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GENDER AND PROPERTY RIGHTS WITHIN POSTCONFLICT SITUATIONS



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Cover photo: A Malian woman tends a garden in a women's agricultural cooperative. USAID.

GENDER AND PROPERTY RIGHTS WITHIN POSTCONFLICT SITUATIONS

Susana Lastarria-Cornhiel

Land Tenure Center, University of Wisconsin-Madison

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Preface

Women's rights in, access to, and control over land, housing, and other property continue to be limited all over the world. Gender-biased laws, traditional attitudes toward women, and male-dominated social hierarchies pose obstacles to women attaining equal and just rights. The situation tends to be worse in wartorn societies.

Absent property rights, a cross-section of war-affected women—refugees, internally displaced, and heads of households—tend to live in dire poverty and deprivation. Everywhere, women without property rights find it more difficult to gain access to credit that allows them to invest in agriculture or micro-enterprises.

USAID's Center for Development Information and Evaluation (CDIE) commissioned this paper from the Land Tenure Center of the University of Wisconsin-Madison. The paper discusses the nature of women's property rights in wartorn societies, reviews the types of assistance provided by the international donor community, and outlines a few policy and programmatic lessons.

I am grateful to Dr. Susana Lastarria-Cornhiel for producing an excellent paper. Nancy Rockel of USAID's Office of Women in Development conducted initial reviews of USAID documents, helped write the scope of work, and reviewed early drafts. Cindy Arciaga supervised contracting arrangements with remarkable efficiency, and Hilary Russell ably edited the paper. My thanks to all of them.

Krishna Kumar
Senior Social Scientist
USAID

Executive Summary

This paper provides an assessment of the nature of women's property rights in regions plagued by violent conflict, reviews property rights programs funded by donors in postconflict situations, and attempts to tease out major policy and programmatic lessons. It also examines the importance of land rights and the status of women in societies that have strong customary norms and practices regarding land tenure. After exploring issues around the acquisition of land rights by women, the paper presents case studies of gendered rights to land under different types of postconflict situations, focusing on policies and programs for improving women's land rights. Policy and programmatic recommendations are offered for improving gender equity in postconflict land tenure systems.

Background

In many regions of the world, households, communities, and societies are destroyed by civil war, invasions from neighboring countries, and interethnic violence. During periods of violence and conflict, the destruction of material and physical resources is devastating for families and communities, particularly for low-income populations. The destruction, however, goes beyond the material and physical. Community cohesion, governance institutions, community authority structures, and socioeconomic

subsistence networks are also destroyed, leaving the most vulnerable—such as women and children—destitute and with minimal recourse for even their daily survival. Often families flee the violence and destruction to other parts of their countries or to other countries, leaving most of their belongings and assets behind.

The process of rebuilding communities' social structures and institutions is slow and uneven. Nevertheless, the restoration of civil and human rights to all groups—including women—is the basis for rebuilding a democratic postconflict society. Land and housing make up one crucial set of rights. Property rights are recognized as an important factor in the struggle to attain economic development, social equity, and democratic governance (e.g., Herring 1999). As cultural heritage and a productive resource, the value and meaning of land is universally recognized. Its social and psychological values for rural families are also important. The challenge is to improve social equity while working for peace, security, and reconstruction. But peace must be understood as more than the absence of war and violence; reconstruction must be seen as more than bricks, roads, and telephone networks; and security must be defined as more than a strong military force.

The international community has begun to acknowledge the link among women's

lack of rights to landed property and increased levels of poverty among women, particularly in postconflict societies. The UN's Habitat Centre brought attention to this crucial issue in 1998 by commissioning a number of papers and holding an international conference on Women's Land and Property Rights under Situations of Conflict (UN Habitat 1999). However, only limited progress has been made in strengthening women's rights to landed property. Women are consistently excluded from postconflict reconstruction efforts. They are thus unable to ensure that their interests are addressed. Gender-biased laws remain the primary barrier to secure land rights in many countries. Even where women have legal entitlement to ownership, they continue to be denied land rights, primarily for cultural and political reasons.

Land Rights and Gender Equity

Gender equity and land are two very political issues. Struggles for land and gender equity are related to power and the process of empowerment. Whether land represents an important cultural resource or a productive factor and capital asset, those who control land rights have a certain amount of power over those who do not, especially in rural areas.

Land rights for women are obviously important, since women have an increasingly crucial role in the survival of households and communities. In most regions, women tend to be ultimately responsible for children and other dependents, whether there is a male reference person present in the household or not.

Struggles for land and gender equity are related to power and the process of empowerment.

Female-headed households are on the increase because of civil wars and violent conflict, migration, disease and epidemics, and male parental abandonment. But even when a male spouse is present, in many societies women are responsible for obtaining, processing, and preparing food; providing and obtaining healthcare; and clothing their children and other dependents. Women's increasing responsibility in reproducing and maintaining the family has resulted in a

rather complex and demanding livelihood strategy. This strategy is dependent on secure access rights to land and housing.

Although household income has become less dependent on agriculture in many countries, land continues to be a crucial resource for the survival and reproduction of rural populations. For smallholders, land rights are not primarily marketable assets. Rather, such rights provide a secure base on which to shelter and nurture families and develop livelihood strategies. Family members who migrate to urban or industrial areas in search of wage labor often rely on the support of families left behind. When such workers become unemployed, family homes and land can often reabsorb them until they find wage work again. In uncertain postconflict situations, land as a secure place to raise families and a base for diversified livelihood strategies becomes even more important, particularly for female-headed households.

A study in El Salvador tracked the effects of asset ownership and labor markets on managing economic insecurity (Conning, Olinto, and Trigueros 2001). The study showed that households owning even small amounts of land or other productive assets were better able to protect the marginal return to household labor and maintain their children in school in years of economic hardship.

In response to shocks, households could fall back on farm and self-employment when they could intensify the use of land and other owned assets. Nonfarm employment options were also important, but the way in which households juggled their time between different types of employment was highly fluid.

Though women increasingly participate in agricultural production and assume more responsibility for families, war and violent conflict often destroy traditional safeguards or safety nets, leaving women with no access to resources. Resources controlled by women are more likely to be used to improve family food consumption and welfare, reduce child malnutrition, and increase overall wellbeing of the family (e.g., Blumberg 1991, von Braun and Kennedy 1994, Hirschmann 1984). Food security and family wellbeing are thus important benefits of protecting or enhancing women's rights to land.

Status of Women

Access to land and housing has ramifications beyond productive capability and household survival. Secure access to landed property—be it land for agricultural production or housing for shelter—is also a basic human right. Gradually, over the last few centuries and particularly during the 20th century, civil society and state institutions have recognized that there are no second-class citizens: all persons have the same human rights, including social, economic, and political rights. Civil society has worked toward recognizing equal rights for all persons, regardless of gender, ethnicity, and civil status. International institutions have had an important role

in this struggle, and the United Nations has ratified this basic human right to land, property, and adequate housing.¹

The recognition of human, social, economic, political, and other civil rights in constitutions, civil codes, and other legal norms is necessary and basic, providing a legal basis for program objectives, assumptions, and activities. This legal recognition, however, does not always result in the institutional changes needed to end gender-based discrimination. Political opposition or social and cultural norms may inhibit or constrain the recognition, acceptance, and internalization of such rights.

Patriarchy, patriliney, and an extended family structure are distinctive features of most customary societies. They define who belongs to the community and who are full members. Patriarchy implies that senior males hold most significant rights and powers; women and junior males do not have the same rights and hold a lower status. While junior males eventually outgrow their secondary status, women generally do not. In addition, women who marry into a family and community are usually considered transient family members. Patriliney means that men are the medium through which a family's bloodline is traced and wealth, property, and status are passed on. Nevertheless, the

extended family and its expansive network of kin provide women and other people with lower status with a secure basis of material support and protection, including access rights to land.

For many decades, however, customary societies have tended to set aside some of the safety-net features that provide for and protect women and minors.² One example is "land snatches" from widows and orphans by male relatives of men who die from HIV/AIDS (Cross 2002). The social network also tends to break down during violent conflict and population upheavals, leaving women without rights, status, and resources. Thus women—and the children and elderly who depend on them—increasingly find themselves without community and family support and without the resources, including land, to provide subsistence and homes for themselves. In addition, women continue to be considered second-class citizens, without the status and power to demand their legal rights and their basic human and civil rights.

The denial of land rights to women in postconflict situations results in their continued political, social, and economic subjugation. The right to landed property is an indication of citizenship or membership status. Generally, those allowed to hold landed property are considered citizens with a complete set of that society's rights (such as rights to use public resources, vote, hold of-

1 A number of UN resolutions have emphasized the importance of secure rights to land and housing, including Resolution 1997/19, "Women and the right to adequate housing and to land and property;" Resolution 1998/15, "Women and the right to land, property, and adequate housing;" both by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities. Another was Resolution 42/1, "Human rights and land rights discrimination," by the Commission on the Status of Women.

