

Women's Rights to Land, Housing and Property in Post- conflict Situations and During Reconstruction:

A Global Overview

**A RESEARCH STUDY CONDUCTED
WITH THE SUPPORT OF THE
GOVERNMENT OF SWEDEN**



UNCHS (Habitat)
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**WOMEN'S RIGHTS TO LAND, HOUSING AND PROPERTY IN
POST-CONFLICT SITUATIONS AND DURING
RECONSTRUCTION:**

A GLOBAL OVERVIEW

A Research Study Conducted with the Support of the Government of Sweden

**United Nations Centre for Human Settlements (Habitat)
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FOREWORD

Access to land, housing and property is one of the principal factors determining the economic and social well-being of women, especially in situations of conflict and reconstruction, when their rights are violated on a mass scale. The number of women-headed households increases sharply in situations of conflict and reconstruction. Housing becomes not only a place for living, but also working, earning extra income through room rental, or collateral for loans. During reconstruction and rehabilitation, the restitution of land and property usually marginalizes women, leading to social and political instability in the country. Without land, housing and property rights for women, there can be no sustainable peace-building.

In recent years, women's land and property rights have received considerable attention by the UN system. In particular, the Global Platform for Action of the World Conference on Women held in Beijing in 1995 acknowledged women's right to inheritance and ownership of land and property. UNCHS and the Government of Sweden convened an International Workshop held in Gävle, Sweden in October 1995 on the implications of the issue on human settlements development. Subsequently, the Habitat Agenda adopted by the Habitat II Conference held in Istanbul in 1996 provided a plan of action regarding the rights of women in human settlements development. In 1997, the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities passed a resolution on "Women and the Right to Adequate Housing and to Land/Property". In February 1998 UNCHS (Habitat) jointly with UNIFEM, UNDP, UNHCR and with the contribution of the UN Centre for Human Rights co-organized the Inter-Regional Consultation on Women's Land and Property Rights in Situations of Conflict and Reconstruction held in Kigali, Rwanda.

This report was prepared as an output of Habitat 1998/99 Work Programme, the objectives of which include the formulation of shelter policies focusing on the needs of vulnerable groups; and assisting Governments and partners in civil society in adopting strategies for the progressive realization of the human right to adequate housing.

The report provides several recommendations. Women and women's organizations must be included in the negotiation of peace agreements and in the reconstruction process from the outset. New laws related to land, housing and property, drafted in the reconstruction period, must include specific provisions which recognize and protect independent rights to land, housing and property for all women. Accessible and independent enforcement mechanisms must be created. All sectors of society need human rights education with a focus on women's rights. National organizations must explore strategies for effecting cultural change. Women's organizations and others must monitor government compliance with international legal obligations. United Nations agencies and other international agencies must re-examine their programmes through a gender lens and then coordinate and restructure their efforts.

UNCHS considers women's rights to land, housing and property as essential for social and economic development. That is why Habitat has launched a Global Campaign for

Secure Tenure which aims to put women at the centre of a long-term, sustainable shelter strategy. This will be done in the context of the high correlation between the active empowerment and involvement of women, and successful strategies to provide shelter and reduce poverty. This publication is one of the first UNCHS outputs to be associated with the Global Campaign for Secure Tenure. The provision of legal security and equal access to land and property for women under situations of conflict and reconstruction requires action not only by the United Nations system and national governments, but by all sectors of society, including the private sector, non-governmental organizations and local authorities. It is my hope that the recommendations of the report will benefit women living in post-conflict situations and reconstruction whose land and property rights are at stake. I also hope that the report will assist countries under reconstruction to review and design new policies and laws. Protecting women's rights must be the focus of any meaningful land and housing policy reform.

I gratefully acknowledge the contribution of Ms. Leilani Farha, Legal Advisor and Coordinator of the Women's Programme in the Centre on Housing Rights and Evictions (COHRE) who prepared the report on which this publication is based. I also wish to thank Ms. Katrin Toomel, Associate Human Settlements Officer from Habitat, for developing the research design and preparing the final publication, the Women and Habitat Programme and the Land Management Programme for their valuable comments, and Ms. Sylvie Lacroux, the Coordinator of the Land Management Programme, for the overall supervision of the project.

I am pleased to pay tribute to the Government of Sweden who continuously since the preparation of the Habitat II Conference renewed its financial support to Habitat's programmatic activities in the area of Women's Rights to Land, Housing and Property. I am delighted that the Government of Sweden has extended this support to the Global Campaign for Secure Tenure, which provides a clear framework for this publication.

Klaus Toepfer,
Acting Executive Director,
UNCHS (Habitat)

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EXECUTIVE SUMMARY

1. Purpose of this Report

The international community is beginning to recognize that women's lack of rights in, access to and control over land, housing and property constitutes a violation of human rights and contributes significantly to women's increasing poverty. Despite this important recognition, however, there is little information and research on the application or meaning of these rights in the context of armed conflict and reconstruction, even though women's rights to land, housing and property are violated on a mass scale during and post conflict situations and regardless of the fact that the violation of these rights during and post conflict has a particularly acute impact on women. In turn, this report synthesizes and analyzes women's experiences across regions in accessing and controlling land, housing and property in the context of armed conflict and reconstruction. It also provides a summary of the central barriers women face in claiming and enforcing their rights to land, housing and property, it delineates the foundation which must be laid to render these rights enforceable, and suggests activities which are required to continue the struggle for women's rights to land, housing and property.

2. Report Overview

The report opens with a general overview of the status of women's rights to land, housing and property *outside* of the context of war and reconstruction highlighting the fundamental role that rights to land, housing and property play in women's livelihood and overall living conditions. This section reveals that while at the international and regional levels there are at least some instruments and documents which create and support women's rights to land, housing and property, at the national level, law custom and tradition pose serious barriers to women's enjoyment of their rights to land, housing and property.

Having set this out, the report turns to focus specifically on these rights in the context of conflict and reconstruction, highlighting the additional barriers to these rights imposed on women in this context. Part four then details the conditions that are required for women to claim and enforce their rights to land, housing and property focusing on, education, the role of women's organizations, community action, legal reform, and international campaigns. In conclusion, Part five assesses the current status of women's rights to land, housing and property in the context of conflict and reconstruction and provides modest suggestions to sustain the momentum of work on this issue and to move it forward.

3. Report Findings: Women's Rights to Land, Housing and Property

The General Context

Land, Housing and Property and Women's Living Conditions. Women's access to and control over land, housing and property is a determining factor in women's overall living conditions, particularly in developing countries. It is essential to women's everyday survival, economic security and physical safety and, some would argue, it is the most

critical factor in women's struggle for equality in gender relations and empowerment. Women's reliance on land, housing and property for economic security and survival is only deepening as the number of *de facto* and *de jure* woman headed households expands. In developing countries, men are increasingly migrating to urban areas in search of employment or to join military forces, leaving women to undertake agricultural activities for subsistence and to generate an income from their homes and off the land, where possible.

Law, Custom and Tradition. Despite the importance of land, housing and property to women, women generally lack security of tenure. This is largely a result of: gender biased laws which at their best only protect *married* women and at their worst do not protect women at all; legal systems which are inaccessible to women or which privilege customary law over statutory law; land and house titling systems which grant title to men rather than women or which require payment for land/houses which women cannot afford; and discriminatory lending or credit policies.

Custom and tradition reinforce women's disadvantage with respect to land, housing and property. Customary law has been interpreted by men to deny women the right to own or inherit land, housing and property in their own names, deny married women a share in assets upon dissolution of marriage, and deny widows the right to inherit land and housing. Without rights in, access to or control over land, housing and property women are excluded from household and community decision making processes and therefore their interests and needs are unrepresented and unfulfilled.

International Legal Framework. Women's rights to land, housing and property are recognized and supported, albeit in a sometimes indirect or circumscribed manner, in a number of international and regional legal instruments and political documents including, *inter alia*, the Universal Declaration on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of Discrimination Against Women, the African Charter on Human and People's Rights as well as the Beijing Declaration of the Fourth World Conference on Women and the Habitat Agenda of the Second World Conference on Human Settlements.

The Conflict and Reconstruction Situation

Impact of Conflict on Women's Land, Housing and Property Rights. If women's enjoyment of their rights to land, housing and property is obstructed during times of relative peace, their enjoyment of these rights during conflict situations is nearly prohibited. In the first place, conflict draws men away from their communities and requires women to perform all the functions of head of household, which is particularly difficult under wartime conditions where access to food, water, labour and transport is obstructed. Second, as a result of the economic hardship and violence associated with conflict, women often have to flee their homes and lands. As refugees or internally displaced persons they lose access to their homes and any land or property. Third, women who return to their homes and lands post conflict either face the same lack of

access as they did pre-conflict or, if widowed or if their spouses are missing, they are confronted by male relatives who rely on custom or power to deny and usurp women's claims to stand in their spouse's stead. In turn, women are increasingly rendered homeless and landless during conflict and reconstruction.

New Opportunities and Roles for Women. Despite the harsh repercussions of conflict on women, it can also provide women with opportunities unavailable during times of peace. The absence from their communities compels women into decision making roles inside and outside of the home. In refugee and internally displaced camps, women may have an opportunity to come together, organize and participate in the organizing and running of camp life. These experiences coupled with the discrimination women encounter in the post conflict situation with respect to land, housing and property has resulted in the emergence of women's organizations that are focused on women's livelihood issues including women's rights to land, housing and property. These organizations are instrumental in promoting women's interests so that they appear on the reconstruction political agenda.

Problems in the Realization of Women's Rights to Land, Housing and Property.

The post-conflict reconstruction phase offers an opportunity to redress women's lack of rights in, access to and control over land, housing and property. However, this seldom occurs. Women find that upon returning home, their new roles are retrenched, and their pre-conflict, social roles are reinstated. In part, this is because women are excluded from decision making processes relevant to reconstruction (eg: peace agreement or land reform negotiations). This results in reconstruction legislation which does not consider or address women's rights to land, housing and property. For instance, there is a worldwide movement, particularly in the post conflict context, toward the privatization of customary land tenure schemes which rejects community ownership of land in favour of a system where land and houses are purchased and owned by individuals, regardless of sex. While this might appear to be an improvement over customary law, it is not. In fact, for women, privatization of land tenure and housing creates a vicious circle where women cannot purchase land, housing and property in private-market driven schemes because they are poor, economically marginalized and have no access to capital. And, of course, women cannot access capital without land as collateral to secure a loan or to generate an income.

Even in those instances where women are afforded rights in the reconstruction legislation there are rarely adequate enforcement mechanisms or the legislation is undermined by male biased custom and tradition.

Responses

The barriers to women's enjoyment of their rights to land, housing and property in post-conflict situations are formidable, with obstacles in every sphere: practical, legal, political, economic and cultural. And yet, despite this, women's struggle to claim and enforce rights to land, housing and property during conflict and reconstruction has come a long way and has even resulted in some "success" stories. A review of the totality of

women's experiences in the struggle to claim rights to land, housing and property, reveals five dimensions each of which are essential preconditions for the enjoyment of these rights.

Education and Awareness Raising. Experiences indicate that education of all people – men and women – on the status of women's national, regional and international rights to land, housing and property is essential to the realization of these rights for women. Education provides women with the knowledge, skills, self-confidence and self-esteem required to claim and enforce their rights to land, housing and property.

Women's Organizations. Through organizing and working with each other, women learn the value of their work and they discover new skills and recognize personal capabilities. In this way, these organizations contribute significantly to women's overall empowerment and increased self-esteem. During conflict and reconstruction, women's organizations are required to ensure that the issue of women's access to and control over land, housing and property is firmly placed on the political agenda and to lobby for legislation which codifies these rights. Once codified, women's organizations are required to ensure that these legal rights are translated into on-the-ground realities.

Community Action: Women and Men Working Together. The promotion and protection of women's rights to land, housing and property also requires broader community action. In particular, women recognize the importance of including men in their struggles and participating in broader civic and community initiatives that have traditionally been male dominated. This makes strategic sense because discrimination against women with respect to land, housing and property involves both men and women and is based in male and female gender identities and inequities which custom and tradition prescribe. Though working alongside men will likely result in conflict, it also creates a space and a place to address inequities of gender which then allows for a more comprehensive and inclusive approach to land and housing reform.

Adoption of Gender Sensitive Laws. While the adoption of gender sensitive legislation is not, in and of itself, the solution to guaranteeing women's rights to land, housing and property, it is an important component and a good starting point. What constitutes gender sensitive legislation will vary in different social, economic and political contexts. However, gender sensitive legislation begins with peace agreements and land, housing and property reform which have as their goal the empowerment of women and which integrate women's rights throughout. This requires legislation to include the explicit recognition of women's rights and protection for those rights; independence from interpretive discretion; anti-discrimination protection; priority of statutory law over discriminatory custom; recognition of women's diversity of experience, status and resources; and accessible enforcement mechanisms.

International Campaigns. The international community - grassroots, community based and non-governmental organizations around the world as well as international organizations, agencies and bodies - can play a significant role in local struggles. One of the most prominent ways in which this can be achieved is through the establishment of

thematic campaigns and networks. International networks and support can provide a number of benefits to local struggles including: solidarity, heightening international awareness and sharing of strategies and resources. The *Kigali Plan of Action* which emerged from the Inter-Regional Consultation on Women's Rights to Land and Property During Conflict and Reconstruction which took place in Kigali, Rwanda (February 1998) (hosted by the Government of Rwanda and sponsored by UNCHS (Habitat), UNDP, UNIFEM, and UNHCR) is an excellent example of international networking and support in this area.

4. Report Recommendations

The report makes the following principal recommendations to improve women's enjoyment of their rights to land, housing and property.

National and Local

- ◆ Governments as well as NGOs must ensure that women and women's organizations are included in the negotiation of peace agreements and in the reconstruction process from the outset and not as an afterthought.
- ◆ All laws which discriminate against women with respect to land, housing and property must be repealed, struck down or amended to conform with international human rights law. Laws which privilege customary law over constitutionally protected anti-discrimination law in the context of personal or land, housing and property matters must also be repealed or struck down. New laws related to land, housing and property, drafted in the reconstruction period, must include specific provisions which recognize and protect independent rights to land, housing and property for ALL women. New or amended laws must be measured against international and regional human rights standards and government obligations thereunder.
- ◆ Governments must concentrate on the creation of accessible and independent enforcement mechanisms.
- ◆ All sectors of society must receive human rights education with a focus on women's rights and on economic, social and cultural rights including women's rights to land, housing and property. Where appropriate, human rights education should also focus on local, national, regional and international legal and other mechanisms to enforce these rights.
- ◆ Male-defined custom and tradition must be transformed. To achieve this, national organizations must explore strategies for effecting cultural change. This research could then be used to develop a socio-legal framework which accommodates legal pluralism but which does not violate women's human rights to land, housing and property.
- ◆ Women's organizations must receive financial support from the international community and local or national governments. Capacity building, training and

education on organizing, activism, establishing projects and fundraising should also be provided.

- ◆ Women's organizations must document violations of women's rights to land, housing and property.
- ◆ Women's organizations and others must monitor government compliance with international legal obligations, including those undertaken at the Fourth World Conference on Women and at Habitat II. Women's organizations and others must initiate campaigns to pressure governments into ratifying all international and regional human rights conventions.
- ◆ Women's organizations must exploit a human rights framework in their work.
- ◆ National and local organizations must document the impact of the privatization of land tenure systems and housing on women. National organizations must also conduct further research on other types of land tenure systems and housing, with a view to determining which are the most viable for women's livelihood.

International

- ◆ Women's rights to land, housing and property must be more firmly established as human rights. To this end, human rights lawyers and activists should work together to delineate and develop a more holistic legal framework to support the claim that women's rights to land, housing and property are human rights.
- ◆ More research should be carried out on the relationship between the right to housing and land and property rights, with a view to better determining how the right to housing (one of the most developed economic and social rights at the international level) might be used to support women's rights to land and property.
- ◆ United Nations agencies and governmental and non-governmental aid agencies must re-examine their programmes through a gender lens and then coordinate and re-structure efforts to ensure that women's interests and entitlements with respect to land, housing and property play a defining role in their work plans and activities.
- ◆ The UN Centre for Human Settlements must ensure that its upcoming Security of Tenure Campaign fully integrates women and a gender perspective.
- ◆ The Technical Cooperation Programme of the Office of the High Commissioner for Human Rights (OHCHR) as well as the Office of the High Commissioner for Refugees should initiate and encourage a focus on women's land, housing and property rights in all field work.
- ◆ The Women for Peace Network is a vital international initiative which requires ongoing support (financial and moral). To enhance its effectiveness, this Network

should forge alliances with other international networks focused on women and conflict.

- ◆ Relevant UN agencies and international human rights organizations and legal experts must contribute to research on the impact of privatization of land, housing and property on women.

1. INTRODUCTION

Societies have a moral obligation to respect the right of women to inheritance and ownership of land and property. But they also have a concrete interest in upholding such rights. In communities torn by conflicts, women almost invariably constitute a majority of the population. Many have become heads of household. Disregarding their ownership rights marginalizes them, thus depriving a large part of the community of its means of livelihood. This creates underdevelopment and violence continues, affecting not only the welfare of women and of their families, but also the peace, stability and economic prosperity of entire societies, and of countries and regions. The respect of this fundamental human right - the right of women to inherit land and their own property - is therefore an important element of stable, peaceful and socially just society.¹

As this century comes to a close, the right to land, housing and property for women is receiving more attention than ever before. As a result of women activists bringing this issue to the attention of the international community, there is a growing recognition globally that women's lack of rights in, access to and control over land, housing and property constitute a violation of their human rights², and is a significant contributor to women's increasing poverty. Over the last few years, a number of activities at the international level have secured this issue on the international human rights agenda. Since 1995, there have been several regional and international consultations designed to further an understanding of the issues women face in securing rights in, accessing and controlling land, housing and property in different countries and regions of the world. At the last two United Nations World Conferences (the Fourth World Conference on Women and the Second World Conference on Human Settlements, *Habitat II*) governments committed themselves to ensuring women's rights with respect to land, housing and property inheritance and ownership.³ Moreover, since these conferences, women's rights to land, housing and property, including their right to be free from discrimination with respect to these rights, have found further recognition within the UN human rights system with the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and the Commission on the Status of Women adopting resolutions on this theme.

While this recognition of women's rights to land, housing and property at the international level is encouraging, there is little information and research on the

¹ Sadako Ogata, UN High Commissioner for Refugees, *Opening Statement* at the INTER-REGIONAL CONSULTATION ON WOMEN'S LAND AND PROPERTY RIGHTS IN SITUATIONS OF CONFLICT AND RECONSTRUCTION [hereinafter, INTER-REGIONAL CONSULTATION], 16 - 19 February 1998, Kigali, Rwanda, cited in PEACE FOR HOMES, HOMES FOR PEACE (Summary Record of proceedings) [Hereinafter, PEACE FOR HOMES, HOMES FOR PEACE].

² Most obviously, their right to be free from discrimination and to equality. At the same time, a number of other rights are violated, such as, *inter alia*, the right to respect for private and family life and the home, the right to property, the right to an adequate standard of living, the right to housing, and the right to equality with respect to these rights. Though the right to be free from discrimination and the right to equality are central to the struggle for women's rights to land, property and housing, rights to land, property and housing are not necessarily fully realized or exhausted by the full enjoyment of equality.

³ *Infra* p. 27. Disappointingly, Governments did not commit themselves to ensuring women's *equal* rights with respect to land, property and housing at these conferences.

application or meaning of these rights in the context of armed conflict and reconstruction. This lack of information is disturbing given that rights to land, housing and property are jeopardized and violated more so during conflict situations and that these violations have an acute impact on women. In turn, many questions remain to be answered. What does the right to land, housing and property mean for refugee and internally displaced women? What stands between these women and the realization of their rights to land, housing and property? What strategies are being employed to allow women to claim and enforce these rights during and post conflict and what more can be done to this end?

Drawing on reports, news and journal articles and personal accounts, by women who have lived under conflict, activists, academics and other professionals in every region of the world, this report aims to synthesize and analyze women's experiences across regions in accessing and controlling land, housing and property in the context of post-conflict situations or reconstruction⁴, with a view to providing a summary of the central barriers women face in claiming and enforcing their rights to land, housing and property, the foundation which must be laid to render these rights enforceable, and activities which are required to continue the struggle for women's rights to land, housing and property.

After exposing the meaning of some of the key terms used in any discussion of women's rights to land, housing and property, the paper opens with some preliminary and general comments on women's rights to land, housing and property *outside* of the context of war or reconstruction. This section highlights the fundamental role that rights to land, housing and property play during times of peace in ensuring the livelihood of women, their families and often their communities. It sets out the existing international legal framework which creates and supports these rights and follows with an overview of the ways in which law, custom and tradition interact with and impede the realization of women's rights to land, housing and property. Part three focuses specifically on these rights in the context of conflict and reconstruction, highlighting the additional barriers to these rights imposed on women during conflict and reconstruction. Part four then details the conditions that are required for women to claim and enforce their rights to land, housing and property focusing on education, the role of women's organizations, community action, legal reform, and international campaigns. In conclusion, Part five assesses the current status of women's rights to land, housing and property in the context of conflict and reconstruction and provides modest suggestions to sustain the momentum of work on this issue and to move it forward.

Explaining the Terms

Before commencing the discussion on *Women's Land, Housing and Property Rights in Post-Conflict Situations and Reconstruction*, an elaboration on the terminology used in this report is instructive and will shed some light on the basic premises on which this report is based.

Which Women? When the term "women" is used in relation to land, housing and property rights, to whom are we referring? In the context of this paper "women" refers to women

⁴ As a result, this paper is primarily focused on women in developing countries who are living in conflict or post conflict situations.

who are single, married, living in common with partners, divorced and widowed. It also refers primarily, but not exclusively, to the most disadvantaged women. This paper is based on the assumption that while women do not comprise a homogenous group it is possible to talk about women's shared and common experiences. Regardless of a woman's race, class, ability, age etc., universally, women are discriminated against and experience inequality with respect to land, housing and property.

What do we mean by "rights"? Often in discussions on women's rights to land, housing and property, the term "rights" is left undefined or ambiguous, perhaps on the assumption that the meaning is obvious or understood universally. There are, however, good reasons to be explicit about the meaning of this term because "rights" provide the legal framework, without which women cannot claim or enforce their entitlements to land, housing and property. For the purposes of this paper, women's rights to land, housing and property are understood primarily as *human rights* as articulated in international human rights instruments. At the international level "rights" also refers to the codification and implementation (or violation) of these rights in a variety of instruments at the domestic level such as statutory and customary law and peace and reconstruction agreements.

