



Appendix to the
Synthesis of contributions by members, partners and
experts
in the International Land Coalition (ILC) network
to the e-consultation facilitated by GI-ESCR and
IWRAW-AP

This document includes all contributions made to ILC's online consultation (Annex 2) as well as the questions posed in that consultation, based on the GI-ESCR and IWRAW-AP questionnaire (Annex I).

For further details and contact information, please contact ILC (ilcinfo@landcoalition.org).

[Annex 1- Questionnaire](#)

Questionnaire to ILC members and partners on priority issues and challenges for rural women in the context of women's land and property rights

Contributing to the IG-ESCR and IWRAW – AP thematic briefing with the CEDAW Committee

The norms enshrined within the Convention for the Elimination of All the Forms of Discrimination against Women (CEDAW) are at the heart of ILC's work on Women's Land Rights. CEDAW is a key tool for advancing women's rights at local and national level, both through monitoring its implementation and using it as a platform for advocating women's rights.

The Convention is the only international treaty specifically focused on preventing discrimination against women and explicitly dealing with rural women and their rights (Art. 14). CEDAW not only covers civil and political rights, but also draws attention to the economic, social and cultural dimension of discrimination.

In the last three decades, the CEDAW Committee has produced 28 General Recommendations, in order to highlight specific issues and to expand the interpretation of State obligations. Since there are no quantitative indicators in the Convention and state parties often define articles very narrowly, General Recommendations are an important tool in interpreting the Convention's application at national level.

The CEDAW Committee is in the process of developing a General Recommendation on the Rights of Rural Women, which is expected to include a relevant section on women's land rights.

GI-ESCR and IWRAW-AP are collecting inputs on rural women's land and property rights, through an open consultation, to make them available to the CEDAW Committee.

We would like to invite ILC members and partners to participate in this consultation.

How to submit your inputs

- You can submit a full paper (2,500-5,000 words, instructions attached in .PDF) to GI-ESCR and IWRAW-AP in English.
- Alternatively, you can send your contribution to ILC (in English, French, Spanish). Taking advantage of the e-consultation opened by GI-ESCR and IWRAW-AP, ILC members and partners have the opportunity to collectively think about the status of women's land rights, causes and consequences of discrimination, good practices and specific recommendations to advance them and promote gender-responsive land governance
- The ILC Secretariat will submit contributions received to GI-ESCR and IWRAW-AP, as an addendum, together with a synthesis report.

Instructions

Please, read the text of the [Convention](#) (especially Art. 14, 15 and 16).

Answer one or more of the questions below.

Be as concise as possible, but feel free to discuss any aspect of them.

Please send your responses to l.miggiano@landcoalition.org by 10th December 2012.

Questions

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

Q3. What are the consequences for women when these rights are violated? How are women impacted?

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

Resources:

CEDAW: <http://www2.ohchr.org/english/law/cedaw.htm>

CEDAW Committee: <http://www2.ohchr.org/english/bodies/cedaw/index.htm>

Rural women, land and CEDAW: <http://www.landcoalition.org/global-initiatives/womens-land-rights/rural-women-land-and-cedaw>

If you want to know more about your State's compliance with CEDAW please read the ILC publication: <http://www.landcoalition.org/publications/update-2010-rural-women-land-and-cedaw>

Annex 2: Member and Network Submissions

Contributions were made by the following ILC members and partners, as well as key experts (ILC members in **bold**):

1. A group of Rwandan NGOs from ILC Africa Node, including **Rwanda Initiative for Sustainable Development (RISD)**, SERUKA, AVP, Réseau des Femmes, COPORWA, Kanyarwanda, CLADHO and LAND Project (Rwanda). Compiled by Yussuf Nsengiyumva, ILC Africa Regional Coordinator
2. **Association for Land Reform and Development (ALRD, Bangladesh)**
3. **Association pour la paix et les droits de l'homme (APDH, Burundi)**
4. Centro de Formação Jurídica e Judiciária (CFJJ – Mozambique)
5. Centro de la Mujer Peruana Flora Tristán (Peru)
6. **Community Self-Reliance Centre (CSRC, Nepal)**
7. **FVTM and Platform SIF (Madagascar)**
8. **JASIL (Mongolia)**
9. **Kenya Land Alliance (Kenya) by Eileen Wakesho**
10. **Keshab Dahal-Abhiyan (Nepal)**
11. **Landesa (USA)**
12. **National Federation of Communal Forests and Pastures (NFCPA – Albania) by Alhora Kacani**
13. **Star Kampuchea (Cambodia)**
14. Susie Jacobs (Independent Researcher, Manchester Metropolitan University, UK)
15. SWADHINA (India)
16. Women in Law and Development in Africa (WILDAF), Togo/West Africa
17. Women's Environment Program (WEP), Nigeria

1. A group of Rwandan NGOs from ILC Africa node (RISD, SERUKA, AVP, Réseau des Femmes, COPORWA, Kanyarwanda, CLADHO and LAND Project) compiled by Yussuf Nsengiyumva, ILC Africa Regional Coordinator

THE ILC AFRICA NODE HAS ORGANIZED A CONSULTATIVE MEETING ON 30th NOVEMBER 2012 TO DISCUSS AND PREPARE THE COMMENTS ON CEDAW

This document is a contribution of the following Civil Society organizations:

RISD, International Land Coalition Africa, SERUKA, Association des Volontaires de la Paix-AVP, Réseau des Femmes, COPORWA, Kanyarwanda, CLADHO and LAND Project.

Subject: Questionnaire to ILC members and partners on priority issues and challenges for rural women in the context of women's land and property rights

Q1 a) What is the legal status of land rights for rural women in your region or country/ies in which you work?