2 As customary societies transition into market economy-based societies, they tend to take on practices such as individual property rights and land sales. This tendency, observed by Platteau (2002), affects elderly parents as well as women in a number of African countries.

fice, and receive benefits). Democratic governance is based on social equity and empowerment for all community members.³ Excluding women from equal property rights denies them full citizenship status. As Herring (1999, 29) put it, “It seems clear from everything we know about oppression, exclusion, and opportunity that redressing gendered inequalities in much of the world must include reform of property relations.”

Gendered Land Rights

Access to land and control over its use are the basis for food and income production in rural areas and, more broadly, for household wellbeing. Access to other productive resources, such as water, irrigation systems, and forest products, is tied to land rights as well. Since women in many societies often have only indirect control over resources, they tend to lose their user rights and other indirect rights to land when violent societal changes, such as civil war, invasion, or genocide, occur. Men from families and communities who traditionally controlled land resources are often killed, or they flee and are unable to return. As land becomes a valuable asset, family and community members who would have respected a woman’s access rights to land in the past may violate or ignore those rights, particularly in the case of widowed, abandoned, or divorced women. The situation becomes increasingly problematic as the number of female-headed households increases

3 As a USAID Office of Women in Development conference involving recipients of a NGO small grants program stated, “Paying attention to women’s rights is part of the democratization process” (Steinzor 2003, 17).

throughout most regions⁴ and in postconflict situations.

Gender-biased laws remain one of the primary barriers to secure land rights in many countries. But even where women have legal entitlement to ownership, tradition and patriarchal norms prevent them from exercising their legal rights or having them enforced. Another major constraint is that women (and men) are often unaware of their rights or they lack access to a legal system that would enable them to claim their legal rights.

4 In an increasing number of rural households, a woman is the head or the reference person. Such households represent 42 percent of the total in southern Africa and 35 percent in the Caribbean (United Nations 2000, 42, 46–50). Not only are rural households increasingly headed by women, but the percentage of women in the rural labor force has increased in all developing regions during the past decade (FAO 1999, 13).



Issues in Gaining Access to Landed Property

The general mechanisms to obtain rights to landed property are inheritance, purchase, and allocation or entitlement from the state. Three institutions regulate these mechanisms and determine who has land rights: sociocultural structures, the market economy, and the state. Examining the influence of these mechanisms and institutions on tenure systems contributes to an understanding of gendered rights to land and to policies and programs for improving gender equity with regard to land rights. Depending on a country's historical development and current socioeconomic and political conjuncture, one mechanism is generally more important than the others in acquiring land rights. However, none is solely determinant: all mechanisms and accompanying institutions influence and interact with each other in determining a society's specific tenure relations.

Acquiring Land Rights from the State

The state is the ultimate guardian of land and protector of property rights. The state determines and secures land rights through legislation and regulations, land administration agencies and programs, and land or tenure reform programs. The role of the state in allocating land and housing affects the resettlement of refugees and returning displaced persons.

Across societies and regions, the strength and stability of state institutions vary considerably and influence their levels of efficacy. In postconflict situations, an added problem is the destruction of legal property records. Often, state and local government offices and their contents, such as landed property records, are destroyed during civil war and violent conflict. This further complicates attempts to sort out property rights and claims to land during the reconstruction period.

The state determines legal rights to land and enforces these rights (tenure security) through land titling and registration (land administration). The judicial system also participates in enforcing land rights and resolving conflicts around land rights. To give smallholder families legal title to the land they already occupy, numerous countries have implemented titling and registration programs through land administration agencies. Efforts to establish effective land administration programs and enforce gender-equal legal rights, however, have encountered numerous problems. One problem is related to weak state institutions; the other relates to the cultural resistance to gender equity relating to land rights.

Land titling programs in Latin America, the Caribbean, sub-Saharan Africa, eastern Europe, and Asia generally have not targeted women. Reasons include legis-

lation that does not explicitly guarantee women's rights, titling processes that focus on titling men, cultural norms that bias titling procedures, and specific constraints that women face in dealing with public institutions and officials.

Joint titling has been recommended as a means of ensuring that women's names are included in title documents for lands acquired by families. Studies suggest, however, that joint titling often confronts the same difficulties in extending property rights to women as "traditional" titling programs that title only one household member.

In Nicaragua during the 1990s, after several decades of civil war, significant progress was made with respect to women's land rights with support from USAID and the UN Food and Agriculture Organization. As a result of gender-conscious legislation and vigorous dissemination, training, and promotion of joint titling and individual titling of women, the number of women who gained legal rights to land dramatically increased. While only 10 percent of land titles were issued to women during the 1980s, women received 25 percent of land titles between 1992 and 1996 and 42 percent of them between 1997 and 2000 (Ceci 2000). While this increase is significant, it is lower than it should have been. Further, much of the joint titling involved fathers, sons, and brothers. Only 25 percent of joint titles between 1992 and 1997 were issued to spouses (Lastarria-Cornhiel et al. 2003).

The state may also be involved in allocating state land or redistributing land to smallholders and returning refugees, either as land reforms, settlement pro-

grams, or market-assisted redistribution programs. During the second half of the 20th century, most countries in Latin America, many in Asia, and several in sub-Saharan Africa undertook land reforms to redistribute agricultural land from large estate holders to landless or near-landless rural populations. Many such programs occurred after civil war or other types of violent conflict: after civil wars in Nicaragua, El Salvador, and Guatemala, and after violent struggles related to independence or ethnic conflict in Mozambique, Rwanda, and Zimbabwe. Some Asian countries also experienced land reform by occupation forces (such as Japan after World War II) or after civil war (such as Vietnam and China).

In most of these reforms, the question of women's rights to land was not considered, and the overwhelming majority of land beneficiaries were men. There are more recent attempts to improve that record, but most reform programs lack data disaggregated by gender, making it difficult to determine the exact level of women beneficiaries. In spite of any legislation guaranteeing equal rights for all citizens, sociocultural norms regarding women's land rights are often replicated during program implementation. For example, a resettlement program in Cameroon initiated in the 1980s targeted young men, although women are the primary farmers (Goheen 1988). Neither lineage authorities nor national bureaucrats were willing to allocate land to women. A review of redistributive land reforms in Latin America (Deere and Leon 2001) revealed that the percentage of women beneficiaries in 12 countries varied from 3.8 in Honduras

to 17.2 in Bolivia. Other land redistribution programs, such as the one in South Africa, may include gender equity in policy objectives, but they fail to operationalize gender priorities and objectives or take into account cultural obstacles to granting land rights to women (Walker 2003). Market-assisted land distribution programs seldom have gender equity objectives nor do they target poor women farmers. Instead, their procedures do not seem to attempt to include women; data collected and surveys conducted are generally not disaggregated by gender. A possible exception may be the land bank established in Guatemala after the Peace Accords of the early 1990s (described below).

In summary, how well state institutions protect land rights, including women's rights, is not only determined by their presence and strength at local and national levels, but also by institutional mechanisms for establishing *legal mandates* on gender equity, determining *gender policies*, and *implementing programs with a gendered focus* that protect and enforce women's rights to land.

Acquiring Land through Inheritance

Land rights in societies with strong customary practices and traditional social structures are generally determined by sociocultural and religious institutions. These customary tenure systems are diverse, with a large variety of property relations and rights, including individual land rights. In sub-Saharan Africa and many regions of Asia, land ownership rights are often vested in the com-

munity or another corporate structure such as a lineage or clan. A significant proportion of the land is controlled by the group and managed according to community rules. Community members may have different types of rights to natural resources, depending on their lineage, ethnicity, status, gender, and marital status. Land allocated to individuals on a long-term basis tends to be parcels for food production, building a home, or raising small animals. How this land is initially allocated to households depends on the particular customary system. Most land parcels under individual or household control are transferred through inheritance, not through the market.

Inheritance rights and practices are generally patrilineal or matrilineal. In patrilineal inheritance, land is generally handed down from father to son. If a man does not have a son, his property is most likely inherited by his brother, nephew, or another male relative. Daughters and wives do not generally inherit landed property.

Inheritance practices in matrilineal societies are more diverse.⁵ In some matrilineal communities—for example in Malaysia (Stivens 1985) and India (Agarwal 1988)—lineage and property are traced through the mother's line, and land is passed from mother to daughter. In other matrilineal communities—for example, in southeastern Africa—although lineage and property are traced through the mother's line,

land is generally passed from maternal uncle to nephew. In addition, rights to land and other resources are more diffuse. Land and other wealth tend to be distributed and redistributed among lineage members through the mechanism of inheritance.⁶ As the market economy exerts its influence by making agricultural production practices more labor-intensive and market-oriented, there are tendencies for matrilineal societies to become less extended and more nuclear, for property rights to become less diffuse and more concentrated, and for families to adopt the more restrictive practices of patrilineal inheritance (Lastarria-Cornhiel 2000).