The right to land, housing and property refers to the totality of possible entitlements. This means women have legal rights in, access to and control over land, housing and property. "Legal rights in land, housing and property" broadly refers to security of tenure, that is, rights to own, lease, rent, mortgage or dwell on land, housing and property and the right not to be forcibly evicted. "Access to land, housing and property" means that a person can use the land (eg: for cultivation), property or housing, but that they do not necessarily have legal rights to do so. This can be through informal concessions granted by individuals to kin or friends.⁵ In some instances access to land, housing and property can be bequeathed and inherited. "Control over land, housing and property" can have multiple meanings, such as the ability to decide how the land and housing resources are used and disposed of, and whether it can be leased out, mortgaged, bequeathed, sold etc. Legal ownership does not necessarily carry with it the right of control. For example, in some regions a married woman requires her husband's consent to alienate land which she legally owns.⁶

It should be noted that this paper is based on the assumption that "women's rights to land, housing and property" must be "independent" rights, that is, "rights that are formally untied to male ownership or control, in other words, excluding joint titles with men".⁷ Women's right to *inherit* land, housing and property - the chief means by which women can own, access and control land, housing and property - is regarded as an essential component of the broader rights to land, housing and property. It is also based on the premise that women have human rights to land, housing and property and that this includes the right to be free from discrimination and the right to equality. That is, women

⁵ Bina Agarwal, *A FIELD OF ONE'S OWN: GENDER AND LAND RIGHTS IN SOUTH ASIA* (1994) at 19.

⁶ *Id.* at 19. This applies to the Jaffna Tamils in Sri Lanka.

⁷ *Id.* at 3.

have human rights to land, housing and property as well as equal rights with respect to land, housing and property.

To What Do Land, Housing and Property Refer? The term "land" in this report is used broadly, referring to all land including that which is arable, agricultural, inherited, owned (individually or communally), leased, rented, squatted upon, occupied, unoccupied, the place upon which a house is established. The term "property", on the other hand, is used throughout this report to refer to immovable property. The term "housing" is used as it has been defined in international human rights law and refers to a physical structure in which people can reside, as well as the attributes required in order for housing to be adequate, in particular: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, and cultural adequacy.⁸

The term "housing" is explicitly used in this report because while "property" can include housing, it generally conjures images of land and implies individual, legal ownership, whereby housing contemplates a full range of relationships (own, lease, rent, squat) and refers specifically to a dwelling, a place to live. As land becomes increasingly scarce, housing becomes increasingly important. Additionally, under human rights law, the right to housing finds explicit recognition but the right to land does not (see section 2.2 below) and the right to protection of property generally protects those who already have legal rights in, access to and control over property. This report is based on the assumption that land and housing play equally significant roles in women's overall economic and social well being and that land and housing are interconnected such that a woman's relationship with land will often inform her relationship to housing, especially in situations of reconstruction whereby the denial of a woman's right in, access to and/or control over land will often simultaneously mean that she lacks a right in, access to and/or control over housing.

What Does Land Tenure Mean? This paper is based on the understanding that land tenure is an inherently social concept and social construct:

Land tenure is, in brief, the social relations established around and that determine who can use what land and how. A land tenure system and its set of tenure relations are interwoven and related to other societal structures and institutions, including family structures and its marriage and inheritance systems. All these structures tend to reinforce each other within a society: if there is a change in one of them, the others often modify and adjust to that change. In other words, a person, household, or group of persons does not possess, use, and transfer land independent of and isolated from other persons and institutions⁹

⁸ Committee on Economic, Social and Cultural Rights, GENERAL COMMENT NO. 4 ON THE RIGHT TO ADEQUATE HOUSING, UN Doc. EC/12/1991/41 (1991).

⁹ Susana Lastarria-Cornhiel, *Impact of Privatization on Gender and Property Rights in Africa*, WORLD DEVELOPMENT (1997) Vol. 25, No. 8, 1317, 1317.

2. WOMEN'S RIGHTS TO LAND, HOUSING AND PROPERTY: AN OVERVIEW

Women's relationship to land, housing and property *outside* the context of conflict and reconstruction directly informs women's relationship to land, housing and property *during* conflict and reconstruction. Therefore, understanding the former is essential for understanding the latter. This section of the paper provides an overview of the relationship between women and land, housing and property during times of "peace"¹⁰ by examining the connection between women's living conditions and women's ownership of, access to and control over land, housing and property. It also provides an analysis of the ways in which laws, policies and tradition – in the national context – inhibit women's enjoyment of their rights to land, housing and property. This section concludes with an overview of the international legal framework available to claim women's rights to land, housing and property as human rights.

2.1. Women's Rights In, Access To and Control Over Land, Housing and Property and Women's Living Conditions

Women's rights in, access to and control over land, housing and property is a determining factor in women's overall living conditions, particularly in developing countries. It is essential to women's everyday survival¹¹, economic security and physical safety and, some would argue, it is the most critical factor in women's empowerment and their struggle for equality in gender relations.¹² Women's reliance on land, housing and property for economic security and survival is only deepening as the number of *de facto* and *de jure* woman headed households expands. In developing countries, men are increasingly migrating to urban areas in search of employment or to join military forces, leaving women to undertake agricultural activities for subsistence and to generate an income off the land, where possible. Despite the importance of land, housing and property to women, the overriding feature of women's relationship to land, housing and property is women's lack security of tenure.¹³ This is largely a result of economic and social discrimination against women, more particularly, gender biased laws, policies and traditions which prevent women from renting, leasing, owning, and inheriting land, housing and property independently or at all and which render women's access to and control over land, housing and property dependant on their link to a man.

¹⁰ Of course, women rarely live in "peace" with economic, physical and psychological violence as common experiences for many women, worldwide.

¹¹ See Rachel Waterhouse, *Women's Land Rights in Post War Mozambique*, paper presented at the INTER-REGIONAL CONSULTATION which states that because most women in Mozambique rely on subsistence agriculture, access to land ensures their livelihood.

¹² Bina Agarwal, *supra* note 5 at 2. The author argues this point in relation to women in South Asia.

¹³ Security of tenure guarantees legal protection against forced eviction, harassment and other threats that if carried out could result in the deprivation of housing/homelessness. Security of tenure for women is not limited to having rights in, access to and control over land or economic security, but also includes physical, psychological and social security. See: General Comment No. 4, *supra* note 8 and Fanelwa Mhago and Melanie Samson, *A Gender Analysis of Recent South African Land Reform*, paper presented at THE INTER-REGIONAL CONSULTATION.

Women's lack of access to and control over productive resources such as land is directly related to women's poverty worldwide.¹⁴ Simply put, for women land and housing serve as security against poverty – a means to basic needs".¹⁵ Studies in South Asia have shown, for example, that households with only marginal plots of land are likely to have a significantly lower risk of absolute poverty than landless households. Rights in, access to and control over land and housing have direct and indirect bearings on poverty. The direct advantages stem from production possibilities and the indirect advantages include facilitating access to credit from institutional and private sources and serving as assets that can be sold.¹⁶ For women, ownership of land and housing can increase women's status within her community and increase her bargaining power within her household.

Without rights in, adequate access to and control over land and housing, and with waged labour difficult to obtain and low paying at best, women do not have the means to meet subsistence needs for themselves and their families. In turn, women have to rely on the goodwill of their spouses or male relatives to share their earnings and household resources. This rarely works to women's advantage as intra-household inequalities in the sharing of benefits from the household resources is common. For example, Bina Agarwal reports that in South Asia a systematic bias against women and female children is found in intra-household access to basic necessities such as health care and food.¹⁷ Moreover, when male earners are present in the household, they do not necessarily share their income with the women in the household¹⁸, creating a poverty trap: lacking rights in, access to and control over land, housing and property women are economically dependant on their spouses or male relatives who, in turn, choose to retain much of their earnings for their own enjoyment. As Agarwal states:

In other words, the risk of poverty and the physical well-being of a woman and her children could depend significantly on whether or not she has *direct* access to income and productive assets such as land, and not just access *mediated* through her husband or other male family members.¹⁹

This is particularly so in the case of divorce, desertion, separation or widowhood where, without rights in or access to independent economic resources like land and without rights in or access to housing, women are extremely economically vulnerable – often left destitute.

Women's lack of rights in and control over land, housing and property means that beyond certain poverty, women are excluded from participating in community decision making, even though these decisions invariably affect women and their living conditions. In many countries ownership and control of land, housing and property commands social

¹⁴ Beijing Platform for Action, A/CONF.177/20, 17 October 1995 at par. 51. [Hereinafter, PFA].

¹⁵ Bina Agarwal, *supra* note 5 at 31.

¹⁶ *Id.* at 31-32.

¹⁷ *Id.* at p. 28.

¹⁸ *Id.* at p. 29.

¹⁹ *Id.* at p. 30.

status²⁰, community respect and in some instances is closely linked with political power. In turn, it is those who own land, housing and property – predominantly men – who are decision makers within the household and in the community. Within the household this means men control how household resources and income are utilized. Within the community or village this means men are represented on decision making bodies and they are responsible for making decisions regarding community resources, development, planning and politics. The virtual absence of women from decision making processes and bodies means that men's experiences are taken for the experiences of the entire community or household, male interests and needs are promoted and the group interests of women are not prioritized.²¹ It is unlikely that men and women will have the same interests given the gender division of labour which exist in almost every society, where women are responsible for maintaining the household, childrearing and subsistence farming and men are responsible for cash crops or income generation and other public activities.

Women's lack of rights in, access to and control over land, housing and property can also contribute to women's experiences of violence. Without security of tenure it is difficult for women to leave abusive and violent households.²² At the same time, a lack of security of tenure means that women can be forcibly evicted from their homes and lands on the whim of an angry spouse or male relative²³, upon marriage breakdown or widowhood which invariably leads women to homelessness, landlessness and destitution, exposing them to further violence. Forced eviction is quite common in the context of armed conflict where it is used as a strategy of war and which results in the involuntary removal of women from their homes and lands.²⁴ After suffering the violence of the actual forced eviction, women are then subject to further violence as internally displaced persons. Francis Deng, the United Nations Special Representative on internally displaced persons, elaborates:

Internally displaced women are particularly vulnerable to gender-specific violence as the protection afforded to them by their homes and communities disappears and the stress of displacement becomes manifest in the family unit. Such abuses include physical and sexual attacks, rape, domestic violence and sexual harassment, increased spousal battering and marital rape. Displaced persons, in particular women, are frequently coerced into providing sexual

²⁰ See Tsehainesh Tekle, *Women's Access to Land and Property Rights in Eritrea*, paper presented at the INTER-REGIONAL CONSULTATION, which states that land held with "tsilmi" tenure conferred on the owner more than just economic benefit, but provided the owner with enhanced social status, almost like aristocracy.

²¹ Shamim Meer, *Introduction* in WOMEN, LAND AND AUTHORITY: PERSPECTIVES FROM SOUTH AFRICA (1997) 1, 4.

²² Leilani Farha, *Women and Housing* in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, Vol. 1, eds. K. Askin and D. Koenig (1999) at 516. See Bina Agarwal, *supra* note 5 at 39-40.

²³ Bina Agarwal, *supra* note 5 at 5.

²⁴ For more on forced eviction as a strategy of war and the impact on women, See Leilani Farha, *The Case of Forced Eviction* in COMMON GROUNDS: VIOLENCE AGAINST WOMEN IN WAR AND ARMED CONFLICT SITUATIONS ed. Indai Sajor (1998) 77.

favours in return for essential food, shelter, security, documentation or other forms of assistance.²⁵

Women's continued lack of rights in, access to and control over land, housing and property is one of the underlying impediments to women's empowerment. Women's disadvantaged economic position creates a structural dependence on men for access to resources which, in turn, subjects women to insecurity. This is particularly damaging to women in today's privatization-driven economy where economic assets and resources are increasingly determinants of power and independence. Until women have power and control in the processes that confer economic power, women will continue to be subordinate to men.²⁶

2.2. Law, Custom and Tradition

Women's insecure tenure and lack of rights in, access to and control over land, housing and property is often rooted in and exacerbated by *statutory law and policies related to land, housing and property, customary law (including religious law), and tradition* which discriminate against women, which assume that men are the supporters and heads of households²⁷ and which treat women as minors and subordinate to men. Exactly how law and economic policies, custom and tradition negatively impact upon women's access to and control over land, housing and property is described below.

Statutory Law and Policies Related to Land, Housing and Property

Law creates and governs most social and economic relations and structures in society, including women's rights in, access to and control over land, housing and property. As it stands, in many instances, law and the legal system act as a barrier between women and rights to land, housing and property. Law obstructs women's rights to land, housing and property most immediately when legislation explicitly forbids women from owning, inheriting, purchasing, leasing, renting, bequeathing land or property. Fortunately, today such legislation is more the exception than the rule.²⁸ In fact, increasingly it appears that women's rights to land, housing and property are protected in law either through anti-discrimination provisions in constitutions or other national legislation such as that dealing with marriage and divorce. An overview of these factors follows.

This does not mean, however, that women's legal rights to land, housing and property are adequately protected. In some countries married women's rights to land, housing and property are ostensibly protected by laws relating to the family, marriage and marriage breakdown, where by law women are granted a share in land, housing and property upon the dissolution of marriage. However, this share is often not "equal" to that of her

²⁵ INTERNALLY DISPLACED PERSONS, REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL, MR. FRANCIS M. DENG, E/CN.4/1996/52, 22 February 1996, at pars. 46 and 47.

²⁶ Adetoun O. Ilumoka, *African Women's Economic, Social and Cultural Rights* in HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES, ed. R. Cook (1994). [Hereinafter, HUMAN RIGHTS OF WOMEN].

²⁷ Julie Mertus, *State Discriminatory Family Law and Customary Abuses* in WOMEN'S RIGHTS HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES eds. J. Peters and A. Wolper (1995) 135, 142.

²⁸ With respect to Africa, See Susana Lastarria-Cornhiel, *supra* note 9 at 1321.

husband's or is not commensurate with her income (or lack thereof) and her contributions to the household. Even the most progressive of these laws tend to be inadequate in their reach as they are often exclusive to women who are legally married, leaving women living in common law without protection. Furthermore, they tend to tie women's rights to those of her husband. For example, in Vietnam, one of the basic laws addressing women's rights to land, housing and property is the Family Law (1986). Together, with the Land Law (1993) and the Civil Law (1995), the Family Law indicates that *husband and wife* have equal rights and duties toward their common property, and that all acts of trade related to land and housing should have the agreement of *both husband and wife*.²⁹

Even in those instances where law appears to protect women's rights to land, housing and property regardless of marital status, obstacles may still appear because law is open to judicial interpretation. For example, in many instances statutory law pertaining to land and housing ownership appears gender neutral³⁰ - land, housing and property rights either do not explicitly refer to women and/or refer to "all persons" or "every individual" or some other generic grouping. The absence of women in the legislation can leave their rights to land, housing and property open to the discretion of a judge. Needless to say, "gender neutral" laws applied by predominantly privileged, male judges, applied in a social, and cultural context where women are relegated to the private realm, accorded second-class status, and regarded as minors, results in legal decisions which do not benefit women.³¹

Legislation which prohibits discrimination based on the ground of "sex" is a possible solution to overcoming at least some of these obstacles to women's rights to land, housing and property and, increasingly, anti-discrimination provisions are emerging in constitutions around the world. These provisions are vital for women's equality and may go some distance in ensuring that community leaders, the judiciary and others involved in the allocation of land, housing and property do not discriminate against women. At the same time, however, anti-discrimination laws do not provide complete protection for women's interests for in many countries women are faced with a further legal impediment to the realization of their rights to land, housing and property: legal pluralism. Legal pluralism refers to a legal system where two systems of law - such as statutory law and customary law - co-exist.³² Discrepancies between the two systems are decided in one of two ways: statutory law prevails or customary law prevails. Unfortunately, many constitutions stipulate that constitutional law prevails in all matters *except* those

²⁹ Thai Thi Ngoc Du, *Women Influencing Housing in Ho Chi Minh City* in *WOMEN'S RIGHTS TO HOUSE AND LAND: CHINA, LAOS, VIETNAM*, eds. I. Tinker and G. Summerfield (1999) 55, 60.

³⁰ In many parts of Asia legislation relating to land, property and housing is gender neutral. See Asteya Santiago, *The Socio-Economic and Cultural Factors Affecting Women's Rights to Land and Property in the Asia Pacific Region*, paper prepared for the INTER-REGIONAL CONSULTATION. Santiago argues that while Asian laws pertaining to land, property and housing are gender neutral, in practice women are still discriminated against.

³¹ UNCHS, *WOMEN AND HUMAN SETTLEMENTS DEVELOPMENT* 1, 38 (1989) and Safiatu Kassim-Singhateh, *A Case Study of the Gambia* paper presented at the INTERNATIONAL WORKSHOP ON WOMEN'S ACCESS, CONTROL AND TENURE OF LAND, PROPERTY AND SETTLEMENT (Gavle, Sweden) (9-11 October 1995). [Hereinafter, INTERNATIONAL WORKSHOP - SWEDEN].

³² This type of legal pluralism is predominant in African countries and Pacific Island nations.

pertaining to family matters such as marriage, adoption, divorce, *the evolution of property on death or other matters of personal law*.³³ Instead, these matters are to be governed by customary law. In other words, according to some constitutions, despite constitutionally entrenched anti-discrimination provisions, or rights to land, housing and property specifically, women CAN be discriminated against in matters pertaining to land, housing and property.

Land and house titling systems can also obstruct women's rights in, access to and control over land, housing and property. For example, in post-colonial Africa, portions of customary land were converted to private property. This was done by the State granting private property titles to "heads of households" for the land families already occupied.³⁴ Needless to say, regardless of the *de facto* situation, heads of households were almost always deemed to be men. And so, the man is regarded as holding title on behalf of his spouse. Gender blind or male specific conceptualizations of the household continue to inform many titling schemes and titles to land and housing continue to be granted exclusively to men in households. The implications for women of male held titles are two fold. First, without independent title to land and housing, women cannot use the land/house as collateral for a loan or credit without the consent of her spouse or male relative. And, in the case of marriage dissolution or death of the spouse, she is left landless and homeless and may also be unable to inherit.

The granting of land and house titles to men as opposed to women is supported indirectly by the international and regional financial institutions such as the International Monetary Fund and the Asian Development Bank which have imposed on developing countries a shift away from customary land tenure systems (where clans, tribes or communities and their leaders are responsible for land/house allocation) to privatized legal land tenure systems (where land/housing is allocated on the basis of an individual's ability to pay). On the face of it, like anti-discrimination legislation, this move toward privatized legal land tenure systems appears to benefit women because under legal land tenure systems, anyone can own land/housing *regardless of sex*. At the same time, however, legal land/house ownership is based on an individual's ability to pay. For women – who constitute the poorest segments of society – purchasing and owning land and/or a house is an unattainable dream. Susana Lastarria-Cornhiel explains:

In a tenure system based on private property rights and a land market, women, theoretically, are able to access land through purchase ... Yet often women enter the market system with no property, little cash income, minimal political power, and a family to maintain. Thus women now encounter serious factor market constraints along with a persistent male bias against women owning land.³⁵

Women may in fact be worse off under the legal land tenure system because not only is it nearly impossible for women to buy land/housing, but also, without ownership rights, they are prohibited from using land/housing rights which they have under customary

³³ See the CONSTITUTION OF ZIMBABWE at article 23(1).

³⁴ Susana Lastarria-Cornhiel, *supra* note 9 at 1320.

³⁵ *Id.* at 1326.

law.³⁶ Individualized and private ownership transfers the few rights, such as cultivation rights, that women had to land under customary law to a few men who are able to claim all rights to land when they possess land titles.³⁷

Beyond legislation, the legal system and process itself pose formidable barriers to women's rights to land, housing and property. In those countries with constitutional or statutory protection of women's rights to land, housing and property, women must overcome two serious obstacles before they can even make a legal claim: they must be apprised of their rights and they must believe in their own entitlement to these rights. Overcoming these obstacles simply leads to more: court processes are complicated, expensive, time-consuming and presume literacy and legal knowledge which few women possess. Moreover, courts are often geographically inaccessible.

In those situations where women are legally entitled to own land, housing and property, financial constraints make purchasing land, housing and property impossible. As it stands, local financial institutions and lending agents do little to assist women with purchasing land, housing and property. Their economic and financial policies, priorities and procedures commonly employed for loans, mortgages and other forms of credit have put women at a significant disadvantage in acquiring credit for land, housing and property. The constraints on women in obtaining such financing are both societal and operational, and arise from a mix of social prejudices and institutional practices. For example, the process of applying for a loan, like judicial processes, assumes literacy levels that few women possess. Even if women could apply, other barriers emerge. Loans taken to finance dwelling units are often large (small loans are not "good business"), entail long-term repayment, often require legal-tenure documentation, and cover only a percentage of the price. On the basis of having to safeguard their capital, conventional lending institutions require proof of an adequate and dependable income as well as ownership of the property. In those countries where women are classified as minors and/or cannot engage in contractual agreements, they cannot acquire credit or can only do so on a husband's or male relative's guarantee.³⁸ For example, in Sri Lanka, women governed under a system of customary law have been denied the right to contract property without the consent of their husbands.³⁹ While there are exceptions to these lending practices, on the whole, credit and lending agencies provide no solution to women's lack of rights in, access to and control over land, housing and property.

Custom and Tradition

Custom and tradition have a bearing on women's rights to land, housing and property in two ways: i/ through customary law and religious law (both of which are based in patriarchy); and, ii/ through the everyday social and cultural manifestations of patriarchy. Where there is no statutory entitlement, custom and tradition tend to restrict women's

³⁶ UNCHS, TOWARDS A STRATEGY FOR THE FULL PARTICIPATION OF WOMEN IN ALL PHASES OF THE UN GLOBAL STRATEGY FOR SHELTER TO THE YEAR 2000 (1990) 12.

³⁷ Susana Lastarria-Cornhiel, *supra* note 9.

³⁸ Leilani Farha, *Women and Housing*, *supra* note 22 at 513-514.

³⁹ Julie Mertus, *supra* note 27 at 142.

rights to land, housing and property. Even when there is formal statutory entitlement, custom and tradition can restrict this in practice.

In many regions of the world including parts of Africa, Asia, the Pacific and the Middle East land and housing is regulated by customary law. Though customary law is not uniform across regions and nations, common factors can be elicited. Customary law tends not to be codified, it is the unwritten social rules and structures of a community ostensibly derived from shared community values and based on tradition, though it can be argued that customary law has come to be defined by men and does not reflect women's interpretation of custom.⁴⁰ Customary law pertaining to women's access to and control over land, housing and property, like much statutory law, is based on social relations between men and women, and more specifically, husbands and wives. Customary law seems to have few provisions for divorced women⁴¹ and even fewer for single women.

Under most systems of customary law women - regardless of their marital status - cannot own or inherit land, housing and property in their own names. In Africa, for example, men control household land (and the house on that land) because community authorities (who are predominantly male) have allocated the land to male household heads and these lands and the houses on them are then passed down to male heirs. For most women, access to land and housing depends on their relation to male relatives. A husband, for instance, has an obligation to provide arable land to his wife to farm but decides which piece of land the woman can use and for how long.⁴² Also under customary law, "all the property acquired by the spouses, except personal goods, belong to the husband who is entitled to retain all of it at the dissolution of the marriage".⁴³ Women's access to land and housing is only via a system of vicarious ownership, through men as husbands, fathers, uncles, brothers and sometimes sons.⁴⁴ In several African countries, for example, customary land and housing registration systems require proof of a husband's authorization for a woman to acquire title independently of her husband and single women or single parent women are obstructed from acquiring these on the basis that there are risks in lending outside of marriage or without the support of their husbands or male relations.⁴⁵

Under customary law, widowed women do not inherit land and housing, but traditionally they were allowed to remain on the matrimonial land and in the matrimonial home until death or remarriage. Over the past decade or so, however, this social safety net has

⁴⁰ See Adetoun O. Ilumoka, *supra* note 26.

