advocate them. They also need to provide gender training to men in order to decrease their resistance on gender issues. NGOs need to improve the gender analytical and research skills of their

staff and particularly field-workers. In recognition of this, the National Land Committee in South Africa, to give one example, is launching an internal gender strategy programme to that effect.

We are criticising the South Africa experience so that people can take lessons from it in order to make improvements in their own countries, and avoid falling into traps. The lessons are the following:

- It is not enough for legislation to be gender-sensitive; it must be gender-transformational. It must proactively use the land reform policy to empower women and shift gender power-relations within the household and the economic, social and political spheres in their favour.
- Women must have independent access to land. The form of tenure security provided by the policy should not create or reinforce other forms of dependence like, for example, remaining in the household unit.
- Policies need to show that gender equity is necessary for the very success of the land reform programme and is not an additional goal.
- The commitment to gender equity needs to be integrated into all aspects of policy, particularly its components dealing with finance, implementation, monitoring and evaluation. Policy needs to anticipate potential blockages in implementation and set up mechanisms to deal with these.

Land Issues in Guatemala

Edna Elizabeth Calderon

The agrarian problem is the biggest one in Guatemala. The country has the worst distribution of land in Latin America. As a study carried out by USAID shows, it is a country in which the majority of farms are very small, while a very small number of farms occupies the largest proportion of the best agricultural land of the country. Since the internal armed conflict began in 1960, the agrarian system has been seen as one of the structural problems which maintain Guatemala in its backwardness, and the majority of the population in poverty.

A Historical Overview of the Agrarian System in Guatemala

There is given below a historical overview of the agrarian system of the country and of the determining factors in the time of conquest and colonisation, which were expressed clearly in the mining and agricultural enterprise. The objective of the conquerors was to establish an absolute dominion over production in the new continent, to the detriment of the original occupants of the land, amongst them Guatemalans.

This objective resulted in the establishment of a landed class which over time took possession of the best lands in the country, due to the structural conformation of the economic system which established a monopoly in agricultural production for export, a monopoly concentrated in the hands of a small group, which constantly promoted an increase in the cheap labour force for this purpose through a system of what we call '*minifundios*' (in Guatemala). These conditions promoted the structuring of an economic and labour system into a national system of cheap labour, which can be seen in the massive labour migrations of workers who do not have their own land for subsistence, thus becoming a great mass of workers doing seasonal exploitative work.

Ownership of land in Guatemala has been one of the factors which began the armed civil conflict. As a consequence, our country had 45,000 refugees in Mexico and Honduras, more than a million internally displaced people, thousands of 'disappeared', and 103 rural communities razed to the ground through state violence. The situation of land in Guatemala is characterised by what we call

'latifundio'. After the invasion of all of the territories found under the control of the former city-states of the Mayas, the land passed into the hands of the Spanish Crown, as crown lands. That became the basis for the *latifundio* system, by dispossessing indigenous communities of their lands in favour of the *latifundista* minority, despite the official policy that Mayans had rights to their lands. The usurpation and dispossession of the land of the Mayas was done in the 17th century with the complicity of the authorities, in order to benefit the *latifundistas*, that is those owning *latifundios*.

In Guatemala, private ownership of land meant it was concentrated in the hands of few people, facilitated by systems of trade, gifts, sale and inheritance of all sorts, and illegal and fraudulent land appropriations. The expropriated lands were valued depending on their size and commercial importance, and for the most part were sold or given to businessmen and foreign investors, high officials in the government, rich speculators, and relatives of politicians and supporters of those in power. At the same time, the authorities rejected petitions for land claims by communities. President Justo Rufino Barrios once said that one German citizen was worth two hundred Guatemalan peasants.

According to the figures of the last Guatemalan farming census in 1979, 88% of the farms of the country fall into the category of 'subfamily' farms (i.e. of less than 7 hectares each), which occupy 16% of the land but are too small for their production to fulfil the basic necessities of the family. Meanwhile, at the other end, there are the multi-family farms, larger than 45 hectares, which constitute only 2.6% of all the farms but occupy 65% of the land. The most important and best quality farms are found in the coastal departments of Suchitepequez, Izabal and Escuintla. Together they constitute 49% of all of the land of Type 'A' in Guatemala, with farms of 450 hectares each or more, and occupy 53% of the land. Thus, 2.5% of landowners possess 64% of the arable land and monopolise the majority of the best lands in Guatemala with products for export.

One positive change in land law was the reform introduced after the Revolution of 1952, when Jacobo Arbenz Guzman was the president of Guatemala. He stated that 'one of the fundamental objectives of the Revolution of October was to introduce a substantial change in property relations and the forms of land use, as a measure to overcome the economic backwardness of Guatemala and bring substantive improvement in the quality of life of the masses.' The decree stated that the concentration of land in the hands of a few not only perverted the social function of property, but also caused a considerable imbalance between the many peasants who do not possess land (despite their capacity to make it productive) and the few landowners who possess land in

excessive quantity, yet without cultivating it entirely or at least enough to justify their ownership.

Through Decree 900 of Article II, Title I, of the Land Reform Law, all forms of servitude, slavery and unpaid labour were abolished. As a result of this Land Reform Law, 750,000 *'manzanas'* of land were expropriated from more than eight hundred private farms, and 200,000 *manzanas* more remained, subject to the application of this law. But the Arbenz government fell, and Guatemala's short spring returned to darkness. Approximately 100,000 peasants received title to land with this law, benefiting at least 500,000 people out of a population of 3,000,000. As an immediate result, Guatemala found its economy in a better shape than ever before, obtaining a favourable balance of trade, a more just division of income in the countryside, and being able to export surpluses of maize, beans and rice, without sacrificing the well-being of the marginalised population.

With the coup d'état against Arbenz Guzman, new agrarian laws were made: the new government of Carlos Castillo Armas and the 'Movement of National Liberation' (MLN) defended the interests of the *latifundistas*, with their North American accomplices, army officers, and the oligarchy. So, they published Decree 31, which prohibited further expropriations and returned the land which had been taken away from the peasants.

Land and Property Rights of Women in Guatemala

On the issue of access to land, the situation of women in Guatemala is characterised by few opportunities to gain ownership of land. This is not simply due to high levels of concentration of land. 40% of rural families lack land, but women have even more difficulty in having access to land than men. This is due to:

- socio-cultural factors which prevent women from owning land and property, because of inheritance practices which give property to males;
- exclusive social structures which impede the majority's access to the instruments of production, of which land is one of the most important factors;
- the legal rigidity of institutions which invalidates the productive input of women, meaning that these cannot benefit from agrarian programmes because they cannot get credit;
- lack of recognition of the multi-cultural and multi-ethnic characteristics of the population, as well as the latter's limited access to education.

Throughout history, women have worked the land on an equal footing with men. They have worked it to sustain their families, but their manual work has not been recognised. Women are agricultural labourers, they work in coffee fields and do subsistence agriculture. And yet all this work has not been recognised. Nor is their domestic work appreciated at the national level.

Women's access to livelihoods in urban and rural areas is bound up with their access to land. In the semi-urban areas of the capital city, it is access to land that affects women most. There is a lack of political will and policy to bring a solution to the problem of livelihood. The high cost of living also impedes women's making a decent living. They face such economic, political and social problems as low salaries, high unemployment and lack of access to credit for livelihood opportunities - because of the neo-liberal policies of privatisation and many requirements for obtaining credit.

There have been many laws seeking to provide women with the same rights to land ownership as men. One of the successes which women have achieved is the '8 October Peace Accord' and the 'Accord on the Socio-economic and Agrarian Situation'. Refugee women have worked hard to have women's rights to property included in the 8 October Peace Accord. In the Socio-economic Accord, gender issues are also included. These are the two accords that support the principle that women's ownership rights should be equal to men's. They were signed on 8 October 1990, while other peace accords were signed on 29 December 1996.

The Guatemalan legislation also says that both women and men have rights to property. There is only contradiction in the case of a married woman, because when she gets married, it is her husband who is the main owner; she becomes secondary. Otherwise, there is no law that prohibits women from gaining access to land, work, credit, or community organisation. Women and men are legally equal rights-bearers if they so desire.

Peace accords were achieved through women's forums and the assembly of the civil society, and were achieved due to the hard work that organised women carried out in order to ensure that land ownership was included in the 8 October Peace Accord and the accord on the Socio-economic and Agrarian Situation. What is sad is that the peace accords fall under the Constitution; it is therefore necessary to make legal changes in order for them to be implemented.

With regard to the implementation process in 1997, the Government last year committed itself to working on the issue of access to land for Guatemalan women and men. The target was set for the end of September 1997, by which time only 30% of the promised goals had been achieved. While there are five hundred petitions aiming at resolving peasants' land conflicts, only seven are

currently in the process of being resolved, a hundred are being studied, and the rest have not yet been considered. It can now be observed that peasant men and women in Guatemala are moving further and further away from the prospect of gaining land and livelihood.

What Guatemalan Women Can Do to Improve the Situation

Faced with this situation, what can Guatemalan women do? Attending consultations and conferences can help them recover hope. They would like to work with their daughters and with female comrades. They want to recover their happiness, a happiness that was cut short by war, kidnappings and social injustice. They must struggle together with men to recover this happiness. This will be a slow process, but the struggle must continue, a united struggle. Links between community organisations of peasant men and peasant women must be strengthened. In their efforts to follow up the implementation of the peace accords, Guatemalan women need international solidarity. They should not be forgotten. It should be remembered that when they were given solidarity in the time of war, the lives of many families were saved. If many comrades, male and female, can still give testimonies, that is because of international solidarity. Even if Guatemalan women have suffered those injustices and difficulties, they thank the heart of heaven and the heart of the earth of our Guatemala, because they have been able to see, at least today, the light of day. They thank everyone for this solidarity and ask everyone to continue to support them and to fight so that the implementation of the peace accords in Guatemala becomes a reality.