The legal status of women's land rights is drawn right from the Constitution of the Republic of Rwanda of 2003 as amended to date, and prior to that it has been evolving since late nineties where Inheritance law was promulgated in 1999 and later on Land Law of 2005. However, these laws protect only women who are formally married. The following articles from the fundamental law as well as the other two formal laws spell out equal treatment between men and women with regard to land rights:

Constitution of 2003 as amended to date

- *Preamble paragraph 9 on the adherence to the principle of human rights as enshrined in the International Conventions ratified by the State of Rwanda which include among others the UDHR, ACHPR, CEDAW etc.*
- *Preamble paragraph 10 the commitment to ensure equal rights between Rwanda and between women and men without prejudice to the principles of gender equality and complementarity in national development;*
- *Article 9(4) on equality of all Rwandans and between women and men reflected by ensuring that women are granted at least 30% of posts in decision making organs;*
- *Article 11 all Rwandans are born and remain free and equal in rights and duties.*
- *Article 16 all human beings are equal before the law. They shall enjoy, without any discrimination equal protection of the law.*

Inheritance Law of 1999

- *Article 3 on Regime of community of property; couples registering their marriage before the civil registrar usually opt to jointly own their property and in this case LAND is the most valuable property to many couples in rural Rwanda. And this article guarantees equal rights to both men and women in the management of their matrimonial property-joint land ownership.*
- *Articles 42 and 43 on the ascending partition/umunani; daughters/women now have a right to umunani. Women acquire full ownership rights; they can sell the land or give it in patrimony to their children. Even if the woman is already married and has land with her husband when family land is divided she still has this right to umunani.*
- *Articles 50 on the succession upon the death of their parents, all legitimate children have a right to equal share without any discrimination based on their gender. This right is given even if the woman is already married and has land through her husband.*

- *Article 70 on the succession of widows; the surviving spouse (woman) will have fully ownership of the matrimonial property and has the duty to look after the children of the deceased and to cater for the parents of the late husband if they are in need.*

Land law of 2005

- *Article 4 of the land law guarantees equal rights over land between men and women. They have equal rights to own and exploit land.*
- *Article 35 on the transfer of land rights to a third person i.e. sale, lease, mortgage to acquire a Bank loan. Any transaction on matrimonial property/family property, women/girls have to be consulted and give their written consent or refuse. This has to be done before competent authorities.*

Q1 b) In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

- *Non implementation of the law; even though a lot of progress is being made-countries give women equal rights to own and have control over land but there is still a challenge of how these laws are implemented. For instance, during land registration there are reported cases of men registering matrimonial land in their own names claiming that they are not married and yet they are (men) requested to come along with their wives.*
- *Conflict between legitimate children and illegitimate children-mostly during land registration exercise, children born outside wedlock need to be recognised by the father in order to claim for any rights over the father's patrimony-mostly land.*
- *Lack of knowledge about the laws-though many laws related to land have been passed by the legislature but these laws are not well known to the public.*

Q2. What are some of the reasons/root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

- *Cultural /traditional practices,*
- *Less knowledge of the laws,*
- *Gaps in the laws,*
- *Men's control and resistance to change,*
- *Non implementation of formal laws,*
- *Lack of understanding & tools to secure women's land rights.*

Q3. What are the consequences for women when these rights are violated? How are women impacted?

- *poverty continues amongst the communities and impacts women in particular*
- *domestic violence and exploitation increase*
- *inequality between men and women continues*
- *confidence among the families decreases*
- *Development is hindered*

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

- *Complementarity between men and women-gender equality over land in some families*

- *Decision taking on part of women on the use of land-women can give their thought on the management and use of the matrimonial/family land*
- *Both men and women are obliged to collect their Land Certificate together*

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

- *Involvement of men in dissemination campaigns-exclusive approach –more efforts should be vested in public awareness campaigns*
- *Dialogue session at grass root levels-an approach bringing together couples to discussion on land related laws to have the same understanding and to lessen resistance on part of men who do not want to have joint control over matrimonial land with women counterparts*
- *Incorporating women’s rights in education curriculum –all countries requested to integrate women’s rights into their curriculum.*

2. Association for Land Reform and Rural Development (ALRD), Bangladesh

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

Following are the recommendations particularly under article 14, 15 and 16 of CEDAW.

Recommendations:

- *Respective member state should enact supportive women friendly co-operative policy, laws with clear frame work and process for implementation. For instance, in Bangladesh, there is no particular women focused cooperative policy/law in existence to obtain better access to economic opportunities.*
- *State parties should ensure that women and women's rights groups/collectives are effectively represented on equal terms with men in all decision-making structures relevant to land and agriculture also ensure that women and women's rights groups/collectives have full and accurate information about decision-making processes and are able to benefit from their participation in decision-making is active, meaningful and effective. For example, ensuring their participation in all community activities, state parties may made provision to keep seats reserved at the local government institutions (where applicable) so that **women can be elected to the local government**, hence take part in the local decision making level to ensure their participation in all community activities.*
- *Physical safety security at the public place e.g. commercial markets and freedom of mobility has to be ensured by the state by extending policy safe guard.State must recognize rural women cultivators/tiller/producer as farmer irrespective of marital status, religion, caste, ethnicity (IP women), no matter they have ownership or title deed in their name or not. Otherwise they are constrained by having no formal recognition as famer, claiming their rights to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; while skewed feminization of agriculture particularly in Asia left more land in the hand of women to cultivate.The rule of law should have respect for legal pluralism, recognition for traditional and alternative dispute resolution and other forms of mediation to reach conciliation out of court.Overall disadvantaged position of women (nutrition, education, access to information and access to judicial system etc.) needs proper attention.*
- *State should take special measures to make system easy accessible by the rural women. As in most cases it is administrative practices and biases that curtail women's equal property rights including land. State parties should endorse equitable public resource distribution policy so that women have more access to control over productive resources including land. State must introduce a gender-equitable Uniform Family Code that would apply to everyone irrespective of religion, ethnicity, caste and marital status so that men and women have same rights in respective of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration. To do this full ratification of CEDAW must be a precondition (where applicable). For instance, Bangladesh has reservation on article-2 and article 16.1.*

Ms Rowshan Jahan from ALRD also sent a paper she had previously prepared for an [Expert Group Meeting : Good practices in realizing women's rights to productive resources, with a focus on land](#) convened by UN Women in June 2012, entitled "[Women's access and effective control over land in Asia: hurdles to overcome](#)".

3. Association pour la paix et les droits de l'homme (APDH), Burundi

Q1. Quel est le statut juridique des droits fonciers pour les femmes rurales dans votre région ou dans le(s) pays où vous opérez ? Selon vous, ces lois/politiques garantissent-elles les droits fonciers des femmes en termes d'accès, de contrôle, d'utilisation, de propriété et de succession ?

De manière générale, les femmes ne jouissent que des droits comparables à l'usufruit et cela, sur une petite portion de terre par rapport à la part qui revient à ses frères lesquels jouissent de la pleine propriété foncière sur une grande propriété foncière par rapport à celle de leur sœur.