A small number of societies practice bilateral inheritance: both daughters and sons inherit property—including landed property—from their birth families. This type of inheritance appears to be the most gender equitable. Examples can be found in Ecuador (Hamilton 1998), Java (Brown 2003), and Sumatra (Quisumbing and Otsuka 2000). For example, sons and daughters in Java inherit land in equal portions. If they move to a distant location, they either loan the land to a sibling to work in exchange for a portion of the proceeds or sell the land to a relative or third party. If they sell, they often use the proceeds to purchase land in the village where they currently live (Lastarria-Cornhiel et al. 2003). Muslim societies also formally recognize a daughter's rights to inheri-

tance, although her share will be smaller than that of sons.

In spite of inheritance norms entitling daughters to inherit some family land, they do not inherit any land in a number of countries where Muslim law is practiced. Daughters concede such rights to brothers to avoid conflict and maintain extended family support. This practice is commonly found in eastern European and central Asian countries that were previously part of the Ottoman Empire⁷ and in sub-Saharan Muslim Africa. For example, while Muslim norms in Senegal (Platteau et al. 2000) give daughters inheritance rights to family property, inheritance practices pass land on only to sons. The Islamic norm of bilateral—albeit not equal—inheritance has not been observed, but rather the previous customary norm of extending inheritance rights only to men is practiced.

Since land within customary tenure belongs to a family or lineage, persons who marry into a family do not have rights to that land. In addition, most customary societies are patrilineal, exogamous, and virilocal, which means that a woman who gets married leaves her birth family and community to join her husband's family and community. A married woman does not customarily inherit land from her father; it is felt her husband's family and lineage would ultimately obtain control over it. However, a woman who marries into a family does not acquire rights to that

5 There are relatively few matrilineal societies, mostly in southeastern Africa (such as northern Mozambique, Malawi, northern Zimbabwe, and southern Zambia), western Africa (such as Ghana and Senegal), and southeast Asia (such as Laos, Malaysia, India, and Indonesia).

6 In many matrilineal societies, diffuse property rights and redistributive inheritance practices impede concentration of wealth, including land. This type of redistributive inheritance results from the extended-family nature of matrilineal societies.

7 For example, see Giovarelli (2003) on Kyrgyzstan, Lastarria-Cornhiel and Wheeler (2000) on Albania, and Lastarria-Cornhiel and Clarke (1996) on Macedonia.

family's land either. A widow, particularly if she has children, is generally permitted to stay on and work her dead husband's land until her sons can take over its management.⁸

Inheritance practices change as customary societies adapt to land scarcity and market conditions and land becomes a valuable asset.⁹ The responsibility of the husband's family to the widow and minor children—particularly daughters—is minimized, if not ignored; the widow is expected to return to her birth family. Nevertheless, a widowed or divorced woman does not have the same customary rights to her birth family's land as her brothers. She must negotiate with her father and brothers and may obtain temporary access to some of their land in order to support herself and her children. In postconflict situations, inheritance rights of widows become a crucial factor in the survival of families. Displaced women who return to land they worked with their husbands may find it occupied by male relatives who deny them access.

8 The levirate custom, for example, assigns the widow to a male relative of her deceased husband—perhaps his brother. As his wife, she retains use rights to the family's land. The practice of levirate, however, is being abandoned. Whether widows with children—particularly male children—can continue living on and farming their husbands' lands generally depends on the particular situation and context (Platteau 2002).

9 These changing practices have been highlighted in a number of studies, including several funded by USAID's Office of Women in Development (Steinzor 2003). Most of the original country studies were not available for review.

Acquiring Land through the Market

Market economy institutions also play a significant role in determining land rights. Market economies are generally based on private property rights and the marketability of these rights. Consequently, land rights are generally acquired through the market—buying and selling or leasing at market values. It is assumed that other productive factors—such as capital and labor—are also acquired via the market at values set by the market.

During the 1990s, socialist states in eastern Europe and central Asia initiated a transition to market-based economies. Beyond legislation, these countries put in place policies and programs to encourage the development of a market economy. In regions such as sub-Saharan Africa, another type of transition is occurring. The market economy is replacing community-based land rights with private and individual property rights and is replacing subsistence production with commercial agriculture.

An economy based on market needs implies that a previous set of rationalizations or motivations for the determination of land rights—such as access to land for all community households—is replaced by ownership rights to land for those who can pay the market price. In addition, as capital markets become more globalized, owners of capital require private property rights that give them almost complete control over property¹⁰ and the flexibility to

10 Even with private and individualized property, the state reserves rights such as eminent domain and zoning.

sell, lease, or mortgage it. Social equity, including gender equity, is not a concern of market economies; economic efficiency is the overriding criteria for determining production and ownership structures. Issues such as social equity are generally dealt with in policies and programs that seek to “soften” the impact of market forces.

On the other hand, the market economy offers women (and men) positive opportunities: salaried work supplements agricultural production with cash income and offers women opportunities to gain skills. In addition, land and other property purchased on the market is less likely to be considered lineage property and more effectively owned by women, including married women. Acquiring land on the market, however, assumes a significant cash income, either from earned wages or commercial agriculture. Women in smallholder families may have difficulty accumulating sufficient funds for land purchases. In postconflict situations, women's access to capital for the purchase of land is even more limited.

Legal Pluralism

Formal legal institutions based on statutory law and customary legal institutions based on cultural norms and practices often coexist within a society, creating a situation of legal pluralism. In some societies, legal norms and practices based on religious law (such as Muslim law) also form part of the legal context. These norms may be formally recognized as part of statutory law or part of customary law. Some countries have acknowledged and recognized customary structures and land tenure regimes

in an effort to give formal legitimacy to customary societies within national boundaries. During the last several decades, numerous countries¹¹ with vigorous customary societies reformed their land legislation and gave formal legal recognition to customary tenure regimes.

While legal pluralism can provide a means of coping with ecological, livelihood, social, and political uncertainty, it also exacerbates knowledge uncertainty. It can give rise to situations where one group is denied its human and civil rights by another, based on ignorance or contradictions and ambiguities between statutory and customary rules and legal norms. How different legal orders interact and influence each other depends on power relationships between the bearers of different laws. In addition, already weak state institutions at the local level may not be capable of dealing with different tenure regimes.

Generally, claims to land rights during land conflicts and ensuing negotiations and mediations are justified by reference to legal rules. Parties will use different legal norms in different contexts, depending on which law or interpretation of law they believe is most likely to support their claims—a process known as forum shopping. In postconflict situations, where formal and customary legal frameworks are often neither effective nor appropriate to local conditions, social actors may create ad hoc informal

tenure systems with their own rules, authorities, and institutions.

Women are caught up in the contradictions and accommodations between customary and statutory legal systems. Customary law often does not allow women to own land, but formal law may provide for equal rights to ownership of land. State institutions and officials, however, are often reluctant to enforce women's rights to land because of lawmakers' and state officials' own patriarchal values and norms. For example, formal law in Zimbabwe provides for equality between men and women. However, a Supreme Court decision in 1999 ruled that a woman named in her father's will could not inherit his property under the formal law because women are juveniles under customary law.

Customary values and norms are always adapting to external and internal conditions such as market forces. When societies experience drastic change and upheaval—such as a devastating conflict that uproots populations and destroys their institutions—socioeconomic structures and cultural norms usually cannot adapt gradually. This often results in uncertainty over land and property rights and conflict between parties over property rights.

What appears to happen in postconflict situations is that customary and formal legal norms are selectively practiced by community members. Leaders and elites are best positioned to benefit from both formal and customary systems because of their access to information and authority. Often, land rights—and the wealth and power associated with them—accrue to persons positioned to

take them by force or take advantage of postconflict situations, including reconstruction programs.

On the other hand, the chaos and upheaval in postconflict and reconstruction situations can provide openings for positive societal change toward social equity and democratic governance and opportunities for women and men to modify their norms and practices. During conflict and postconflict periods, women are subjected to new experiences, whether fighting as combatants or reorganizing their lives in refugee camps. Women in postconflict societies may have new attitudes and skills, as well as a sense of self-worth and empowerment.

The tendency is that overlapping rights—particularly secondary rights—over land held by several persons in the community become extinguished as the primary holder of rights increases his prerogatives. Community members, however, may also be adept at protecting their land rights through forum shopping. A landholder may appeal to customary leaders and traditional values when his or her access to common property becomes restricted by individuals appropriating it as private property during chaotic conflict and postconflict periods. On the other hand, a war widow threatened with eviction from her marital home by her husband's relatives may take her case to formal civil authorities and claim she has legal inheritance rights.

11 Examples of land legislation recognizing customary tenure can be found in Uganda (1998), Mozambique (1997), Tanzania (1999), Niger (1993), Senegal (1964), Philippines (1997), Bolivia (1995), and Australia.