The Implementation of the Guatemalan Peace Accord with Special Reference to Women Returnees from Mexico

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Background

Guatemala is an agricultural country. The most fertile and productive lands are in the hands of the minority who grow export crops. As Mayan people and peasants (locally called *campesinos*), we are subject to oppression and discrimination; we are used as cheap labour on big plantations, as the majority of us either have no land at all or have very little and that is of poor quality. Consequently, the majority of the Guatemalan people live in extreme poverty. This is really the main cause of the internal conflict that lasted thirty-six years and ended on 29 December 1996 with the signing of Peace Accords [between the Guatemalan government and the insurgent organisation, URNG].

Our Life in Exile

In 1981 and 1982, during the civil conflict, the governments of Lucas Garcia and Rios Mont carried out a scorched earth policy, resulting in innumerable massacres, kidnappings, cases of torture, destruction of communities, and bombing and persecution of the civilian population. This period of repression and impunity caused the displacement of more than one million people and more than 45,000 of us became refugees in Mexico.

As in all wars, the civilian population (of us women and men who become refugees) suffer the worst both in fleeing and in adapting to refugee life. Those who suffer most are we, the women, who must be both father and mother to our children after becoming widows and orphans, leaving behind our villages and lands, languages and dress, in order to save our lives and the lives of our children.

The protection given us by churches, humanitarian agencies, non-governmental organisations and the United Nations High Commissioner for Refugees (UNHCR), plus the hospitality of the Mexican people, rescued us from the violence, thus helping us to look towards the future. We were treated as sisters and brothers as we reorganised our lives and our work in the context of our families, while at the same time never forgetting about our country.

As refugees, we never forgot the pain that we suffered in the war, and thus valued more the fact that our lives had been spared. In this refugee situation we organised ourselves, electing representatives to run the refugee camps, all of whom were men. As time went on, we were able to continue to shape our organisation, in regard to health, education, etc. And as women we began to organise in small groups involved in projects related to vegetable gardening, production of handicrafts to sell and bread production, all in order to satisfy certain basic needs.

With our organisation and the local and international support that we received, we had various successes that eased the hardship of being refugees, which we have now been for 16 years.

In 1987, we began the struggle to return to our country by electing our representatives, namely, the Permanent Commissions of Guatemalan Refugees, to negotiate with the Government the conditions of security and dignity under which we would return as organised collective groups. This process of negotiation took five years and resulted in the signing of a seven-point accord on 8 October 1992. Among the points was the right to own land to live on and work, via a revolving credit scheme for its purchase [wherein the cost of the land is to be repaid by the community to its own internal organisation or association for future projects, not to the Government].

The return to Guatemala has been difficult for those who decided to return home: the accords are not complied with as we would have wished, receiving credits for the purchase of land is a very slow process, and often the land for sale has many legal problems. Many studies have to be carried out to determine if the price set by the owner is appropriate, and, if it is not, then the negotiation is over and the groups have to start from the very beginning again by looking for other lands.

In 1990, we created our own organisation of Guatemalan refugee women, called *Mama Maquin*, with the objective of creating awareness of the situation of discrimination and marginalization that women face, a situation which is even worse in our case as indigenous women and poor *campesinas* [i.e. peasants]. In the return process and reinsertion phase, it is an especially important goal to promote and strengthen our participation in decision-making within our family and our community.

After the 8 October 1992 Accords were signed we held various meetings and workshops with the leaders and members of *Mama Maquin* in order to analyse the content of the accords, and we realised that women who are married or in common-law unions were not taken into account in terms of the right to land. Only men, widows, and single mothers were, the latter two groups being considered as vulnerable groups and as women-heads-of-households respectively. That is when we decided to fight for the right to be co-owners of the land for our own security and that of our daughters and sons, so that the woman will not be left out in the street if the man sells the land or abandons his partner. This also means recognizing the value of the work that we carry out in the house and the fields.

To have legal access to and co-ownership of the land, we have to sign the legal document used to solicit the credit for land purchase. We also have to participate in the whole process, which means making visits to look for possible lands for settlement and participating in the negotiation of the land purchase and the return movements. It also means becoming members of the co-operatives that are being formed in our communities because lands are being transferred into the name of the co-operative and by definition they belong to its members. As owners and co-owners of the land, the co-operative is the guarantor to pay the value of the revolving credit. We have the right to be members, with voice, voting rights and the right to elect people and be elected to leadership positions in the co-operative and community structures.

Our demands were brought by *Mama Maquin* to the participating organisations supporting the returns, to the representatives of the return groups, our husbands, UNHCR and other institutions. However, those demands were not accepted or viewed positively, and even with our determination we were not self-assured enough, nor were we prepared to defend our rights. With the support of UNHCR, legal studies were carried out to reaffirm our decision, and the conclusion was that the Constitution of our country does not deny us this right. Yet, with the discrimination that we, as women, have historically faced (as in any society and especially in our poor countries), asserting this right is not at all a simple task.

Since 1993 and up to 1997, with the support of UNHCR, we have achieved the goal of having women who are married or in common-law unions be included in the legal document that is used to obtain the credit for land purchase. This means having the legal right to be co-owners alongside our husbands, with our family and within our community.

The incorporation of women in the legal document (soliciting the credit for land purchase) is a first step to gaining co-ownership, a step that took place while we were still in refugee camps. Once we return to our country, there are a

series of concrete steps that must be taken, such as constructing the new community and legally constituting the co-operative. With regard to the latter, we women are still not accepted as members because we do not do the same kind of work as men. They forget that we have signed the legal document to have access to land, and in practice, they ignore our right to be co-owners because the work we do in the house and in the fields is not valued. Thus the co-operatives are established only with men.

For us and our organisation, this situation presents great challenges and means changes in ourselves too, because, since land is the basis of life, economic well-being and community development, we women must fight to make our participation real in all facets of community life and society. We must also fight for the reformulation of laws in order to guarantee equality between women and men.

The Guatemalan refugee and returnee women are clear about the fact that land is the most important family possession that we can have. Land is an integral space for the development of *campesino* and indigenous women and men, a space where we can live and work, defend our rights and pass on our culture, customs and languages to our daughters and sons.

The task we have set ourselves is not easy because even with our consciousness and determination there are situations that limit or complicate our participation, among them the fact that we are responsible for childcare, for our families, for housework; we lack experience in travelling outside our communities and taking part in negotiations. Furthermore, many of us cannot read or write. But in spite of all this, bit by bit we have been opening up and occupying new opportunities for participation in order to achieve a society where women and men truly live harmoniously between themselves and with nature -- as held in our world view that has been passed down to us from our Mayan ancestors.

We believe that it is an obligation to revive the world-view of our Mayan culture to gain a harmonious world where people live side by side, all women and men and everything else on this earth. That is why we reaffirm our commitment to continue to struggle for our full participation in the construction of a new Guatemala with justice and real peace.

Achievements

We can mention the following achievements:

- the formation of our own organisation as a basis for gaining respect for our rights;

- the various training sessions we have undergone about our rights in a way that strengthens our participation;
- the opportunities for participation in the return process and the reconstruction of our communities;
- the awareness that we have gained of our rights to be co-owners of the land and thus participate on equal terms with men in decision-making, in discussions and in problem-solving in situations that we face during the return process and in our communities.
- the consciousness, once back, that our domestic work, our reproductive role and work in production, -- which are all fundamental to achieving community development and our own development -- are to be valued.

Obstacles

The responsibility for child care and domestic work, which is neither valued nor recognised, is still a major obstacle to our participation in improving our situation. Much work remains to be done in order to sensitise and train men and institutions to value and assist in these tasks. Among other obstacles:

- there is a lack of legal assistance with a gender focus;
- there is a lack of follow-up to the organisational work due to the geographical dispersal of the returnee communities;
- there is a lack of capacity on the part of the women in each community to successfully negotiate their inclusion in the co-operative and to defend joint land ownership;
- the leaders with experience gained as refugees are now dispersed throughout the various returnee communities and are also concerned with their own survival with less energy and time for the organisation;
- the members of *Mama Maquin* in general, once back in Guatemala, have faced many difficulties in their organised work given the post-conflict economic, political, social and cultural situation of the country, and often have to give priority to their own survival and to the construction of their community;
- there is a lack of funding for the follow-up and strengthening of women's organisations' work.

Future Prospects

With the organisations working for the return of refugees, with representatives of each returnee group and with the institutions involved, we want while still in exile, to discuss, negotiate and clearly define the form of women's participation in the co-operatives as coop members, and hence co-owners of lands in the name of the co-operative. We intend also to hold more workshops to train men and women in focusing on gender.

In conclusion, we call upon all women of the world to fight together for a world with equality and justice. As refugee women we have experienced, first-hand, the horrors of war and exile. We face, with our families, the challenges of coping with the losses and sufferings of war and exile. But we encourage everyone not to be overcome by anguish and other setbacks. All women and men can help search for ways great and small to lead us to a resolution of our most urgent needs and the wish of all humanity to have a world of justice and peace. Of the international organisations, governments and institutions and the world at large, we ask that they not abandon us in our goals that would benefit all women. We value the participation of these institutions and governments in achieving the peace accords recently signed in Guatemala. We ask that they continue to give their support in the follow-up and verification of these accords so as to truly construct peace from within the family, the community and the society as a whole.

For the equality and dignity of women, the return to our country is our right; the participation of women is an absolute necessity in the construction of peace.