⁴¹ Rachel Waterhouse, *supra* note 11 at 2.

⁴² Susana Lasterria-Cornhiel, *supra* note 9 at 1321.

⁴³ IMPLEMENTATION IN AFRICA OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, UN Doc. E/ACA/CM.13/27 (1987) par. 51 in Julie Mertus, *supra* note 27 at 42.

⁴⁴ Dr. Chaloka Beyani, *Women's Land and Property Rights Under Situations of Armed Conflict and Reconstruction: Summary Paper on Key Issues*, paper prepared for the INTER-REGIONAL CONSULTATION at 4.

⁴⁵ *Id.* at 5.

eroded with male heirs tending to sell off the land and the housing on it for their own economic gain leaving widows landless and homeless.⁴⁶

In many countries Islamic Law is integral to customary law and is used to determine how land and housing is allocated. Under Islamic Law while women are not precluded from owning and inheriting land, housing and property, they are not granted equality with men. Looking at the shares widows and daughters receive under the Islamic Law of inheritance reveals the privileged position of men with respect to land, housing and property. A widow is entitled to a fixed share of 1/8th of her late husband's estate if he had children (not necessarily by her) and 1/4 if they had no children. If there is more than one widow they divide this share. A widower in a similar situation would take twice as much: 1/4 if he and his deceased wife had children and 1/2 if they were childless. Daughters inherit a fixed share of 1/2 of the estate if the deceased has no sons. If there are two or more daughters they share 2/3rds of the estate. If there are sons, they are the first heirs and daughters then receive only 1/2 of the share of the son.⁴⁷

Even though women are granted some ownership and inheritance rights under Islamic Law, social norms pressure women to renounce these rights. In Palestine, for example, the position of a woman in her husband's house often depends on the support she can count on from her own kin and if she cannot rely on her brothers for support and assistance with agricultural tasks she becomes even more dependant on her husband.⁴⁸ In turn, if a woman claims her inheritance upon the death of her father, she risks upsetting valuable kinship ties with her husband's brothers.

In those countries where women have the statutory right to own land, housing and property, tradition also prohibits these rights from being claimed or enforced. For example, in India, women have considerable legal rights to own and inherit land, housing and property, yet few women are able to claim these legal rights. Although India has a fairly gender-progressive legal framework it is rooted in a social framework that denies women the legitimacy of such legal claims and of being able to exercise "control" over their land in the cases where they do own land.⁴⁹ Similarly, in Nigeria, the *Land Use Act* which codifies the system of land ownership, does not exclude women; however, women's socio-economic position within Nigeria bars them from claiming land and house ownership. Once married, to the outside world, a Nigerian woman loses her identity as it is subsumed under that of her husband. Therefore, only her husband's name is expected to appear on land and house titles. Most married women, who understand and accept this "cultural trap", lose interest in the acquisition of property.⁵⁰ In Guatemala, it is difficult for any peasant or rural dweller to access land and housing, but it is particularly difficult

⁴⁶ FlorenceButegwa, *Using the African Charter to Secure Women's Access to Land* in WOMEN'S HUMAN RIGHTS, *supra* note 26 at 497.

⁴⁷ Annelies Moore, WOMEN, PROPERTY AND ISLAM: PALESTINIAN EXPERIENCES 1920 - 1990 (1995) at 51.

⁴⁸ *Id.* at 55.

⁴⁹ See Bina Agarwal, *supra* note 5; Leilani Farha, WOMEN AND HOUSING, *supra* note 22; and, Gayatri Menon, *Women's Access, Control and Tenure of Land and Settlement in India*, paper presented at the INTERNATIONAL WORKSHOP ON WOMEN'S ACCESS, CONTROL AND TENURE OF LAND, PROPERTY AND SETTLEMENT (Istanbul, Turkey) (1995). [Hereinafter, INTERNATIONAL WORKSHOP - Turkey]

⁵⁰ Jadesola Akande, untitled paper presented at the INTERNATIONAL WORKSHOP - SWEDEN, *supra* note 31.

for women because of traditions around inheritance practices which give property to men but not women.⁵¹

Though there are few - if any - statutory laws which explicitly exclude women from decision-making processes and bodies, custom, tradition or social norms continue to have this effect. This exclusion has a profound influence on women's position with respect to land, housing and property.⁵² In almost every country in the world, men are the community leaders and those engaged in local and national politics and as such make decisions without reflecting on women's experiences and without consulting women themselves. This is not surprising given that decision making or political power of any sort is historically linked to land, housing and property ownership and the status that confers on the owner. Given that women do not have full rights to land, housing and property, they find themselves outside of political bodies and processes. Under male dominated decision-making bodies it is assumed that men and women have the same interests and concerns and that men and women would address these concerns in the same way. These assumptions result in decisions which neither reflect nor address women's lived realities and needs.

2.3. International Legal Framework

The lack of protection for women's rights to land, housing and property in national legal systems and customary law and tradition is simultaneously reflected and challenged in international human rights law. What follows is a review of the international human rights *instruments, resolutions and documents* within which women's rights to land, housing and property are situated. This review reveals that under the international human rights system, women have the right to be free from discrimination; women have the right to an adequate standard of living; women have the right to adequate housing; women have the right to enjoy financial independence and to earn a livelihood and therefore women have the right to own, manage, enjoy and dispose of property. Taken together this bundle of rights goes some distance in securing women's rights to land, housing and property and to inherit these, albeit, somewhat indirectly. At the same time, a review of those human rights documents which have emerged from political processes, such as World Conferences, reveals that the struggle for women's equal rights with respect to land, housing and property is one that has not yet been settled. This is because Islamic States are not yet ready to concede women's equal rights with respect to land, housing and property on the basis that to do so would conflict with the tenants of Shariah law. It should also be noted that neither the right to land nor the right to inheritance appear as independent rights in international human rights law and for this reason, the right to housing is particularly important in the struggle for women's rights to land, housing and property.

⁵¹ Edna Calder Chaves, NGOs and Cooperatives, *Working with Populations Affected by the Civil War in Guatemala*, paper prepared for the INTER-REGIONAL CONSULTATION, 3.

⁵² Bina Agarwal, *supra* note 5 at 41, 75.

Legal Instruments

International

The Universal Declaration on Human Rights (UDHR)⁵³ - the basis of all human rights instruments at the international level - contains a number of provisions which support women's claim to land, housing and property as human rights. Article 17 (1) and (2) clearly establish the right to property for all people regardless of sex, stipulating that "[e]veryone has the right to own property alone as well as in association with others" and that "[n]o one shall be arbitrarily deprived of his property."⁵⁴ Article 25 establishes for everyone the right to an adequate standard of living including housing and to security in the event of a lack of livelihood. Women's rights to land, housing and property can be read into the right to Article 25 on the basis that these are essential to an adequate standard of living for women and to women's security when widowed, unemployed or lacking livelihood.

Further support for women's rights to land, housing and property can be found in Article 16 of the UDHR which states that men and women are "entitled to equal rights as to marriage, *during marriage and at its dissolution*". Given the central role that land, housing and property play within marriages and upon their dissolution, this article suggests that women have the right to be free from discrimination with respect to rights in, access to and control over land, housing and property both during marriage and upon its dissolution.

If indeed Articles 17, 25 and 16 can be read as implying the right to land, housing and property, Article 2 of the UDHR underscores these rights for women by stipulating that women have the right to be free from discrimination with respect to all of the rights found in the UDHR.

While the UDHR provides a useful legal framework for women's rights to land, housing and property, and while its provisions constitute important general principles of international human rights law, it is not considered legally binding on States. In turn, its efficacy in terms of promoting and protecting women's land, housing and property rights may be limited.

Legal instruments such as the International Covenant on Civil and Political Rights (ICCPR)⁵⁵, the International Covenant on Economic, Social and Cultural Rights⁵⁶, and

⁵³ Universal Declaration of Human Rights, adopted 10 Dec. 1948 by General Assembly Resolution 217 A (III), UN GAOR, 3rd Sess., *reprinted* in United Nations, A COMPILATION OF INTERNATIONAL INSTRUMENTS, ST/HR/1/Rev.5 (Vol.1/Part 1) [hereinafter UDHR].

⁵⁴ It is now understood that the male-specific language of international human rights instruments is inclusive of women.

⁵⁵ International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) *reprinted* in A COMPILATION OF INTERNATIONAL INSTRUMENTS, *supra* note 53.[hereinafter ICCPR].

⁵⁶ International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (xxI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force*

the Convention on the Elimination of All Forms of Discrimination Against Women⁵⁷ codify many of the provisions found in the UDHR which are relevant to women's rights to land, housing and property and build upon these provisions. As "treaties" these instruments are accorded more legal weight than the UDHR as they are legally binding on those States which have ratified them.

The ICCPR does not explicitly codify the right to land, housing and property for women however, it contains an important anti-discrimination provision that protects women's rights to be free from discrimination with respect to land, housing and property. Article 26 is a broad, anti-discrimination provision which indicates that any law – regardless of its subject matter – which discriminates on the basis of sex is in breach of the ICCPR.⁵⁸ Therefore, law which discriminates against women with respect to, *inter alia*, using, renting, owning or inheriting land, housing and property would constitute a violation of women's human rights under the ICCPR. This means that any State party to the ICCPR found to have such law is in violation of its legal obligations under the ICCPR. In keeping with this interpretation, the Human Rights Committee - which monitors State party compliance with the ICCPR - has made recommendations to Zambia, Zimbabwe, Yemen and Libyan Arab Jamahiriya regarding discriminatory customary laws relating to women's rights to land, housing and property.⁵⁹

Like Article 26 of the ICCPR, the CEDAW's relevant provisions focus on the right to be free from discrimination, but differ from the ICCPR in that it contains a number of provisions which *explicitly* protect women from discrimination with respect to matters relating to land, housing and property. For example, Article 13 instructs States parties to take all appropriate measures to eliminate discrimination against women in areas of economic and social life to ensure women's equal right to bank loans, mortgages and other forms of financial credit. Article 14.2 (h) ensures rural women the right to enjoy "adequate living conditions in relation to housing, sanitation, electricity and water supply ...". And Articles 15 and 16 provide explicit protections from discrimination with respect to land, housing and property. Under Article 15, States Parties are obliged to accord to women "equality with men before the law"; "a legal capacity identical to that of men" including "equal rights to conclude contracts and to administer property". It also states that "all contracts and all other private instruments of any kind with legal effect which is directed at restricting the legal capacity of women shall be deemed null and void". Article 16 stipulates:

3 Jan. 1976) *reprinted* in A COMPILATION OF INTERNATIONAL INSTRUMENTS, *supra* note 53 [hereinafter ICESCR].

⁵⁷ Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. G.A.O.R., 34th Sess., Supp. No. 46, U.N. Doc. A/34/36 (1980) (*entered into force* 3 Sept. 1981), *reprinted* in A COMPILATION OF INTERNATIONAL INSTRUMENTS, *supra* note 53. [Hereinafter CEDAW].

⁵⁸ Andrew Byrnes, *Enforcement Through International Law and Procedures* in HUMAN RIGHTS OF WOMEN, *supra* note 26, 189.

⁵⁹ The ICCPR also includes other relevant provisions such as Article 17(1): "No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home..." and 17(2): "Everyone has the right to the protection of the law against such interference or attacks". These articles in conjunction with Article 26 could also be used to protect women's rights to equality with respect to land, property and housing.

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: ...

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration.

The Committee on the Elimination of Discrimination Against Women⁶⁰ has complemented these provisions in General Recommendation No.21, "Equality in marriage and family relations".⁶¹ Commenting on Article 15 the Committee states:

When a woman cannot enter into a contract at all, or have access to financial credit, or can do so only with her husband's or a male relative's concurrence or guarantee, she is denied legal autonomy. Any such restriction prevents her from holding property as the sole owner ... Such restrictions seriously limit the woman's ability to provide for herself and her dependents.⁶²

And then, linking Article 16(1)(h) with Article 15(2), the Committee notes that the right to own, manage, enjoy and dispose of property is central to a woman's right to enjoy financial independence, and in many countries is critical to her ability to earn a livelihood and to provide adequate housing and nutrition for herself and her family.⁶³ The Committee also suggests that countries undergoing agrarian reform or redistribution of land, should carefully observe the right of women - regardless of marital status - to share such redistributed land.⁶⁴ Further the Committee states:

...any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.⁶⁵

After describing the various ways in which women are commonly discriminated against with respect to the division of property during marriage and upon its dissolution as well as the discrimination women suffer under inheritance laws and customs, the Committee calls for the revocation and abolition of laws and practice which support or entrench these types of discrimination against women.⁶⁶

The ICESCR can be seen as providing a framework which allows women to claim equality rights as well as specific rights to housing and land. That is, the ICESCR protects women's right to be free from discrimination and to equality with respect to housing while also protecting more specific rights to housing and access to land. Under

⁶⁰ [Hereinafter, "the Committee"].

⁶¹ GENERAL RECOMMENDATION NO. 21, 13th Session, 1994, available at: <http://www.un.org/womenwatch/daw/cedaw/recomm.htm>.

⁶² *Id.* at par. 7.

⁶³ *Id.* at par. 26.

⁶⁴ *Id.* at par. 27.

⁶⁵ *Id.* at par. 28.

⁶⁶ *Id.* at pars. 30 - 35.

Article 3 women are guaranteed equal rights to the enjoyment of all economic, social and cultural rights set forth in the ICESCR and Article 11(1) codifies the right to adequate housing. In its legal interpretation of the right to adequate housing, the Committee on Economic, Social and Cultural Rights⁶⁷, which monitors State party compliance with the ICESCR, has explicitly included the right to land as an element of the right to housing. In General Comment No. 4, the CESCR defines accessibility – one of the seven elements required for adequate housing – as follows:

Adequate housing must be accessible to those entitled to it. Disadvantaged groups must be accorded full and sustainable access to adequate housing resources ... Within many States parties **increasing access to land by landless or impoverished segments of the society** should constitute a central goal. Discernible governmental obligations need to be developed aiming to substantiate the right of all to a secure place to live in peace and dignity, **including access to land as an entitlement**.⁶⁸ [emphasis added]

The relevance of Article 11(1) and the right to adequate housing to women is reflected in the CESCR's Concluding Observations on States parties⁶⁹. In its recent review of Canada, for example, the CESCR notes that "Aboriginal women living on reserves do not enjoy the same right, as women living off reserves, to an equal share of matrimonial property at the time of marriage breakdown"⁷⁰ and recommends that the State party undertake to resolve this matter to uphold Aboriginal women's human rights.

Regional

None of the regional instruments include specific reference to land, property or housing rights. They can however provide an indirect means of supporting and claiming these rights for women through either anti-discrimination provisions and/or provisions which protect private family life and the home.⁷¹

Though the African Charter on Human and People's Rights does not codify a specific right of women to land, housing and property, it does contain a number of provisions which - in their totality - can be interpreted as affording women the right to be free from discrimination with respect to land, housing and property.⁷² States parties are bound to recognize the right to freedom from discrimination with respect to the rights included in

⁶⁷ [Hereinafter, CESCR].

⁶⁸ Committee on Economic, Social and Cultural Rights, GENERAL COMMENT NO. 4 *supra* note 8 at par. 8.

⁶⁹ States or governments which have ratified the Covenant are legally obligated to respect, protect and fulfill the rights in the Covenant. State parties to the Covenant are required to submit periodic reports to the CESCR on the status of implementation of these rights within that country.

⁷⁰ Committee on Economic, Social and Cultural Rights, CONCLUDING OBSERVATIONS, E/C.12/1/Add.31. at par. 29.

⁷¹ Unfortunately, the protection of "private family life" has been used shield the family and actions within households (eg: domestic violence) from the ambit of human rights and other laws. This does not mean, however, that these provisions cannot be used to protect women's rights to land, property and housing.

⁷² For a more thorough examination of the African Charter and its use to secure and promote women's rights to land in Africa see: Florence Butegwa, *Using the African Charter to Secure Women's Access to Land* in HUMAN RIGHTS OF WOMEN, *supra* note 26 at 495.

the Charter and shall undertake to adopt legislative or other measures to give effect to it.⁷³ Article 18 ensures the “elimination of every discrimination against women” and the protection of the rights of the woman “as stipulated in international declarations and conventions”. Article 22 provides that all peoples have the right to their “economic, social and cultural development” and Article 25 obliges States to:

to protect and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

These articles of the African Charter which protect women from discrimination and which refer to international human rights law could be used to challenge laws and judicial decisions which restrict or deny women’s rights in , access to and control over land, housing and property. The African Charter also provides an opportunity to include private (non-State) actors in the protection and promotion of women's rights to land, housing and property and to be free from discrimination, by making both States and individuals within the State responsible for eliminating discrimination against women.⁷⁴

The European Convention for the Protection of Human Rights and Fundamental Freedoms⁷⁵ also contains provisions which can be interpreted and applied in a manner which affords women rights to land, housing and property. Article 8, like Article 17 of the ICCPR, provides the right to respect for private and family life and the home. Article 1 of Protocol No. 1 underscores this by stipulating that “[n]o one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”. Despite the male-centric language of these rights, their protections undoubtedly extend to women as indicated by Article 14 which stipulates that the enjoyment of the rights and freedoms set forth in the ECHR “shall be secured without discrimination on any ground”, including sex. From a gender perspective, these provisions may not be useful for women who cannot prove title to her home or who do not have possessions that she can claim as her own.

The American Convention on Human Rights⁷⁶ contains similar provisions to the ICCPR and the ECHR, that could be applied to women’s land, housing and property claims, stipulating at Article 11(2) that “No one may be the object of arbitrary or abusive interference with his private life, his family, his home....” and that everyone has the right to the protection of the law against such interference or attacks (Article 11(3)). However, like the ECHR, these provisions may not adequately protect women. Like other human

⁷³ African Charter on Human and People’s Rights, *adopted* 26 Jun. 1981 (*entered into force* 21 Oct. 1986), *reprinted* in United Nations, A COMPILATION OF INTERNATIONAL INSTRUMENTS, ST/HR/1/Rev.5 (Vol.II), Article 2 and 1 respectively [hereinafter African Charter].

⁷⁴ African Charter, Article 28. See: Florence Butegwa, *supra* note 46 at 502.

⁷⁵ The European Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* 4 Nov 1950 (*entered into force* 3 Sept 1953), *reprinted* in United Nations, A COMPILATION OF INTERNATIONAL INSTRUMENTS, *supra* note 73 [hereinafter, ECHR].

⁷⁶ American Convention on Human Rights, *adopted* on 22 Nov 1969 (*entered into force* 18 July 1978), *reprinted* in), *reprinted* in United Nations, A COMPILATION OF INTERNATIONAL INSTRUMENTS, *supra* note 73 [hereinafter, American Convention].

rights legislation, the American Convention includes a non-discrimination clause with respect to the rights contained the Convention.⁷⁷

UN Documents

Documents that emerge from World Conferences, Resolutions and reports written by Special Rapporteurs are not legally binding on States, however, they carry moral persuasion, and represent sources of international law.⁷⁸

Beijing Platform for Action

The Beijing Platform for Action, which emerged from the Fourth World Conference on Women⁷⁹, explicitly recognizes the importance of land, housing and property to women's livelihood drawing the important link between women's poverty and their homelessness, inadequate housing, and lack of access to economic resources such as credit, land ownership and inheritance.⁸⁰ The PFA also notes the negative impact that the unequal division of labour and responsibilities within the household has on women's participation in decision-making in public forums.⁸¹ The PFA squarely places these concerns in a human rights framework by reaffirming that all human rights - civil, cultural, economic, political and social - are universal, interdependent and interrelated and that women's human rights are an inalienable, integral and indivisible part of universal human rights.⁸²

The PFA commits governments to enable women to obtain affordable housing and access to land by removing all obstacles to access⁸³; to undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property⁸⁴; to eliminate the injustice and obstacles in relation to inheritance faced by the girl child by enacting and enforcing legislation that guarantees equal right to succession and ensures equal right to inherit⁸⁵; and to enhancing at the national and local levels, rural women's income generating

⁷⁷ *Id.* at Article 1 which states: “The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. For the purposes of this Convention, “person” means every human being”.

⁷⁸ Berta Esperanza Hernandez-Truyol, *Human Rights Through A Gendered Lens: Emergence, Evolution, Revolution* in WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW, *supra* note 22 at 17. The author cites the four sources of international law as recognized in the Statute of the International Court of Justice which are: (a) international covenants (treaties), (b) customary international law, (c) general principles of law recognized by civilized nations, and (d) teachings of highly qualified publicists. The reports of Special Rapporteurs could be considered as coming under category (d).

⁷⁹ [Hereinafter, FWCW]

⁸⁰ PFA, *supra* note 14 at pars 47, 51, 156.

⁸¹ *Id.* at par. 185.

⁸² *Id.* at par. 213.

⁸³ *Id.* at par. 57(m).

⁸⁴ *Id.* at pars. 256(k), 61(b).

⁸⁵ *Id.* at par. 274(d).

potential by facilitating their equal access to and control over productive resources, land, credit, capital, and property rights⁸⁶

Despite these important observations and commitments for action, it should be noted that during the FWCW, women's *equal rights* to land, housing and property and the inheritance of these, were highly contentious issues. It is for this reason that the PFA predominantly calls for women's "equal *access* to" but not "equal *rights* to" housing, land, property and inheritance. The sole paragraph in the PFA which calls for "equal rights" to succession and inheritance (in the context of the girl child), is subject to reservations from the following countries: Egypt, the Islamic Republic of Iran, Iraq, Libyan Arab Jamahiriya, Mauritania, and Tunisia all of which stipulated that this paragraph would have to be interpreted in the context of respect for the laws of inheritance in the Islamic Shariah.

Habitat Agenda

At the outset, the Habitat Agenda rightly identifies the factors which have prevented women from obtaining adequate shelter such as the persistent and increasing burden of poverty on women and discrimination against women.⁸⁷ In turn, women's equal access to land, housing and property is one of the overall guiding principles of the Habitat Agenda. This is reflected in Chapter II which sets out the Goals and Principles regarding human settlements and which stipulates that equitable human settlements are those in which all people without discrimination have equal access to housing, and which provide equal access to the right the right to inheritance, the ownership of land and other property and credit.⁸⁸ The Agenda also notes that the empowerment of women is fundamental to sustainable human settlements development.⁸⁹

Chapter III of the Habitat Agenda is particularly articulate on women's rights to land, housing and property ownership, with paragraph 40(b) committing governments to:

Providing legal security of tenure and equal access to land to all people, including women and those living in poverty; and undertaking legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property, credit, natural resources and appropriate technology.⁹⁰

This is reinforced by the commitments undertaken by States to ensure gender equality in all aspects of human settlements, such as: the integration of gender perspectives in human settlements related legislation, policies, programmes and projects; developing conceptual and practical methodologies for incorporating gender perspective in human settlements planning, development and evaluation; and formulating and strengthening policies and

⁸⁶ *Id.* at par. 166(c).