Population Displacement

During civil war and other violent confrontations, significant proportions of the population may be displaced to different parts of their country or another country.¹² Issues of land rights and gender bias emerge during peace negotiations and postconflict reconstruction as the displaced and refugees return and parties to the conflict and international agencies attempt to rebuild a secure and just society.

Displaced persons and refugees attempt to return to their home communities, reclaim their land and homes, and rebuild their lives and social structures. They may find some difficulties in being reincorporated into the community and, particularly, in reclaiming their land that others are living on and working. If home communities have been destroyed, the task of physical and social reconstruction awaits. The experience of upheaval and reconstruction may motivate some displaced groups and returning refugees to question customary norms and social structures that deny them access to landed property. This offers an opportunity to address gender bias within land rights.

In some postconflict societies, displacement is not the major issue because rural populations remained in their communities. But the conflict—particularly

if prolonged—most likely destroyed social structures, institutions, and physical infrastructure. In the postconflict period, these communities may undergo drastic changes as structures and institutions are rebuilt and developed, including the land tenure system and its land administration institutions.

A postconflict society may exhibit several of these displacement situations. In all of them, women and their young children often find their legal and even customary rights to land and other resources are not observed. Needless to say, displaced women usually face more complex and challenging conditions than men do.

¹² This paper does not address refugees who cannot return to their countries. If isolated into refugee camps, they may attempt to recreate some of their traditions and customary practices. Otherwise, they may find themselves living under different and unfamiliar customary and legal norms. Typically, refugee families have access to minimal or no land. Women and men generally find themselves without resources and job opportunities.

Three Postconflict Case Studies

Case studies from three regions illustrate problematic issues in dealing with women's land rights in postconflict situations. All three are patriarchal societies, where most of the population live and work in agricultural communities. In all three, access to land was a major factor behind their violent conflicts. Differences among them include the level of gender bias in formal and customary norms, presence of ethnic conflict, participation by women in postconflict negotiations, and how successfully the issue of women's rights to landed property was addressed.

Differences among them include the level of gender bias in formal and customary norms, presence of ethnic conflict, participation by women in postconflict negotiations, and how successfully the issue of women's rights to landed property was addressed.

The Rwanda and Guatemala case studies concern efforts made to facilitate the return of displaced persons and refugees. Civil war in Guatemala and ethnic violence in Rwanda occurred over several decades. Both countries are now dealing with the resettlement of large numbers of families. In addition, both countries have highly skewed land distribution. This makes more difficult the identification of suitable land for returning refu-

gees who were landless or cannot return to previously owned property.

The Afghanistan case is different. Postconflict efforts to relocate displaced populations began only in the last two years, though the conflict endured for several decades and culminated in an invasion and the establishment of a new governance structure. The question of access to land in Afghanistan is an important policy issue, since the country also suffers from a highly skewed land distribution and a large landless rural population.

Rwanda

Rwanda has a small arable land base, a large and growing population with a high proportion living in rural communities,¹³ and rapidly changing customary land tenure systems. Principal land tenure problems are high levels of landlessness, land fragmentation, and tenure security. Landlessness and tenure insecurity are more acute as a result of violent conflict, displacement of people, and the need to resettle the displaced on viable land parcels. This, in turn, brings up issues of disputed rights to land and

¹³ An estimated 90 percent of Rwanda's population is dependent on subsistence agriculture. Rwanda is also one of the most densely populated countries in the world.

finding enough land for so many people in a country with land scarcity.

As a patrilineal customary society, men own the great majority of land under lineage control. During the colonization period, a statutory land tenure system based on individual private property was introduced, laying the foundation for legal pluralism regarding land rights. Because of increased population density and the commercialization of the economy over the last several decades, land in Rwanda has become a highly individualized and marketable asset. One consequence has been increased levels of land ownership concentration (Platteau 2002, 24), a process that appears to have accelerated during and after the violence of the 1990s.

For the most part, men are the buyers and sellers of land. Under customary tenure rules, women are not allowed to control customary tenure land or inherit land from their families. One study of land purchase contracts found that very few women bought land and a greater (but still small) number sold land (André 2003). Sellers were mostly widows who needed cash for their own survival or for school fees, and sales could be contracted only with the express permission of the widow's sons or another male lineage member.

Rwanda's long-standing ethnic conflict escalated in the early 1990s, culminating in the relatively short but extremely violent and brutal genocide of 1994. Although both women and men were massacred, the number of widows and female-headed households increased significantly as a result of the violence (Newbury and Baldwin 2000). Or-

phaned and widowed women are unable to claim their father's or husband's land and property because of customary law. This problem was exacerbated by huge population displacements and wholesale grabbing of land plots in the aftermath.

Women who return from refugee or internally displaced camps, often without male family members, do not have the legal means of reclaiming family property. Widows and their children were left without resources and denied access to their husbands' land when the relatives of their husbands claimed ownership rights.

Because property and inheritance rights constituted the majority of cases brought to postconflict legal aid organizations, one of them, Haguruka, lobbied in the late 1990s for revision of inheritance laws that discriminate against women. More specifically, Haguruka proposed that daughters have the right to inherit landed property from their parents and widows from their husbands (Newbury and Baldwin 2000).

In 1999, the Rwanda Inheritance Law was passed, which explicitly grants equal inheritance rights to male and female children. The law also established a choice of property regimes upon marriage that allows women *married under civil law* to inherit the property of deceased husbands. Since most women—particularly rural women—marry under customary rules, they are denied marital property rights. Wives continue to have only use rights over property, be it household goods or land. Ownership of landed property remains in the hands of husbands and male relatives.

To increase awareness of wives' rights, the Government of Rwanda began a national campaign to teach concepts of equality between men and women. The education programs encouraged some women to return to their village of birth and demand a share of the land to be inherited from their parents. But some male family members disputed such actions, claiming that women in new villages are provided for by their husbands' families.

A directive on provisional land management was also issued to resolve the problem of access to land by women. The directive mainly regulates abandoned land, and acknowledges that wives and children are entitled to manage such family land until the return of the titular owner. While orphaned children are minors, their parents' property can be managed by their guardians. This helped to improve the socioeconomic situation of women and their child dependants—especially daughters—and protect these families from eviction. However, the gain remains precarious if the woman's husband returns and resumes ownership of his property. When a husband dies, a woman may also find herself repudiated by his family, especially if she has no children.

Because of the concentration of land ownership and the needs of returning refugees, Rwanda made several attempts to reform land distribution and facilitate access to land. The 1993 Arusha Accords aimed to make land available to repatriated refugees who had been out of the country for long periods, some since 1959. The agreement stipulated that refugees, both women and men, might reclaim their land if they had

been gone for less than 10 years. If they were absent for more than 10 years and others were occupying their land, the Rwandan government undertook to make other land available to them.¹⁴

Other land policy initiatives were proposed in an attempt to improve access to land, increase tenure security, and increase agricultural production. Rwanda's new land policy and the draft Land Law of 2002, still being discussed and designed, aim to promote an equal distribution of land and access to land, including access and rights for women (Rurangwa 2002). Some policies and programs appear to improve women's rights to land; others will most likely deny them their hard-won land rights.

The current land distribution program is designed to allocate state land to landless families, particularly repatriated families. Some districts seem to allocate land more equitably than others. For example, in Kibungo Prefecture, the most progressive in land distribution, land parcels given to men and women are equal in size (Hamilton 2000). Whether eligibility to participate in the land distribution program is the same for women and men is not known.

Another policy being contemplated is to prohibit the partition of land among heirs if resulting parcels are under a minimum size.¹⁵ This is to discourage

further fragmentation of agricultural land, a growing problem in Rwanda among smallholders. The implementation of this policy, however, would most likely result in daughters not inheriting land from their parents, since fathers usually prefer to bequeath land to sons (Bledsoe 2003). In large measure, this would cancel out the positive gender impact of the 1999 inheritance law that gives daughters and sons equal inheritance rights.

Further, it appears that Article 40 of the draft Land Law requires joint titling and registration of land when more than one owner is involved. The draft, however, does not describe the method for determining what establishes joint ownership or whether it includes marital property rights as well common property within a community. This is an important clarification; experience in other countries has shown that joint titling programs intended to give wives legal rights to marital property can be undermined at implementation when men title land jointly with sons, fathers, and brothers (Lastarria-Cornhiel et al. 2003).

The draft Land Law also envisions the creation of land commissions throughout the country to carry out land management functions with local participation. The commissions will undertake a number of activities, including land acquisition for redistribution and land consolidation, land registration, and land use planning. To be truly participatory and democratic and ensure that women's needs and rights are addressed, these commissions should have women members. However, this issue does not appear to have been considered.

It is difficult to assess how Rwanda's land policies have affected or are likely to affect women's rights to land. Studies on current land distribution, land policy, and program implementation were not located; neither were data on women's ownership or access to land. In 2001, a research program at the Centre for Conflict Management at the National University of Rwanda was to address economic and social factors in the Rwandan conflict. It aimed to analyze changes within the Rwandan land system over the years so as to anticipate potential conflicts arising from the implementation of the new land policy. The center hoped to make recommendations on the optimal exploitation of land from a conflict-prevention perspective and demystify the ethnic dimension of land tenure issues.