En effet, la part allouée à ces sœurs toutes confondues, indépendamment de leur effectif, est inférieure ou égale en termes d'étendue à la part qui revient à chacun des garçons.

Comme évoqué ci-haut, ce style de possession ne peut pas constituer une pleine propriété.

Les droits détenus sur ces terres n'est que le simple usufruit viager et la transmission de mère à enfants est impossible (la détentrice de ce droit peut user et jouir de ce droit durant sa vie mais après son décès, ses enfants ne peuvent jouir d'aucun attribut de la propriété, la terre rentre dans le patrimoine familial et est partagé exclusivement entre ses frères).

Cette acquisition n'est pas aussi aisée et spontanée. Généralement, la quasi-totalité des cas arrivent au niveau des tribunaux parce que ne pouvant pas être tranchés au niveau de la colline.

Les pratiques coutumières qui gèrent au quotidien les successions considèrent toujours les séparées, les divorcées ou assimilées, les mères célibataires et les filles célibataires à vie au même pied d'égalité que les femmes mariées en termes de statuts juridiques des droits fonciers détenus sur la propriété foncière acquise de leurs parents.

Toutefois, d'après les jugements rendus par les cours et tribunaux, les filles célibataires à vie ont les mêmes droits et la même étendue de terrains que leurs frères malgré les contestations de ces derniers suite à la tendance de la coutume et l'exécution de tels jugements est souvent difficile.

Il convient de signaler que les communautés rurales masculines et féminines évoluent progressivement dans la mesure où ils s'accordent qu'une descendance exclusivement féminine puisse hériter de la terre familiale en pleine propriété, héritage qui se faisait dans le temps au bénéfice de ses oncles paternels.

Sur la propriété reçue en héritage par son mari, la femme peut manifester son désaccord quand il s'agit de vendre cette dernière. Elle peut remettre en cause le contrat de vente si elle n'a pas été consultée ou si malgré l'opposition, le mari ne renonce pas à cette opération de vente, ce qui n'est pas le cas pour une terre achetée.

En effet, si la propriété est achetée par le mari, la femme y détient uniquement le droit d'exploitation et n'a même pas le droit de regard sur la propriété foncière. Le mari décide à lui seul de l'affectation de la propriété y compris la vente, peu importe que l'achat ait lieu pendant ou avant le mariage.

Les femmes rurales n'ont généralement pas de revenus dont elles peuvent s'approprier sauf quelques exceptions. Ceci pour signifier que les femmes ne s'achètent des propriétés foncières que dans des cas très rares. Dans ce cas, elle détient la pleine propriété sur cette dernière et elle est enregistrée, au nom de l'un de ses enfants, dans la plupart des cas, ou au sien.

Mais quand la femme désire la vente de cette propriété, le mari peut refuser l'opération arguant qu'il ne sera pas à mesure de gérer une femme fortunée. Son mari fait tout son possible pour que les revenus en provenance de cette vente soient immédiatement écoulés afin que la femme reste dans sa situation d'avant. Mais quand elle est séparée, divorcée ou assimilée, elle peut disposer de la pleine propriété foncière sur cette terre achetée et décider à elle seule de son sort.

Les veuves avec enfants n'ont pas de problèmes majeurs à ce sujet. Quand le mari meurt avant le partage de la propriété foncière familiale, sa femme bénéficie d'une part égale à celle de ses beaux-

frères en termes d'étendue et de fertilité du sol et jouissent de tous les droits fonciers même si elle est souvent embêtée par ses beaux frères.

Les veuves sans enfants portent diverses désignations pour montrer l'absence de droits fonciers dont elles doivent jouir Le sort réservé à la veuve sans descendance dépend en général du temps qu'elle vient de passer dans sa belle famille, la bonne volonté de cette dernière, sa stérilité ou sa fécondité.

Veuve stérile

Cette dame est soit chassée soit renvoyée si elle n'a déjà passé qu' une courte période dans la belle famille.

On lui donne une propriété largement inférieure à celle qui reviendrait à son mari s'il était encore en vie. Lorsqu'elle a déjà passé une période relativement longue dans la belle famille.

Veuve féconde :

Cela suppose que le mari est décédé quelques temps après le mariage.

- *Soit elle se marie avec le frère du mari décédé si tel est le choix de ce dernier*
- *Soit elle part pour se remarier avec quelqu'un d'autre en dehors de cette famille sans aucun droit sur la terre dans la belle famille*
- *Soit elle est maltraitée et rentre chez elle ou part à la recherche d'un autre mari sans aucune réclamation*

Dans tous les cas, elle n'a pas la pleine propriété sur la propriété foncière laissée par son mari et n'a que le seul droit d'exploitation si une partie lui est octroyée.

Toute naissance advenue après la mort du mari alors que la femme n'était pas enceinte au moment du décès entraîne le refoulement sans autre forme de procès de la veuve.

Evidemment, la loi reconnaît toutes ces catégories de femmes mais les pratiques coutumières sont fortes de telle sorte que les femmes lésées saisissent moins les tribunaux dans ces situations.

Par contre, les femmes urbaines indépendamment des catégories (veuves avec ou sans enfants, féconde ou pas) jouissent de tous les droits de leurs maris.

Il en est de même pour la succession.

En général, en cas de conflits liés à la succession de la fille, il s'est remarqué que les tribunaux adoptent une position plus équitable par rapport aux pratiques coutumières mais qui n'arrive pas systématiquement à considérer les femmes au même pied d'égalité que les hommes en matière de succession.

Voilà de manière générale les pratiques coutumières bien que des disparités négligeables de existent dans une moindre mesure pour améliorer l'accès de la femme à la terre dans une large mesure pour le réduire.

Par rapport au niveau de garantie sur la terre que les lois/politiques foncières accorde en termes d'accès, de contrôle, d'utilisation, de propriété et de succession aux femmes, la constitution de la République du Burundi en vigueur stipule en son article 13 que tous les burundais sont égaux en mérite et en dignité. La même loi fondamentale précise à la même disposition notamment que tous les citoyens jouissent des mêmes droits et ont droit à la même protection de la loi.