⁸⁷ REPORT OF THE UNITED NATIONS CONFERENCE ON HUMAN SETTLEMENTS (HABITAT II), ISANTBUL 3-14 JUNE 1996, 7 AUGUST 1996, HABITAT AGENDA, UN doc. A./CONF.165/14 at par. 15.

⁸⁸ *Id.* at par. 27.

⁸⁹ *Id.* at par. 27.

⁹⁰ *Id.* at par. 40(b).

practices to promote the full and equal participation of women in human settlements planning and decision-making.⁹¹

Later, the document complements these objectives and commitments with corresponding strategies for implementation, recommending the eradication of legal and social barriers to women's equal and equitable access to land. More specifically, the document calls for States to, *inter alia*: promote awareness campaigns and education regarding women's legal rights with respect to tenure, land ownership and inheritance; support community projects that aim to remove all barriers to women's access to affordable housing, land, housing and property ownership, economic resources, infrastructure and social services and ensure the full participation of women in all decision making processes; undertake legislative and administrative reforms to give women full and equal access to economic resources, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technologies.⁹²

The Habitat Agenda is useful in the struggle to promote and protect women's rights to land, housing and property as it reaffirms the crucial link highlighted in the Beijing PFA between women's economic and social disadvantage and women's lack of *access* to land, housing and property, and provides a number of concrete actions Government's and others can take to ensure women's *equal access* to land, housing and property. Like the Beijing PFA, however, the Habitat Agenda does not go far enough, as it fails to recognize and call upon Government's to ensure women's *equal rights* to land, housing and property.⁹³

Special Rapporteur on the Right to Housing

In 1993 Justice Rajindar Sachar was appointed Special Rapporteur on promoting the realization of the right to housing. During his tenure Justice Sachar produced three reports which explore the various aspects of the right to adequate housing. What follows is an overview of the Special Rapporteur's comments pertaining to women and land, housing and property.

In his first "Progress Report" the Special Rapporteur notes that "gender and housing" must be further examined in order to understand the causes of the global housing crisis.⁹⁴ Toward this end, in his final report, the Special Rapporteur devotes several paragraphs to women's land, housing and property rights.⁹⁵ In particular he notes that "women across

⁹¹ *Id.* at par. 46 (a) - (e).

⁹² *Id.* at par. 78 (a) - (g) and 79 (a) - (f).

⁹³ Paragraph 75 of the Habitat Agenda, which provides preliminary comments on Ensuring Access to Land, states that "...Governments at the appropriate levels, including local authorities, should nevertheless strive to remove all possible obstacles that may hamper equitable access to land and ensure that equal rights of women and men related to land and property are protected under law". However, this paragraph is not specifically an "Action" paragraph, which means States may have a legitimate argument for ignoring this recommendation.

⁹⁴ THE RIGHT TO ADEQUATE HOUSING, FIRST PROGRESS REPORT Submitted by Mr. Rajindar Sachar, Special Rapporteur, U.N. Doc. E/CN.4/Sub2/1993/15 (1993).

the world continue to suffer from discrimination in the attainment of all aspects of the right to housing: land security and inheritance of right to land, housing and property; access to credit facilities ...". He further comments that the issue of land security is of primary importance to women, especially given that in most countries of the world women have neither a right to the home in which they were born nor to the home they live in after marriage.⁹⁶ Further, he notes that even in countries where inheritance laws and laws governing rights to home ownership and security of tenure have changed, women are seldom able to exercise these rights.⁹⁷ The Special Rapporteur then suggests that the most critical factor in the perpetuation of gender inequality and poverty is the continued discrimination faced by women in all matters of land, housing and property. He then concludes that gaining and securing the right to housing can lead women to attain other rights and create possibilities for the improvement of the environment in which women live.⁹⁸

Under the heading "Gender equality" the Special Rapporteur states that it is necessary to alter the unjust and exploitive social and cultural practices and processes against women and to ensure that these issues are explicitly considered in all aspects of housing policy, programmes and legislation.

Maintaining this momentum, the report proceeds to recommend that States should guarantee women full equality of treatment regarding any and all aspects of the human right to adequate housing, with particular attention paid to rights to land and/or property ownership and inheritance, that influence decision-making processes.⁹⁹

Resolutions

To date there have been three resolutions adopted by UN bodies on women's rights to land, housing and property: Resolution 1997/19, "Women and the right to adequate housing and to land, housing and property"¹⁰⁰; Resolution 1998/15, "Women and the right to land, housing and property and adequate housing"¹⁰¹ both adopted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities; and Resolution 42/1, "Human rights and land rights discrimination" adopted by the Commission on the Status of Women (see Annex).¹⁰²

⁹⁵ THE RIGHT TO ADEQUATE HOUSING, FINAL REPORT submitted by Mr. Rajindar Sachar, Special Rapporteur, U.N. Doc.E/CN.4/SUB.2/1995/12 (1995) at pars. 45-49.

⁹⁶ *Id.* at par. 46.

⁹⁷ *Id.*

⁹⁸ *Id.* at par. 49.

⁹⁹ *Id.* at 169.

¹⁰⁰ Sub-Commission on the Prevention of Discrimination and Protection of Minorities, RESOLUTION 1997/19, E/CN.4/SUB.2/RES/1997/19 (1997). For full text *see* Annexes to this paper.

¹⁰¹ Sub-Commission on the Prevention of Discrimination and Protection of Minorities, RESOLUTION 1998/15, E/CN.4/SUB.2/RES/1998/15. For full text *see* Annexes to this paper.

¹⁰² Commission on the Status of Women, RESOLUTION 42/1, E/CN.6/1998/12. For full text *see* Annexes to this paper.

These resolutions underscore and support women's rights to land, housing and property as well as their rights to be free from discrimination with respect to land, housing and property. The two resolutions adopted by the Sub-Commission are particularly interesting for the linkages they make to a variety of human rights documents. For example, both resolutions include references to General Comments and Recommendations adopted by the CESCR and CEDAW as well as references to the Beijing Platform for Action and the Habitat II Agenda.¹⁰³ As Martin Scheinin, member of the Human Rights Committee, has noted, these resolutions prove and propose a close interaction between a primarily political process (the Beijing Conference and Habitat II), standard-setting activities (the Sub-Commission) and treaty interpretation (CEDAW and CESCR).¹⁰⁴ This suggests that the various UN instruments and documents related to women's rights to land, housing and property interact and combine to constitute a legal and political base for the protection and enforcement of these rights for women.

3. WOMEN'S RIGHTS TO LAND, HOUSING AND PROPERTY IN POST-CONFLICT SITUATIONS AND DURING RECONSTRUCTION

3.1. Impacts and Opportunities in Post-Conflict Situations and Reconstruction

Those who suffer most are we, the women, who must be both father and mother to our children, after becoming widows and orphans, leaving behind our villages and lands, languages and dresses, in order to save our lives and the lives of our children.

*Maria Garcia Hernandez, Mama Maquin Women's Organisation, Guatemala.*¹⁰⁵

If women's enjoyment of their rights to land, housing and property is obstructed during times of relative peace, their enjoyment of these rights during armed conflict situations is nearly prohibited. This section attempts to elucidate the impact of armed conflict on women's relationship with land, housing and property by focussing on women's experiences during armed conflict and the early reconstruction phase. What emerges is an appalling picture, but one that is not without hope. There is little doubt that both during and following conflict women experience extreme trauma and hardship. At the same time, however, armed conflict and reconstruction provide women with new opportunities and roles in relation to land, housing and property that can be the germinating seed for structural change and the realization of women's rights to land, housing and property.¹⁰⁶

¹⁰³ Habitat Agenda, *supra* note 87.

¹⁰⁴ Martin Scheinin, *Women's Enjoyment of their Economic and Social Rights: Conceptual Framework for the Discussion*, paper prepared for the EXPERT GROUP MEETING ON PROMOTING WOMEN'S ENJOYMENT OF THEIR ECONOMIC AND SOCIAL RIGHTS (November 1997, Turku/Abo, Finland.), hosted by the United Nations Division for the Advancement of Women, UN Doc. EGM/WESR/1997/BP.1

¹⁰⁵ Maria Garcia Hernandez, *Implementation of the Guatemalan Peace Accord with Special Reference to Women Returnees from Mexico*, paper prepared for the INTER-REGIONAL CONSULTATION.

¹⁰⁶ See Paula Worby, *Organising for Change: Guatemalan Refugee Women Assert their Right to be Co-Owners of Land Allocated to Returnee Communities*, paper prepared for INTER-REGIONAL CONSULTATION.

3.1.1 Women During Conflict : Impact and Opportunities

Women are less likely than men to engage in "combat" and hence more likely to experience war as "civilians". Despite the fact that men tend to be on the frontlines of the battlefield, wars are not or not solely about men in battlefields especially in light of the fact that approximately 75% of those killed in war are civilians and among these civilians women (along with children and older men) will be found in huge numbers.¹⁰⁷ Beyond the threat of death, rape and other forms of physical and psychological violence that war imposes on women¹⁰⁸, war directly impinges on women's relationship to land, housing and property. Oftentimes at the commencement of armed conflict men leave their homes and lands to join military or guerilla forces in other regions of the country, causing many women to become de facto heads of households - if they weren't already prior to the conflict. As heads of households women are responsible for doing all that is necessary to ensure their own well being and that of their families including: child rearing and education, accessing food, water and other basic amenities and services, generating an income and protecting their families from exposure to physical violence. The burden this places on women during armed conflict situations cannot be underestimated. Accessing food and generating an income can be particularly difficult in the face of food blockades and the destruction or looting of seed stocks, foodstuffs, crops, livestock, and drinking water installations. Women also find it difficult to run family farms without men's labour and if transportation systems have been destroyed.¹⁰⁹ In turn, although the armed conflict provides women with an opportunity to make decisions regarding the running of the household and the cultivating of lands, the conflict situation makes it nearly impossible for women to survive economically and emotionally under incredibly harsh conditions.

3.1.2 Women Displaced by Conflict: Impact and Opportunities

Economic hardship combined with the threat or perpetration of violence means that many women and children have to flee their homes and lands to seek refuge in a foreign country (where they become refugees) or to a different region within their country (where they become internally displaced persons).¹¹⁰ In many instances, prior to or after fleeing, their homes and lands are demolished, burned, and totally destroyed, a phenomenon the world witnessed most recently in East Timor and Kosovo where it is believed that close to 70% of homes in both regions were destroyed.¹¹¹ If not destroyed, vacated houses and lands are often looted and occupied by opposing forces and their supporters.

It is now estimated that between 70 and 80% of the world's 14 million refugees and internally displaced populations are comprised of women and children.¹¹² The impact on women of displacement is severe:

¹⁰⁷ Agnes Callamard, *Breaking the Collusion of Silence* in COMMON GROUNDS *supra* note 24 at 70.

¹⁰⁸ For an excellent collection of essays on violence against women during armed conflict situations *see*: COMMON GROUNDS, *Id.*

¹⁰⁹ Agnes Callamard, *supra* note 107 at 70.

¹¹⁰ PEACE FOR HOMES, HOMES FOR PEACE, *supra* note 1. *See* Agnes Callamard, *supra* note 107 at 70.

¹¹¹ Australian Broadcasting Corporation, MORNING RADIO NEWS, 16 September 1999.

¹¹² United Nations, THE WORLD'S WOMEN 1995: TRENDS AND STATISTICS (1995), UN Doc. ST/ESA/STAT/SER.K/12, p.76.

A displaced woman is confronted by a social and cultural vacuum: she faces not only a loss of security but also of identity. Her land, house, community, friendships, family and traditional role in relation to her community and family are gone.¹¹³

Daily survival in refugee camps and those established for the internally displaced is not easy. As the UN Special Representative on Internally Displaced Persons states:

Internally displaced women are particularly vulnerable to gender-specific violence as the protection afforded to them by their homes and communities disappears and the stress of displacement becomes manifest in the family unit ... Gender based discrimination and unequal treatment in allowing access to food, water, clothing, housing, adequate medical care and sanitation often undermines the satisfaction of these subsistence needs. This is particularly serious in camp situations where these needs are acute.¹¹⁴

Perhaps not surprisingly, the confining gender roles and discrimination women experience in everyday life are replicated in the impermanent camps in which women are forced to live during conflict situations. In reaction to the shock and stress of displacement those living in camps often try to "normalize" their situation by reverting to old patterns of behaviour and social roles. Despite these attempts, however, camp life rarely truly replicates everyday community life during times of peace.¹¹⁵ From a gender perspective, this is at least in part because camp life necessarily blurs the division of labour and the separation between the "public" realm (men's activities) and the "private" realm (women's activities). After all, at least at the outset, within camps the public and private are inextricably linked with decision-making (public realm / men's activities) centering on issues which are of concern, traditionally, to women in the private realm: adequate food, housing, sanitation, education, health care facilities, privacy, etc. Moreover, women in particular, but also men, find themselves having to take on new roles in the camps.¹¹⁶ Perhaps for these reasons, in a few instances, camp life has provided women with a unique opportunity to organize, to act collectively, to participate in decision-making and to advocate for changes and/or the implementation of policies that are in keeping with women's interests and needs.¹¹⁷ The experiences of Salvadoran refugees in Honduras is illustrative. Once the initial goal of families' physical survival and basic needs was secured, Salvadoran refugee camps became known for their high levels of organization.¹¹⁸ The refugees managed the administrative systems of the camps,

¹¹³ Amnesty International, COLOMBIA: JUST WHAT DO WE HAVE TO DO TO STAY ALIVE? (1997) at 20.

¹¹⁴ REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL, MR. FRANCIS M DENG, E/CN.4/1996/52, 22 (February 1996) at pars. 46-47.

¹¹⁵ Except, of course, in those instances where refugee camps become quasi-permanent settlements such as the Sho'fat refugee camp in East Jerusalem which has been lived in by Palestinian refugees since 1967.

¹¹⁶ Paula Worby, *supra* note 106 at 7.

¹¹⁷ This is not to overstate the case. In most camps gender discrimination extends to the participation of women in planning and programming life in camps or other settlements. See REPORT OF THE REPRESENTATIVE OF THE SECRETARY-GENERAL, MR. FRANCIS M DENG, *supra* note 114 at par 54.

¹¹⁸ Peter Sollis, *The Relief-Development Continuum: Some Notes on Rethinking Assistance for Civilian Victims of Conflict*, JOURNAL OF INTERNATIONAL AFFAIRS, Wntr 1994 47 n2 p451-471, retrieved from <http://www.web5.infotrac.galegroup.com>.at 9.

literacy and skills training programmes, schools and clinics. In turn, literacy rates in the camps rose sharply and large numbers of women learned to read and write during their period of exile. Women also broadened their involvement in the camps, assuming leadership roles, acquiring administrative capacity and organizational skills and moving into non-traditional occupations such as carpentry and mechanics.¹¹⁹ These programmes and initiatives were viable because of the support provided by external NGOs and field workers for the United Nations High Commission for Refugees.

In other camps, women have been empowered through similar initiatives as well as through the establishment of women's organizations. This can have a direct bearing on women's access to and control over land, housing and property in the post-conflict, reconstruction phase. The best example of this is the Guatemalan refugee camps in Mexico where, despite the lack of a lingua franca and the practical demands of camp life, refugee women came together, formed women's organizations and, with the assistance of the UN High Commission for Refugees' local staff, undertook a variety of activities to empower themselves and improve living conditions within the camps.¹²⁰ The following projects were undertaken:

- ◆ a literacy campaign designed with women's organizations as a tool for raising women's self-esteem and contact with one another;
- ◆ the implementation of time and labour saving devices such as mechanical corn grinders and fuel-saving stoves;
- ◆ training in communication skills and radio access for refugee women as a vehicle for spreading information and raising capabilities of the women involved; and
- ◆ protection and rights training covering human rights, women's rights, land rights, and sexual and domestic violence including education on mechanisms to report violations of these rights to UNHCR.¹²¹

In 1987 the refugees began the struggle to return to Guatemala. A key issue which emerged in this struggle was the right to own a house, and to own, live and work on land. After the 1992 Peace Accords were signed, the refugee women's organizations analyzed the Accords and discovered that married women or those in common law unions were not being granted independent title to land and housing. This revelation led the women's organizations to commence a campaign for co-ownership of land and housing upon their return to Guatemala.¹²² This campaign was made possible because of the refugee women's awareness of their rights, their overall empowerment and the fact that they had already formed organizations within the camps to represent their interests.

¹¹⁹ *Id.*

¹²⁰ For more on the experiences of Guatemalan women refugees and their struggle for land and property rights upon return, *see* Case Study.

¹²¹ Paula Worby, *supra* note 106 at 7.

¹²² Maria Garcia Hernandez, *supra* note 105 at 2.

3.1.3 Women and Reconstruction: Impact and Opportunities

In this way, in some instances, the reconstruction phase can provide women with an opportunity to claim and enforce their rights to land, housing and property. Unfortunately, however, the Guatemalan women refugee's experience stands as more of an exception than a rule. In fact, the reconstruction period after armed conflict generally reinforces and completes women's lack of rights in, access to and control over land, housing and property and underscores their insecure tenure as experienced prior to and during armed conflict.

In some countries, refugee and internally displaced women who want to return to their lands and homes are prohibited from doing so if their husbands or fathers die during the war or go missing because under customary law women cannot inherit or own land, housing and property.¹²³ As Concessa Nibogore of Rwanda explains:

My life has been very bad since my parents died. Since their death I have not had access to my forest or to my fields. When I went to the court, I was told I had lost even before they started my case. I was not given the chance to speak. I couldn't even cut a tree on my property or grow a potato.¹²⁴

Women who attempt to return to their lands and houses are confronted with a number of equally discriminatory and disadvantageous scenarios. Oftentimes, male relatives of the woman's husband - sometimes distant male relatives - will contest a woman's claim to the land, housing and property, claiming it as their own. In some cases, upon her return she will find that her husband's male relatives have already seized the land and have occupied the house.¹²⁵ And in other instances, when the armed conflict subsides, men return to their own lands and houses but then claim neighbouring lands and houses as their own, particularly if these neighbouring lands/houses are occupied by women alone.

In each of these circumstances, it is very difficult for a woman to prove that the land and house are hers – even if she has contributed to them financially or has assisted in the construction of the house – because she cannot prove "title" she cannot simply claim to own the land/house because social norms and customary law prohibit women from owning land, housing and property.¹²⁶ In many cases, women who could make legal claims to their land, housing and property are unaware of their rights or choose not to pursue them for fear of family or community reprisal or because they do not have the necessary resources to do so. Instead, women are either at the mercy and benevolence of their fathers or brothers or other male relatives (assuming they have survived the armed conflict) and forced to seek refuge in their homes (hardly an option after the dislocation of war)¹²⁷ or women are compelled to squat and build houses on land that is not their own

¹²³ Representative of the Secretary - General on Internally Displaced Persons, Mr. Francis Deng, *supra* note 114 at par. 50.

¹²⁴ Concessa Nibogore, in PEACE FOR HOMES, HOMES FOR PEACE, *supra* note 1 at 6.

¹²⁵ Sabine Sabimbona, in PEACE FOR HOMES, HOMES FOR PEACE, *supra* note 1 at 7.

¹²⁶ Makumi Mwangi, *Critical Issues on Women's Land and Property Rights in Situations of Conflict and Reconstruction in the Horn of Africa: A Review and Evaluation*, paper prepared for THE INTER-REGIONAL CONSULTATION.

¹²⁷ Rachel Waterhouse, *supra* note 11 at 3.

and risk forced eviction or complete homelessness and landlessness and the dangers and insecurity that entails.

In these cases women are far worse off than before the armed conflict because even though during times of peace women might not have had legal title to the land and house or could not inherit land or housing, under customary law they were at least granted the right to use or cultivate land and to occupy the house. This meant that they had shelter and access to common lands, such as forest and scrub lands used for grazing which are particularly relevant to women for gathering firewood, fruits and leaves.¹²⁸ Without shelter and secure user rights women are deprived of sustenance and the means of a livelihood for themselves and their family. In turn, many women choose not to return to their original homes and lands and attempt to survive by wandering from one region to another, squatting, and/or moving to urban centres in search of employment.

Even if the reconstruction phase results in a change from customary land tenure to legal land tenure where women have the opportunity to purchase land and housing, they are still forced into landlessness and homelessness because, as we have seen, legal land tenure requires that land and housing be purchased and women do not have the resources nor can they access the necessary credit to do so.

CASE STUDY 1
GUATEMALA: WOMEN'S EMPOWERMENT

Guatemalans have suffered through civil war for over 35 years. Much of the conflict in Guatemala was the result of land disputes and poverty. Guatemala is an agricultural country with fertile and productive land, but these lands are in the hands a few, wealthy Guatemalan families and are worked by poor Guatemalans with no lands of their own. When the conflict intensified in 1982-83, over 1 million people were displaced and more than 45,000 Guatemalans became refugees in Mexico. The lands they left were in both ancestral indigenous regions in the area known as the western highlands and in the recently colonized lowlands. Some of this land was of marginal quality and insufficient size but some was productive, supporting cash crops. Generally speaking, widowed women (and other single women with dependents) nominally controlled land when they inherited it from a father or husband who had the original claim.¹²⁹ All other women generally depended on husbands or male partners for access to land. Generally lands were divided among siblings, either giving more land to sons than daughters, or giving no land at all to daughters.¹³⁰ In turn, land issues were a key component of the 1996 Peace Accords and as a result of the empowerment of Guatemalan refugee women, women's rights to land and property were duly considered.

Although for most women refugee camps are hardly a site of empowerment, with support from UNHCR and non-governmental organizations, the civil war in Guatemala proved to be an opportunity for women refugees to improve their social position both within the camps and then upon their return to Guatemala.

¹²⁸ *Id.*

¹²⁹ Paula Worby, *Organizing for a Change: Guatemalan Refugee Women Assert their Right to be Co-Owners of Land Allocated to Returnee Communities*, Paper prepared for the INTER-REGIONAL CONSULTATION.

¹³⁰ *Id.*

Organizing Within the Camps

Guatemalan women have been in exile from their homes and lands for more than 15 years. The barriers to women's empowerment were numerous. Not only were women necessarily preoccupied with everyday survival, but they could hardly communicate with each other as they did not share a lingua franca, most had only limited education and lacked self-confidence. Moreover, all of the representatives elected by the refugee population to run the camps were men. Despite these obstacles, however, camp life provided women with an opportunity to undertake new roles which eventually led women to become involved in small projects such as vegetable gardening, production of handicrafts to sell and bread production, all of which were in order to satisfy certain basic needs. With the assistance of UNHCR the women refugees engaged in a number of other activities and projects including literacy campaigns, the establishment of reproductive health services, training in radio and other communication skills, and human rights education. In 1990 women refugees had formed their own organization, *Mama Maquin*, the primary objective of which is to raise consciousness about discrimination against women.

And so, by 1992 when the Permanent Commission of Guatemalan Refugees, the primary NGO representing Guatemalan refugees, had successfully negotiated with the Guatemalan government and ensured that land rights for the landless were included in the Peace Accords, Guatemalan women were in a good position to analyze the new Peace Accords from a gender perspective.

After the accords were signed *Mama Maquin* held various meetings and workshops with its leaders and members in order to analyse the content of the accords, and upon doing so, they realised that married women and those living in common law unions were not taken into account in terms of the right to land. Only men, widows, and single mothers were, the latter two groups being considered as vulnerable groups and as women-heads-of-households respectively. In turn, *Mama Maquin* decided to fight for women's right to be co-owners of the land as a means of protecting women from homelessness and landlessness and to validate women's work in the house and fields.