Questions to be addressed include the extent to which gender roles affect production, given that women work in the fields while men make decisions on production (Republic of Rwanda 2001). Women provide most of the agricultural labor and, with their children, do the local marketing of their production surplus. Hopefully, information on the property rights of women has also been collected. The results of the study would inform policy and programmatic recommendations. More information is needed on which to base policy and programmatic mechanisms for improving and protecting women's access and rights to land.

While government policies and draft laws include language about gender equity and improving women's rights to land, policy formulation and program design do not appear to incorporate a

14 Article 2 states, "each person who returns is free to settle in any area within the country of his/her choice, as long as he/she does not infringe on somebody else's rights." Article 4 states: "refugees who fled the country over ten years ago should not claim their property if it has been occupied by other individuals. To compensate them, the Government will put land at their disposal, and will assist them to resettle."

15 The minimum size has still not been determined, but will most likely be between 0.75 and 0.90 hectares.

gender perspective. A land policy, law review, and assessment were commissioned by USAID to help the Government of Rwanda sort out the consequences of its draft Land Law and land policies. That review pointed out several implications for gender equity (Bledsoe 2003). The government has not focused on legislation, regulations, and programs that address gender equity. In fact, it appears that different land policies have, at best, vague gender objectives. More likely, the policies will have conflictive or negative impacts on women's rights to landed property.

Guatemala

Most Central American countries have experienced increasing poverty and land concentration, with income growth for only a small minority. The consequences have included peasant rebellion, brutal repression, and, finally, civil war. El Salvador, Nicaragua, and Guatemala experienced decades of violent civil war before the peace accords of the 1980s and 1990s. International organizations and bilateral aid agencies, including the UN and USAID, supported programs in these countries to address land tenure problems during and after these conflicts.

Guatemala is perhaps Central America's prime example of highly skewed land tenure conditions that contribute to civil war. Indices for poverty and land concentration are among the region's highest. A principal cause of poverty and the civil war is this highly concentrated distribution of agricultural land. Access to land is very important in Guatemala: 60 percent of its population live in rural areas and depend on

agriculture for its livelihood. This figure is the highest in Central America.¹⁶ The agricultural sector represents 23 percent of the country's GNP (compared to 10 percent in El Salvador and Costa Rica and 15 percent in Honduras).

The vast majority of Guatemala's rural population is either landless or does not have enough land to cover basic food needs. Rural poverty has been rising and the number of landless workers increasing, while the average size of the *minifundios*—small subsistence-oriented farms—is diminishing (Stringer and Lambert 1989; Hough et al. 1982) and land concentration continues to increase (Thiesenhusen (1995, 84–85).

The protracted civil war finally ended in 1996 with a series of peace accords, but many provisions dealing with access to land have not been fully implemented. Using data from several recent surveys, Baumeister (2002) calculated that the proportion of landless rural families increased from 23 percent in 1979 to 29 percent in 2001 and *microfinca*s (of less than one *manzana*¹⁷) increased from 31 percent to 55 percent of total farms.

Land programs in Guatemala demonstrate the importance of grassroots participation in program design and implementation. They also indicate how cultural norms and practices (in the absence of programs to promote social equity and democratic governance)

affect the level of gender equity in land programs.

From the 1960s until the mid-1990s, Guatemala's state and private land programs did not recognize women's equal rights as property owners. Land parcels distributed and adjudicated to rural families were given largely to men. When land certificates and titles were issued by state agencies such as INTA and FYDEP,¹⁸ only heads of household were named—women household heads (with the exception of widows) were not offered property rights. Private-sector land market programs such as FUNDACEN¹⁹ followed the same pattern. FUNDACEN would not consider single women as eligible for their land market program; only couples were selected. Usually, women became beneficiaries as the result of separation or widowhood. A study in the early 1990s estimated that women made up only 7–9 percent of INTA beneficiaries and 1.2 percent of FUNDACEN beneficiaries (Fundación Arias 1993).

Ironically, women forced to migrate at the height of the civil war in the 1980s and early 90s grew more conscious of their rights and responsibilities. During peace accord discussions in the early and mid-1990s, women refugee organizations, supported by the UN High Commission for Refugees, pressured the state to recognize women's rights (Worby 2001). More specifically, they demanded that the names of both spouses be put on titles for land distributed to rural

16 In 1999–2000, the rural population in Guatemala was 60 percent, compared with 54 percent for Honduras, 53 percent for El Salvador, 49 percent for Costa Rica, and 44 percent for Nicaragua.

17 One *manzana* is equal to approximately 0.7 hectares.

18 Instituto Nacional de Transformación Agraria (INTA) and Fomento y Desarrollo de El Petén (FYDEP)

19 Fundación del Centavo (Penny Foundation).

families through postconflict programs such as FONAPAZ and FONTIERRAS. As a result, the 1999 law that created FONTIERRAS²⁰ stipulated that land titles it issued had to include the name of both spouses, whether or not they were legally married.

These examples of land purchase programs demonstrate very different processes with regard to gender equity. One set of programs ignored women's land rights, seeing women only as unpaid family labor. The other, influenced by pressure from displaced women and the international community, ultimately recognized women's rights to land by including their names on land titles. This highlights the importance of women's participation in the design of land programs and the value of support by international organizations.

Beyond design, there is a need to examine how postconflict land programs are implemented. While no comprehensive studies were found to corroborate whether both spouses are being given title to land purchased through state programs, some case studies have indicated serious implementation problems.

Land being acquired through programs such as FONTIERRAS and FONAPAZ consists of large estates purchased by a group of smallholder families, who generally conform themselves into cooperatives or smallholder enterprises (*empresas campesinas asociativas*). The original purchase contract is in the names of all families, and the document includes the

names of both spouses from each. Nevertheless, when the group legally subdivides the estate into individual family parcels and titles these parcels, women are often denied legal rights. Sometimes, this results from intrahousehold pressure on women not to insist on having their names on titles. Another tactic is to deny women membership and leadership positions in cooperatives and smallholder enterprises. Women who attempt to join meet with hostile responses from their husbands and other male members. Cooperative regulations may also restrict membership to one person per family—traditionally the male head of household. In addition, membership requirements concerning cooperative field work are close to impossible to fulfill for women whose household and childrearing responsibilities limit their availability. A case study of six group land purchases showed that while 26 percent of names on the original purchase document were women, only 8 percent became cooperative or association members—most of them single women with children (Hernández 2002, 29).

Wives of cooperative members are thus not included as owners when cooperative land is subdivided and individual sale-purchase contracts between cooperatives and families are drawn up and recorded in the land registry. The state institutions in charge of these transactions appear to turn a blind eye to this discrimination against women as landowners. A clear legal mandate—to extend to women their legal rights to land in a postconflict situation—is being ignored or subverted, attesting to the strength of cultural norms and practices.

Afghanistan

Most of Afghanistan's population lives in rural villages, and 70–80 percent of the total population is engaged in agriculture and dependent on agricultural production (Hill et al 1997). Compared to Rwanda and Guatemala, Afghanistan has a higher level of pluralism in its legal framework. Land relations are governed by 1) strong customary tenure traditions, 2) Islamic land institutions and practices, and 3) the formal or statutory system—civil law, state law, and constitutional law. After 23 years of conflict and chaos arising out of chronic and unresolved inequities, tribal-based disputes, and two years of postconflict reconstruction, land relations among Afghans remain in serious disarray. Real and lasting peace will require the resolution of land conflicts and ordering of land relations.

Patriarchal norms and practices in Afghanistan not only deny women equal rights and status, but put their physical security at risk. Patriarchal control over women has deepened and tribal power and authority increased because of internal conflict and chaos brought on by international struggles over Afghanistan. Women's rights and access to basic services such as education and health greatly declined or were simply eliminated during the Mujahideen and Taliban periods of control (Ahmed-Ghosh 2003). In addition, physical assaults increased significantly on women who were perceived as not adhering to submission. In the postconflict period, women activists, particularly those attempting to educate and mobilize women around issues related to political participation, operate in an environment of ridicule, hostility,

20 Article 20 of the Ley del Fondo de Tierras, Decreto Número 24–99 (Guatemala 1999) says: "los títulos serán emitidos a favor de los cónyuges o convivientes, jefes de la familia beneficiaria."

and physical threats. This combination of concentrated land rights by tribal landlords, years of intertribal violence, and extreme gender inequity appear to influence how issues of land access and gender are being addressed.