Le Burundi a ratifié, par décret-loi n°1/006 du 4 avril 1991, la « Convention internationale sur l'élimination de toutes formes de discriminations à l'égard des femmes » qui vise aussi bien les domaines politique, social qu'économique et culturel. Par cette convention, « les Etats parties condamnent la discrimination à l'égard des femmes sous toutes ses formes (...) » et s'engagent

notamment à « prendre toutes les mesures appropriées, y compris des dispositions législatives, pour modifier ou abroger toute loi, disposition réglementaire, coutume ou pratique qui constitue une discrimination à l'égard des femmes ». Cette convention figure par ailleurs parmi les textes internationaux faisant partie intégrante de la Constitution de la République du Burundi aujourd'hui en vigueur en vertu de l'article 19 de la constitution de la République du Burundi.

Ce qui est surprenant, c'est que la seule loi organique portant adoption du code des personnes et de la famille en son article 126 qui touche très sommairement la dimension genre dans la gestion des immeubles dont la propriété foncière.

Cette disposition stipule qu'aucun époux ne peut sans le consentement de l'autre ;

1° Aliéner ou grever de droits réels les immeubles ou les exploitations dépendant de la communauté conjugale, ni disposer desdits droits ou biens à titre gratuit même pour l'établissement des enfants communs.

2° Acquérir à titre onéreux la propriété ou tout autre réel portant sur les immeubles ou les exploitations dépendant de la communauté conjugale.

Sont réputés dépendants de la communauté conjugale sauf preuve contraire résultant d'une disposition légale, conventionnelle ou coutumière :

- Le fonds de terre acquis par dévolution successorale ;
- La maison servant de logement ou de moyen de logement à la famille ;
- L'exploitation agricole faisant l'objet ou étant le fruit du travail commun des époux.

Quid du respect de cette disposition l'égalité ?

Concernant la question de savoir si les femmes sont consultées dans les transactions foncières (achat et vente), les réponses sont très variables selon les personnes. La plupart de femmes affirment que certains hommes ne les consultent pas mais la quasi-totalité des hommes affirment que les femmes sont consultées.

La réponse sur laquelle tout le monde se rencontre est que dans l'acquisition d'une propriété foncière, les femmes sont généralement informées car maintes fois les hommes qui effectuent les opérations d'achat sont des gens qui assument pleinement leur responsabilité.

Dans les opérations de vente, certains, mais en nombre très réduit, ne consultent pas leurs femmes. Même en cas de consultation des femmes, leur valeur est insignifiante car elles ne le sont pas pour changer la décision de l'homme. Quand la femme refuse, elle est des fois renvoyée et la vente a lieu en son absence.

Certains acheteurs ne veulent pas des remises en cause des contrats de vente et réclament à tout pris l'accord des femmes des acheteurs. Pour faire face à ces conditions, les vendeurs ont adopté toute une gamme d'astuces pour convaincre leurs femmes à consentir à l'opération de vente.

Certains hommes commencent par demander à l'acheteur de lui donner une certaine somme d'argent en guise d'avance afin qu'ils puissent offrir à leurs femmes un cadeau (pagne ou autre chose) pour s'attirer leur sympathie. Cette dernière l'accepte sans toutefois avoir des explications sur l'origine de cette somme d'argent. Ce n'est qu'après quelques jours qu'un acte sous seing privé sur lequel elle doit apposer sa signature lui est présenté (acheteur et vendeur). Elle ne peut pas refuser car l'homme lui explique que c'est dans ces conditions que le pagne a été acheté et qu'ils ont pu subvenir à leurs besoins.

D'autres invitent leurs dames au cabaret sans toutefois en révéler la raison et, ce n'est qu'après lui avoir donné quelques bouteilles de bière ou de vin de banane qu'on lui présente le papier qu'elle doit signer. Il est rare que la femme refuse cette proposition dans ces situations sous peine d'être congédiée.

Mais pourquoi les femmes ne sont pas des fois effectivement consultées ?

La raison semble être toute simple. Quand la propriété foncière n'est pas vendue pour des raisons valables et pour le bénéfice de toute la famille, les femmes n'acceptent pas ce genre de transactions. Pour ne pas voir la transaction échouer, les hommes se passent alors de cette consultation en vendant à leur insu ou en usant de la ruse comme souligné ci-haut.

Pour faire face à l'absence de lois régissant les successions, dans notre pays Burundi où nous opérons, les droits fonciers pour les femmes sont régis par une coutume qui discrimine la fille au droit de succession foncière. Mêmement pour les hommes, la réglementation de leurs droits à la succession est régie par la coutume.

Si nous revenons aux lois et politiques foncières, d'autres textes y compris le code foncier restent muets en matière de succession en général et d'accès de la femme à la terre en particulier.

Il y a plus de deux décennies que les défenseurs des droits humains réclament au parlement d'adopter une loi sur la succession pour que les conflits fonciers en famille et en communauté soient réglés conformément aux lois et à l'équité sociale. Ces efforts sont malheureusement jusqu'à maintenant sans succès.

La ligne directrice est déjà tracée par la constitution de la République du Burundi, il ne reste que l'adaptation du droit interne qui tarde à venir en adoptant une loi portant succession, libéralités et régimes matrimoniaux pour la mise en œuvre pratique des dispositions de la convention, la ratification à elle seule n'étant pas suffisante.

Q2. Pour quelles raisons/causes principales les femmes rurales ne jouissent-elles pas de leurs droits fonciers dans votre région ou dans le(s) pays où vous opérez ?

Les causes sont de deux sortes majeures :

Les causes légales et les causes sociologiques

Cause légale : *Absence de loi régissant les successions suite principalement au manque de volonté politique pour adoption des lois équitables et juste sur l'accès à la terre et aux attitudes suivant certaines pratiques coutumières qui discriminent la femme quant à l'accès à la terre : Un projet de loi sur le régime matrimonial, libéralités et succession vient de passer plus d'une décennie dans les tiroirs de l'Assemblée Nationale et du Gouvernement sous prétexte que la coutume burundaise n'a pas encore atteint une maturité permettant le partage équitable de la terre familiale entre frères et sœurs et que par conséquent une loi permettant un accès équitable à la terre aussi bien aux hommes qu'aux femmes perturberaient gravement les relations sociales.*

Causes sociologiques :

Toute une théorie coutumière a été développée et ancrée dans l'esprit des gens et est malheureusement à l'encontre de l'accès à la terre par les femmes. Le système patriarcal est la source de tous les maux liés au faible accès à la terre dont souffrent les femmes.