Mama Maquin campaigned to grant women the right to participate in the whole process of land purchase, from visiting lands for possible settlement, to participating in the negotiation of land purchase, to having the right to sign the documents necessary to solicit credit for land purchase, to becoming members of the co-operatives.¹³¹ On this last point *Mama Maquin* was clear that women must have the right to be co-op members, with voice, voting rights and the right to elect people and be elected to leadership positions in the co-operative and community structures.

Mama Maquin's demands were not immediately embraced by representatives of the return groups, husbands, and others. However, with the support of UNHCR *Mama Maquin* was able to ground their demands in law by demonstrating that the Guatemalan Constitution in no way precludes women from co-owning land and property. Eventually, with continued efforts, campaigning, negotiating and lobbying, *Mama Maquin* was successful in its bid to grant married women and those living in common law unions the right to be co-owners of land and property.

Of course, *Mama Maquin* has recognized that the legal recognition of women's rights to co-own land and property is only the very beginning of the struggle and that upon return to Guatemala there are many things that must be accomplished before married women and those living in common law will actually enjoy their new legal rights. Maria Garcia Hernandez of *Mama Maquin* captures the important struggles that lie ahead for Guatemalan women returnees:

For us and our organisation, this situation means great challenges to and changes in ourselves too, because, since land is the basis of life, economic well-being and community development, we women must

¹³¹ Under the Peace Accords lands were being transferred into the names of cooperatives and by definition, the land then belongs to members of the co-operative.

fight to make our participation real in all facets of community life and society; we must also fight for the reformulation of laws in order to guarantee equality between women and men.

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

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

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

[This case study was based on: Maria Garcia Hernandez, *The Implementation of the Guatemalan Peace Accord with Special Reference to Women Returnees from Mexico*, paper prepared for the INTER-REGIONAL CONSULTATION ON WOMEN'S RIGHTS TO LAND AND PROPERTY DURING CONFLICT AND RECONSTRUCTION, Rwanda, 1998; and Paula Worby, *Organising for a Change: Guatemalan Refugee Women Assert their Rights to be Co-Owners of Land Allocated to Returnee Communities*, paper prepared for the INTER-REGIONAL CONSULTATION ON WOMEN'S RIGHTS TO LAND AND PROPERTY DURING CONFLICT AND RECONSTRUCTION, Rwanda, 1998].

3.2 Post-Conflict Problems in the Realization of Women's Rights to Land, Housing and Property

3.2.1 Roll-Back in Women's Participation in Public Life and Decision Making,

As noted above, during armed conflict women are compelled to undertake a variety of roles outside of those traditionally or customarily prescribed for women. In particular, armed conflict requires women to participate in both public and private realms. When men are absent training for conflict or fighting on the front lines, as sole heads of households, there are no restrictions on what women can and cannot do; they are left to fulfil their traditional roles as well as men's roles, from community decision making to subsistence farming, to earning a livelihood, to caring for children and the elderly. For example, in Rwanda, as a result of the war women had to take up non-traditional roles such as managing refugee camps and building their own communities.¹³² In some cases during armed conflict, women's participation in public life has taken place on the battlefield. For instance, during the war in Eritrea, women comprised over 30% of the military forces, as commandos, assault troops, tank and truck drivers, mechanics, doctors

¹³² Marieke van Geldermalsen, *Women Breaking the Vicious Circle: A Gender Perspective on Cause and Effect in the Burundese and Rwandese Conflicts*, HABITAT DEBATE, VOL.1 NO. 2 (1995) at 20.

and teachers.¹³³ On occasion, women in refugee camps have also found opportunities to actively participate in public activities, to have their interests heard and recognized publicly, such as in the Guatemalan refugee camps where women organized, formed women's refugee associations and became part of the political voice and peace process demanding the right to return home. Conflict also provides women with an opportunity and reason to become more political and to engage in political discussions. For instance, in Palestinian refugee camps in Jordan, as camp society evolves, young women are becoming more independent, speaking out and intervening in political issues.¹³⁴ Similarly, in Nepal, where conflict initiated by the Communist (Maoist) party erupted in 1996, women have formed organizations to promote peace and have become increasingly politicized as they face and attempt to stop the war.¹³⁵ Similarly in Burundi, where there has been an ethnic war between Hutus and Tutsis since 1993, women – even those who were members of political parties – were initially excluded from all meetings organized by the government to find a solution to the ethnic war. In response to this exclusion, Burundi women organized and created associations for peace and reconciliation and, with regional assistance from female politicians such as the Vice President of Uganda and the ex-President of Liberia, held a conference in Uganda to discuss ways in which women could contribute to a negotiated solution to the crisis. This ultimately resulted in a meeting with the President of Uganda who agreed to negotiate for the inclusion of Burundian women in the Burundi peace negotiation in Arusha. As a result, women have been participating in peace negotiations since October 1998.¹³⁶

Despite women's participation in the public realm, including community decision-making during armed conflict, in the post-conflict, reconstruction phase there is often a "rollback" of women's gains; once they return home women are forced to resume their pre-conflict social roles, with only limited or circumscribed participation in public life, decision-making and the committees that coordinate aid.¹³⁷ This occurs for a number of reasons. Beyond the desire to restore normalcy in the post-conflict situation which means reverting to pre-conflict social norms and traditions, women are finding that political opportunism – rather than support for women's equality – motivates men to support women's participation on the battlefield or in peace negotiations. Women are often used as pawns in political bargaining.¹³⁸ Commenting on this phenomenon in the context of Guatemala, UNHCR worker, Paula Worby, states:

...the creation and promotion of women's refugee organisations within the last eight years was not only permitted, but also promoted by male leaders in a moment of political opportunism: to have women demanding the right to return home with a political platform stipulating conditions, rejecting the role and presence of the army, and demanding land, made for a powerful image in the

¹³³ Tsehainesh Tekle, *supra* note 20. For more on women's rights to land and property in Eritrea, see Case Study.

¹³⁴ Stephanie Latte Abdullah, *Palestinian Women in the Camps of Jordan: Interviews*, JOURNAL OF PALESTINE STUDIES, Summer 1995 v24 n4, retrieved from <http://web5.infotrac.galegroup.com>, at 3 of 11.

¹³⁵ Shobha Guatam, E-mail communication, 12 October 1999.

¹³⁶ Marie Goretti Nduwayo, E-mail communication, 2 November 1999.

¹³⁷ Paula Worby, *supra* note 106 at 1 and Marieke van Geldermalsen, *supra* note 132 at 20.

¹³⁸ Sima Wali, *Human Rights for Refugee and Displaced Women* in WOMEN'S RIGHTS, HUMAN RIGHTS, *supra* note 27.

media and vis-à-vis international organisations and embassies. Thus, women were manipulated by male leaders ... to the extent that women began to take charge of their own organisation and consciousness raising to demand visible and formal roles in decision-making, this may have been perceived by men, consciously or unconsciously, as overstepping the acceptable limits they had prescribed for women's roles.¹³⁹

Findings at a recent international conference on women and violent conflict suggest that women's exclusion from the political activity in peace building may also be related to the fact that women themselves regard their roles during conflict and reconstruction as being non-political and merely an extension of their domestic responsibilities.¹⁴⁰

3.2.2 Lack of Gender-Sensitive Legislation

Land reform during de-colonization and de-collectivization processes rarely take gender into account. For example, studies indicate that the "chief losers" in Romania were widows; and that land reform in Kenya resulted in women's land ownership of only 2 to 5 per cent and caused landlessness among women.¹⁴¹ Land reform in the post conflict situation is reaching similar results. To date, experience shows that women and their rights to land, housing and property are not being considered or included in peace agreements or new legislation and institutions established to rebuild societies after armed conflict. This is true in many cases including El Salvador¹⁴², Guatemala¹⁴³, Haiti¹⁴⁴, Liberia¹⁴⁵, and Nicaragua¹⁴⁶. In El Salvador, for instance, neither the Peace Accords which ended the war, nor the National Reconstruction Plan, offer much to peasant women wanting to own land.¹⁴⁷ Both documents imply that those benefiting from changes in the structure of land are men. The land transfer programme agreed upon as part of the Peace Accords prioritized demobilized combatants of the guerilla and armed forces. Moreover, the pattern of land redistribution in the 1980s under agrarian reform favoured men over women by a ratio of 10:1.¹⁴⁸ When and if women are included in peace agreement negotiations, it is often well after these negotiations have commenced

¹³⁹ Paula Worby, *supra* note 106 at 9.

¹⁴⁰ Rita Manchanda, "Hearing Women's Voices on Conflict: An Overview", Summary Essay, Women and Violent Conflict: Global Perspectives, International Conference, 5-6 May 1999. E-mail communication received from International Alert, 1 November 1999.

¹⁴¹ Louise Fortmann, *Why Women's Property Rights Matter*, paper prepared for the INTERNATIONAL CONFERENCE ON LAND TENURE IN THE DEVELOPING WORLD, (27 - 29 January 1998, South Africa) [Hereinafter, International Conference, South Africa].

¹⁴² Arias Foundation for Peace and Human Progress, *Land and Property Rights of Women in Situations of Reconstruction: The Central American Experience*, paper prepared for the INTER-REGIONAL CONSULTATION AT 5. See Peter Sollis, *The Relief Development Continuum*, *supra* note 118.

¹⁴³ Maria Garcia Hernandez, *supra* note 105; Paula Worby, *supra* note 106; Edna Calder Chaves, *supra* note 51.

¹⁴⁴ Anette Occeus, *The Role of Women Farmers in Influencing Land Legislation in Haiti*, HOMES FOR PEACE, PEACE FOR HOMES, *supra* note 1.

¹⁴⁵ Jeanette Ebba-Davidson, *Lobbying for Legislation to Overcome Discrimination Against Women in Inheritance in Liberia*, paper prepared for the INTER-REGIONAL CONSULTATION. For more on women's rights to land and property in Eritrea, see Case Study.

¹⁴⁶ Arias Foundation, *supra* note 142 at 4.

¹⁴⁷ Peter Sollis, *supra* note 118 at 10 of 15.

¹⁴⁸ *Id.*

and result in women having to inject their interests and rights into an existing framework. This exclusion of women, their interests and rights can be attributed to at least the following factors.

As "civilians" during armed conflict, women (and children) may be seen to be gravely impacted upon by war, but, on the whole, are not regarded as having been directly involved in the war. It appears that women's peripheral status continues in the reconstruction phase; just as women are not involved in war, they are not involved in the solutions to war. The "key players" in the reconstruction phase tend to be economically and socially elite men: male politicians and other government officials, military men, and male bureaucrats. Even when non-governmental bodies, such as cooperatives or peasant groups, are consulted, men tend to dominate because peace negotiations and the drafting of legislation are "public" activities and hence men's domain. As women around the world know, men in positions of power make decisions so as to consolidate that power, to the exclusion of representing any other interests. Male decision-makers cannot be relied upon to understand or represent women's interests without being educated and pushed to do so by women.

Peace agreements and reform legislation for reconstruction periods are designed to restore normalcy to a war torn society.¹⁴⁹ Restoring a society to normalcy means reverting to old social roles and patterns, replicating relations between men and women as they were prior to the war. In most instances, this means adopting gender roles based on patriarchal, male paradigms which oppress women. In the case of Guatemala, for example, male leaders have explicitly stated that the refugee women's organizations, which secured married women's rights to co-own land and housing, were supported by men in the refugee movement because they were seen as important for the refugee struggle to return home, but having returned home these organizations are no longer necessary and women should give up their public position and return to their "duties" in maintaining the household and childcare.¹⁵⁰

In the post-conflict period, decision-makers are primarily concerned with addressing the causes of armed conflict, to make sure the conflict does not re-emerge. Because gender inequality or structural inequality based in gender is rarely seen as a *cause* of armed conflict, it does not find a place in the reform agenda. Instead, political, military and financial solutions are sought which uphold rather than challenge dominant paradigms and which consolidate the power of the already powerful.

This consolidation of existing power bases is exacerbated by the neo-liberal policies which the International Financial Institutions (eg: International Monetary Fund, Asian Development Bank) impose on post conflict countries as a pre-condition for receiving financing for reconstruction, and which are agreed to by post conflict governments.¹⁵¹

¹⁴⁹ Asteya Santiago, *supra* note 30 at 10.

¹⁵⁰ Paula Worby, *supra* note 106 at 10.

¹⁵¹ Ironically, these are the same policies which are regarded as having caused many armed conflicts. See Wenche Hauge, *Development, Trade and Armed Conflict: The Vicious Circle of Marginalisation*, ICDA JOURNAL, VOL 6 NO. 1 (1998) at 43.

These policies are inherently conservative and underscore the disadvantage of the poorest in society by turning away from collectivity and State provision of social goods toward an emphasis on the individual and the free market.¹⁵² In the context of land, housing and property, neo-liberal policies impose new land tenure systems that regard land as a commodity which, like other commodities, is bought and then owned by individuals and, if invested in, can reap profits. Of course, as shown in the previous section of this report, a private, individual, capital based system excludes women - the poorest in society - who do not have the resources to buy land or housing, let alone invest in it and who cannot access formal credit or loan schemes.¹⁵³ A comparative study of land reform experiences in three countries at three different stages of economic and political development – Ethiopia during its post-revolutionary period (1978-9), Kenya during its post-independence era (from 1973), and Chile during the administration of E. Frei (1964-70) – highlights that within agrarian reform efforts, there is a tendency to transfer priorities from subsistence to export crops with little attention given to the effect on women's economic and social status.¹⁵⁴ This has been experienced more recently in pastoralist Somalia where women traditionally made decisions concerning family resources. Modernization of the livestock export sector, supported by international development assistance before and after the civil war, are eroding this role for women:

Previously women in nomad families often had ownership of some of the goat and sheep under their care which they could sell to obtain money for procuring basic household needs. However, with the current emphasis on livestock export, there appears to be a general trend towards male marketing of all the animals perhaps due to the more complex process involved.¹⁵⁵

In these ways, women are excluded from economic power-sharing and decision-making.

Although these factors predominantly result in the failure of the inclusion of women's rights to land, housing and property in peace agreements and land reform legislation, there are a few exceptions, such as South Africa, Eritrea and Ethiopia.¹⁵⁶ In post-apartheid South Africa, the new Constitution is formally committed to gender equality, the right to housing and to land reform. Within the land reform legislation there is specific commitment to gender equity and the Department of Land Affairs has established a sub-directorate responsible for gender affairs.¹⁵⁷ In Eritrea, during the transition to a constitutional government, the Government of Eritrea instituted new amendments to the Civil Code which fundamentally alter the status of women in Eritrea.

¹⁵² Caroline Thomas, *International Financial Institutions and Social and Economic Human Rights: An Exploration* in HUMAN RIGHTS FIFTY YEARS ON, A REAPPRAISAL, ed. Tony Evans (1998)161 at 162-3.

¹⁵³ *Infra* at page 18. For more on women's access to land through direct purchase see Florence Butegwa, *Women's Legal Right of Access to Agricultural Resources in Africa: A Preliminary Inquiry* in THIRD WORLD LEGAL STUDIES (1991), 45 - 57.

¹⁵⁴ Women's International Network, *Women's Access to Land Still Restricted by Tradition*, WIN NEWS (1966) v22 n4, retrieved from: <http://web5.infotrac.gallegroup.co>, at p. 4 of 6.

¹⁵⁵ Mariam Hussein Owreeye, *Women's Rights to Land and Property in Somalia*, paper prepared for the INTER-REGIONAL CONSULTATION, 11.

¹⁵⁶ See: Fanelwa Mhago and Melanie Samson, *supra* note 13; Tsehainesh Tekle, *supra* note 20 and Makumi Mwangiru, *supra* note 126.

¹⁵⁷ Fanelwa Mhago and Melanie Samson, *supra* note 13.

Women are now granted the legal right to own and inherit land and housing and married partners have equal rights within the family to land, housing and property.¹⁵⁸ The 1994 Ethiopian Constitution also recognizes women's rights to own land on the same basis as men stating that, "[a]ny Ethiopian who wants to earn a living by farming has a right, which shall not be alienated, to obtain, without payment, the use of land".¹⁵⁹

It should be noted, however, that gender sensitive legislation may not be enough. In post apartheid South Africa, the government undertook substantial land reform to redress past injustices as well as to increase stability within the country for greater economic growth and to improve household welfare.¹⁶⁰ Though the South African government appears to have developed gender sensitive legislation, women working in non-governmental organizations in South Africa have several concerns with the legislation. For example, it has been argued that the legislation is based on an inadequate understanding of gender and seems to regard the term "gender" as interchangeable with "women". The legislation also treats women as a homogenized group and one that is isolated from other groups such as labour tenants, farm workers and other dispossessed people. Moreover, a concern for gender is not integrated throughout the policy; it is restricted to those sections dealing with objectives and principles and is not referred to in those sections on implementation, monitoring, evaluation, economic considerations and constraints to land reform.¹⁶¹ This casts doubt upon the efficacy of gender sensitive legislation - which merely adds women's interests and rights into existing paradigms and legislation - in promoting and protecting women's rights to land, housing and property. It suggests that adequate realization of these rights for women, relies upon an engendered starting point. That is, rather than merely including a gender perspective into existing paradigms and legislation (which are normally grounded in patriarchy), land reform must have, as its starting point the goal of empowering women and fundamentally transforming gender relations in the household and the economic, social and political spheres.¹⁶²

3.2.3 *Law v. Practice: The Problem of Enforcement*

Without adequate enforcement mechanisms and access to those mechanisms, women's rights to land, housing and property will remain illusory.¹⁶³ For example, in some post-conflict situations women's rights to land, housing and property and/or their right to be free from discrimination are specifically codified in the Constitution or within legislation dealing specifically with land and housing. To enforce these newly entrenched rights,

¹⁵⁸ Tsehainesu Tekle, *supra* note 20.

¹⁵⁹ Makumi Mwagiru, *supra* note 126.

¹⁶⁰ Fanelwa Mhago and Melanie Samson, *supra* note 13.

¹⁶¹ Ruth Hall, *Design for Equity: Linking Objectives with Practice in Land Reform*, paper prepared for the INTERNATIONAL CONFERENCE - SOUTH AFRICA. For the same critique see: Fanelwa Mhago and Melanie Samson, *supra* note 13. The authors also express concern that the legislation continues to adopt a male head of household paradigm; it compels women to stay in relationship they would otherwise leave; definitions of security of tenure fail to consider women's interests in social, psychological and physical security as well as land security.

¹⁶² Fanelwa Mhago and Melanie Samson, *supra* note 13.

¹⁶³ Mariam Hussein Owreeye, *Women's Rights to Land and Property in Somalia*, paper presented at INTER-REGIONAL CONSULTATION at p.4

governments often rely on the courts and the judiciary. As we have already seen, in order for a woman to access courts she must know her rights; she must be literate or have the assistance of someone who is literate; she must have the resources – including legal representation – to go forward with a claim; once in the system she must navigate often complex procedures; if she is a rural dweller, she will require transportation to the city where the court is most likely to be located; and she must be patient as the process could take several years.¹⁶⁴ Needless to say, for most women courts are not a viable mechanism to claim their rights to land, housing and property. In post conflict situations, more than ever, most women are preoccupied with survival and basic livelihood issues which are dependent on the immediate realization of their land, housing and property rights. There is no time for extensive legal education, accumulating the necessary resources and wading through lengthy court procedures.¹⁶⁵ Instead, women will have to resort to local justice - which will rely, at least in part, on customary law - as enforced by male elders and traditional leaders.¹⁶⁶

In some post conflict contexts, Land/Housing Commissions are established, as an alternative to or in conjunction with court procedures, to deal with land, housing and property reform. Experience to date indicates that these Commissions are not always granted adequate powers of enforcement.¹⁶⁷ Moreover, where Commissions include a gender unit or office, these are often under resourced and staffed, which reduces their effectiveness and calls into question the seriousness accorded women's rights to land, housing and property.¹⁶⁸

Even in cases where there are viable legal mechanisms to enforce women's rights to land, housing and property, formidable attitudinal barriers, custom and tradition stand in the way. While law can go some distance in redressing inequalities, law is limited in its ability to effect social change.¹⁶⁹ Simply put, women have been disadvantaged by centuries of custom, tradition and social practice and to rectify this will take more than just changing women's legal rights. In particular, patriarchal attitudes may not be quick to change, especially where those attitudes privilege men, granting them political, economic and social power and prestige. After the war in Eritrea, for example, the government introduced the Land Proclamation which grants ALL Eritrean citizens lifetime usufruct rights to land, rights which can be inherited. Nowhere in the Proclamation is any distinction made between men and women; all traces of custom which privileges men over women have been eliminated from the law.¹⁷⁰ As it stands, there remains a gap between this legislation and practice. Men are still refusing to allow women access to and control over land and housing to which they are legally entitled.¹⁷¹

¹⁶⁴ Jasna Lojo, *Women's Land and Property Rights in Bosnia and Herzegovina*, paper presented at INTER-REGIONAL CONSULTATION. She notes in particular that court processes in enforcing inheritance laws are extremely long.

¹⁶⁵ Makumi Mwangi, *supra* note 126 at 10.

¹⁶⁶ Rachel Waterhouse, *supra* note 11 at 4.

¹⁶⁷ Tsehainesh Tekle, *supra* note 20.

¹⁶⁸ Fanelwa Mhago and Melanie Samson, *supra* note 13.

¹⁶⁹ Florence Butegwa, *WOMEN'S LEGAL RIGHT OF ACCESS*, *supra* note 153 at 55.

¹⁷⁰ Tsehainesh Tekle, *supra* note 20 at 5-6.

¹⁷¹ *Id.* at 8.

The power of custom and tradition which obstructs women's rights to land, housing and property should not be regarded as a barrier exclusively imposed by men on women. In many cases, maintaining custom and tradition is as important to women as men, even when that custom and tradition appears to disadvantage women and to violate their human rights. Moreover, in Southern countries, "rights", and more particularly, "human rights", are sometimes considered distinctly "Western" values which fail to account for Southern cultures and values.¹⁷² Women's resistance to the promotion and protection of their rights to land, housing and property was seen after the civil war in Liberia when a group of Liberian women lawyers formed an Association to advocate for women's rights to land, housing and property. To begin, the Association hosted workshops which were aimed at educating and sensitizing women about the need for land reform, which would abolish the dichotomy between statutory and customary law so that under both systems of law women could own and inherit land, housing and property. Women who attended these workshops initially rejected such suggestions, not wanting to participate in the erosion of customary law and African tradition. It was only once they understood the tangible benefits to them of such land reform - within their own, post-conflict, African context - that they became more supportive of the Association's aims.¹⁷³ In South Africa, conservative women have not fully supported the call for women's rights to inherit land, housing and property under statutory law, fearing that to grant women such rights will lead women to reject married and family life in favour of the "femme-sole" status which will ultimately cause the demise of society at the family level.¹⁷⁴

4. OPTIMIZING OPPORTUNITIES FOR WOMEN'S RIGHTS TO LAND, HOUSING AND PROPERTY IN POST-CONFLICT SITUATIONS AND DURING RECONSTRUCTION

The barriers to women's enjoyment of their rights to land, housing and property in post-conflict situations are clearly formidable, with obstacles in every sphere: practical, legal, political, economic and cultural. And yet, despite this, women's struggle to claim and enforce rights to land, housing and property during conflict and reconstruction has come a long way and has even resulted in some "success" stories. By reviewing the totality of women's experiences in the struggle to claim rights to land, housing and property, five dimensions emerge which are essential preconditions for the enjoyment of these rights. This section of the paper explores these dimensions by providing and critically analyzing further illustrations of women's experiences in claiming their rights to land, housing and property during conflict and reconstruction.