Using the UN System in Lobbying for Women's Right to Land and Property

Leilani Farha, Centre on Housing Rights and Evictions
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UN Resolution 1997/19 entitled 'Women and the right to adequate housing and to land and property' is a resolution we drafted together with several others and which was adopted by the United Nations Sub-commission on the Prevention of Discrimination and Protection of Minorities in August 1997. This paper explains the process by which it came into being, its meaning and the various ways in which it can be used to protect and promote women's rights to land and property, locally, regionally and internationally.

The UN system in Geneva and New York can be a great resource in dealing with the kinds of issues that have been raised here. It operates with two different types of bodies:

- There are treaty-based bodies, which are committees that work on particular human rights instruments. The 'Committee for the Elimination of All Forms of Discrimination against Women' works on the convention with the same name. There are similar committees that work on social, economic and cultural rights, rights of the child, and on civil and political rights. These are composed of independent experts in different fields, not government representatives.
- Then there are charter-based bodies, that is, UN bodies whose work is based on the UN Charter and Universal Declaration of Human Rights. The two main bodies are the Commission on Human Rights, which is composed of 53 members and meets once a year in Geneva; and the 'Sub-commission on Prevention on Discrimination and Protection of Minorities'. It is under the umbrella of this UN body that the resolution that we are referring to was drafted. The Sub-commission is very important within the UN system because it is also composed of twenty-six independent members from all over the world. It is like a think-tank, where you can raise fundamental questions. It is not as politicized as the Commission on Human Rights, which made us feel it was the right place to try to introduce the Resolution.

The content of the Resolution is fairly straightforward. For those working on the issue of women's land and property rights, many of these issues it contains are familiar. Our intention in drafting it was by no means to reinvent the wheel, but rather to draw on what we all already know and what has already been set down and expressed in international documents such as the Beijing Declaration and the Habitat Agenda. Underlying the entire content of this Resolution is the recognition that women throughout the world, in developed and developing countries alike, continue to experience inequality in every sector of life, and that women's disadvantaged and oppressed position in society is intimately connected with and informed by women's relationship to housing and to land and property.

The Resolution elaborates on the connection between women's oppression and women's relationship to housing, land and property. In particular it highlights:

- the immediate and direct connection between women's poverty and the discrimination women face with respect to land and property (Preamble, paragraph 7);
- the existence in many regions of gender-biased laws, policies, customs and traditions which exclude women from acquiring land, security of tenure and inheritance rights to land and property; (Preamble, paragraphs 5 and 10);
- the fact that women in all regions contend with extremely poor living and housing conditions, which threatens their mental and physical health as well as the health of their families; (Preamble, paragraph 8);
- the fact that women continue to be excluded from the housing and planning development process (Preamble, paragraph 9), and
- the fact that many of the problems women face with respect to housing are caused by or related to domestic violence (Preamble, paragraph 12).

An equally important concept underlying this resolution is the understanding that, in order for women's social and economic rights -- including the right to land and property -- to be fully realised, action must be initiated and must occur at all levels. For this reason, the operative (i.e. the concluding) paragraphs of the Resolution call on all sectors -- non-governmental organisations, governments (and by this we mean all levels of government), international agencies as well as various UN bodies -- to undertake activities aimed at recognising, better defining and implementing women's rights to housing and to land and property.

For example, operative paragraph 2 encourages governments to comply with their international and domestic obligations and commitments with respect to the legally-recognised rights of women to land, property, inheritance and adequate housing. Operative paragraph 8 of the Resolution recommends that UN special rapporteurs and the special representative of the Secretary General on internally-displaced people take into account the question of the housing, land and property rights of women -- something that Special Representative Francis Deng has mentioned in several of his reports. Particularly relevant for post-crisis situations of reconstruction, operative paragraph 17 calls on the international financial institutions, in particular the World Bank and the International Monetary Fund, to take into account the human rights implications for women of their policies, structural adjustment programmes in particular.

Lastly, the Resolution highlights the interaction between the varied work that has occurred on the issue of women's housing, land and property rights. In this respect, it attempts to expose (and in so doing contribute to) the interaction between political processes like the Fourth World Conference on Women and Habitat II; standard-setting activities (like the Resolution itself); and treaty-interpretation, such as asking CEDAW to adopt general recommendations on women and their rights to housing and to land and property. In order to reap the full benefit of these different activities, rather than regarding them as separate documents (and therefore separate enterprises), they must be viewed as part of a process with the same end, namely to advance women's human rights.

There are two other points that are important and which we tried to bring up in the resolution. From the information we received from our members and from what we have seen in different countries, one of the main issues is that of forced evictions and displacement. We tried to raise this in a resolution which states that women and children suffer disproportionately from the practice of forced eviction and that women bear the brunt of traumatized and dislocated communities. This was important to state, as it leads to other steps that need to be taken at different levels.

The second point is a larger issue when we talk about land and property rights. Firstly, there are many other human rights that need to be looked at and resolved before we can get to implementing and achieving land and property rights. The resolution notes this and stresses that the violation of women's right to adequate housing results in the violation of other civil, cultural, economic, and political and social rights. Secondly, we also need to look at equality of rights before the law, the right to life, the right to security of the person, the right to work, the right to health, the right to education. When we reflect on this, it becomes clear that human rights are a very

powerful instrument to try to protect a holistic picture of life. We need to think of all rights as indivisible and interdependent.

Why is a UN resolution important? Human rights are something we need to have as a perspective and as a guiding force in all of the work that we do. In this sense, the resolution from the human rights system is very important because it is actually based on internationally-accepted human rights instruments which most countries have ratified or accepted to abide by.

The other impact of the resolution at the level of the UN is that it creates a stable perspective within which to build society. It takes care of some of the issues raised earlier, like what to do in situations where the conflict has ended and there is reconstruction, but there the constant threat of conflict occurring again. When we think of this kind of process, the human rights instruments provide us with a very powerful basis on which to assess society at any time during transition.

Now, how can we use this Resolution? What can people do with it at the local and grass roots level and at the national level? Based on our experience, we can say there are four things people can do:

- Distribute it. The Resolution needs to be widely distributed. It needs to be translated, so that popular booklets and brochures can be prepared. We have one example of this in Tanzania and how it has been used in relation to the Land Bill that is in discussion there.
- Educate people about it. Human rights education is something we need to do in all communities, and this Resolution can form the basis for teaching women, families, communities, governments, that is, different sectors of society about women's human rights. It is an instrument that can be used to get the issue discussed in many societies. From my own experience in India, the whole issue of women's rights needs to be constantly brought up because it can very easily be forgotten. A UN resolution can give you the opportunity to raise it again.
- Use it to effect within the community. It is very important that the resolution be used as a basis for litigation, used to form amendments to existing legislation and try to push for new legislation based on human rights. In a number of countries legislation is either being challenged or new legislation being drafted, and a resolution like this should be used to improve these or give new ideas about what could be incorporated into the law.
- Use it for the benefit of civil society. It can be used at the local, national, international level. We would strongly recommend that the plan of action

incorporate the use of this resolution. There are opportunities for individuals to go to New York or Geneva and use the system, or to go through organizations like ours.

Discussion

Comments from Participant 1

After the Vienna Conference in 1993, a resolution was passed by the United Nations to ensure that all treaty bodies (that is, the bodies with the competence to examine issues of human rights violations) should take on board the issues of women. And pursuant to that resolution, in 1997, for the first time, the Human Rights Committee requested two African states to remove from their constitutions those provisions which discriminate against women in the context of traditional practices in relation to access to land. The difficulty is that once the statement is met at that level it does not filter down to the domestic processes within states. It is important for women's movements as well as NGOs to get hold of those reports and go to their governments and tell them that this is the position at the international level in relation to our domestic legal system and we want to have these particular processes removed.

The second comment relates to the domestic implementation of international instruments and international standards. The Convention on the Elimination of All forms of Discrimination against Women and The African Charter on Human and Peoples' Rights (its article 18 in particular), require the removal of every discrimination against women in accordance with international instruments.

Two cases are important illustrations of this. In Tanzania, a woman inherited property in the will of her dead father, under higher customary law. Her brother then took this up with her and said, 'Sorry, you are a woman and, under higher customary law, you have no rights to inherit this property at all'. The lower courts in Tanzania endorsed this view and told the woman she had no right to inherit property. But the high courts took a different view. They looked at the Bill of Rights under the Tanzanian Constitution. They also looked at the provisions of the African Charter on Human and Peoples' Rights, plus the provisions of the Convention on the Elimination of All Forms of Discrimination against Women. They then said that although they recognised the institution of higher customary law in relation to land (and that it should exist), within that institution rights of men and women must be guaranteed on an equal basis. Therefore, the woman in question had the right to inherit her property from her father. This can serve as an important precedent.

The second case arose in the European context: it is that of *'Luizidou versus Turkey'*, (18 December 1996), which arose from evictions as a result of the occupation of northern Cyprus. The applicant was one of those evicted. She was trying to go back to northern Cyprus and reclaim her property, but she was told by the authorities that she could not do so. She then went to the European Commission and the European Court. And, to cut a long story short, not only was her right to return confirmed, but her right to have her property restored to her was too. That is obviously slightly different from the Tanzania case. However, both cases show a certain legal basis in terms of strategies. And although these strategies have limits, nonetheless they can be important to use.

Comments from Participant 2

In Kenya, land ownership revolves around titling. Title is absolute ownership. Anybody who is not registered in that title has no claim to land whatsoever. This, in my opinion, is an extreme case. But, when you think about conflict situations - and there are people displaced by conflict in Kenya - even if you were to compensate those who are dispossessed, how would you verify that they had a claim to land in the first place?

Then there is the debate around whether land is a resource or a commodity. In socio-economic realities, one, there isn't enough land to go around; two, we are talking of the empowerment of women economically and socially; and three, we have to face the reality of population growth which is worst in most developing countries in Africa. We need to address these issues.