En effet, d'après les résultats de l'enquête menée par l'APDH, la coutume burundaise interdit formellement à une fille la détention d'une propriété foncière sauf dans des cas vraiment particuliers. Aucune fille n'héritait la propriété foncière de ses parents quand elle a des frères. Seule une petite portion en usufruit leur est coutumièrement accordée. Les choses se présentent ainsi depuis longtemps, disent les gens interviewés, hommes et femmes confondus. Toutefois, même l'accès à leur dû de par la tradition n'est pas aisé.

D'après toujours les résultats de l'enquête, quand une femme se marie, elle obtient ipso facto une propriété foncière car la terre de son mari devient la sienne. Inutile alors de réclamer une autre de ses parents alors que ses frères en ont tellement besoin pour élever leurs enfants et subvenir à leurs besoins surtout que l'on sait qu'il appartient au mari en grande partie de subvenir aux besoins de ses

enfants alors que la seule source est la terre. Ceci signifie clairement que le sort de la femme mariée est, selon la tradition, entièrement lié à celui de son mari, le système burundais étant en effet, comme souligné ci-haut, patriarcal.

Avec ces barrières coutumières, on observe une faible implication de la femme rurale : la majorité des femmes rurales expriment rarement le besoin d'améliorer leur accès à la terre. Contre toute attente, les études révèlent qu'un nombre important de femmes rurales veulent le statu quo alors qu'elles en sont véritablement des victimes. Les décideurs tardent justement à mettre en place une telle loi arguant que les femmes instruites et donc, moins nécessiteuse s'implique plus que les concernés. L'analphabétisme des femmes rurales et le manque d'informations (par rapport à leurs droits et aux expériences réussies dans certains pays) et de sensibilisation de toute la communauté en général et des femmes en particulier sont à la base d'un tel comportement.

- 1) *L'égoïsme des hommes : Derrière cette coutume discriminatoire, il se cache chez beaucoup d'hommes/garçons, détenteurs de pouvoir familial, social, économique et politique, une pensée négative égoïste de bloquer ou perturber toutes opportunités à la femme d'accéder aux ressources. Les hommes évoquent également l'exigüité des terres qui ne permet pas aussi bien aux hommes qu'aux femmes d'accéder équitablement à la terre.*

Ce sentiment pousse ces hommes à développer des stratégies implicites d'amener la communauté à rejeter l'accès équitable à la terre aussi bien pour les hommes que pour les femmes arguant que les garçons tueraient leurs sœurs. Cette conception provoque une peur panique chez les femmes rurales jusqu'à ce que ces dernières qui, au lieu de réclamer leurs droits soutiennent à leur tour l'idée de sauvegarder la coutume.

Q3. Quelles sont les conséquences pour les femmes lorsque ces droits ne sont pas respectés ? Quel est l'impact sur les femmes ?

Les conséquences d'empêcher les femmes d'accéder à la propriété foncière sont de plusieurs formes tant sur les femmes particulièrement que sur toute la communauté en général :

- 1) *Pour les femmes en particulier*
 - *Les enfants filles depuis leur jeune âge grandissent dans une vie de désespoir profond et se laisse entraîner dans une dépendance psycho-socio-économique vis-à-vis des hommes*
 - *Les femmes mariés doivent se soumettre au bon vouloir de leur époux quel que soit le traitement leur imposé car elles n'ont d'autres choix pour vivre. Des violences domestiques se multiplient causant la plupart des fois des dépressions mentales chez certaines femmes*
 - *Beaucoup de femmes qui décide de se séparer avec leur époux, mènent une vie misérable et aillent se débrouiller dans les villes en faisant du petit commerce informel, de petit métier d'ouvrier domestique, des sales métiers comme la prostitution, le concubinage clandestin, etc.*
 - *Certaines femmes dont les longues réclamations ne sont pas comprises dans leurs ménages deviennent par après violentes par suite de nervosité et se confrontent aux propos communautaires de stigmatisation négative les mettant ainsi à la portée des profiteurs pour les violations des droits humains*
- 2) *Pour la communauté en général*
 - *En ne facilitant pas l'accès de la femme à la terre, le pays s'expose à la pauvreté généralisée car les femmes qui représente 52% de la population et qui font l'agriculture à 95% (les hommes rurales n'aident que dans une moindre mesure leurs femmes dans les activités champêtres) ne peuvent pas mieux exploiter la terre dont elles n'ont pas de propriété.*

- *Le pays qui ne parvient pas à garantir ne fut-ce formellement les droits de plus de la moitié de sa population s'expose à une manipulation des profiteurs qui cherchent des intérêts particuliers au détriment des intérêts généraux de la communauté.*
- *Les tribunaux de l'Etat sont coincés entre l'application de la coutume injuste envers les femmes et le bon sens du juge qui respecte les principes fondamentaux des droits humains. On trouve des jugements différents sur des litiges semblables selon la volonté du juge.*

Q4. Quelles sont les bonnes pratiques dans le domaine de la promotion et de la protection des droits fonciers des femmes en milieu rural ?

Au Burundi, les bonnes pratiques pour promouvoir et protéger les droits fonciers des femmes rurales sont limitativement identifiées :

- *Dans les actions des organisations de la société civiles à travers les actions de formation sur les lois nationales et internationales, de conscientisation de la communauté en général et de la femme en particulier pour l'équité sociale notamment pour l'accès à la terre. A titre illustratif, dans la région du Nord du Burundi, APDH encadre des groupements communautaires d'hommes pour la promotion et la protection des droits de la femme avec une thématique spécifique sur l'accès de la femme à la terre.*
- *L'attitude positive de certains parents (moins nombreux) qui octroient à leurs filles des terrains plus vastes ou des biens meubles de grande valeur comme le gros bétail, une somme d'argent en compensation de leur exclusion au partage égal avec leurs frères de la terre familiale. Les pratiques successorales en milieu urbain constituent un modèle au Burundi.*
- *Les jugements rendus par les cours et tribunaux (malgré l'inexistence d'une loi) quelques fois plus équitables par rapport aux pratiques coutumières*

Q5. Quelles recommandations spécifiques souhaitez-vous adresser au Comité pour l'élimination de toutes les formes de discrimination à l'égard des femmes (CEDAW) afin de garantir du mieux possible l'intégration des droits fonciers des femmes rurales à la prochaine Recommandation générale sur les droits des femmes rurales ?