The land tenure system is based on a very limited arable land base that amounts to only 12 percent of the total land area. Pastureland for both settled and nomadic raisers of livestock constitutes 45 percent of land area. Ownership of land is skewed: 2.2 percent of families owned 19 percent of the total land area in 2002. Not surprisingly, landlessness and near-landlessness is high and appears to be rising. A recent study in one province demonstrates that more than one-third of households are landless (Wily 2004). If the near-landless are included, more than half the sampled populations do not have sufficient land to provide for their subsistence. Farmers who work as tenants and sharecroppers for landowners are vulnerable to exploitation. This is demonstrated by their low crop share, the number of duties and obligations they are required to perform, and ever-present threats of eviction. Crop shares for tenants and sharecroppers are well established, varying from one-third to one-fifth. Workers do not consider the share to be enough to live on or a fair return for their labor. Most have to buy food (often entering into debt with shopkeepers) four or five months after harvest. The system is entrenched, however: those victimized do not think it is possible to modify land relations and working conditions.

Various land tenure codes in Afghanistan differ with regard to women's rights to land. *Constitutional law* could be interpreted as permitting women to own land. This set of legal norms, however, is practiced only by certain educated people in urban areas. In rural areas, customary and religious (shariat) norms are generally observed for most issues. *Shariat law* provides that widows and daughters can inherit land, though daughters inherit only half the amount their brothers inherit. *Customary legal norms*, however, pressure daughters to surrender their inheritances to their brothers. If a father has only daughters, his brothers inherit his property on his death. Women who insist on their share of inheritance are considered shameful and are likely to lose the support of their families.

The study revealed very few women landowners: only 10 of approximately 400 recorded (2.5 percent) were women (Wily 2004). Some were widows, but woman landowners were generally daughters who had inherited in the absence of brothers. The subject of female land ownership was of little or no interest to interviewees, male or female.

The study documented men who owned land left to their sisters after their fathers' deaths; in each case, the sisters surrendered their land to their brothers. As one explained:

Girls must get land to meet the requirements of Islam, but they are not expected to keep it. If they keep it, they cannot expect their brothers to care for them if they face problems. My brother took my sister presents. He bought her sheep and clothes.

He praised her. At the same time he called us and the elders to witness in writing that she had passed the land over to him. (Quoted by Wily 2004, 70–71.)

Recommendations on titling and registering land rights and land entitlement reform by international agencies such as the Asian Development Bank should be approached with caution. Patriarchal norms and customary practices may influence the entitlement process such that only the household head—generally a man—is given individual legal title to land that belongs to the family. USAID is currently funding an urban titling program, but gender equity does not appear to be a basic element of its design and objectives.

Postconflict programs have been slow to take up the issue of gender and land rights. There appears to be a reluctance to broach the issue of rural land and gender relations or recommend direct reforms. Afghan women striving for other aspects of gender equity have not strongly advocated land rights for women. Perhaps, like tenants and sharecroppers, the inequitable system is so entrenched that those caught up in it do not envision any significant change.

As in Guatemala and Rwanda, customary practices in Afghanistan based on patriarchal norms challenge gender equity and undermine attempts to extend these basic rights to women. This struggle, and the ambivalence regarding social equity, is reflected in the new Afghan Constitution approved in January 2004, which declares, “the State shall abide by the United Nations Charter, international treaties, interna-

tional conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.”²¹ In a separate clause, the constitution also grants all “citizens of Afghanistan—men and women—equal rights and duties before the law.”²² This would seem sufficient to guarantee that women and men have equal rights. However, the Reconciliation Committee agreed to amend the Constitution to say that legislation cannot contravene “the beliefs and provisions” of Islam.²³ This leaves women’s rights and human rights vulnerable to extreme interpretations of Islam and its reformulation by customary norms. There are also efforts to weaken constitutional language requiring Afghanistan to abide by international treaties and conventions on human rights and social equity. In addition, it is unclear whether the current draft contains essential rights such as protection from forced marriage, early marriage, or trafficking.

The Ministry of Women’s Affairs identified four priority areas: health, education, legal protection, and economic empowerment. In its appeal for a more coordinated national and international effort, the ministry cites the following gender issues: ignorance, discriminatory traditions, economic hardship, forced marriage, childhood engagement, and lack of security. The UN, which is supporting Afghan women’s development and promoting their human rights, acknowledges that domestic violence and discriminatory traditions continue to be major problems for Afghan women. It is significant, however, that property rights

for women are not listed among the priorities of the Ministry of Women’s Affairs.²⁴

A recent UN Economic and Social Council report (2004) on adequate housing pointed out the problems women refugees and displaced persons are encountering in accessing land and housing during reconstruction as well as the resulting lack of physical security for women and their children. One factor compounding this insecurity is the continuing violence and land-grabbing that occurs as local warlords fight each other. The illegal occupation of land is resulting in forced evictions, increasing the number of displaced persons and contributing to insecurity. Cases have been reported of widows forced to marry invading commanders to consolidate the warlord’s control over land (UN 2004).

There is evidence, however, that women are slowly beginning to claim the rights—though unequal—they possess under religious law. Widows are most likely to insist on their share. This may be in response to the rising number of widows and female-headed households who are learning to live independently as a result of the conflict. Another sign of change is the growing number of women who are reluctant to step back into their traditional roles as they be-

come more directly involved in farming and livestock raising. They are among the first to challenge the inequitable distribution of land in Afghanistan today (Wily 2003).

It would appear that human rights education is extremely important to the effort to protect women’s rights. Not only do women and girls need to be educated, but men and boys need to understand the importance of extending basic human and civil rights to women. If gender equality is to obtain significant public support in Afghanistan, arguments and language are needed that draw upon Islamic notions of equity and social justice. Progressive legal and constitutional developments in other Islamic countries, such as Iran’s family courts, should be examined as possible models for Afghanistan.

21 Chapter 1, Article 7.

22 Chapter 2, Article 22.

23 Chapter 1, Article 3.

24 U.S. assistance to Afghanistan’s gender programs have focused on access to microcredit, job skills training, political participation training, education and literacy, healthcare and nutrition, and teaching women productive skills such as animal husbandry, tailoring, and preserving produce. Programs have also provided technical support for the traditional productive activities of women in carpet and textile factories and bakeries, and have offered training in services such as teaching and medicine.



Conclusions and Recommendations

The challenge is how to ensure women and men equal opportunity to acquire land rights during periods of postconflict reconstruction. Political will and institutional commitment to gender equity are important for policy formulation and program design. How well state institutions protect land rights, including women's rights, is not only determined by institutional mechanisms for carrying out legal mandates on gender equity, establishing gender policies, and implementing programs that protect and enforce women's rights to land, but also by the presence and strength of such institutions outside major cities.

How well state institutions protect land rights...is not only determined by institutional mechanisms..., but also by the presence and strength of such institutions outside major cities.

A word of caution: changes over time to customary norms and practices may improve or worsen social equity, including gender equity. Though adaptation to market forces by customary tenure systems may strip women of some of their secondary rights to land, this adaptation may also offer them opportunities to acquire land in their own names. Because land represents and is the source of

wealth and power, modifications of land tenure systems often entail struggle, conflict, and negotiation.

Changes in cultural norms and practices that yield the same and equal rights to land for men and women entail internal changes in how women and men are perceived by society, each other, and themselves. Policymakers and program implementers should recognize the importance of maintaining community and social structures and support relations. Improvement of gender equity should focus on improving and strengthening women's relations within the community and within households. Communities can be fragile institutions, yet they are crucial for the survival and subsistence of rural families. Program activities, whether by state, civil society, or nongovernmental organizations, should reinforce and build on positive relations for women within the community and work with the community on changing the more negative ones.

Legislation and Policy

Many countries have explicit language that recognizes women and men's equal rights, including equal land rights. Formal legislative measures aim to ensure no discrimination or bias with regard to property rights based on gender, ethnicity, race, and civil status. Such legisla-

tion, however, should also address how to remove significant social, political, and cultural constraints in acquiring land rights. As the case studies have shown, simply declaring equal land and property rights does not erase gender bias.

Strong political will at the highest levels is needed to address and reduce nonlegal constraints. There is growing recognition that the incorporation of gender sensitive legislation will not in itself improve women's rights to land, housing, and property. For such a shift to take place, education and awareness building, attitudinal changes in society, and the support of the international community are required. Dissemination of successful national and international legal codes that deal with gender discrimination would be useful for postconflict societies that have the political will to overcome gender and ethnic discrimination and attain social equity.

Removing gender bias and explicitly stating gender equity in land property rights requires a review of legislation, including titling and registration laws, land reform and resettlement laws, inheritance codes, marital property regime laws, and family codes. For example, equal inheritance rights and how to enforce them should be addressed in legislation to "correct" customary bias in inheritance practices. Marital property regime legislation should protect a wife's contribution to marital property in cases of desertion, divorce, and husband's death. Titling programs that legalize smallholders' possession of land and low-income families' ownership of housing involves protecting women's rights, recognizing women as heads of

household (whether married or not) and as property owners.