¹⁷² Much has been written on the universality and cultural relativity of human rights. For an excellent collection of essays see, *HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES*, ed. Adullahi Ahmed An-Na'im and Francis M. Deng (1990).

¹⁷³ Jeanette Ebba-Davidson, *supra* note 145.

¹⁷⁴ Catherine Cross and Michelle Friedman, *Women and tenure: marginality and the left-hand power*, in *WOMEN, LAND AND AUTHORITY: PERSPECTIVES FROM SOUTH AFRICA*, *supra* note 21 at 28.

4.1. Education and Awareness Raising

Recent experiences indicate that education of all people on the status of women's national, regional and international rights to land, housing and property is essential to the realization of these rights for women.¹⁷⁵ The ultimate goal of education is to work toward the erosion of patriarchal, male biased structures which keep women from enjoying their rights. As a starting point, awareness raising regarding women's rights to land, housing and property must be aimed specifically at women: urban, rural, young, elderly, married, single, widowed. If women do not know and understand their rights, there is little chance that their rights will be enforced. It cannot be assumed that women know their rights instinctively or even as a result of their hardships and personal experiences, because, as noted previously, women (like men) have been socialized to believe that they are not entitled to rights in, access to or control over land, housing and property.

As an overall goal, education should be combined with consciousness raising and should provide women with the knowledge, skills, self-confidence and self esteem required to claim and enforce their rights to land, housing and property. More specifically, experiences in Eritrea, South Africa and Mozambique (where post conflict land reform legislation was introduced) demonstrate that women must receive education and training on the implications of this legislation on their everyday lives. All women, and particularly those living in conflict situations or in post conflict countries where gender-sensitive reform legislation does not exist, need to be educated on their regional and international rights to land, housing and property. At the same time, legal rights awareness should avoid an overly legalistic approach - which might be alienating - and should build on local communities' knowledge and experiences.¹⁷⁶

Bearing in mind the importance of custom and tradition in the lives of many women, education should attempt to be culturally un-threatening, perhaps focusing on ways in which women's rights to land, housing and property can enhance or at least adapt to existing social and cultural contexts. Education must also include a focus on the use or development of enforcement mechanisms because, just as rights are illusory without enforcement mechanisms, knowledge of rights is meaningless unless that knowledge includes an understanding of how these rights can be enforced. The Guatemalan experience demonstrates that because few women have participated in political processes or public or community forums, education must also focus on capacity building, developing women's skills in community activism and organizing.

Experience also shows that if the ultimate goal of education is to be met, men must be included in the education process from the outset. Cheryl Walker articulates this point:

¹⁷⁵ This point was highlighted at the Inter-Regional Consultation where education on land and property rights of women featured prominently in the Regional and National Plans of Action which emerged from that Consultation.

¹⁷⁶ Florence Butegwa, *supra* note 153 at 56.

... education and training for gender equality are essential components of a land reform programme. This has to be aimed (differentially) at men as well as at women - that is, "women" should not be seen as the problem that has to be changed, in isolation from men. Rather, it is unequal gender roles and relations and their consequences that have to be addressed in an ongoing fashion at a local level.¹⁷⁷

The Guatemalan experience confirms this. Upon returning to Guatemala women learned that though men had supported their political participation and claims to land, housing and property they had not internalized an understanding of why women's participation in decision making and rights to land, housing and property are essential and beneficial to the development of the family and the community.¹⁷⁸ As Maria Garcia Hernandez states:

Men forget that we have signed the legal document to have access to land, and in practice, they ignore that we should be co-owners because the work we do in the house and fields is not valued.¹⁷⁹

From this it is clear that to enhance men's understanding of gender power relations, men need to be educated about the economic and social values of women's work. This will assist men in understanding the benefits to their own well-being and that of their family if women's equal rights with respect to land, housing and property ownership and inheritance are guaranteed. This type of education, encouraging men to understand, respect and appreciate the economic and social value of women's work, might also lead to the blurring of the sharp divisions between women's and men's work. Gender equality will only be achieved with the blurring of strict gender roles and the valuing of some work (men's) over other work (women's), and women's rights to land, housing and property will only be respected on-the-ground if men themselves respect women. Men's increasing respect for women, combined with women's increased knowledge of their rights and self-confidence should go some distance in the greater inclusion of women in community decision-making. This will be assisted if men in the public realm and leadership roles, such as government officials, lawyers, judges and community leaders, are also targeted for education. Among other things, these men need to learn about international human rights treaties to which their governments are a party and the implications of treaty obligations on domestic law and application. This education may also ensure that gender-neutral laws and those that explicitly deal with equality are interpreted from a gender-sensitive, enlightened perspective and in keeping with international human rights standards.

The simultaneous education of men and women will work toward a slow change in social attitudes and beliefs. To prevent destructive tensions between women and men, it is essential that they are educated simultaneously as this will help to avoid a situation where men feel they are being assaulted by women's liberation – instead, they will be very much a part of it.

¹⁷⁷ Cherryl Walker, *Cornfields, gender and land* in WOMEN, LAND AND AUTHORITY, *supra* note 21, 55 at 73.

¹⁷⁸ Paula Worby, *supra* note 106 at p. 11.

¹⁷⁹ Maria Garcia Hernandez, *supra* note 105 at 3.

4.2. Women's Organizations

I was a member of many mixed [sex] organizations up to 1988. Through my experiences as an active woman, I noticed that the situation of women in my country was not good, which led me to take the initiative to arrange to set up organizations that would belong only to women. At the beginning I looked for support from men with whom I had worked in mixed organizations; I hoped they would work with me to organize women's groups. Unfortunately they did not respond positively to my first invitation. I therefore addressed myself directly to women, to make them aware of the need to get together. It is in this way that I was able to set up a women's organization that is quite strong and works towards changing the situation of women.

Anette Oceaux, Comite de Reflexion des Femmes du Bas Haiti

Women's organizations have proven to be essential to women's overall empowerment and to their enjoyment of their human rights including their rights to land, housing and property. Women's organizations provide a safe place for women, where they can dream, organize, strategize, build confidence and seek comfort and support from others with similar experiences and concerns. As Shamim Meer states:

Women's organisations are a key arena for the deployment of empowerment strategies. Separate women's organisations are important in terms of their role in building confidence and allowing women the space to discuss issues that affect them.¹⁸⁰

Through organizing and working with each other, women learn the value of their work and they discover new skills and recognize personal capabilities. In this way, these organizations contribute significantly to women's overall empowerment and increased self-esteem. During conflict and reconstruction, women's organizations are required to ensure that the issue of women's access to and control over land, housing and property is firmly placed on the political agenda and to lobby for legislation which codifies these rights. Once codified, women's organizations are required to ensure that these legal rights are translated into on the ground realities¹⁸¹.

The influence of women's organizing on women's lives is reflected in the effect that it has had on women's empowerment and the realization of women's rights to land, housing and property during and after conflict. For example, since the liberation war in Zimbabwe, women's organizations have played a central role in pressuring the government to ensure equality between men and women with respect to land, housing and property matters.¹⁸² Similarly, in Liberia, the Liberia Women Initiative was actively involved in every stage of the peace process and remains one of the major political pressure groups for women's empowerment.¹⁸³ In Guatemala, prior to the formation of refugee women's organizations, women were not considered direct beneficiaries of land distribution

¹⁸⁰ Shamim Meer, *supra* note 21 at p. 7.

¹⁸¹ Arias Foundation, *supra* note 142 at 10.

¹⁸² Susie Jacobs, *A Share of the Earth? Feminisms and Land Reforms in Zimbabwe and South Africa*, prepared for the INTERNATIONAL CONFERENCE - SOUTH AFRICA.

¹⁸³ Abiodun Onadipe, E-mail communication, 22 October 1999.

policies. With the rise of refugee women's organizations demanding women's co-ownership of land and housing, however, women's land and housing rights became part of the political agenda.¹⁸⁴ Similarly, in El Salvador, with the assistance of international agencies and NGOs, refugee women began to participate in activities in production and decision making in which they had traditionally not been involved. When the right to land was not addressed in the Peace Accords, peasant women organized and campaigned successfully against land transfers which discriminated against women, lobbying instead for female heads of households to have priority claims on land and housing and for independent title to be given to both spouses.¹⁸⁵ In post-apartheid South Africa, the lack of a strong rural women's movement has resulted in a distinct absence of grassroots lobbying in rural areas to ensure that women's rights to land, housing and property, as they exist in legislation and policy are further entrenched and translated into on the ground realities in rural areas.¹⁸⁶ Similarly, in Suriname, where a civil war raged from 1986 - 1992, women's organizations have not emerged to advocate for women's housing rights and in turn, women who were internally displaced by the war, are living in abhorrent conditions.¹⁸⁷

Women's organizations can be established in refugee camps while the conflict continues to rage. Camp life provides an opportune setting for these organizations to thrive. Women live in close quarters and often comprise the bulk of the camp population. Moreover, a plethora of camp life issues arise which often require women's input. Sustaining these organizations in the reconstruction phase is, however, not easy. There are many obstacles to women organizing in the post conflict situation. Women who had organized, formed associations and were working together in the camps find themselves geographically dispersed upon returning to their respective homes and lands. In turn, they feel isolated, with limited communication with other women in their new communities.¹⁸⁸ Moreover, when women return to their homes and lands much of their time is taken up with basic survival and domestic work, making little or no time for involvement in organizations. Women's dependence on men and lack of community support also inhibits women from acting contrary to men's expectations and participating in local organizing.¹⁸⁹ In addition, male family members may challenge women's participation in organizations. From this, we know that if women's organizations are to continue to exist and advocate for change, they need to be strengthened through skills training, contact with outside networks¹⁹⁰ and by providing women with support in their domestic and child rearing responsibilities, and basic survival. Moreover, men must be encouraged to undertake more household responsibilities to afford women the opportunity to participate in organizations.

¹⁸⁴ Arias Foundation, *supra* note 142 at 7-8.

¹⁸⁵ *Id.*

¹⁸⁶ Cheryl Walker, *Land Reform and Gender in Post-Apartheid South Africa*, UNRISD DISCUSSION PAPER 98 (December 1998). See also, Fanelwa Mhago and Melanie Samson, *supra* note 13 at 6.

¹⁸⁷ Betty Cederboom, E-mail communication, 13 October 1999.

¹⁸⁸ Paula Worby, *supra* note 106 at 10-11 and Maria Garcia Hernandez, *supra* note 105 at 4.

¹⁸⁹ Shamim Meer, *supra* note 21 at 8.

¹⁹⁰ Cheryl Walker, *Cornfields, Gender and Land*, *supra* note 177 at 72.

International assistance aimed at providing support must be careful to ensure that it is actually reaching women whose rights to land, housing and property are being violated, and not just elite, educated, english speaking women who often head-up non governmental organizations.¹⁹¹

4.3. Community Action: Women and Men Working Together

Women also recognize the importance of including men in their struggles and participating in broader civic and community initiatives that have traditionally been male dominated.¹⁹² This makes strategic sense because discrimination against women with respect to land, housing and property involves both men and women and is based in male and female gender identities and inequities which custom and tradition prescribe. Though working alongside men will likely result in conflict, it also creates a space and a place to address inequities of gender which then allows for a more comprehensive and inclusive approach to land and housing reform.¹⁹³

The promotion and protection of women's rights to land, housing and property alongside or through broader community action has been accomplished through alliance building with other movements or campaigns. For example, in Palestine, efforts to protect and promote women's access to and control over land, housing and property have been undertaken alongside a broader movement - dominated by men - to protect and promote the right to housing for Palestinians in East Jerusalem and the Occupied Palestinian Territories.¹⁹⁴ In Mozambique, women's land, housing and property rights are being promoted through the National Peasant's Movement of Mozambique, which identifies itself specifically as a peasant's movement and not a women's movement, though it is headed by a woman and was born of the cooperative movement which was dominated by women.¹⁹⁵ In Guatemala, the refugee women's organization, Mama Maquin, supported and worked directly with the Permanent Commissions of Guatemalan Refugees - the elders of which are all men - established, at least in part, to negotiate the terms of their repatriation. Mama Maquin supported unequivocally the return movement as vocalized by the male leaders in the Permanent Commissions but also insisted that women's rights to title also be recognized upon return to Guatemala.¹⁹⁶

There are several benefits of this type of alliance building. It provides an opportunity for men and women to work together which assists in highlighting the similarities and

¹⁹¹ Mariam Hussein Owreeye, *supra* note 163 at 7.

¹⁹² Shamim Meer, Introduction, *supra* note 21 at 7.

¹⁹³ Shamim Meer, *supra* note 21 at 13.

¹⁹⁴ For more on the housing rights campaign in Palestine *see* Palestine Housing Rights Movement and Habitat International Coalition, *LIVING IN JERUSALEM: AN ASSESSMENT OF PLANNING POLICY, HOUSING AND LIVING CONDITIONS IN LIGHT OF THE PALESTINIAN'S RIGHT TO ADEQUATE HOUSING* (1996); *HOUSING FOR ALL? IMPLEMENTATION OF THE RIGHT TO ADEQUATE HOUSING FOR THE ARAB PALESTINIAN MINORITY IN ISRAEL* (1996); and Leilani Farha, *BRINGING ECONOMIC, SOCIAL AND CULTURAL RIGHTS HOME: PALESTINIANS IN OCCUPIED EAST JERUSALEM AND ISRAEL* (forthcoming, 2000).

¹⁹⁵ Ismael Ossemane, *The Role of the Union of Peasant Farmers in Securing Land for Returnees in Mozambique*, presentation at the INTER-REGIONAL CONSULTATION.

¹⁹⁶ Paula Worby, *supra* note 106 at 4-5.

interconnections between their struggles. Linking women's struggles with broader community struggles may also raise the respect and attention accorded women's concerns. On a more practical level, alliance building with existing movements or campaigns may ease women's burden as it allows them to tap into existing structures and strategies rather than having to "go it alone".

There are however, several possible disadvantages to working with other community movements, particularly those that are male dominated. There is a danger that women will continue to be excluded from decision making, particularly given the obstacles to women's participation, which would result in men's voices, ideas and decisions continuing to be taken as representative of the "community" and women's voices and ideas continuing to be marginalized. The second risk lies in the fact that many broader community movements are male dominated and based in male paradigms. It is not certain that women's involvement in these movements would result in a fundamental transformation, instead, it could result in women's interests merely being "added onto" existing structures, aims and goals of the movement. While this may lead to some change, without redefining struggles from a gender perspective, it is unlikely that women's rights to land, housing and property will be fully realized.

4.4. The Adoption of Gender-Sensitive Laws

While the adoption of gender sensitive legislation is not in and of itself the solution to guaranteeing women's rights to land, housing and property, it is an important component and a good starting point. But what constitutes gender sensitive legislation on women's rights to land, housing and property? Though this will vary in different social, economic and political contexts, drawing on the similarity of experiences in different parts of the world, the following broad principles may be required before legislation regarding land, housing and property is truly gender-sensitive:

- ◆ ***Gender Sensitive Peace Agreements.*** Where relevant, peace agreements must explicitly recognize women's interests in land, housing and property and include provisions which explicitly protect those interests;
- ◆ ***Gender Transformational Legislation.*** Ideally, legislation must be gender transformational. It must have as its central goal the empowerment of women and a fundamental shift in gender power relations in the household and other spheres. It must be based on the belief that gender equity is necessary for the very success of the peace agreement or land and housing reform programme and must not merely graft women onto existing legislation;¹⁹⁷
- ◆ ***Independence from Discretion.*** Women's rights to land, housing and property must be explicitly recognized and guaranteed in national laws and not left to the interpretive discretion of a judge - that is, women's rights to land, housing and

¹⁹⁷ Fanelwa Mhago and Melanie Samson, *supra* note 13 at 6.

property should not be dependent on a judge's willingness to read women into gender neutral laws;

- ◆ ***Anti-Discrimination.*** All constitutions or other human rights legislation must prohibit discrimination on the enumerated ground of sex and must codify civil, economic, political and social rights;
- ◆ ***Priority of Statutory Law Over Custom.*** Constitutional and statutory law must not defer to customary law with respect to land, housing and property related matters where customary law discriminates against women. In other words, where customary law does not recognize women's rights to land, housing and property, constitutional law which does recognize these rights should take precedence;
- ◆ ***Women's Diversity.*** Legislation pertaining to land, housing and property must reflect that women are not a homogenous group. Therefore, legislation must be enacted to promote and protect land, housing and property rights for all women: single, married, common law, widowed. This means that women who are married or living in common law relationship (de facto marriages) must be able to co-own land and housing with independent title or share title with their spouses, single women must be able to own land and housing in their own right and all women must be able to inherit land, housing and property regardless of their marital status and must have equal rights with respect to inheritance ;
- ◆ ***Gender-Sensitive Reform.*** Where legislation regarding land and/or housing reform is introduced or amended in post-conflict, the commitment to gender equity must be integrated into all aspects of the legislation and policy including those provisions dealing with finance, implementation, monitoring and evaluation;¹⁹⁸
- ◆ ***Gender-Sensitive Terms.*** The terms used in legislation pertaining to land, housing and property must be clearly defined and must not be based in patriarchal assumptions and paradigms. For example, if the term "household" is employed, it must be defined broadly, recognizing that households configured in any number of ways and not necessarily headed by men, and are complex entities particularly after armed conflict.¹⁹⁹

If gender sensitive legislation is to have practical effect, it must be accompanied by accessible and gender-sensitive enforcement mechanisms. Experience has shown that courts are not accessible or gender-sensitive and may be ill suited to the enforcement of women's rights to land, housing and property. Instead of relying on courts, therefore, a multi-tiered system of enforcement could be implemented: the first tier could provide an

¹⁹⁸ *Id.*

¹⁹⁹ In South Africa the term "household" was taken out of the land reform legislation and replaced with "Eligible individual" because gender activists criticized the use of the term household. Though the term was replaced, the traditional male biased household paradigm still remains. See Fanelwa Mhago and Melanie Samson, *supra* note 13.

alternative dispute resolution mechanism;²⁰⁰ the second tier could provide a hearing opportunity through a land and housing commission²⁰¹ or tribunal (which is less costly and has less complicated procedures than courts) and the final tier could provide an appeal mechanism to the courts. Regardless of the type of enforcement mechanism, it must be available in both urban and rural centres and staffed by local women and men schooled in land, housing and property matters (but not necessarily law).²⁰² Land, housing and property commissions should also have special representatives responsible for women's land, housing and property claims, though all staff of the Commission should be equipped to address women's land, housing and property matters.²⁰³ Women wishing to utilize enforcement mechanisms must be provided with monetary assistance (legal aid) and legal representation.

Beyond accessible and gender-sensitive enforcement mechanisms, legislation will only be effectively implemented under four conditions: i/ if ongoing monitoring and evaluation mechanisms are developed; ii/ if the legislation is accompanied by changes in attitude and custom;²⁰⁴ iii/ if the new laws which protect and promote women's rights to land, housing and property are introduced incrementally and not imposed rigidly - a period of transition and adjustment will assist in smoother implementation;²⁰⁵ and iv/ the new laws and changes to custom are introduced in concert with other activities such as education campaigns.²⁰⁶

CASE STUDY 2

LIBERIA: WOMEN TAKE ACTION

A civil war raged in Liberia for 7 years coming to an end in the mid 1990s. During and perhaps as a result of the war, women started to think and act collectively and eventually to form their own organizations. The Association of Female Lawyers of Liberia, established in 1994, advocates for the rights of women, children and indigent residents. In the post-conflict period, they focused their work on women's equality with respect to land and property. Upon reviewing the laws on the books, the Association observed a dichotomy between women married under civil and customary law. Those married under civil law were legally entitled to inherit land and property, but those married under customary law were not. The Association decided to challenge this discrimination adhering to their motto: "Equal Rights Under the Law". They commenced their activities by working directly with women to raise their awareness and to sensitize them about the need to rectify the dichotomy by unifying the two systems of law to guarantee women's rights to land and property regardless of the system of law under which they were married. Women were initially resistant to tampering with customary law, however, they grew more supportive of the Association's initiative when they understood the implications of the law to their current situation: the law could prevent them from legally inheriting land and property which, in turn, could keep them from being able to return homes or would put their security of tenure at risk. Having garnered women's support for this project, the

²⁰⁰ Makumi Mwangi, *supra* note 126 at 10.

²⁰¹ Ismael Ossemame, *supra* note 195 at 4.

²⁰² In Solomon Islands community land councils are responsible for adjudicating land disputes and are staffed by community experts on customary law. These experts do not have legal backgrounds or training, but have significant knowledge of customary law. In the context of the Solomons these experts have been exclusively men. In turn, if local land councils are established in the post-conflict context, efforts would have to be made to ensure that the experts governing these councils are both men and women.

²⁰³ Ismael Ossemame, *supra* note 195 at 4.

²⁰⁴ Shamim Meer, Introduction, *supra* note 21 at 12.

²⁰⁵ Tsehainesh Tekle, *supra* note 20 at 7.

²⁰⁶ *Id.*

Association then developed draft legislation to rectify the discriminatory legislation. This legislation was presented to the House of Legislature (Parliament) and was used - albeit unsuccessfully - in Probate Court. The Association has encouraged women to lobby their local representatives in the Legislature to table and pass the draft legislation as a government bill. A woman Legislator has taken an interest in the draft legislation and the Association is hopeful that it will be passed by Government in the near future.

[Based on the presentation at the Inter-Regional Consultation by Jeanette Ebba-Davidson (1998)].

4.5. International Campaigns

... We also ask for international solidarity [in our efforts] to follow up the implementation of the peace accords. Do not forget about us. Because when you gave [us] solidarity in the time of war, the lives of many families were saved. Many comrades, male and female, can still give testimonies, due to the support of international solidarity. Even if we have suffered those injustices and difficulties, we thank the heart of heaven and the heart of the earth of our Guatemala, because we have been able to see, at least today, the light of day. Thanks to everyone for this solidarity. We ask you to continue to support us and to fight so that the implementation of the peace accords in Guatemala becomes a reality

*Edna Calder Chaves, NGOs and Cooperatives Working With Populations Affected by the Civil War in Guatemala.*²⁰⁷

The international community - grassroots, community based and non-governmental organizations around the world as well as international organizations and bodies - can play a significant role in local struggles.²⁰⁸ For example, Eritrean women used international networks to stage demonstrations across the world to bring the conflict with Ethiopia to an end and expatriate Eritrean women living in the United States engaged in a letter-writing campaign to lobby officials, congress and the media to support peace in Eritrea.²⁰⁹ Using international networks is most effective when thematic campaigns and networks are established. For example, as a result of the recent international conference hosted by International Alert, "Women and Violent Conflict: Global Perspectives", a "Women and Peace Building Campaign" is in the process of being launched.²¹⁰ In the context of women's rights to land, housing and property, the Women for Peace Network was founded at *Habitat II* in June 1996 by six women from different countries and organizations. The Network, which is now comprised of 12 organizations (all of which are in countries either in conflict or undergoing reconstruction), was established in recognition of the need for specific measures to be taken to protect women's lives and livelihood in war situations. One of the central understandings of the network is that women need rights to land, housing and property to support themselves and to contribute to the processes of reconstruction, hence they have adopted the following guiding theme for their network: "No Homes Without Peace, No Peace Without Homes".²¹¹ The

²⁰⁷ Edna Calder Chaves, *supra* note 51.