- *Soutenir les actions des ONG locales pour la formation (sur les lois/ politiques/ conventions nationales et internationales), information, conscientisation des communautés en général et des femmes en particulier pour l'abolition de ces pratiques locales discriminatoires au profit des pratiques équitables visant l'accès équitable des hommes et femmes à la terre.*
- *Soutenir les actions communautaires pour la conscientisation des populations aux droits des femmes surtout liés à la terre*
- *Appuyer les actions des ONG locales des actions de plaidoyer en faveur de l'adoption des lois sur la succession, régime matrimonial et libéralités*
- *Collaborer avec les partenaires au développement des pays (où l'accès de la femme à la terre n'est pas garanti comme le nôtre) pour contraindre les Etats à procéder à l'adoption d'une loi interne y relative afin de respecter la convention sur l'élimination de toutes les formes de discrimination à l'égard de la femme déjà ratifiée et faisant partie intégrante de la constitution de la République de pas mal de pays.*

4. Centro de Formação Jurídica e Judiciária (CFJJ), Mozambique

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

I'm currently working in Ministry of Justice, as a Researcher and Trainer on ongoing Paralegals training program started in 2006. The new national Multi- Party Constitution established in post civil war period, stated rules that every single Mozambican citizen has equal rights to a land, man and woman, without any gender discrimination, however, the secure land tenure rights in rural areas, due strong consuetudinary or customary laws, women still do not plenty enjoy those rights. Heritage are the main concern over the right on land, especially in the southern provinces of the country. Recently

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

There are many reasons, one of them is the patriarchal society with heavy impact on how women really exercise their rights, the customary law also impacts negatively on the gender issues, especially on patrimonial heritage. One other issue that leads to women to not exercise their rights is the low literacy and the fact that cultural aspects are very linked to the process of demanding rights.

Q3. What are the consequences for women when these rights are violated? How are women impacted?

The consequences are many with strong impact on the family structure, especially on the children's future. Women in Mozambique are the member on the family structure that assume responsibility on working the land for example, but in recent years, due to huge demand on land by foreign investors, land are being sale by their husbands in the rural areas, without a consent of the women and these situation leads children to quit school due to the lack of income to support their studies.

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

The promotion of the Family Law done by Civil Society and NGOs, that protects the rights of the women, education, the promotion of the Land Law, the inclusion of the women on the consultation process mechanisms to be fulfil to acquire the land within community, in order to secure land tenure rights to women.

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

The promotion of education and sensitization of the women and the whole society on their rights, the introduction in the school curriculums subjects on gender issues, promotion of civic campaigns on regarding the rights of the women, build technical capability to the community customary courts on issues regarding the rights of the women on land and natural resource exploitation. To build up a national consciousness about the respect of human rights specific regarding to women and to eliminate discrimination and violence against women. Give more power to women in informal decision making at customary level courts, engage and influence tradition norms, values and laws in order to allow women to control land.

5. Centro de la Mujer Peruana Flora Tristán, Peru

P1. ¿Cuál es la situación jurídica de los derechos de las mujeres rurales a la tierra en su región o país/es donde usted trabaja? En su opinión, ¿salvaguardan estas leyes/políticas los derechos de las mujeres a acceder a la tierra, controlarla, utilizarla, tenerla en propiedad y heredarla?

La legislación peruana otorga los mismos derechos a los hombres y las mujeres respecto a la propiedad de bienes, la tierra no es una excepción, sin embargo en la realidad este derecho no se cumple, por cuanto se da prioridad al varón al momento del registro, al identificarlo como jefe de hogar. La mayoría de las mujeres accede a la tierra para trabajarla, pero no controla la producción, ni el acceso a la propiedad y a la herencia

P2. ¿Cuáles son algunas de las razones/causas fundamentales por las cuales las mujeres rurales no gozan sus derechos a la tierra en su región o país/es donde usted trabaja?

Razones de índole cultural (patriarcal y machista) hacen que gran parte de las mujeres no estén en igualdad de condiciones respecto a los derechos frente a la tierra. Mujeres casadas o convivientes trabajan en tierras de sus padres o herencia de sus maridos, muy pocas aún tienen la

Propiedad o copropiedad. Las autoridades hacen caso omiso de la legislación, la familia hereda a los hijos, priorizando en calidad y cantidad, siguiendo así una cadena de desprotección para las mujeres.

Muchas mujeres convivientes trabajan las tierras de sus maridos, pero este las puede dejar fácilmente en el desamparo.

P3. ¿Cuáles son las consecuencias para las mujeres cuando se violan estos derechos? ¿Cuál es el impacto que reciben estas mujeres?

La desprotección de parte de su entorno inmediato (familia, comunidad) y de las autoridades.

Esto baja su autoestima y trae una serie de daños colaterales como las agresiones y falta de cuidado de su salud y de su cuerpo, así como la escasa participación en la toma de decisiones.

P4. ¿Cuáles son algunas buenas prácticas sobre la promoción y protección de los derechos a la tierra de las mujeres rurales?

- *Hay que hacer un trabajo específico con las mujeres para que asuman sus derechos y puedan ejercerlos y defenderlos en las diversas instancias.*
- *Que las autoridades busquen solucionar algunas limitantes para el acceso a la propiedad de la tierra como el acceso al derecho a la identidad: que tengan partida de nacimiento, documento de identificación.*
- *Sensibilizar a las y los operadores de las instancias pertinentes sobre el derecho de las mujeres (casadas, convivientes, viudas, solteras) a la tierra en igualdad de condiciones que sus pares varones*

P5. ¿Qué recomendaciones específicas tiene usted para el Comité de Naciones Unidas para la Eliminación de Todas las Formas de Discriminación contra la Mujer (Comité de la CEDAW) a fin de que asegure de la mejor forma que los derechos a la tierra de las mujeres rurales sean integrados a la próxima Recomendación General sobre los Derechos de las Mujeres Rurales?