Comments from Participant 3

Regarding forced evictions in Kigali, Rwanda, the laws allow the Government to evict people from any house or land that is not properly developed. And you only own what is on the land, not the land itself. This means that when the land is to be developed, if you are the owner of a house in the city -- which is not accepted as development -- you can be evicted and have to go somewhere else, unless you buy that land. And what you get in compensation is only the crops that were on the land and maybe the small house that was there. You just move away. In Rwanda, where many women are now heads of households, most of the poor women in the city are being evicted, and the compensation is nothing compared to the land. How can we assist these women?

Comments from Participant 4

I work in Tanzania with two NGOs, namely the HIC Women and Shelter Network and, at the national level, the Women Advancement Trust. They deal

with the involvement of women in human settlements. Women's rights of access to and control over land and to property ownership is one of the central issues that we have to deal with.

When I heard that this Resolution had been passed by the UN Sub-commission, I thought right away that it was going to be a tool for me to fight for the case at home. In Tanzania at the moment the government is preparing a new land bill. We are wondering whether it will include the equal right of access to land for both men and women. We deemed it important both to use our own experiences at home and also to bring in the international level where these problems have already been recognized and dealt with. We needed to lobby so that the government, or the lawyers who are drafting the bill, understand that this is a serious issue and, as a result, appreciate it as a matter of concern and therefore include in the bill the section on women's equal rights of access to land and property ownership.

So, I was happy when the Resolution came out, since I could use it for lobbying in order to succeed in my undertaking. I knew that I had a lot of work to do, because knowing about the Resolution myself could not help much. Thus, as soon as I received a copy of it, I had to make photocopies and distribute them to my colleagues, the lawyers and people who belong to NGOs working together on this issue. But that was not enough: the most important thing was let other women know about it. We organised women at the grass roots level for them to know that there is such a thing.

Men need to know it, too. They don't know of these resolutions which are passed at the UN in New York or Geneva. It is only the governments that sign the protocols that do. But what happens at home? People are not aware of those resolutions, and the governments feel accountable only to international organisations instead of to their people. They can say 'we have signed this, which means we are supposed to do this and that'. But the roles of the people should also be known. Grassroots women are the ones who could benefit, but unless documents like this Resolution trickle down to the beneficiaries, they are useless. You cannot get support from them. I am trying to get funds to translate the articles of the Resolution into Kiswahili, the common language of Tanzania, so that I can distribute them to more people at the local level.

I don't know how successful we have been. We are still working on it. I feel the Resolution is a useful tool to be used while we struggle to get equal rights to access and ownership of property and land.

Comments from Participant 5

Those charters and conventions are not understood by ordinary people. They are only known by intellectuals, at conferences and so on. Even policy-

makers don't understand them. There is therefore a serious need to 'domesticate' and demystify some of these documents so that they can be used by the right people. Pressure is required to make the governments that have signed those charters accountable. People do not know that their governments have signed them, and do not understand the documents which have been signed.

We can't control what has already happened. But we can get some of these things to schools, explain some of the rights we are now fighting for, and let the young girls know about them in school, so that they will grow up knowing what is their right. But this should happen not only in school but also in the homes of women who need to be enlightened. There may be women who are subject to the same discrimination we are discussing here. What can be done to ensure that some of these issues of inheritance or cultural problems are sorted out in their own homes? I think things need to be put down in documents and then implemented, if we are to achieve what we are discussing.

Comments from the authors

Unfortunately, that is not exactly how things work. It is up to us to put what is in the resolution into action. And that is where a network could be very helpful. If what is in the Resolution is included in the Plan of Action, then we as a network can go off and start advocating for the Resolution. It would work best, I think, if NGOs pushed the different levels of the UN, as well as their own governments and their own people, to take action.

This Resolution should form the terms of reference for any level of work that we are doing, whether at the local level in terms of spreading information and raising awareness -- where we are working, for example, with national parliaments and courts -- or at the international level. In post-conflict situations, where you have a lot of aid agencies trying to contribute to reconstruction, it is important that all of us bring to their attention not only this Resolution, but the international human rights and humanitarian instruments as well. It is these instruments that should form the terms of reference for any projects or programmes that are being designed, which is where this work takes on a different meaning. A number of tasks have been identified for the network in terms of distributing the Resolution, 'domesticating and demystifying' it, and putting pressure on different levels of the UN so that the work can really take off.

Afterword

Afterword

Hon. Faustin Nteziryayo, Minister of Justice, Rwanda

Your Excellencies, Ladies and Gentlemen, Distinguished Participants, Guests at this Consultation on the rights of women in the area of land and property in conflict areas and areas under reconstruction. In the name of the Government of Rwanda I would like to express the gratitude of the Government of Rwanda and myself, the Minister of Justice, for the very useful and enriching deliberations that you undertook in the course of this Consultation.

I am interested in the theme of your Consultation because it touches on a very crucial issue. It is one that is current in our country and in other countries in Africa and all over the world. We are confronted by legal structures that fail to deal with the rights of women to land and property. There is also a shortcoming in the implementation of the legal provisions that have been undertaken in order that women have their rights to property and to land.

This Consultation and other inter-regional consultations that have been held before have had the theme of looking to see how one can guarantee women's rights to land and property by enacting legislation in the areas of land and property rights and succession. You have looked towards strengthening awareness at all levels of women's rights to property. You have also tackled the need to set up networks on issues that would ensure the follow-up and implementation of plans of action. You have talked too of establishing the mechanisms of communication and distribution of treaties and international conventions in the area of women's right to property, to ensure the implementation of policies and the setting aside of the resources that need to be available in order to ensure this mobilisation.

Even if the progress that has been made in this area has been considerable, let me say that there is still a lot of work to be done. There is a lot of uncovered ground in reforming the legal structures of this country. Yet in other countries, as I have said, legislative provisions that have been accepted have not been translated into action because there is a lack of political will. In addition, we have not been able to set up a coherent and well conceived program especially in the area of sensitisation and mobilisation of the population which often times remains under certain misunderstandings, certain social and cultural misconceptions. I do not doubt that the strategies for actions and the concrete programs you have adopted will make it possible this time to lead a movement that will ensure the rights of women to land and property. Thus the follow-up mechanisms of the resolutions and recommendations that you have made will make it possible for you to reach your objectives through solidarity and co-operation at the regional and interregional level. It will make it possible for you to overcome the obstacles and problems that may arise.

For its part, the government of Rwanda commits itself to do everything it can to facilitate the implementation of the resolutions and recommendations that have been made here. I would like to give you an example. There must be an effort to eliminate the legal obstacles that exist in our country, especially in the area of the adoption of the new legislative provision of the succession of women to make it possible for women to have access to land and property. As you have already noted access to land and property is a major issue. We have to ensure that women have the right to land so that families can be more secure and comfortable. This is another area you have looked at, the ways and means to make it possible to maximise the land and property that one has. So we are talking about development of whatever property, whatever the land is available.

I would not be happy with myself if I finished my presentation without emphasising yet again the gratitude of the government of Rwanda for having chosen the Rwanda as the place that your meeting is taking place. Rwanda and the people of Rwanda will always offer you hospitality. I wish all distinguished participants of this Consultation a safe return home after a pleasant stay in this country.

Annexes

1. Plan of Action
2. List of Relevant International and Regional Instruments
3. Documents tabled
4. Declaration of Commitments
5. Government and Inter-Governmental Organisations represented

Inter-Regional Consultation on Women's Rights to Land and Property under Situations of Conflict and Reconstruction

Kigali, Rwanda 16-19 February 1998
Plan of Action

Preamble

The Inter-Regional Consultation on Women's Rights to Land and Property under Situations of Conflict and Reconstruction held at Kigali, Rwanda, 16-19 February 1998, was organized jointly by UNIFEM, UNCHS (Habitat), UNHCR and UNDP with the financial support of Sweden, DANIDA and CIDA. The consultation was hosted by the Rwandese Government. The agenda of the meeting built on the principles and recommendations for actions presented in the various UN Global Agendas such as the recent UN Global Development Agenda, Agenda 21 (Rio Conference, 1992), the Social Summit Development Agenda (Copenhagen, 1994), the Population Agenda (Cairo, 1994), the Beijing Platform for Action (Beijing, 1995), and the Habitat Agenda (Istanbul, 1996) ratified by member states as well as International Conventions, Protocols, Agreements dealing with women's rights to land and property as human rights. A complete list of these documents will be included as an Annex in the final report of this Consultation together with a list of research documents, papers and other literature provided by the participants.

Access to land, security of tenure and property rights for women under situations of conflict and reconstruction have been the main points of the debate and have been recognized as strategic prerequisites for the provision of adequate shelter for all and it is also one way of breaking the vicious circle of poverty, especially during reconstruction.

The provision of legal security and equal access to land and property for women under situations of conflict and reconstruction requires action not only by governments, but by all sectors of society, including the private sector, non-governmental organizations, communities and local authorities, as well as by partner organizations and entities of the internal community.

During the four days, more than one hundred participants from Africa, Asia, Latin America, Europe, the Middle East and the Caribbean participated in

the preparation of a Plan of Action which includes recommendations on priorities for follow-up and strategies for concrete action at international, regional and national level. The following plan of action reflects the deliberations of this Kigali Consultation.

The formulation of the present Plan of Action was preceded by a series of presentations and discussions including:

1. Personal testimonies by women from selected countries (Bosnia-Herzegovina, Burundi, Colombia, Palestine, Rwanda, Haiti, Mozambique) on the impact of their landlessness and homelessness strategies and struggle for change;
2. Possible new lessons from countries that have passed and implemented gender-sensitive land tenure policies and are putting them into practice (Eritrea, Guatemala, South Africa);
3. Analysis of existing legislation and protocols and their implications for the promotion and protection of women's access to land and property;
4. Four regional working groups to address the key issues of concern and elaborate a proposal for action based on the specific thematic issues in each region;
5. Adoption of a common Plan of Action and signing of a Declaration of Commitments.