²⁰⁸ Rita Manchanda, *supra* note 140.

²⁰⁹ Eden Fesshazion, E-mail communication, 4 November 1999.

²¹⁰ International Alert, E-mail communication, 1 November 1999.

²¹¹ PEACE FOR HOMES, HOMES FOR PEACE, *supra* note 1 at 43.

objective of the network is to promote solidarity and practical support to members through coordinated global action, coordinated advocacy, sensitization and lobbying on issues and themes of concern to all members. The Network's activities will be affirmed and fortified by international support from other organizations committed to the same issues but which are not necessarily part of the formal network.²¹²

International networks and support of this sort can provide a number of benefits to local struggles. These benefits can be characterized as follows:

Solidarity: This is the most important function of international networks and support. For many women, the struggle for the realization of land, housing and property rights is a lonely one, especially since this struggle is inherently "anti-social", based in a rejection of custom and tradition and social norms. The loneliness of such a struggle is exacerbated for those women living in situations of armed conflict where supportive communities cannot be established or maintained and where other issues may be regarded as more pressing. In turn, international support from women and women's organizations helps to sustain energy and efforts at the local level and serves to validate work at the local level.

Gloria Cuartas, former Mayor of Apartado, Colombia summarized this at the Inter-Regional Consultation on Women's Rights to Land and Property During Situations of Armed Conflict and Reconstruction:

It is essential to create networks of global solidarity ... Our world needs women and men who are daring enough to create spaces for hope, peace and tolerance. This Inter-Regional Consultation gives us another opportunity to keep our hope alive and plant hope in our own hearts and in the hearts of many other people in similar situations, so that together we can begin to create a culture of peace and solidarity in our own hearts, our homes, our countries and our world. We thank you for the new opportunity and we, the women from the Women for Peace Network, pledge our commitment to peace for homes and homes for peace!²¹³

Politicizing the Issue: The development of an international network translates a local issue into one of global concern and impact. This can assist in ensuring that the issue is placed squarely on the international human rights agenda which can become a vehicle for the mobilization and application of external pressure on governments.

New Strategies: International networks can broaden the resources of local organizations and bring in valuable experience from other countries. Drawing on the expertise of individuals and other groups not associated with the local organization can also deepen the latter's understanding of the issues and problems involved.²¹⁴ To this end, the Liberia Women Initiative, is hoping to draw on its experiences to assist women's organizations in other post-conflict situations such as Sierra Leone.²¹⁵ Moreover, networks such as the Women's Peace Network, can galvanize action at different levels (local, national and

²¹² Women For Peace Network, PEACE FOR HOMES, HOMES FOR PEACE, *supra* note 1 at 43.

²¹³ PEACE FOR HOMES, HOMES FOR PEACE, *supra* note 1 at 5.

²¹⁴ International Human Rights Internship Program, RIPPLE IN STILL WATER: REFLECTIONS BY ACTIVISTS ON LOCAL AND NATIONAL LEVEL WORK ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1997) at 17.

²¹⁵ Abiodun Onadipe, *supra* note 183.

international) so that, ideally, activities at the international level are directly informed by activities at the local and regional levels which are then informed by activities at the international level.

In these ways international networks are an important part of local activism. International networks, however, are only of practical use to network members under certain conditions. In particular, it is important to have a network coordinator or coordinating body that is responsible for disseminating information and sustaining the momentum and energy of the network. Without strong and consistent coordination, a network can quickly peter out. It is also important for networks to engage in collaborative or cooperative activities from information dissemination, to country exchanges, to joint projects. These types of activities create working relationships between network members, breathe life into the network and, in turn, help to sustain it. Lastly, any network activities undertaken at the international level - such as utilizing UN human rights mechanisms - should be directly informed by existing local or regional campaigns on a related issue and the results achieved at the international level must be fed back into those local or regional campaigns if the gains at the international level are to be effective and useful.

4.6. Kigali Plan of Action

In February 1998 the government of Rwanda hosted a four day "Inter-Regional Consultation on Women's Land and Property Rights During Situations of Armed Conflict and Reconstruction" in Kigali. The Consultation was specifically organized to build on the experiences of the Women for Peace Network. Sponsored by several UN agencies,²¹⁶ there were more than 100 participants from Africa, Asia, Latin America, Europe, the Middle East and the Caribbean. The Consultation brought together a broad range of actors to focus on the issue of women's rights to land, housing and property including: grassroots women, non-governmental organizations, activists, legal experts, government ministers and parliamentarians from several countries and representatives of a number of UN agencies.²¹⁷

During the Consultation participants engaged in a process that culminated in the preparation of a *Plan of Action* which includes recommendations on priorities for follow-up and strategies for concrete action by all actors - government, UN officials, NGOs, activists and legal experts - at all levels: international, regional, national and local. The commitments undertaken by conference participants - if implemented - would result in concrete progress toward the realization of women's rights in, access to and control over land, housing and property in both rural and urban settings.

The Kigali Consultation and *Plan of Action* adopted a unique approach to addressing women's lack of access to and control over land, housing and property during situations

²¹⁶ United Nations Development Fund for Women (UNIFEM), United Nations Centre for Human Settlements (UNCHS)(Habitat), United Nations High Commission for Refugees (UNHCR) and the United Nations Development Programme (UNDP).

²¹⁷ PEACE FOR HOMES, HOMES FOR PEACE, *supra* note 1.

of conflict and reconstruction. The Consultation created a new political environment by bringing together ALL actors, non-governmental and governmental alike, and facilitating dialogue and interaction between people who, in other contexts, are unlikely to find themselves in the same room. The *Plan of Action* complements this by developing a series of regional and national plans of action which incorporate activities at all levels and which require the participation of all actors. To encourage the implementation of the *Plan of Action*, participants were asked to design and then to publicly commit to undertake specific activities to promote and protect women's rights to land, housing and property between 1998 and 2000 and to sign the *Declaration of Commitments*. Again, commitments were made by all actors, grassroots activists, legal experts, UN officials, and government representatives.

The message from the Kigali Consultation is clear. If women's rights to land, housing and property are to be realized in the new millenium, there must be solidarity and cooperation between women and men, governments and the people and activists around the world. Those who have never worked together before, must struggle to build trust, reach common ground and work in concert for the human rights of women, families, and their communities.

5. CONCLUSIONS

Taking stock of the major trends emerging across nations and the gains or achievements that have been made with respect to the realization of the right to land, housing and property for all women will assist in the determination of an appropriate focus and direction for future work in this area.

5.1. Major trends

Although the status of land, housing and property rights for women during conflict and reconstruction varies from country to country depending on the political, economic and social context, an overview of the status of these rights globally reveals the following trends:

- ◆ In most countries the first step toward the realization of women's rights to land, housing and property has been taken in the legislative realm. That is, women's organizations and others have worked in concert to ensure that women's rights are recognized in constitutional and statutory legislation.
- ◆ While gains are being made on the legislative front, with women's right to be free from discrimination appearing in Constitutions and women's rights to land, housing and property beginning to appear in land and housing reform and other statutory legislation, women continue to lack access to and control over land, housing and property both during and post conflict. This indicates that while laws may be slowly changing, attitudes and male defined tradition and custom are not. Men continue to ignore women's rights in land, housing and property and deny women access to and control over land, housing and property particularly in the context of return and, as a

result, women are increasingly rendered homeless and landless during conflict and reconstruction.

- ◆ Conflict requires women to undertake untraditional roles which, in some instances, includes participating in political, decision making processes and structures while displaced from their homes and lands. Upon returning home, however, women's new roles are being retrenched, with the pre-conflict social status quo being reinstated. In those instances where women are not explicitly excluded from decision making, the struggle for basic survival in the post-conflict environment virtually precludes them from participating.
- ◆ Despite the incredibly harsh repercussions of conflict on women, it can also provide women with opportunities unavailable during times of peace. In particular, and as a result of conflict, there has been an emergence of women's organizations that are focused on women's livelihood issues including women's rights to land, housing and property. These organizations are instrumental in promoting women's interests so that they appear on the political agenda and are important to women's overall empowerment.
- ◆ There is a worldwide movement, particularly in the post conflict context, toward the privatization of customary land tenure schemes²¹⁸ which rejects community ownership of land in favour of a system where land and housing is purchased and owned by individuals, regardless of sex. While this might appear to be an improvement over customary law which prohibits women from owning, accessing and controlling land, housing and property, it is not. In fact, for women, privatization of land tenure creates a vicious circle where women cannot purchase land, housing and property in private-market driven schemes because they are poor, economically marginalized and have no access to capital. And, of course, women cannot access capital without land and/or housing as collateral to secure a loan or to generate an income. This suggests that individual private ownership rights is not the solution to women's lack of rights in, access to and control over land, housing and property, and that perhaps a solution lies in either a dual system of private and customary land tenure or simply a modification to customary tenure schemes, as was achieved in Eritrea²¹⁹ and Mozambique.²²⁰

²¹⁸ See THE EAST AFRICAN, RWANDA COUNTRY REPORT (1-7 February 1999) which in its 16 pages includes the following articles: *Hospital Showcase of Rwanda's Effort to Privatise the Economy*, *Privatisation Process Right on Track*, *Says Project Executive*. The paper also provides an update on the various enterprises which remain to be privatized in Rwanda.

²¹⁹ See Case Study on Eritrea and the Land Proclamation.

²²⁰ In Mozambique the new Land Law of 1997 confirms the constitutional principle that women and men have equal right to occupy and use land. It also states that women have the right to inherit land. For the first time since national independence it recognized the right of local communities to secure a collective title to their lands, including cultivated, grazing and common lands and it foresees that such land may be governed according to customary law, so long as these laws do not contradict the Constitution of Mozambique.

- ◆ Land, housing and property rights are recognized as women's human rights both directly and indirectly at the international level, but despite the legal provisions in the ICESCR and CEDAW and the general recommendations expounding on these provisions, the international community has predominantly focussed on women's right to be free from discrimination with respect to inheritance practices, as opposed to articulating women's rights to land, housing and property as rights unto themselves. Moreover, despite the connections between land and housing and the importance of housing for women's livelihood, despite the increasing scarcity of land and the simultaneous mass destruction of civilian homes during conflict situations, and despite the fact that the human right to adequate housing has received considerable attention at the international level, the international community has yet to fully embrace a housing rights framework in its approach to women's rights to land, housing and property.

5.2. Progress To Date

Though we remain at some distance from the full realization of the right to land, housing and property for women during conflict and reconstruction, the past few years have seen some important, foundational achievements toward this end. An essential starting point, and perhaps the most exciting achievement to date is the increasing numbers of women across the world who are learning about their rights and entitlements with respect to land, housing and property and who are translating their experiences into collective action for change. Women in every region are forming and joining organizations as a vehicle for personal and political change. Through these organizations women are learning new skills, educating more women about their rights, working with men as well as with other organizations and movements to agitate for change, and becoming more empowered and hence better equipped to claim their rights to land, housing and property. Women's stories are emerging. We have heard about women using model legislation they have drafted to support their claims and convince judges to rule in their favour; and we have heard about women approaching political leaders to discuss land, housing and property policies, to negotiate justice. Finally, women's voices, experiences and demands are starting to resound through public space.

As a result, women's rights to land, housing and property, specifically during conflict and reconstruction, are now receiving some attention at both national and international levels. At the national level, land and housing reform legislation and peace agreements which explicitly refer to women's land, housing and property interests are beginning to emerge. In fact, in some contexts, "successes" have been achieved such as in Eritrea, Guatemala, Mozambique and South Africa, where women's rights to land, housing and property can at least be found on paper, in the law. At the international level meetings are being convened, such as the Kigali Consultation, to bring together a broad range of actors to elaborate on the land, housing and property related issues faced by women during conflict and reconstruction, and to strategize on future action and activities toward the realization of women's rights in this area. In addition, international non-governmental organizations traditionally focused on women's civil and political rights in the context of war (eg: rape as a war crime) are beginning to broaden their mandates to include work on issues which

do not fall squarely within the civil and political rights domain, but which also have economic and social rights dimensions, such as women's access to and control over land, housing and property.²²¹

Though there is still, undoubtedly, a long way to go, the foundation for change has clearly been laid. There is reason to believe that this foundation will be solid because while grassroots women have been the catalyst for action, progress toward the realization of women's rights to land, housing and property has been achieved because of the efforts of a host of men and women acting in different capacities at different political and social levels, such as: politicians, bureaucrats, grassroots and community based activists, lawyers, international human rights experts, UN officials and international development workers. In turn, it is in this spirit of alliance building and cooperation that the following forward looking strategies and activities are suggested.

CASE STUDY 3

ERITREA: WILL PROCLAMATION LEAD TO IMPLEMENTATION?

Eritrea won its independence in 1991, after a thirty year conflict with Ethiopia. The war for independence began in 1962 when the Eritrean federation with Ethiopia was dissolved and Eritrea was incorporated into Ethiopia as its fourteenth province. De facto independence was won in 1991 when the Eritrean People's Liberation Front (EPLF) was able to bring victory to the independence movement. Eritrea's independence was officially declared in 1993 by way of referendum.²²²

Prior to independence there were several types of land tenure systems in Eritrea. In the highland plateau (which runs north-south through the centre of the country) the tenure was "risti", a communal tenure system based on lineage which restricted land access to any peasant who was a descendent from the first settlers of the community. In the central highlands the tenure was "diessa" where land was allocated on a rotational basis every five to seven years to all of the residents of a village. Because it was residence based, diessa was a more welcoming tenure system for newcomers. In some areas private tenure as in existence as a result of Italian colonization.

When the EPLF gained control of Eritrea in 1991, these various tenure systems and others were still in existence. After independence, as soldiers returned to the countryside to claim land in their former villages, it became clear that a land reform or a new land policy was of immediate importance. Consequently, in March 1993, before official independence was declared, the Eritrean Land Commission commenced discussions and the drafting of a land policy for Eritrea. Systems which were considered and rejected included: privatization, returning all land to the diessa system but changing the time period for reallocation from five to twenty years, maintenance of the diessa system and several variations of these options. These options were rejected in favour of a system of usufruct rights held on an individual basis.

The 1993 Land Proclamation attempts to find a middle ground between tradition and the demands of modernization. Under the Land Proclamation ownership of land is vested solely in the Government and land is classified in two ways, it is either usufruct land or leased land. Under the usufruct system, land is allotted to Eritrean citizens who are then granted lifetime usufruct rights. Under the new system, the village remains the springboard for land allocation, but it has no collective claim to its former farming area as this is under Government control. The village still controls its own grazing area, woodlands and roads

²²¹ For example, the upcoming Newsletter of the International Centre for Human Rights and Democratic Development's Women's Programme will be focused on land, property and housing issues for women during armed conflict situations.

²²² This brief history is from: Sandra Fullerton Joireman, *The Minefield of Land Reform: Comments on the Eritrean Land Proclamation*, AFRICAN AFFAIRS, April 1996 v95 p269.

and it retains water rights. Land held in usufruct cannot be sold or passed on through inheritance. But a deceased's usufruct rights automatically passes to his or her children if they are minors who then have the option of retaining these rights when they reach the age of majority. Usufruct rights can be converted into lease rights for those with resources and who want to exploit the land allotted in ways other than those permitted by the Proclamation. Leased land can be heavily invested on and turned into a site of business, it can be sold, inherited etc. The leased land system is intended as a means of attracting capital investors into farming communities, without disturbing the user rights of the general populous.

What makes the Land Proclamation particularly remarkable is that unlike the *risti* and *diessa* systems, it assures equal rights of men and women to land ownership. Even in marriage and divorce a women's right to farm her own land is now preserved. Article 15(1) states that married couples who, under the Proclamation, are allowed to acquire agricultural land, get separate shares from the land allocated for agricultural activities. In the event of divorce each partner in the couple then takes his or her allocated share.

The Land Proclamation marks the first essential step in Eritrea towards women's enjoyment of land and property rights. But many more steps must be taken before the Land Proclamation is actually implemented. As it stands there is a gap between the legal reforms of the EPLF and on-the-ground realities. Ignorance of the law coupled with the imposition of cultural norms is making it difficult for women to claim their rights to land and property. And so, the struggle for the realization of women's rights to land and property must continue on in Eritrea.

[Based on: Sandra Fullerton Joireman, *The Minefield of Land Reform: Comments of the Eritrean Land Proclamation* in AFRICAN AFFAIRS, April 1996 v95 n379 p269; and Tsehainesh Tekle, *Women's Access to Land and Property Rights in Eritrea*, paper prepared for the INTER-REGIONAL CONSULTATION ON WOMEN'S RIGHTS TO LAND AND PROPERTY DURING CONFLICT AND RECONSTRUCTION, Rwanda, 1998.]

5.3. Moving Forward

What follows are a few focused suggestions as to how governments, the UN, NGOs, legal experts, and grassroots organizations can further develop, promote and protect women's rights to land, housing and property during armed conflict and reconstruction. For these strategies to be effective they must be coordinated and carried out simultaneously, they must be grounded in women's experiences and they must draw on women's skills and knowledge.

National and Local

- ◆ Governments as well as NGOs must ensure that women and women's organizations are included in formal politics, including the negotiation of peace agreements and in the reconstruction process at the outset and not as an afterthought. Women from all levels of society must be included in these negotiations, and not just privileged, wealthy and educated women.
- ◆ Governments, UN bodies and NGOs engaged in post conflict needs assessments must consult with women and women's organizations in a meaningful way and incorporate women's perspectives in their plans.²²³

²²³ Iheoma Obibi, E-mail communication, 29 October 1999.

- ◆ All laws which discriminate against women with respect to land, housing and property must be repealed, struck down or amended to conform with international human rights law. Laws which privilege customary law over constitutionally protected anti-discrimination law in the context of personal or land, housing and property matters must also be repealed or struck down. New laws related to land, housing and property, drafted in the reconstruction period, must include specific provisions which recognize and protect independent rights to land, housing and property for ALL women. New or amended laws must be measured against international and regional human rights standards and government obligations thereunder.
- ◆ Beyond adopting legislation which explicitly protects and promotes women's rights to land, housing and property, governments must concentrate on the creation of accessible and independent enforcement mechanisms. These should include locally based alternative dispute resolution mechanisms (eg: mediation by an non-partisan, third party), and the establishment of locally staffed land and housing commissions and/or tribunals with quasi-judicial powers. Legal aid, legal representation and legal education must be included in the establishment of enforcement mechanisms. Research into how to create gender-sensitive mechanisms must be conducted and the findings should be included in establishment of enforcement mechanisms.
- ◆ All sectors of society - women, men, governmental officials, legislators, judges, lawyers, grassroots, community based and non-governmental organizations, educators – must receive international human rights education with a focus on women's rights and on economic, social and cultural rights including women's rights to land, housing and property. Where appropriate, human rights education should also focus on local, national, regional and international legal and other mechanisms to enforce these rights.
- ◆ If rights to land, housing and property are to be fully realized for all women, male-defined custom and tradition must be transformed. To achieve this, governments and national organizations must understand that accommodating women's land, housing and property rights is not fundamentally threatening to customary law. There are many deeply traditional places where these types of changes are occurring.²²⁴ In turn, governments and national organizations must explore strategies for effecting cultural change. To this end, organizations should investigate movements to effect cultural change on other issues such as those aimed to limit the practice of female genital mutilation in parts of Africa. This research could then be used to develop a socio-legal framework which accommodates legal pluralism but which does not violate women's human rights to land, housing and property, as was achieved in Mozambique.
- ◆ Women's organizations have played a defining role in women's empowerment during conflict and reconstruction. These organizations tend to be under-resourced and are

²²⁴ Louise Fortmann, *supra* note 141.

difficult to sustain given the many demands on women, particularly in the post conflict period. These organizations need financial support from the international community and local or national governments. Capacity building, training and education on organizing, activism, establishing projects and fundraising should also be provided to women's organizations.

- ◆ Once trained and resourced, women's organizations must start documenting violations of women's rights to land, housing and property. As Agnes Callamard of Amnesty International says:

Documentation is about exploring, describing, understanding, explaining and predicting the nature and extent of human rights violations in the world and bringing changes and remedies to those violations. Documentation is about shaping knowledge, filling those spheres left unheard of, uncovered, unspoken ... In the context of war or armed conflict situations, documentation is about informing on the gendered dimensions of the practices of war.

In turn, documentation can be used to raise awareness as part of an empowerment strategy. The process of gathering information and documenting violations of women's land, housing and property rights, builds new skills and can assist women in accessing national and international forums, bringing their cases to international attention. Documentation helps to validate women's stories and concretizes their demands for access to and control over land, housing and property.

- ◆ Women's organizations and others must monitor government compliance with its international legal obligations, including those undertaken at the FWCW and at Habitat II. Women's organizations and others must initiate campaigns to pressure their governments to ratify all international and regional human rights conventions.
- ◆ Women's organizations must exploit a human rights framework in their work. In particular, the Women's Convention (CEDAW) and General Recommendation 21, the ICESCR and General Comment No. 4 on the right to adequate housing and the UN Resolutions specifically pertaining to women's rights to land, housing and property, should be translated into popular format and used in national and local efforts to promote and protect women's rights to land, housing and property.
- ◆ During the reconstruction period, many countries struggling to re-establish themselves economically as well as politically, are adopting liberal economic policies which require radical changes to land tenure systems, including the privatization of land and housing. National and local organizations must document the impact of these fiscal policies on women. National organizations must also conduct further research on other types of land tenure systems, with a view to determining which are the most viable for women's livelihood.