- *Que se haga un acápite especial sobre el derecho a la tierra en igualdad de condiciones*
- *Eliminar todos los obstáculos que impiden a todas las mujeres a gozar de ese derecho.*

6. Community Self-Reliance Centre (CSRC), Nepal

Rural women's land and property rights

Introduction:

More than 90 percent of women in Nepal engage in agriculture, contributing in all stages of agricultural production including management and decision-making. They are the primary source of labour in small and medium farms and in large farms their labour contribution is more or less equal to that of men. However, women rarely have a legal title to the land they till. Without a title they are not viewed as farmers but continue to be perceived by the government and the general public at large as homemakers. This perception is ingrained in every aspect of the socio-political and economic outlook towards women. At the heart of this is the issue of unequal rights of women vis-a-vis land. Women in Nepal have the most unequal right to land in South Asia. With this context as the background I have answered the following questions.

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

As per the agreement with National Land Rights Forum (Land Rights Movement), the Government of Nepal has made a provision to include a policy on land transfer ownership from husband to wife into joint ownership since 2011. As per which the respective family can transfer the husband's land ownership to his wife paying NPR 100 tax. Moreover, 40% and 30% discount is allowed for village and urban level women respectively, in the land registration fee.

Since Nepal has been dominated by a patriarchal system and although there was a government announcement on women's access to land, there still needs to be a cultural campaign at the rural level as there are no awareness programmes on this policy. Community Self-Reliance Centre (CSRC) a national level NGO has been facilitating and empowering women and as a result has made it possible for approximately 500 women to receive joint land certificates. However, daughters are denied equal inheritance rights and rights to maintenance. There is discrimination on intestate property and in the line of succession, women must be 35 years of age and be married for 15 years to receive a share of her husband's property. There is also discriminatory regarding the property rights of widows and on tenancy rights.

Q2. What are some of the reasons/ root causes for why rural women do not enjoy their land rights in your region or country/ies in which you work?

Patriarchy and religious mindset are the main causes in access to land and property rights, and informal institutions governing land access. Additionally, formal laws and regulations did not recognize women's access to land per se for several years. At present, women control 4 % of land holdings and 10.84 % (CBS, 2001) households have land holdings in the name of women. Their main access to land has been through their husbands and therefore, they are the secondary owners of land. This type of access is vulnerable to breakdowns in relationships, divorce and to the changing priorities of male landowners.

Even though some attempts have been made in Nepal towards land reform, this did not aim at improving women's access to or ownership of land, e.g. in the Land Reform Act 1964, and in various revisions of this Act, there were no provisions for women's ownership of land. This Act was not able to bring any meaningful land reform and nothing was done in favour for women-centric land reform.

Only in recent times, have there been some positive improvements in policies. Especially in the present 'interim' constitution there have been provisions to equal access to parental property. But because of the prevailing traditional practices, women will continue to be marginalized in land ownership. Given the new political context, there has also been concern about how to provide

access for women to land. Questions remain in such areas as: promoting community sharing of resources under ownership of women's groups; giving women individual ownership and joint ownership of resources; giving women adequate budgets and training; transforming the existing feudal and patriarchal gender relations; and taking steps to reverse the adverse impact of neo-liberal policies on agrarian society. These areas are considered generally as women-centric land reform issues. How far they will go in being relevant to women in the context of Nepal where women are also exposed and experience different realities because of diverse socio-cultural and environmental context, needs to be analyzed.

Furthermore, there is also wide diversity among women – based on caste, class and location, tradition, etc. The role of land for the livelihood security of these divergent women's groups is also different. In most cases, it is vital that marginal women's access or ownership of land be more important because educated women might ask for their rights if they are incorporated in laws and policies. Therefore, Dalit and underprivileged Janajati women, physically and mentally challenged women, women of minority groups, women engaged in work attracting social stigma needs to be emphasized in land reform programs.

Q3. What are the consequences for women when these rights are violated? How are women impacted?

The discriminatory laws on property rights had (has) several and severe adverse impacts on women's lives. These are as follows;

- *Economic dependency- either on husband or father in-law; primarily economic dependency on male members.*
- *Domestic violence- since women have little economic security, they have been bearing domestic violence.*
- *No access to resources- Land is the main source of production and means to collateral and as a result they do not have access to other resources.*
- *Daughter's considered as liabilities- Considering that a daughter is going to her future husband's home it is meaningless to provide land to her.*
- *Second class citizens- not treated as male members.*
- *Negative impact on women's health- Due to several reasons, there is also impact in health.*
- *Hindrance on national development- the work of women does not count towards national income.*

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

The experience of CSRC is that without organization and collective effort justice for women is not possible. In the first instance women must themselves realize their rights and take action. Other people and organizations can only help to facilitate this process. They cannot provide land certificates to them, women must be empowered to be able talk with their families and concerned authorities.



In order for this to happen, legal and cultural changes need to take place simultaneously. Legal provisions may provide the basis for change, but this must be accompanied by a campaign for cultural change. Within Nepal, women's legal rights are slowly being realized, and paving the way for cultural change. For example, the government announced the legal provision for only paying Rs. 100 for a land certificate but many men question why women need these. CSRC has been mobilizing women for cultural and attitudinal change in changing the behavior of men.

Another important factor is that those who talk about women's rights should themselves act accordingly. To this end CSRC and NLRP are together supporting the campaign of joint ownership by ensuring that their staff and members respectively hold joint ownership certificates.

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

Community Self-Reliance Centre (CSRC) and land rights activists in Nepal have been advocating for joint ownership over family land. In the case of single women, divorcees and/or widows they should also have the right to land ownership. Arable land is the most important base of livelihoods for the rural population. Those who have access to land and can produce enough food for the year and don't have to look towards out-migration, have a lesser chance of being accused of witchcraft and trafficked to foreign brothels. Girls from landless or semi-landless households have almost no opportunity to complete their primary school education. In order to ensure women's land rights, CEDAW should focus on the following major issues:

- *Land is a human right: All human beings should have access to land and other natural resources. Women are the major contributors to agricultural production and managers of the land - thus women should be able to claim their land as human rights.*
- *Land rights are key to women's empowerment: land ownership gives both economic and social power to women –land ownership determines the level of women's political participation- only women's independent land rights can promote women's empowered voices in any public decision making.*
- *Land rights ensure a sustained source of secured livelihood: land is the primary and sustained source of livelihood in the rural context- rural women's land rights, ownership and control over the use of land, can strengthen the base for the overall rural population's livelihoods systems.*
- *Land rights and gender sensitive land reforms enhance productivity: absent landlordism and the breach of occupancy ceilings have hindered productivity- gender sensitive land reform can check these problems.*
- *Land rights for women helps to conserve the environment: Experience from all over the world shows that women conserve the environment and best manage land.*