Program Implementation

In addition to legislation, regulations and procedures that accompany land reform and state-allocated land programs must be reviewed to make sure no gender bias exists in program processes and women and men have equal opportunity to receive land entitlements. Reconstruction programs that deal with land rights—such as land reform, resettlement, land administration, titling, and registration—should carefully review policies and regulations so that gender is integrated at every level and women as well as men are involved at all stages. Because women generally confront sociocultural obstacles to obtaining legal land rights, special attention is needed to make sure that women are informed of their rights and participate in the process.

In the case of Rwanda, government policies and draft laws included language about gender equity and improving women's rights to land, but policy formulation and program design did not appear to incorporate a gender perspective. There was little effort or focus on formulating legislation, regulations, and programs that address gender equity. At best, land policies being debated seem to have vague gender objectives. More likely, they will have conflictive if not negative impacts on women's rights to landed property.

Land titling programs have generally not targeted women. The reasons include legislation that does not explicitly guarantee women's rights, titling

processes that focus on titling men, cultural norms that bias titling procedures, and specific constraints that women face in dealing with public institutions and officials. Joint titling has been recommended as a means of targeting women and ensuring that their names are included in title documents for lands acquired by their families. As the Nicaragua case study shows, however, joint titling often confronts the same difficulties in extending property rights to women as programs that title only one household member. While specific legislation, regulations, and procedures that focus on women's rights to land are needed to title women as individuals and as joint titleholders, norms that do not recognize women as full citizens—with the same and equal set of rights that men enjoy—will ultimately undermine those efforts.

This process of integrating gender into policy and programs includes the definition, capacity, and interaction of national and local agencies, selection and training of institutional and program personnel at all levels, and the determination of gender equity objectives for each institution at different levels. In addition, these programs should include gender sensitivity training for implementers and target populations. For these programs to successfully integrate gender and eliminate gender bias, strong political will is essential.

Overcoming Patriarchal Norms

While obstacles presented by legislation and program design are not insignificant, perhaps the most problematic

obstacles are constraints contained in sociocultural institutions that tend to permeate state and market institutions. All of these institutions relate to each other and do not operate in isolation. Changes in one necessarily affect the rest, and are often accompanied by modifications in power structures. Whether changes in institutions, structures, and power relations bring about increased equity within a society is the question. State institutions can mandate legal recognition of equal rights for women and men. But this must be accompanied by social and cultural values and norms that validate equal rights to result in the adoption of practices based on equal rights and economic mechanisms and structures that promote equity. It is not sufficient for one set of institutions to recognize gender equity: changes need to happen and be coordinated within all three institutional structures.

Many communities, households, and individuals have norms and practices that perpetuate gender discrimination and do not acknowledge specific legal rights. The fact that women do not have the same and equal rights to land as men is in part due to how women are perceived—by society, by men, and by themselves. Patriarchal norms, values, and practices are perhaps the most difficult obstacles to improving gender equity with regard to land rights. Patriarchal institutions and structures—and inherited patriarchal values and practices—perpetuate unremunerated labor, lower wages, and passive compliance to work conditions for women and deny them the rights, including property rights, held by men.

Recognition of women's equal rights introduces modifications in existing power relations. This leads to further changes in the traditional ways decisions are made and breaks down stereotypes of a gender-based division of labor. As the Guatemala land bank example demonstrates, the patriarchal family, conceived as a legitimate and immutable institution, is often used to defuse or invalidate women's demands for improved access to resources and services and equal opportunity. Political opposition to gender equity is often presented as protection of cultural values because attempts to improve women's rights and their status are seen as challenges to the traditional family.

Since these cultural values and norms are based on gender stereotypes that are reproduced and reinforced at the community level and within the household, it is difficult to identify them as discriminatory and contravene them. Women's perceived role is still that of dependent housewife. Women's agricultural work—weeding, harvesting, transporting, storage, processing—is considered an extension of their home duties and tasks, not productive work. Cultural values and practices do not view women as independent and productive citizens, and program implementers and rural communities continue to consider men as the decisionmakers and production managers. Even where legislative reform and land distribution programs mandate gender equity, sociocultural norms and practices place constraints on women's abilities to exercise their legal property rights.

The Cost of Speaking Out

Contributing to the difficulty of eliminating gender bias are the significant social costs women incur for going against cultural norms, including social ridicule and loss of social benefits. Women's low status makes them reluctant to behave independently from men, who are considered household heads and community leaders. The extended patriarchal family provides a structure for the lifelong basic welfare of all family members and assistance in times of social or economic crisis. This is particularly significant for resource-poor rural women with young children, and they are reluctant to put that basic welfare structure at risk.

Discriminating or oppressive tenure relations and practices may continue to be used and preferred by the landless and land poor, including women, because such relations and practices offer complementary benefits and services or challenging them would be socially or culturally costly. For example, a daughter gives up her claims to inherited land in favor of her brother to maintain access to potential benefits from her male relatives and the support system of her extended family.

Sociocultural costs of obtaining direct access to land may discourage women from demanding equal land rights, even though laws mandate equal rights and state programs do not exclude women as beneficiaries. A wife or daughter may be reluctant to have her name included on the title to household land because of the potential conflict with her husband or family. In a number of countries where joint title is an option, for example, few women know

whose name is on the land title and few request that joint titles be issued. These self-imposed constraints may disappear or become less onerous for women if other structural and institutional opportunities are available and appropriate training is offered.

Women may be reluctant to become publicly involved in political activities and community organizations for several reasons: lack of experience in public speaking and participation, lack of basic education and knowledge about how things function, and domestic responsibilities that men are reluctant to take on. Dependent and low-status women feel uncomfortable speaking in public meetings because men—and even other women—may ridicule them. South African women, for example, seldom voice their thoughts at local land reform meetings and usually support the proposals of their husbands and other men (Walker 2003).

In many regions, local communities and institutions continue to be hierarchical and patriarchal. Governance and power are limited to certain men, not permitting cooperation, management, and lines of communication in which all community members—including women—can participate. In addition, in some communities, women are actively discouraged from public life. In Uzbekistan, for example, Kandiyoti (2003) reported that men prohibit women—particularly younger women—in their households from going to community meetings and public places such as the local marketplace. Women may also be reluctant to behave in culturally unacceptable ways and thus expose themselves to social conflicts.

Rural women's demands are not included in the agenda of most women's rights movements. Their neglect has been reported in Brazil (Deere 2003) and South Africa (Walker 2003), where women's organizations focused on urban women workers and working conditions, ignoring rural women's different needs and problems. This low level of involvement constitutes a lost opportunity for rural women. A USAID evaluation of women's organizations in postconflict situations demonstrates these organizations play crucial roles in civil governance and improving women's status and rights (Kumar 2001).

Gender Sensitivity Training and Legal Assistance

Real and effective rights for women will take time, as norms of social equity and democratic governance are assimilated by postconflict communities and societies and social actors adopt values and practices not based on gender bias. This process can be facilitated through policy decisions and programs that help civil society and state agencies adopt equity as a societal objective. Reconstruction programs that raise awareness of current discriminatory practices increase the level of consciousness on the issue to societal levels. Awareness raising, together with legal literacy programs for both women and men, give community members the basis for identifying their rights. Legal assistance for those women (and minorities) who want to exercise their rights not only allows them to navigate government agencies and legal channels, it offers women moral and

financial support. The USAID Women in Development program has been very active in supporting education and legal assistance activities by local NGOs, particularly women's organizations (Steinzor 2003).

In Guatemala, there was a clear legal mandate to extend to women their legal rights to land in a postconflict situation. These rights are being ignored or subverted because of strong cultural norms and practices. This example demonstrates the importance of paying close attention to how regulations for the implementation of programs and policies are drawn up; gender sensitivity training for program officials, from directors to field operators; and gender sensitivity training for women and men participating in these programs.

Gender sensitivity training and consciousness raising can also reduce women's reluctance to participate in community activities and press for their rights. Increased participation by women in local organizations improves democratic governance. Education that emphasizes the positive benefits of assuring that daughters and wives have equal opportunity to land rights and housing will help reduce resistance from men within the household and the community.

Information on Gender Impact

There is a dearth of data on the impact of postconflict programs on gender equity. This is particularly true in the case of land administration programs such as land reforms or resettlement schemes. Without information on how these programs are affecting women's rights to

landed property, it is difficult to know whether they are positive or negative with regard to gender equity and how to design programs that improve women's property rights. For example, a very useful study would be to examine the design and procedures of land market programs in Guatemala relating to gender inclusion, the implementation of these programs, and their impact on gender equity and land rights.