The following Plan of Action reflects the deliberations of this Kigali Inter-Regional Consultation. It includes a common part of actions to be taken at international level, followed by regional plans of action respectively for Latin America and the Caribbean, Africa, Asia and Europe. Recommendations for action at country level have also been considered in each regional group discussion, on the basis of the countries represented at the meeting. However, they are not included in this general Plan of Action.

Global Recommendation

Women should have adequate and secure rights to land and property. These rights must be equal to those of men and a woman should not be dependent upon a man in order to secure or enjoy these rights.

International Actions To Be Taken

1. Eliminate all discriminatory laws and customary practices regarding inheritance, women's direct ownership and control of land, women's co-ownership of family land.

2. Initiate practical mechanisms and pro-active efforts to inform and permit women to exercise their rights to land and property must be created.
3. Take preventive and corrective measures for the expected undermining of women's land and property rights due to current trends of globalization and neo-liberal economic policies must be prepared.
4. Co-operate with international organizations concerned with its objectives.
5. Establish a mechanism for co-ordinating the flow of information on the implementation of this plan.
6. Lobby to include within the mandate of the Special Rapporteur on Violence Against Women, the question of access to land and property rights in situations of conflict and reconstruction.
7. Identify relevant provisions of international covenants and charters to use as a basis for claiming rights and ensuring their enforcement (NGOs).
8. Identify the international agencies already working on issues regarding women's land and property rights, as possible venues where issues can be resolved and finances and other resources identified (UN).
9. Prepare, improve upon and implement manuals of systems and procedures to help groups gain access and make use of these agencies (UN).
10. Contribute to meaningful networking among UN agencies and develop mechanisms for effective inter-agency co-ordination.
11. Popularise and disseminate information on the relevant issues and resources through multimedia arrangements, including video, posters, radio transmission, and internet, through UN publications and resources, and government-owned media (NGOs).
12. Translate identified rights into justiciable rights i.e. judicial rights that can be enforced at the local, national, regional and international levels (HIC and COHRE).
13. Lobby for expansion of the role of the UN, not just in conflict resolution but in acting to prevent the eruption of conflict (governments, NGOs...).
14. Recognise existing conflicts and act in concrete and specific ways where help can be provided by national and regional agencies, NGOs, community and lobby groups (Development agencies, UN and governments).

15. Increase the number of women occupying positions of influence within the UN system, other international bodies and at regional and national levels (UN and member states).
16. Mobilize funds to support the implementation of the Kigali Plan of Action (all participants, UN and development agencies).
17. Monitor the implementation of international conventions and treaties through the International Agencies and the International NGOs.
18. Provide financial, administrative and other forms of support for grassroots women's organizations through research, negotiations, capacity-building and solidarity (Development agencies).
19. Create a clause within the Women and Habitat Fund, when and if created, for direct support for the initiatives of women in situations of conflict and reconstruction (UNCHS).
20. Mobilize resource and policy support for women's productive development of land to which they have rights, i.e. not just for subsistence agriculture but for housing, production and economic empowerment (Private sector and development agencies).
21. Disseminate information on actions of local women's group for conflict prevention and peacemaking and support their work through networking (Women for Peace Network).
22. Encourage the UN to highlight women's key role in peace-building (UN).
23. Raise support for research and exchange of knowledge and experience on post-conflict reconstruction and women's access and rights to land and housing (Academies etc...).
24. Help strengthen the Women for Peace Network (all participants).
25. Monitor the implementation of the Plan of Action, ensure exchange of information, and hold a follow-up meeting during the 1998-2000 implementation period to review progress (Women for Peace Network).

Regional Plan Of Action For The Latin American And Caribbean Region

Fundamental Principles Behind The Regional Plan Of Action

The working group participants recognise that:

1. Pressure from women's popular movements themselves towards this right is the one crucial element to ensuring the achievement of this objective. For that reason, it is fundamental that we support their consolidation and strengthening.
2. This goal is not only a legal one but is also political, social and cultural.
3. NGOs and the United Nations system should continue to support and facilitate women's popular movements.

Strategies

1. Sensitizing and consciousness-raising.
2. Dissemination of information and education.
3. Capacity-building among the women's popular movements in order for them to acquire lobbying skills to negotiate with different government instances and with regional and international entities.
4. Developing an inventory of positive steps forward regarding women's land and housing rights.
5. Creating and strengthening mechanisms for communication and interchange between networks and organizations.
6. Demanding credit and technical assistance to women's organizations for buying land, housing and for production.
7. Maximizing efficiency and effectiveness:
 - Lobbying at the international level.
 - A campaign of dissemination of the rights of women to land and property.
 - Ensure that international organizations, as donors and financial institutions, **condition** their programmes of access to land and property to securing the equal rights of women.
8. Strengthening of networks at local, national, regional and international levels.
9. Accompanying the struggles and initiatives of the women's organizations by:
 - Elaboration of indicators.
 - Definition of mechanisms for follow-up at the local, national, regional and international levels.

Means And Instruments

The strategies will be developed through the use of instruments at different levels:

1. At regional level

- Articulate national initiatives to make the regional offices of international co-operation agencies accountable to women.
- Articulate exchanges between countries.
- Support national processes.

2. At national level

Depending on the local and national context, there will be different strategic priorities.

- Research will be carried out and debated in order to discern the viability of different forms of land/property rights for women such as individual ownership, joint title deed, collective property or co-operative ownership, with the full and equal participation of women.
- Develop alliances with Federations, NGOs and Associations of Lawyers in order to support the struggles and the strengthening of the national and local organizations.
- Citizen monitoring and evaluation groups in order to ensure government compliance with the agreements.
- Capacity-building for women in local leadership, human rights and lobbying skills.

Regional Plan Of Action For Africa³⁶

Regional Action

1. Incorporate an additional provision on women's access to land and property in the African Charter on Human and Peoples' Rights.

³⁶ It is important to explain the process of arriving at the plan. The two African groups were large, with twenty to thirty participants each, while the English-speaking group had one language in name only, incorporating Portuguese and Somali speakers too. We had intended to prepare a common regional plan but this proved impossible in the time available. The French-speaking group produced national plans for five countries: Rwanda, Burundi, Morocco, Congo Brazzaville and Chad and a common regional and global plan. The English-speaking group developed a common set of priorities and then divided into three groups to address general issues, situations of conflict and reconstruction. This report contains the French-speaking Africa recommendations on regional and global action, the three priorities selected by the English-speaking Africa group for the Global Plan of Action and a recommendation on review of its implementation. These are annotated with the comments of the plenary. The detailed plans of action are contained in separate reports.

2. Strengthen the regional component of the Women for Peace Network.
3. Pursue inclusion of the Plan of Action priorities in the UN Secretary General's Special Initiative for Africa.
4. Submit a resolution based on the Plan of Action priorities to the Arusha meeting on sub-regional co-operation on the Community Management Programme of UNHCS Habitat.
5. UNIFEM, UNDP, UNHCR and UNHCS (Habitat) to continue to provide support to the Women for Peace Network.
6. Conduct policy-level exchanges on the Mozambican and Eritrean models of secure tenure adopted from customary systems.
7. Hold a regional meeting on sharing research outputs and donor support for research and action.
8. Arrange study visits and exchange of grassroots action experience on women's access to land and property.
9. Submit resolutions on women's civil rights to Arusha meeting of governments.
10. OAU, ECA and other regional and sub-regional bodies to harmonise national policies at regional level, involving non-governmental organizations and groups, parliamentarians and civil society organizations.

National Actions

1. Promote awareness creation, popular education and media campaigns on women's access to land and property.
2. Governments to implement laws and conventions on gender equality, carry through law reform and harmonisation, and ensure equitable administration of same.
3. Inform and support grassroots women's organizations on their legal rights and roles in peace-building and conflict resolution.
4. Promote alternative secure forms of tenure, such as learning from Mozambican and Eritrean models, joint titles for spouses.
5. NGOs and professional bodies to monitor compliance with laws and conventions and pressurize governments.
6. Promote credit schemes for women to develop land to which they have access, not just for subsistence agriculture but also for other productive uses, including housing.
7. Action research on the impact of violence on women in relation to their access to land and property.
8. Accelerate implementation of the UNCHS (Habitat) Special Initiative for Africa.

Priority Actions

General Consideration:

Women's access to land and property in situations of conflict in Africa must be seen in the context of a globalizing economy, liberalization and privatization of national economies, militarism, declining state power and the growth of civil society organizations. There is no evidence that women refugees and returnees choose to revert to subsistence agriculture during periods of reconstruction. Furthermore, the social transformation of tenure rights from customary to other forms of land tenure is part of a wider social and economic transformation in African countries which is proceeding at a different pace and in different ways in different areas and of which women's land rights form a part.

There is no single formula for recommendations on tenure types for women's access to land and property. Registered titles may be appropriate in some situations and customary titles in others.

It is recommended that:

1. Land be registered jointly in both spouses' names whatever the tenure type, to ensure women's equal access thereto.
2. The forms of modified customary tenure adopted in Mozambique and Eritrea be studied and disseminated by other countries.
3. Information on women's equal rights to land tenure be disseminated by NGOs, religious institutions, professional bodies, the media, and curriculum development bodies, and through para-legal training, regional exchange visits and study tours, and above all through grassroots discussion at community level.

It is not enough to ensure women's access to land without enabling them to develop that land more intensively. Thus, resources must be mobilized for the economic development of land by women at the same time as they are assured security of tenure for themselves and their families. More intensive use of land may include agriculture, housing and other productive uses with broader economic and social benefits.

Specific global actions required are the mobilization of credit and other supports for women's productive use of land and the adoption of women's land rights and land development as a policy position of international funding agencies.