International

- ◆ Women's rights to land, housing and property must be more firmly established as human rights. To this end, human rights lawyers and activists should work together to delineate and develop a more holistic legal framework to support the claim that women's rights to land, housing and property are human rights. Only an integrated rights approach – which includes an analysis of the economic and social dimensions of land, housing and property rights – will address the structural causes of women's lack of access to and control over land, housing and property.
- ◆ To this end, more research should be carried out on the relationship between the right to housing and land, property rights, with a view to better determining how the right to housing (one of the most developed economic and social rights at the international level) might be used to support women's rights to land, housing and property.
- ◆ Where possible, cases of discrimination against women with respect to land, housing and property and the inheritance of these as well as cases alleging violations of rights to housing, land and property should be brought before appropriate international and regional human rights bodies for judicial determination;
- ◆ United Nations agencies and governmental and non-governmental aid agencies, particularly (but not exclusively) those working with refugee and internally displaced populations on land, housing and property related issues in countries engaged in conflict or under reconstruction, must re-examine their programmes through a gender lens and then coordinate and re-structure efforts to ensure that women's interests and entitlements with respect to land, housing and property play a defining role in their work plans and activities. The Guatemalan case study demonstrates the supportive role and political influence that the UN can have in promoting and protecting women's land, housing and property rights and this role must be encouraged.
- ◆ The UN Centre for Human Settlements must ensure that its upcoming Security of Tenure Campaign fully integrates women and a gender perspective. This means ensuring that all terms of reference, programme structures and activities are defined, designed and developed from a gender perspective. For example, the term "security of tenure" has very different meanings for men and women. UNCHS must be careful to ensure that their working definition of security of tenure is one that centres on the empowerment of women, rather than one which is apparently "gender-neutral".
- ◆ The Technical Cooperation Programme of the Office for the High Commissioner for Human Rights (OHCHR) assists states, at their request, in building and strengthening national structures which have a direct impact on the overall observance of human rights and the maintenance of the rule of law. Working in over 40 countries, many of which are emerging from conflict situations, the OHCHR undertakes a variety of activities including: human rights education and training for all sectors of society; workshops for the purpose of elaborating national human rights plans of action; training legal officers in the field of legal drafting; enhancing policy makers' and

legislators' understanding of women's human rights issues.²²⁵ Given the OHCHR's commitment to the integration of a gender perspective as well as economic, social and cultural rights into Technical Cooperation practices and procedures²²⁶, it is well placed to initiate and encourage a focus on women's land, housing and property rights in its field work.

- ◆ The Women for Peace Network is a vital international initiative which requires ongoing support (financial and moral). To enhance its effectiveness, this Network should forge alliances with other international networks focused on women and conflict. For example, an alliance could be formed with the "on-line" international network of women's organizations focused on violence against women during armed conflict situations. This network is comprised of some of the leading women's human rights activists and has successfully put violence against women during armed conflict situations on international political/human rights agendas. In fact, it was the work of members of this network which led to rape being included on the list of indictments against those being prosecuted at the International Criminal Tribunal for Rwanda. An alliance between the Violence Against Women Network and the Women for Peace Network could be mutually beneficial. The Women for Peace Network could learn from the experiences of the Violence Against Women Network, and the Violence Against Women Network could learn more about economic violence and more specifically about violations of women's rights to land, housing and property during conflict and reconstruction.
- ◆ Relevant UN agencies and international human rights organizations and legal experts must contribute to research on the impact of privatization of land, housing and property on women. An analysis of this impact must be undertaken with a view to developing strategies for addressing the impact in those countries where privatization is well under way. This analysis may also assist in the search for other means of developing economic interests in land while protecting women's rights to land, housing and property. This analysis would be undertaken in concert with research at the national level.
- ◆ An international expert group meeting of women activists, legal experts, academics, development and aid workers, and UN officials should be convened to draft "Basic Principles for Women's Rights to Land and Property During Conflict and Reconstruction" which could then be used by various actors in efforts to promote, protect and enforce women's rights to land, housing and property at the local, national, regional or international level. International human rights activists could then use the Basic Principles document to lobby for the adoption of a resolution on this issue at the Commission on Human Rights.

²²⁵ United Nations Office for the High Commissioner for Human Rights (OHCHR), TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS: ON-GOING PROJECTS AND ACTIVITIES (August, 1998).

²²⁶ OHCHR, INTEGRATION OF A GENDER PERSPECTIVE INTO TECHNICAL COOPERATION PRACTICE AND PROCEDURES, GLO/96/AH/24 and INTERIM MEASURES FOR THE INTEGRATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS INTO TECHNICAL COOPERATION PRACTICES AND PROCEDURES, GLO/97/AH/20.

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7. ANNEXES

7.1. UN Resolutions

UN SUB-COMMISSION ON THE PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Resolution 1997/19 Women and the right to adequate housing and to land and property

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling the recognition and legal foundations of the right to adequate housing in, inter alia, the Universal Declaration of Human Rights (art. 7, 12, 17, 25, par. 1), the International Covenant on Economic, Social and Cultural Rights (art. 2 par. 2, 11, par. 1), the International Covenant on Civil and Political Rights (art. 2 par. 1, 17, 26) and its Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e) (iii)), the Convention on the Rights of the Child and the Convention on the Elimination of Discrimination Against Women,

Recalling also general comment No. 4 (1991) on the right to adequate housing and general comment No. 7 (1997) on forced evictions adopted by the Committee on Economic, Social and Cultural Rights,

Recalling further Commission on Human Rights resolution 1993/77 of 10 March 1993 entitled "Forced evictions",

Recalling its own resolutions 1991/26 of 29 August 1991, 1992/26 of 27 August 1992, 1993/36 of 25 August 1993, 1994/38 of 26 August 1994, 1995/27 of 24 August 1995, entitled "Promoting the realization of the human right to adequate housing",

Recognizing that women face particular constraints in securing and maintaining their right to housing because of the continued existence of gender-biased laws, policies, customs and traditions which exclude women from acquiring land, security of tenure and inheritance rights to land and property, and owing to women's reproductive role and that these constraints are particularly acute for women who also face discrimination on one or more other grounds including race, ethnicity, creed, disability, age, socio-economic status and marital status,

Alarmed that more women than men live in absolute poverty and that female headed households, which comprise one fourth of all households world-wide, are very often among the poorest,

Concerned that continued discrimination faced by women in all matters relating to land and property is the single most critical factor in the perpetuation of gender inequality and poverty,

Disturbed that millions of women worldwide suffer from extremely poor housing and living conditions, including severe pollution, overcrowding, polluted water and inadequate sanitation, all of which give rise to serious mental and physical health problems and cause thousands of women to die, or to live in a permanent state of ill-health,

Aware that women are largely excluded from the housing and planning development process, which leads to the under-utilization of their knowledge and experience and results in development policies and projects that are insensitive to women's requirements for the improvement of their housing, neighbourhoods and communities.

Aware also that women experience discrimination by being denied access to, *inter alia*, the right to rent, own or inherit housing, land and property; economic resources, including agricultural and housing credits and loans; economic opportunities through employment and self-employment, training, information and education; health care and social support services and that such discrimination has a particularly adverse impact on female-headed households,

Concerned that women and children suffer disproportionately from the practice of forced evictions and that women bear the brunt of traumatized and dislocated communities,

Deeply concerned that inadequate and insecure housing and living conditions, contribute to, cause and are often the result of violence against women and that women's lack of security of tenure, resulting from domestic violence as well as gender-biased laws, customs and traditions which exclude women from renting, owning or inheriting land or property, exposes women to homelessness and landlessness,

Stressing that the violation of women's right to adequate housing results in the violation of other civil, cultural, economic, political and social rights such as the right to equality before the law and equal protection of the law, the right to life, the right to security of the person, the right to work, the right to health and the right to education,

Aware that the Secretary-General, in his report Women in urban areas: population, nutrition and health factors for women in development, including migration, drug consumption and AIDS (E/CN.6/1994/3) submitted to the Commission on the Status of Women at its eighty-eight session, stated that security of tenure promotes greater participation of women in community management and that this, in turn, helps households escape the poverty trap,

Mindful that the Habitat Agenda (A/CONF.165/14), adopted by the United Nations Conference on Human Settlements (Habitat II), recognizes women's right to adequate housing, and to land and property and the importance of all actors adopting and implementing policies, laws and programmes aimed at the realization of these rights,

Mindful also that the Platform for Action (A/CONF.177/20) adopted by the Fourth World Conference on Women recognized the links between women's poverty and lack of access to economic opportunities including land ownership and inheritance,

Noting that the Plan of Action adopted by the World Food Summit, recognized women's right to land in relation to their right to food,

Noting also that the Special Rapporteur on violence against women of the Commission on Human Rights in her preliminary report (E/CN.4/1995/42) noted that economic and social factors, including inadequate housing can cause domestic violence,

Noting further resolution 16/7 of 7 May 1997 entitled "The realization of the human right to adequate housing" adopted by the United Nations Commission on Human Settlements in which it recommended that a joint programme be elaborated between the United Nations Centre for Human Rights and the United Nations Centre for Human Settlements (Habitat) to assist States with the implementation of their commitments to ensure the realization of the right to adequate housing as provided for in international instruments,

1. Reaffirms the universal nature and existence of the right to adequate housing in terms of its relevance to all human rights with respect to women;
2. Encourages Governments to comply fully with all their international and regional obligations and commitments concerning the legally recognized rights of women to land, property, inheritance, adequate housing including security of tenure, an adequate standard of living and the continuous improvement of living and housing conditions and to create opportunities for women to acquire training, education and information in all matters related to these rights;
3. Reminds Governments of the critical importance of providing women with legal resources and human rights information and education to address the violence they experience in relation to housing, and to enact and enforce laws and policies that protect women against violence in this context;
4. Recognizes the importance in this regard of international cooperation and the need for cooperation between Governments, non-governmental organizations and international agencies;
5. Requests the United Nations High Commissioner for Human Rights, in pursuance of her mandate, to undertake initiatives that promote woman's right to adequate housing and to land and property;
6. Encourages the High Commissioner /Centre for Human Rights to include fully in all the projects undertaken by the technical cooperation and advisory services programme specific activities related to the promotion and protection of woman's right to adequate housing and to land and property;

7. Also encourages the High Commissioner /Centre for Human Rights to include fully in all its field operations specific activities relating to the promotion and protection of women's right to adequate housing and to land and property
8. Recommends that the Special Rapporteur of the Commission on Human Rights on violence against women include in her next report, an in-depth analysis of the relationship between violence against women and violations of the right to adequate housing, including forced evictions;
9. Also recommends that all relevant special rapporteurs, and the special representative on internally displaced persons take into account in the preparation of their reports the question of the housing, land and property rights of women;
10. Invites the Commission on the Status of Women to consider the right to adequate housing in its continued research on the impact of violations of economic, social and cultural rights on women;
11. Invites the Committee on the Elimination of Discrimination Against Women pay special attention to the issue of the right to adequate housing and to land and property of women when examining States parties' reports and to explore the possibility of adopting a general recommendation on women and housing rights as this relates, inter alia, to the provisions of Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women, with a view to clarifying the obligations of States parties to this Convention in this respect;
12. Invites the Committee on Economic, Social and Cultural Rights to consider devoting a day of general discussion to the impact of structural discrimination, poverty and inadequate housing and living conditions on the economic, social and cultural rights of women with a view to adopting a general comment on article 2, par. 2 of the International Covenant on Economic, Social and Cultural Rights;
13. Strongly suggests that the joint programme of the Centre for Human Rights and the Centre for Human Settlements of the UN Commission on Human Settlements (Habitat) focus directly on women and the right to adequate housing, and to land and property;
14. Requests Governments, the organizations and bodies of the United Nations and the specialized agencies, actively to support local, national and international initiatives, including the development of human rights indicators, aimed at assessing and improving housing and living conditions of women throughout the world, in full consultation with and with the full participation of women themselves, their representatives and community based non-governmental organizations and other relevant groups;
15. Invites the Food and Agriculture Organization of the United Nations, in its implementation of the Plan of Action adopted by the World Summit on Food, to focus on women's poverty in relation to their rights to land and property;

16. Invites the International Labour Organization to consider women's housing, land and property rights in its monitoring and development of recommendation No. 115 concerning Workers' Housing, 1961 and the Home Work Convention (No. 177), 1996;

17. Urges the international financial institutions, in particular the World Bank and the International Monetary Fund, to take fully into account the human rights implications for women of their policies, in particular structural adjustment programmes and the funding of large-scale development projects that often lead to forced eviction;

18. Decides to review the question of women and the right to adequate housing at its fiftieth session, under the relevant agenda item.

Adopted by consensus, 27 August 1997.

Resolution 1998/15 Women and the right to land, property, and adequate housing

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Recalling Commission on Human Rights resolution 1998/51 of 17 April 1998 calling for the integration of the human rights of women throughout the United Nations system,

Recalling also Sub-Commission resolutions 1997/19 of 27 August 1997 entitled "Women and the right to adequate housing and to land and property", and 1997/9 of 22 August 1997 entitled "Implementation of the human rights of women and the girl child",

Recalling further, the recognition and legal foundations of the right to adequate housing contained in, inter alia, articles 7, 12, 17 and 25, paragraph 1, of the Universal Declaration of Human Rights; article 2, paragraph 2, and article 11, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights; article 2, paragraph 1, and articles 17 and 26 of the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; article 5 (e) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination; articles 4 and 27 of the Convention on the Rights of the Child and article 14, paragraph 2 (g) and (h) and article 16 (h) of the Convention on the Elimination of All Forms of Discrimination Against Women,

Reaffirming the right to be free from discrimination based on sex and the equal right of men and women to the enjoyment of all civil, cultural, economic, political and social rights as stipulated in, inter alia, the International Bill of Human Rights,

Bearing in mind the Habitat Agenda (A/CONF.165/14), adopted by the United Nations Conference on Human Settlements (Habitat II), and the Platform for Action (A/CONF.177/20) adopted by the Fourth World Conference on Women,

Concerned that as a result of the discrimination faced by women with respect to acquiring and securing land, housing and property, the number of women living in poverty is increasing disproportionately to the number of men and that women's experiences of poverty are particularly severe and prohibit women from escaping the poverty trap,

Recognizing that the existence and perpetuation of gender-biased laws, policies, and traditions which deny women credit and loans and keep women from owning and inheriting land, property, and housing and which exclude women from fully participating in development processes discriminate against women and create insecure and inadequate housing and living conditions,

Deeply concerned that inadequate and insecure housing and living conditions give rise to serious mental and physical health problems for women and contribute to, cause and are often the result of violence against women,

Stressing that the impact of discrimination and violence against women on women's ability to access and secure land, housing and property is particularly acute for women who are internally displaced as a result of armed conflict situations and development projects,

Concerned that international and regional trade, finance and investment policies often increase gender inequality in terms of access to land, property, housing and other productive resources and undermine women's capacity to gain and retain these resources,

Mindful that women's inequality will not always be remedied by the identical treatment of men and women and that adequate remedies may require that women be treated differently from men based on a consideration of women's specific socio-economic context,

1. Affirms that the discrimination faced by women with respect to acquiring and securing land, housing and property as well as financing for land, housing and property, constitutes a violation of women's human rights to equality, protection against discrimination and to equal enjoyment of the right to an adequate standard of living, including adequate housing;
2. Strongly urges governments to comply fully with all of their international and regional obligations and commitments concerning the legally recognized rights of women to land, property, inheritance, adequate housing including security of tenure, and an adequate standard of living;
3. Urges governments to review their laws, policies, customs and traditions pertaining to land, housing and property rights, to amend and repeal laws and policies and to encourage the transformation of customs and traditions which deny women security of tenure and equal access and rights to land, housing and property, and to adopt and enforce legislation which protects and promotes women's rights to own, inherit, lease or rent land, housing and property;

4. Encourages governments, international agencies and non-governmental organizations to provide judges, lawyers, political and other public officials, community leaders, and other concerned persons with information and human rights education concerning women's rights to land, property, and housing;
5. Recommends that governments, international financial institutions, local lending agents, housing finance institutions and other credit facilities review their policies and eliminate those which discriminate against women and keep women from securing financial resources necessary to access and secure land, housing and property and, in this regard, that special consideration be given to single women and households headed by women;
6. Suggests that the international trade, investment and financial institutions, in particular the World Bank, the International Monetary Fund, the World Trade Organization and the Organization for Economic Cooperation and Development, take fully into account the human rights implications for women of their policies;
7. Invites governments, the United Nations Development Programme, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Centre for Human Settlements and the United Nations Development Fund for Women to allocate resources for further documentation of the impact of internal displacement as a result of armed conflict situations and development projects on women, particularly with respect to women's access to land, housing and property;
8. Invites the United Nations High Commissioner for Human Rights, in pursuance of her mandate, to undertake initiatives that promote woman's rights to land, property and to an adequate standard of living, including adequate housing;
9. Requests the Secretary-General to propose to the Committee on the Elimination of Discrimination Against Women to pay special attention to women's rights to land, property, and an adequate standard of living, including adequate housing, when examining States parties reports and to explore the possibility of adopting a general recommendation on this theme as it relates, *inter alia*, to the provisions of Article 14 of the Convention on the Elimination of All Forms of Discrimination Against Women, with a view to clarifying the obligations of States parties to this Convention in this respect;
10. Suggests to the Committee on Economic, Social and Cultural Rights to undertake a thorough discussion of the critical issue of the relationship between women's rights to land and property and the International Covenant on Economic, Social and Cultural Rights and to include the results of this discussion in its general comment on women.

Adopted by consensus, 20 August 1998

COMMISSION ON THE STATUS OF WOMEN

Resolution 42/1. Human rights and land rights discrimination

The Commission on the Status of Women,

Recalling the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, and the Beijing Declaration and Platform for Action of the Fourth World Conference on Women,

Noting that the Universal Declaration of Human Rights prohibits discrimination and proclaims that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting also that the States parties to the International Covenants on Human Rights have the obligation to ensure the equal right of men and women to enjoy all economic, social, cultural, civil and political rights, and concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Gravely concerned that in many countries the treatment accorded to women, whether in terms of property rights, land rights, rights of inheritance, laws related to marriage and divorce or the rights to acquire nationality, manage property or seek employment, reflects the inequality between women and men,

Concerned that in situations of poverty, women are disproportionately affected and have the least access to productive resources, food, health, education, training and opportunities for employment and other needs,

Recognizing that land is a valuable resource, and that secure land rights are key rights for the economic empowerment of women,

Recognizing also that the full and equal participation of women in all spheres of life is essential for the full and complete development of a country,

Reaffirming the equal rights of women and men, as enshrined, inter alia, in the Charter of the United Nations and the Convention on the Elimination of All Forms of Discrimination against Women,

1. Stresses the need for full and urgent implementation of the rights of women, as guaranteed in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political

Rights, and the Convention on the Elimination of All Forms of Discrimination against Women;

2. Urges all States to take all necessary measures, including legislation, to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of all human rights and fundamental freedoms on a basis of equality with men, and to take effective action against violations of those rights and freedoms;

3. Calls upon States:

(a) To set goals and develop and implement gender-sensitive strategies for addressing the rights and needs of women;

(b) To generate social support to change the social and cultural patterns of conduct of women and men with a view to achieving the elimination of prejudices and customary and all other practices that are based on the inferiority or the superiority of either of the sexes or on stereotyped roles for women and men;

(c) To develop innovative activities at all levels, including human rights education, to increase women's awareness of their human rights and the mechanisms that are available to protect and enforce women's full enjoyment of them, inter alia, through the translation, production and dissemination of information materials on these rights to all sectors of society;

(d) To ensure women's equal rights with men in the areas of education, health and nutrition, and to provide equal access to programmes of continuing education, including adult and functional literacy programmes;

4. Urges States to pay particular attention to women and their rights and needs in designing and implementing development programmes, and specifically to address the feminization of poverty and its root causes, including secure land tenure;

5. Also urges States to design and revise laws to ensure that women are accorded full and equal rights to own land and other property, including through the right to inheritance, and to undertake administrative reforms and other necessary measures to give women the same right as men to credit, capital, appropriate technologies, access to markets and information;

6. Calls upon the United Nations High Commissioner for Human Rights, in the exercise of her mandate, to increase awareness that land rights discrimination is a violation of human rights and that in addressing the right to development secure land tenure for women should be taken into account;

7. Requests the Secretary-General, as Chairman of the Administrative Committee on Coordination, to ensure that all organizations and bodies of the United Nations system,

individually and collectively, in particular the United Nations Development Programme, take into account land rights discrimination and its negative impact on women in all poverty eradication programmes and policies;

8. Calls upon all States and all relevant organizations and bodies of the United Nations system to report to the Commission on the Status of Women at its forty-third session on initiatives related to the present resolution.

Adopted by consensus, 13 March, 1998

7.2. About the Main Contributors and Partners

Leilani Farha is the Coordinator of the Women's Programme and Legal Advisor, Centre on Housing Rights and Evictions.

The Centre on Housing Rights and Evictions (COHRE) is an international, non-governmental human rights organisation which seeks to find solutions to the problems of homelessness, inadequate housing and living conditions, forced evictions and other violations of human rights. It promotes interaction between local CBOs and NGOs and the international system by raising popular awareness and by focusing international attention of local struggles for housing rights and against forced evictions.

<http://www.cohre.org>

Habitat International Coalition (HIC) is a global network of grassroots organisations, CBOs and NGOs from 70 different countries that works on a number of issues related to housing and living conditions. In the last decade, HIC launched Global Campaigns for Housing Rights and against forced evictions, using international human-rights law in order to mobilize local and national support and awareness. Its principal organ is the Housing Rights Committee.

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The Women for Peace Network created in Istanbul at the Habitat Conference in June 1996 comprises individuals, women's and mixed organizations, having among their main objectives the empowerment of women in situations of armed conflict and reconstruction. Currently the members come from twelve countries under conflict or reconstruction. The network seeks to promote solidarity and practical support to members and their work through coordinated global action, advocacy, sensitisation and lobbying on issues and themes of concern to all members.

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Arias Foundation for Peace and Human Progress, based in Costa Rica, was founded in 1988 to promote the advancement of just and peaceful societies in Latin America and the Caribbean. Among its objectives are, promoting equal opportunities for women, the building of a firm and lasting peace and the strengthening of the participation and actions of civil society. The foundation has created the Centre for Human Progress to promote a legal framework which allows the development and full respect of women's human rights and to promote women's access to productive resources. The Centre has organised several studies, workshops and campaigns.

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United Nations Development Fund for Women (UNIFEM) promotes women's empowerment and gender equality. It works to ensure the participation of women in all levels of development planning and practice, and acts as a catalyst within the UN system, supporting efforts that link the needs and concerns of women to all critical issues on the national, regional and global agendas.

<http://www.unifem.undp.org>

United Nations High Commissioner for Refugees (UNHCR) is mandated by the United Nations to lead and coordinate international action for the world-wide protection of refugees and the resolution of refugee problems. Its primary purpose is to safeguard the rights and well-being of refugees. By assisting refugees to return to their own country or to settle in another country, UNHCR also seeks lasting solutions to their plight.

<http://www.unhcr.ch>

United Nations High Commissioner for Human Rights (UNHCHR) seeks to ensure the universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations. Office of the High Commissioner for Human Rights acts as the focal point for all human rights activities of the United Nations. It undertakes research and prepares reports, cooperates with Governments and international and regional organizations for the promotion and protection of human rights. UNCHS and Office of the High Commissioner for Human Rights are collaborating on the formulation and creation of a joint UN Housing Rights Programme.

<http://www.unhchr.ch>

UNCHS Women and Habitat Programme, created in 1993, seeks to support the empowerment of women by promoting women's equal participation, especially at decision-making levels, in the pursuit for adequate shelter for all and sustainable human settlements in an urbanizing world. Its activities include policy formulation and development, capacity building, applied research and development of training materials, and networking.

<http://www.unchs.org>

UNCHS Land Management Programme launched after the Istanbul Conference (June 1996) to give a follow-up to the Habitat II Land Initiative, focuses on access to land, security of tenure, informal settlements upgrading and regularisation, urban land management and land policy reform. Its activities include producing and disseminating research publications and technical/information material including best practices, and partnership building with central and local governments, communities, NGOs and the private sector.

<http://www.unchs.org>

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