References

- Agarwal, Bina. 1988. "Who Sows? Who Reaps? Women and Land Rights in India." *Journal of Peasant Studies* 15 (4): 531–81.
- André, Catherine. 2003. "Custom, Contracts and Cadastres in North-West Rwanda." In *Securing Land Rights in Africa*, ed. Tor A. Benjaminsen and Christian Lund. London: Frank Cass.
- Baillet, Cecilia. 2002. "Between Conflict and Consensus: Conciliating Land Disputes in Guatemala." Thesis. School of Law, University of Oslo.
- Blumberg, Rae. 1991. "Income under Female Versus Male Control: Hypotheses from a Theory of Gender Stratification and Data from the Third World." In *Gender, Family, and the Economy: The Triple Overlap*, ed. R. Blumberg. Newbury Park, Calif: Sage.
- Brown, Jennifer. 2003. "Rural Women's Land Rights in Java, Indonesia: Strengthened by Family Law, but Weakened by Land Registration." *Pacific Rim Law & Policy Journal* 12 (3): 631–51.
- Ceci, Sara. 2000. "Women's Land Rights: Lessons Learned from Nicaragua." Unpublished. Rome: FAO.
- Conning, Jonathan, Pedro Olinto, and Alvaro Trigueros. 2001. *Managing Economic Insecurity in Rural El Salvador: The Role of Asset Ownership and Labor Market Adjustments*. University of Wisconsin-Madison. <<http://www.wisc.edu/lrc/live/basca0005b.pdf>>
- Cross, Catherine. 2002. *The Impact of HIV/AIDS on Land Issues in Kwazulu-Natal Province, South Africa*. Pretoria: Integrated Rural and Regional Development, Human Sciences Research Council.
- Deere, Carmen Diana. 2003. "Women's Land Rights and Rural Social Movements in the Brazilian Agrarian Reform." *Journal of Agrarian Change* 3 (1&2): 257–88.
- Deere, Carmen Diana, and Magdalena Leon. 2001. *Empowering Women: Land and Property Rights in Latin America*. Pittsburgh: University of Pittsburgh Press.
- Food and Agricultural Organization. 1999. *Las Estadísticas Relacionadas con el Genero*. Rome: FAO.
- Fundación Arias. 1993. *El Acceso de la Mujer a la Tierra en Guatemala*. San José, Costa Rica: Fundación Arias.
- Giovarelli, Renee. 2003. *Overcoming Gender Biases in Established and Transitional Property Rights Systems*. Washington DC: World Bank.
- Goheen, Miriam. 1988. "Land and the Household Economy: Women Farmers of the Grassfields Today." In *Agriculture, Women, and Land: The African Experience*, ed. J. Davison. Boulder: Westview Press.

- Guatemala. 1999. *Ley del Fondo de Tierras*. Guatemala: Congreso de la República.
- Hamilton, Heather B. 2000. "Rwanda's Women: The Key to Reconstruction." *The Journal of Humanitarian Assistance*. <<http://www.jha.ac/greatlakes/b001.htm>>
- Hamilton, Sarah. 1998. *The Two-Headed Household: Gender and Rural Development in the Ecuadorean Andes*. Pittsburgh: University of Pittsburgh Press.
- Hernández Alarcón, Rosalinda. 2001. "Derechos de las Mujeres Rurales y Propuestas Reivindicativas en Guatemala." Presentation for the Primer Encuentro Mesoamericano de Estudios de Género, sponsored by FLACSO-Guatemala, 28–31 August 2001.
- Hernández, Julieta. 2002. "Situación Actual de los Derechos de las Mujeres a la Propiedad y Copropiedad de la Tierra, en los Procesos de Legalización y Regularización." Guatemala: Consejería en Proyectos.
- Herring, Ronald J. 1999. "Political Conditions for Agrarian Reform and Poverty Alleviation." Institute of Development Studies Discussion Paper 375, presented at DFID Conference on 2001 World Development Report on Poverty, Birmingham, England.
- Hirschmann, David. 1984. *Women, Planning, and Policy in Malawi*. Addis Ababa: United Nations Economic Commission for Africa.
- Kandiyoti, Deniz. 2003. "The Cry for Land: Agrarian Reform, Gender and Land Rights in Usbekistan." *Journal of Agrarian Change* 3 (1&2): 225–56.
- Kumar, Krishna. 2001. *Aftermath: Women and Women's Organizations in Postconflict Societies: The Role of International Assistance*. USAID Program and Operations Assessment Report No. 28. Washington DC: USAID. <http://www.dec.org/pdf_docs/PNACG621.pdf>
- Lastarria-Cornhiel, Susana. 2000. "Who Gets the Land in Matrilineal Societies?" Unpublished draft. University of Wisconsin-Madison, Land Tenure Center.
- Lastarria-Cornhiel, Susana, and Mari H. Clark. 1996. *Fragmentation and Farm Production in the Former Yugoslav Republic of Macedonia: A Case Study of Ethnic Albanian and Macedonian Families*. Madison: Land Tenure Center, University of Wisconsin.
- Lastarria-Cornhiel, Susana, and Rachel Wheeler. 2000. "Family and Property Rights: Implications for Gender and Farming," In *Rural Property and Economy in Post-Communist Albania*, ed. H. Lemel, 126–54. New York: Berghahn Books.
- Newbury, Catharine, and Hannah Baldwin. 2000. *Aftermath: Women's Organizations in Postconflict Rwanda*. CDIE Working Paper No. 304. Washington DC: USAID. <http://www.dec.org/pdf_docs/PNACJ324.pdf>
- Platteau, Jean-Philippe. 2002. *The Gradual Erosion of the Social Security Function of Customary Land Tenure Arrangements in Lineage-Based Societies*. WIDER Discussion Papers No. 2002/26. Helsinki: United Nations University, World Institute for Development Economics Research.
- Quisumbing, Agnes R., and Keiji Otsuka. 2000. *Land Inheritance and Schooling in Matrilineal Societies: Evidence from Sumatra*. Washington DC: International Food Policy Research Institute.
- Republic of Rwanda. 2001. *Brookings Initiative in Rwanda: Land and Human Settlements*. Kigali: Ministry for Lands, Human Resettlement & Environmental Protection. <[http://www.db.idpproject.org/Sites/idpSurvey.nsf/3F80557CA98748FEC1256B270047A9BA/\\$file/Rwanda+Settlements+Nov+01.pdf](http://www.db.idpproject.org/Sites/idpSurvey.nsf/3F80557CA98748FEC1256B270047A9BA/$file/Rwanda+Settlements+Nov+01.pdf)>
- Rurangwa, Eugene. 2002. "Perspective of Land Reform in Rwanda." Paper presented at FIG XXII International Conference, Washington, D.C., 19–26 April.
- Steinzor, Nadia. 2003. *Women's Property and Inheritance Rights: Improving Lives in a Changing Time*. Washington DC: USAID. <http://www.usaid.gov/our_work/cross-cutting_programs/wid/pubs/womens_property_inheritance.pdf>
- Stivens, Maila. 1985. "The Fate of Women's Land Rights: Gender, Matriliney, and Capitalism in Rembau, Negeri Sembilan, Malaysia." In *Women, Work, and Ideology in the Third World*, ed. Haleh Afshar. London: Tavistock.
- Tanner, Christopher. 1996. *The Land Question in Mozambique (Part 1): Elements for Discussion*. Rome: FAO Land Tenure Service. <<http://www.fao.org/sd/LTdirect/LTan0010.htm>>
- Tanner, Christopher, and Paolo Groppo. 1997. *The Land Question in Mozambique (Part 2): Donor Assistance and Present Status of the Problem*. Rome: FAO

Land Tenure Service. <<http://www.fao.org/sd/LTdirect/LTan0011.htm>>

United Nations. 2000. *The World's Women: Trends and Statistics*. New York: United Nations.

United Nations Economic and Social Council. 2004. *Economic, Social and Cultural Rights: Adequate Housing as a Component of the Right to an Adequate Standard of Living*. Report by the Special Rapporteur, Miloon Kothari. E/CN.4/2004/48/Add.2

United Nations Habitat. 1999. *Women's Rights to Land, Housing and Property in Post-conflict Situations and During Reconstruction: A Global Overview*. Land Management Series No. 9. Nairobi: United Nations Centre for Human Settlements. <<http://www.unhabitat.org/en/uploadcontent/publication/land.pdf>>

von Braun, Joachim, and Eileen Kennedy, eds. 1994. *Agricultural Commercialization, Economic Development, and Nutrition*. Baltimore: Johns Hopkins University Press and International Food Policy Research Institute.

Walker, Cheryl. 2003. "Piety in the Sky? Gender Policy and Land Reform in South Africa." *Journal of Agrarian Change* 3 (1&2): 113–48.

Wily, Liz Alden. 2003a. *Land Rights in Crisis: Restoring Tenure Security in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit.

Wily, Liz Alden. 2003b. *Land and the Constitution: Current Land Issues in Afghanistan*. Kabul: Afghanistan Research and Evaluation Unit.

Wily, Liz Alden. 2004. *Land Relations in Bamyan Province: Findings from a 15-Village Case Study*. Kabul: Afghanistan Research and Evaluation Unit.

Worby, Paula. 2001. "Organising for a Change: Guatemalan Refugee Women Reaffirm Their Right to Land." In *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*. New York: UN Development Fund for Women

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