Situations of Conflict:

Women and women's organizations are known to play an important role in peace-making, conflict resolution and conflict prevention. This action by women in local communities and their support organizations in civil society are not only to be supported at the national level but also at the global level and this is a priority for the global Plan of Action.

The Women for Peace Network should disseminate information globally on the actions of local women's groups for conflict prevention and peace-making and establish networking exchanges between such groups to enhance their effectiveness.

Situations of Reconstruction:

Research is needed, based on multi-country studies, of post-conflict reconstruction in order to create gender-disaggregated databases on access to land both before the end of conflict and post-conflict, and to increase learning about the dynamics of post-conflict reconstruction and women's access to land.

Regional Plan of Action For Asia/Europe

Approach used:

The group clustered all the issues based on their relatedness:

- a) Issues on land, property, ownership Role of education/literacy
- b) Implementation/state intervention
- c) Role of international agencies, agreements and covenants
- d) The group then made the following decisions:
 1. All these issues will be considered by the two countries whose representatives presented their testimonies (namely Palestine and Bosnia-Herzegovina) once there is a semblance of normality in their respective countries. What is immediately needed are actions at the national, regional and inter-regional levels which can help solve the immediate problems of displaced people and refugees arising from their situation of conflict. These two groups require different approaches because there are differences in the parties involved.
 2. The group looked only at important lessons derived from the Asia-Pacific Region and did not make proposals for inclusion in the national programme, because there was limited representation from the region. These lessons are:
 - i) In the translation of constitutional provisions into laws, and from constitutional and legal provisions to actual practice, there is a need to ensure that these efforts are not merely "token" in character and that "hidden agendas" are recognized for what they are. There should also be no "distortion" or "deception" involved so that they do not result in merely shifting the venue of problems.

- ii) There is a need to obtain a better picture and understanding of the impact of situations of conflict on women, including their assumption of new roles besides the traditional ones. These new roles are not accompanied by increased resources or privileges or improved access to land and property.

Regional Actions

1. Undertake steps to get a more faithful and updated picture of situations of conflict and their impact on women, more particularly on their access to land and property. In this regard there should be:
 - a) Statistics and information
 - b) Access to these data
 - c) Sharing and dissemination of existing research tools, methodology and findings
 - d) Analysis of issues and problems generated
2. Identify and mobilize existing agencies such as legal research groups.
3. Implement institutional reforms:
 - a) Improve governments' capacity for governance at different levels, especially on administration of land rights, and financial/donor institutions giving grants for land.
 - b) Strengthen democratic institutions at regional level, a precondition of which is the democratization of national agencies.
 - c) Learn from relevant precedents such as those of inter-regional co-operation for socio-economic development.
4. Operationalize Inter-Regional Charters
 - a) Identify relevant agencies and determine how to use them most effectively
 - b) Municipalize international law and covenants (see Annex III for a list of these relevant and international covenants, charters and commitments). This can be done by translating them into local or municipal laws, and by providing mechanisms for individuals and groups to have direct access to regional institutions.
5. Strengthen solidarity in the region by breaking down artificial barriers, strengthening regional co-operation, leading to "people-to-people" dialogue and interaction. Benefits from this approach could be:
 - a) Containing and/or preventing conflicts

- b) Enhancing the rights of marginalized sectors
- c) Ensuring security and protection of NGOs

National Plans of Action For PALESTINE And BOSNIA-HERZEGOVINA

1. For both Palestinian and Bosnian refugees, the parties involved are:
 - a) country of origin
 - b) host country/countries
 - c) international agencies - for Palestinians, UNRWA and UNHCR, for Bosnians, UNHCR.
 - d) other countries who may want to assist
 - e) humanitarian and human rights NGOs
 - f) lobby and pressure groups

2. For both displaced and refugee women, the programme of action should consist of rehabilitation programmes which involve:
 - a) physical reconstruction of destroyed or damaged infrastructure
 - b) institution of social and economic recovery projects, including income-earning
 - c) appropriate psycho-social interventions for affected people

Specific Actions for Palestine

Parties involved and their suggested roles:

1. The Palestine National Authority (PNA), UNRWA and High Commission for Human Rights.

To ameliorate the conditions of Palestinians, there is need to:

- a) Improve the living and housing conditions of refugees inside the camps, making these more gender-sensitive.
- b) Make adequate provisions for psychological counselling.
- c) Enable returnees to acquire appropriate skills and basic resources.
- d) Assist unemployed people.
- e) Help in the democratization process.
- f) Co-ordinate NGO activities.
- g) Improve housing, infrastructure facilities (electricity, sanitation and water).
- h) Strengthen local councils through active participation.

2. Israeli Government.
 - a) Cease and desist from building and expanding their settlements, expropriating lands, demolishing buildings and other infrastructure.
 - b) Remove restrictions on the movement of Palestinians, including to Israel for employment.
 - c) Restore infrastructure which has been destroyed.
3. NGOs
 - a) There should be better inter-agency co-ordination with NGOs.
 - b) There should be more international support.
 - c) The sharing of experiences and campaigns to support the peace process.
 - d) The Palestinian Human Rights Information Centre will proceed with a participatory survey on social and economic conditions for women in the urban areas of Jerusalem and the Gaza Strip. Training workshops will follow, including the West Bank Area. Funds are required to undertake these activities.
4. There should be some kind of twin-country programme of assistance.

Specific Actions for Bosnia-Herzegovina

1. The priority is to assist in the settlement of those who are now displaced within Bosnia-Herzegovina before refugees return from exile in Europe and elsewhere.
2. Create the conditions for return of refugees through a programme of reconstruction and rehabilitation.
3. Repeal war-time legislation in the Federation of Bosnia-Herzegovina, which enables the discriminatory grant of land and housing on the basis of ethnicity and other criteria, upon the return of populations.
4. Guarantee freedom of movement and residence throughout the Federation of Bosnia-Herzegovina and the Serbian Republic as a pre-requisite for access to land, housing, and property.

19 February, 1998

A List of Relevant International and Regional Conventions, Covenants, and Resolutions that refer to Land and Property Rights

Agenda 21, United Nations Conference on Environment and Development, UNCED, Rio de Janeiro, 1992 (E.93.1.8)

Beijing Declaration and Platform for Action, Beijing 1995, (Wom 95-39642)

Copenhagen Declaration on Human Rights, Report on the World Conference on Social Development, Copenhagen, 1995 (A/CONF 166/9)

General Comment No. 4 (1991) on the Right to Adequate Housing adopted by the Committee on Economic, Social and Cultural Rights.

General Comment No. 7 (1997) on Forced Evictions adopted by the Committee on Economic, Social and Cultural Rights.

Housing rights. Strategy for the progressive realisation of the right to adequate housing. Report of the Executive Director. HS/C/16/2/Add.2 22 January 1997.

International Convention of the Elimination of All Forms of Discrimination Against Women, 1995 (General Assembly resolution 34/180)

International Convention on the Rights of the Child, date? (General Assembly resolution 48/104)

International Convention Relating to the Status of Refugees, 1951

International Covenant on Civil and Political Rights, 1966, (General Assembly resolution 2200)

International Covenant on Economics, Social and Cultural Rights, 1966, (General Assembly resolution 2200)

Istanbul Declaration on Human Settlements and Habitat Agenda, 1997 - HS/441/97E

Program of Action of the International Conference on Population and Development, Cairo, 1994 (E.95.XIII.18)

Resolution 1993/77 on Forced Evictions, Commission on Human Rights.

Resolutions 1991/26, 1992/26, 1993/36, 1994/38, 1995/27 of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities.

Universal Declaration of Human Rights, 1948 (General Assembly resolution 217A)

Vienna Declaration on Human Rights, Report of the World Conference on Human Rights, Vienna, 1993 (A/CONF 157/24)

Women and the right to adequate housing and to land and property. United Nations Centre on Housing Rights and Evictions (COHRE), 1997. (E/CN.4/Sub.2/1997/L.11/Add.1.)

African Charter on Human and People's Rights, 1982, (21 ILM 58)

American Convention on Human Rights

European Charter Against Exclusion and For Housing Rights

European Convention on Human Rights and Fundamental Freedoms

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DECLARATION OF COMMITMENTS

We, the participants at the Inter-Regional Consultation on Women's Land and Property Rights under Situations of Conflict and Reconstruction, held in Kigali, Rwanda, 16-19 February 1998, coming from many different countries of the world, from many different ethnic and religious backgrounds, from grassroots organisations, non-governmental organisations, research and professional associations and lawyers, policy makers, activists, media representatives, mayors, parliamentarians, ministers, other Government officials, United Nations officials, together commit ourselves to promote peace in all that we do.

We re-affirm and are guided by the purposes and principles of the Charter of the United Nations and we re-affirm our commitment to ensuring the full realisation of the human rights set out in international instruments and in particular, in this context, the right to adequate housing as set forth in the Universal Declaration of Human Rights and provided for in the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child. We reaffirm that all human rights - civil, cultural, economic, political and social - are universal, indivisible, interdependent and interrelated (para 26, Habitat Agenda).

We have considered, with a sense of urgency, the continuing deterioration of conditions in our countries due to structural conditions, including economic policies, militarisation, increasing civil strife and war, and increased marginalisation, which impact on entire communities and particularly on women, debilitating women's possibility from participating fully in development and significantly reducing their capacity to nurture and to build society. We are keenly aware that we have a responsibility to preserve the culture and diversity of our peoples and at the same time to promote solidarity among all our peoples. We also recognise the key role women play in peace-building and conflict resolution.

The challenges are global but communities, countries and regions also face specific problems which need specific solutions. We recognise the obstacles women face in their access to and control over land and property to create sustainable livelihoods under situations of conflict and reconstruction, and the need to intensify our efforts and co-operation to improve women's equal access to and control over land and property, and empower women to make optimal use of these resources. We commit ourselves to fostering cities, towns, villages and rural areas where women as well as men, girls as well as boys, all peoples, without discrimination of any kind as to sex, race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status, have equal access to productive and freely chosen livelihood, equal access to economic resources, including the right to inheritance, the ownership of land and other property, credit, natural resources and appropriate technologies; equal opportunity for personal, spiritual, religious, cultural and social development; equal opportunity for participation in public design-making; equal rights and obligations with regard to the conservation and use of natural and cultural resources; and equal access to mechanisms to ensure that these rights are not violated. We commit ourselves to promote the empowerment of women and their full participation on the basis of equality in all spheres of society, whether rural or urban (para 27, Habitat Agenda).

We therefore shall intensify our efforts to eradicate poverty and discrimination, to promote and protect all human rights and fundamental freedoms for all.

We commit ourselves to supporting the work of the women and their organisations, including the Women for Peace Network, in the struggle for peace and the human right to land and security of tenure.

We, the undersigned participants at the Inter-Regional Consultation on Women's Land and Property Rights Under Situations of Conflict and Reconstruction, held in Kigali, Rwanda, 16-19 February 1998, commit ourselves to the Kigali Plan of Action and to further address, in a concrete manner, over the next two years (February 1998 to February 2000) the following concerns, issues, imperatives and commitments:

UNIFEM: Laketch Dirasse, Jocelyn Croes, Lis Joosten, Rose Gasibirege: UNIFEM will continue to advocate for women's cultural, economic, social and political rights as basic human rights as. UNIFEM will:

- support (fund) an educational campaign in Rwanda in support of the draft legislation which is intended to provide women land and inheritance rights;
- disseminate the information generated by the Inter-Regional Consultation through Women Watch (website);
- fund the publication of proceedings of the Inter-Regional Consultation;
- inform its regional programme advisors about the activities and contacts of the Women for Peace Network as well as keep the network informed about UNIFEM's activities and possible co-ordination/linkage of activities;
- integrate the concern for women's land and property rights under situations of conflict and reconstruction in its programming as well as inform ongoing activities in affected regions of the outcomes of the consultation;
- collaborate with UNHCR on concrete follow-up actions for example in Guatemala, Rwanda and Burundi;
- disseminate (and update) the annotated bibliography and resource guide; and
- report on the outcomes of this meeting at the ACC and CSW.

UNCHS (Habitat): Catalina Hinchey Trujillo, Sylvie Lacroux, Angela Hakizimana, Irene Brasholt, Joseph Guiebo, Rasna Warah, Sharad Shankardass: UNCHS (Habitat) commits itself to the following:

- to give international visibility and human, material and financial resources to the Women for Peace Network in order to broaden and strengthen the network;
- to help the Women for Peace Network develop a proposal based on the Plan of Action emanating from this Inter-Regional Consultation and to look for financial support;
- to facilitate the work of the Women for Peace Network as far as the monitoring and evaluation of the compliance of each government regarding the implementation of the Habitat Agenda from a gender-perspective (on the part of governments of countries in situations of conflict or reconstruction);
- to ensure that within the Women and Habitat Fund (when and if it is created) there will be a special clause regarding support for women and their organisations who are in situations of conflict or reconstruction;
- to co-fund the publication of the proceedings of the Inter-Regional Consultation;
- to take appropriate action to include this Plan of Action in any of our new programmes or projects in countries in conflict or reconstruction;
- to implement programmes for the concrete translation of the Habitat Agenda (on access to land and security of tenure for women) and to ensure that those partners who signed the New Delhi Declaration are actually implementing it with a gender-perspective;
- to produce a video on women's peace initiatives; and
- to present the Plan of Action and Declaration of Commitments emanating from this Inter-Regional Consultation at the Inter-Agency Committee on Women and Gender Equality, United Nations, New York, 25-27 February 1998.

UNHCR: Armineh Arakelian, Great Lakes Region: UNHCR will continue to give technical, financial and advisory assistance and support to the national governments and civil society (women's associations, women parliamentarians etc.) in their initiatives, especially for the people of concern to UNHCR, in the following four areas:

The enhancement of women's participation in the economic, social and cultural human development process;

The promotion of women's human rights, especially focusing on the elaboration of inheritance law in Rwanda and Burundi;

The enhancement of women's position in law, politics and the media; and

The elimination of violence against women.

Indeed, all the recommendations and the Plan of Action resulting from this consultation, relevant to UNHCR's mandate, will be integrated within the UNHCR Regional and National strategies and programmes.

UNHCR: Paula Worby, Guatemala will:

complete research on land tenure options for Guatemalan returnee communities and the possible and practical models for women's effective inclusion;

lobby corresponding institutions to implement these models of co-partnership that ensure women's direct land access; and

help seek organisational support for Guatemalan returnee women's organisations.

UNHCR: Mahua Bamba-Parums, Somalia Unit will:

continue to provide technical and financial support to women's actions in peace building;

promote women's human rights, specifically women and children's rights;

provide financial support to women in order to improve their socio-economic positions within their communities; and

sustain "women at risk" special programmes in Kenya refugee camps, and to combat violence against women in general.

Lara Blanco, Arias Foundation for Peace and Development, Costa Rica:

The Arias Foundations webpage, as well as "CANA BRAVA", a Central American Scope Bulletin, are edited by the Center for Human Progress which will:

1. disseminate relevant actions carried out in favour of land and property rights for women;

provide information on women and access to land and property in Central America, as well as share information regarding organisations involved in this matter; and

provide logistical support for actions to be carried out in Central America.

Edna Elizabeth Calderon and Anastacia Xajil, CONCOOP, Guatemala will work to:

strengthen the vision of gender within the resistance communities of Peten;

initiate conversations with women around the topic of women's rights to land and property in situations of conflict or reconstruction (with the women members of the Permanent Commissions of Refugees and Returnees);

look for information about women's rights to land and property (the reality) and send it to the Women for Peace Network; and also

inform and develop this theme with the dispersed communities.

Susana Lastarria, Land Tenure Center of the University of Wisconsin, USA will:

disseminate on our homepage (internet) the information from the Women for Peace Network; and

incorporate the priorities of the Women for Peace Network in the research which I am carrying out in Latin America and the Caribbean, Eastern Europe and some African countries.

Sonia Rabello de Castro, Municipality of Rio de Janeiro and the University of Rio de Janeiro, Brazil will:

organise and disseminate, through Habitat's Bureau in Rio de Janeiro (if they consent), the studies and the results of the legal formulations and practice of urban land and property regularisation and property rights in the Rio de Janeiro case;

offer legal articles and research on urban law and property access rights in Brazil and other South American countries (this conditioned on availability of information); and
 depending on the willingness of the UNCHS (Habitat) Regional Office for Latin American and the Caribbean, organise and disseminate, through this office, the significant legal, legislative information and positive case studies on urban law and property rights in Brazil and other South American countries.

Gloria Cuartas, NGO "Umbrales", Colombia will:

co-operate in the dissemination of the Action Plan of the Inter-Regional Consultation in Colombia through the Ministry of Women's Affairs, the Federation of Municipalities and mass media;
 replicate this focus within "Umbrales", a Colombian NGO;
 include (with UNESCO) the Plan of Action which comes from this Consultation in the project entitled: "Cities For Peace" and also make sure it has a gender-perspective;
 share my own experience as Mayor of a Municipality in the middle of an armed conflict with other Municipalities in similar situations; and
 give the Plan of Action to the Colombian Government so that women will be directly included in the Council of Peace which is being created in Colombia.

Guadalupe Maria Garcia Hernandez, Guatemalan Women in Chiapas, Guatemala:

I commit myself to fight for women's right to land in Guatemala as well as what we are already doing in Mexico.
 I promise to support women's active and equal incorporation into the co-operatives (i.e. Mama Maquin).
 I will visit the different communities of returnees and also carry out meetings with the men regarding women's rights to participate fully.
 I will elaborate a document on the commitments of women and men and institutions for the support of women.

Mama Maquin Guatemalan Refugee/Returnee Women's Organisation, Guatemala will:

continue struggling for women's right to joint ownership of land in returnee communities;
 encourage women to participate actively in community co-operatives;
 visit returnee communities to strengthen women's struggles;
 meet with representatives of each group of returning refugees, including men, to discuss and define women's inclusion;
 and
 produce a document to which women, men and institutions can commit themselves to enabling the participation of women in the co-operatives and their communities.

Diana Lee-Smith, Mazingira Institute, Nairobi, Kenya and Women and Shelter Network/Habitat International Coalition will:
 exchange information including study visits and internships on women's access to land and property in the East African and Southern Africa Sub-region;
 write articles on the Women for Peace Network activities in our Regional Newsletter: Settlements Information Network Africa (SINA); and
 promote the Habitat International Coalition (HIC) mission to Brazzaville, Congo to investigate women's loss of land and property in the recent conflict (1997).

Leilani Farha, The Centre on Housing Rights and Evictions, Geneva:

As a representative of the above organisation I make the following commitments to the Women for Peace Network:
 provide informational resources that may assist the network in reaching its goals as stated in the Network's Plan of Action; and

assist members of the Network to better understand and to use the UN system to promote issues of particular concern to the Network and to assist the Network in reaching its goals as stated in the Plan of Action.

Tabitha Siwale, Executive Director WAT (Women Advancement Trust) and International Secretariat for the HIC: Women and Shelter Network and Member of Parliament, Tanzania:

I will do the following:

lobby my government so that the coming Land Bill is gender-sensitive;

continue working on an educational campaign on women's equal right to, access to and control over land and property; and

disseminate information through the HIC Women and Shelter Network Newsletter, issues on women's land and property rights under situations of conflict or reconstruction.

Rachel Waterhouse, Action Aid, Mozambique: As an NGO worker, I will undertake:

to conduct and promote research into the obstacles facing women in securing access to and control of land and in securing their livelihoods;

to train on gender sensitivity in formulating and implementing land policies; and

to campaign to further promote the protection and extension of women's land rights.

Ismael Ossemame, UNAC (Union Nacional de Camponeses), Mozambique: In the name of my organisation and in my own name, I commit to do the following:

organise and participate in the programmes which the Farmers Union carries out at the national level in defence of the lands rights of the poor, in general, and women in particular;

carry out training programmes for women, including information on their rights to land as contained in the Mozambican Land Bill;

work with NGOs, especially those which support women, strengthening their programmes of direct capacity building for women in the area of land rights;

disseminate the decisions taken at this Inter-Regional consultation through NGOs and CBOs in Mozambique; and

participate in the dissemination of the information on the experience and results of our work on this subject in Mozambique at the regional and inter-regional level.

Murtaza Jaffer: I, Murtaza Jaffer of the Kituo Cha Sheria and of the Centre for Governance and Development, Nairobi, Kenya, commit myself, individually and in conjunction with the several NGOs and professional organisations that I am a member of, to:

disseminate the results of the Action Plan developed at this meeting to all these organisations;

seek to influence these bodies and particularly the Law Society of Kenya, the Law Society for East Africa, the International Bar Association, the Muslim Consultative Council, the NGO Coalition for East Africa, the National Council of NGOs - Kenya and other regional NGO umbrella bodies like TACOSODE, TANGO and ANGOZA (in Tanzania), DENIVA and Uganda NGO Coalition (in Uganda), MWENGO (in Zimbabwe), the Civil Society Indian Ocean Rim Network (in Mauritius) and the NGO umbrella bodies in Ethiopia and Eritrea to take on board and establish local programmes and activities that relate to women's rights and access to land in general and in cases of conflict in particular;

engage UN bodies, the OAU structures and the East African Co-operation Secretariat in making themselves more visible and their activities and functions more transparent and accountable;

promote legal and human rights based alternative land tenure arrangements for communities and women in order to enhance their rightful and fundamental access, possession and control over land and other property and resources;

engage the newly established Ministry of Women and Youth in Kenya to ensure a human rights based approach to its work plans about to be developed;

subject to the support of the UNCHS (Habitat), promote the development and dissemination of official positions and statements from all religious and cultural institutions in Kenya on their respective stands on the rights of women generally and women's rights to land and property in situations of conflict in particular and on land tenure security for women in principle; and

engage the newly formed Constitution of Kenya Review Commission to study and integrate the basic and fundamental right of women to access, control and management of land and property, especially public lands and property of which the government is a trustee for all citizens.

Yasmin Jusu-Sheriff Fofanah, Sierra Leone: I commit myself to:

ensuring that "The Sierra Leone Women's Forum in Guinea" group will be an active member of the Women for Peace Network;

initiating and promoting an open debate amongst Sierra Leonean women and the public in general on issues of women's land and housing rights in situations of conflict and reconstruction; and

disseminating the Action Plan of this Inter-Regional Consultation and information on the Women for Peace Network to Sierra Leonean women's groups.

Miloon Kothari - Habitat International Coalition, Geneva: On behalf of the Habitat International Coalition I will:

work towards fully integrating all issues of women's human rights to housing, land and property throughout the work of HIC; and, in particular,

integrate these issues into the global work of HIC's Housing Rights Committee, in close co-operation with HIC's Women and Shelter Network. Women's human rights to housing, land and property will figure prominently in all research, publications, fact-finding, lobbying, advocacy and access at the UN Human Rights Programme, training at local, national and international levels and in urgent actions undertaken by HIC's Housing Rights Committee.

Asteya Santiago, Phillipines: I will involve student interns in relevant programmes of the UN, other international agencies and women's groups to help disseminate the information and monitor implementation of this Plan of Action. I will assist in integrating gender issues in all legislation under consideration.

Jihad Abu Zneid, Palestinian Human Rights Information Center, Palestine: I will commit myself and my organisation to work closely with the Women for Peace Network, especially in the following:

disseminating the Plan of Action of this Inter-Regional consultation in Palestine, through NGOs and Human Rights Organisations and the Ministry of Welfare and Planning;

building capacity among grassroots Palestinian women regarding their rights to land and property;

participating with other women's organisations in training grassroots women and encouraging horizontal exchange;

training young leaders in Palestine regarding the importance of women's leadership roles; and

continue lobbying with the UN Committee on Human Rights in Geneva.

Hon. Tabitha Sei (MP, Kenya), Monica Mbaru, Makumi Mwangiru, Njeri Karuru, Bethes Kokach, Carole Doucet (CIDA - Canada), coming from NGOs and bilateral organisations, commit ourselves to promoting peace through various individual and collective actions and programmes in Kenya, especially networking, lobbying and sensitisation.

UNHRFOR: Isabel de las Casas, Maria Agnes Mukangwije, Angelique Mulazayire, Annette Lyth: We commit ourselves to: the active dissemination of relevant international and national provisions on women's rights;

strengthening work with women's associations; and
 taking appropriate actions to implement specific programme for the promotion of women's rights in co-operation with other UN agencies.

Françoise Ngendahayo, United Nations International Criminal Tribunal for Rwanda in Arusha:

I commit myself to continue playing an active role in advocating women's access to land and property.

I also re-confirm my commitment in advocating for women participation in conflict resolution mechanisms, as well as lobbying for and highlighting their crucial role in peace making/ peace keeping to be recognised and exploited.

I particularly commit myself to be active in the Great-Lakes Sub-region, fostering justice for sustainable peace and reconciliation.

Augustine Deumiandje, member of the Executive Bureau of the Women Lawyers' Association, Tchad: According to the constitution and the laws No. 23, 24, 25 and the statutory order No. 186, 187, 188 and land tenure, I, Augustine Deumiandje, member of the Executive Bureau of the Women Lawyers Association of Tchad, commit myself on behalf of my Association to reinforce our fight to protect women's rights, especially women's land rights.

To reach this objective, our strategies will be undertaken on two levels:

a survey on women's access to land; and

training of trainers on this subject with the aim of sensitising many women.

Julienne Ondziel, President, National Committee on Women for Peace: I commit myself in my own name as a member of CHDHP to:

ensure that the law in the additional protocol of the African Charter considers women's rights to land and property in situations of conflict and reconstruction. This bill is currently under consideration by the Commission;

to collaborate with the Women for Peace Network in the implementation of all actions for the prevention, management and resolutions of conflicts; and

to link the Women for Peace Network with an African sister organisation, the Federation Network of African Women for Peace (FERFAP) of which I am the Congolese Representative.

Nathalie Gahunga: OXFAM UK/I Rwanda:

I commit myself in my own name to:

promote sensitisation, especially with my organisation, on the fundamental right of women at all levels to have access to land and property; and

motivate my organisation to help local NGOs and the Ministry of Gender, Social Affairs to activities inform and sensitise on women rights to land and property.

Burundese delegation: commits itself to working hard to ensure that this Plan of Action is implemented during the target period. The following four actions are to be implemented.

Co-ordination of the law on inheritance, matrimonial systems and gender equality.

Information and training of women on their rights.

Sensitisation and education of political decision makers at all levels.

Support women disaster victims under situations of reconstruction and resettlement in order that priority be given to women in gaining access to land and housing.

Rwandese delegation: commits itself to:

gather data on the number of homeless persons and those without property in Rwanda and assess how many of them are women;

educate and sensitise policy-makers at all levels on women's rights

lobby decision-makers to accelerate the adoption of the current bill on land tenure, inheritance laws, and matrimonial systems;

when the bill is passed, disseminate and popularise of the laws throughout the Rwandese population; and

help women to regain and maintain their rights.

Itto Zedguy, Democratic Association of Morocco Women:

I, as a representative of ADFM, commit myself to facilitate Moroccan women's access to land and property by dissemination of information on these issues.

Conclusions

This Inter-Regional Consultation marks a new era of co-operation, an era of a culture of peace and solidarity. As we move into the twenty-first century, we offer a positive vision of human solidarity, a sense of hope for our common future and an exhortation to join a truly worthwhile and engaging challenge, that of building together a world where everyone can live in a safe home with the promise of a decent life of dignity, good health, peace and hope. Today, in the presence of this august assembly, we sign our pledge: (signatures follow)

Entities represented

Government Ministries and Municipalities represented

Ministry of Gender, Family and Social Affairs, Rwanda
 Ministry of Justice, Eritrea
 Ministry of Justice, Rwanda
 Ministry of the Interior, Rwanda
 Ministry of Promotion of Women and Social Action, Burundi
 Ministry of Women's Affairs, Haiti
 General Attorney, Rio de Janeiro, Brazil

Institutes of Higher Learning represented

Center for Women's Studies and School of Urban and Regional Planning, University of the Philippines
 London School of Economics, London
 University of Wisconsin at Madison, Land Tenure Center.

United Nations entities represented

United Nations Centre for Human Settlements (Habitat) - Angola, Kenya
 United Nations Development Fund for Women (UNIFEM) - Kenya, USA
 United Nations Development Programme (UNDP) - Rwanda
 United Nations High Commissioner for Refugees (UNHCR) - Guatemala, Kenya, Rwanda
 United Nations Human Rights Field Operations in Rwanda - Rwanda
 World Health Organization (WHO) - Rwanda
 Centre on Housing Rights and Evictions (COHRE) - Geneva

Other entities represented

Canadian Embassy, Rwanda
 Canadian International Development Agency, Kenya
 Commission Africaine des Droits de l'homme et des peuples, OUA - African Commission on Human and Peoples' Rights, OAU.