Considering and focusing on the following points, CEDAW should focus and support its work by taking the following major actions:

- *There is a need for gender-sensitive land tenure context mapping at all levels, from VDC to the national level, so that all specific cases are taken into consideration.*
- *Joint land occupancy rights of men and women over each farming plot, if managed by a family.*
- *Independent land right for women, especially in the case of single women, divorcees and widows managing a field.*
- *Women's groups at the community level to be provided collective rights for managing previously unused or fallow lands.*
- *In the case of managing communal and other public lands, management committee*

should be formed bringing in the concerned community people, which must include not less than 50% women in the membership

- *Women's land right should be regarded as human rights issue, by the government, international community and others concerned.*
- *Strong implementation of laws and bylaws at the grassroots level to ensure the land rights of rural women.*

At the end

Progressive development in terms of securing women's rights over land and property is vital. Current efforts of joint land ownership and rebate (30% to 40%) cost reduction during land registration is an important step towards securing equal rights of women over land but this change in the legal provisions is not widely known at the local level. CEDAW must support women's access to land to secure their dignity, freedom, security of livelihood and human rights.

7. FVTM and Platform SIF, Madagascar

Q1. Quel est le statut juridique des droits fonciers pour les femmes rurales dans votre région ou dans le(s) pays où vous opérez ? Selon vous, ces lois/politiques garantissent-elles les droits fonciers des femmes en termes d'accès, de contrôle, d'utilisation, de propriété et de succession ?

Dans la législation malgache, il n'y a pas de distinction de genre. Les femmes ont autant de droits que les hommes. La réforme foncière de 2005, dont l'origine est la lettre de politique foncière, a été pensée pour apporter des solutions à la crise domaniale constatée par la population malgache. En effet, avant cette période, seulement 10% du territoire malgache a été titré, un grand nombre de titres ont été délivrés au nom du premier propriétaire enregistré sans processus de mutation avéré, et de nombreuses démarches d'immatriculation ont été commencées sans avoir été finalisées. Ainsi, l'Etat Malgache a décidé de faire une réforme foncière visant la sécurisation foncière massive s'articulant autour de quatre axes : la décentralisation de la gestion foncière, la modernisation des services fonciers, la révision des lois et textes sur le foncier et la mise en place de plan de formation et communication. Par contre, ces activités de la réforme foncière n'ont pas eu de réel impact sur les droits de la femme rurale en matière d'accès, de contrôle, d'utilisation, de propriété et de succession. En effet, une étude nous a permis de constater que les pratiques coutumières ont une forte influence au niveau des communautés locales. De plus, les lois et textes sont peu connus de la population en général et même de certaines personnes de l'administration au niveau local. La mise en application des nouvelles lois a du mal à se faire et grands nombres de tribunaux ne les appliquent pas.

Au-delà de cela, les stéréotypes, engendrant l'exclusion des femmes, surtout en milieu rural, ont encore une forte emprise et ne favorisent pas la promotion des droits de la femme rurale malgache à avoir accès et contrôle de la terre. Par contre, elle a un droit d'usage de la terre de part les pratiques au niveau local. La question de la succession est réglée au niveau du code de la famille et n'est directement traité dans la réforme foncière.

Ainsi nous pouvons dire que la réforme, qui a été mise en œuvre, est loin d'adresser la question de la promotion des droits de la femme rurale en matière de foncier, étant donné que de nombreux paramètres doivent encore être pris en compte pour parvenir à des résultats plus satisfaisants en la matière.

Q2. Pour quelles raisons/causes principales les femmes rurales ne jouissent-elles pas de leurs droits fonciers dans votre région ou dans le(s) pays où vous opérez ?

Les causes principales influant sur les droits fonciers de la femme rurale sont les suivantes :

-La non considération de la dimension genre dans la mise en œuvre de la réforme en cours et le manque de reconnaissance par un grand nombre d'acteurs sur l'existence de barrière pour la promotion des droits fonciers de la femme

-La méconnaissance des lois et des textes protégeant les femmes due à une insuffisance de la diffusion et de la vulgarisation des nouveaux textes

-L'insuffisance des services de proximité et l'insuffisance de communication sur leur existence, leur rôle etc (gestion foncière décentralisée) ; de même que l'insuffisance du champ d'action de ces services de proximité. En effet, les guichets fonciers ne peuvent que constater les droits des personnes que sur un statut de terre : les propriétés privées non titrées

-L'influence encore forte des stéréotypes sociaux au niveau des communautés quant aux rôles et à la position de la femme en milieu rural engendrant notamment des faiblesses pour la femme dans le processus de prise de décision

-Le faible niveau d'éducation des femmes rurales en général

Q3. Quelles sont les conséquences pour les femmes lorsque ces droits ne sont pas respectés ? Quel est l'impact sur les femmes ?

L'impact n'est pas visible de prime abord. En effet, les femmes semblent ne pas avoir de problèmes réels par rapport à cela, à première vue. Mais le manque de contrôle de la terre sur laquelle elles travaillent, souvent sur plusieurs décennies, peuvent engendrer des risques de vulnérabilité surtout dans le contexte actuel de recrudescence des séparations des couples. Les femmes, en cas de séparation, de divorce ou de veuvage, se retrouvent souvent à supporter seules les enfants. Pourtant, dans ces cas, elles perdent leur accès aux parcelles et donc aux moyens de nourrir leur enfants. De même, ces femmes n'ont souvent pas accès aux terres familiales (du côté de leurs parents) car elles suivent leur mari et perdent tout droit sur un héritage éventuel.

De plus, le manque de contrôle sur la production peut causer de nombreux problèmes tels qu'une insécurité alimentaire accrue du ménage, un délaissement de l'éducation et de la santé des enfants etc.

Au-delà de cela, les femmes ne peuvent pas se prétendre à un empowerment non seulement économique mais aussi social, car elles n'ont pas accès et contrôle, souvent, aux différents facteurs de production surtout la terre.

Q4. Quelles sont les bonnes pratiques dans le domaine de la promotion et de la protection des droits fonciers des femmes en milieu rural ?

Pour que les femmes en milieu rural puissent avoir leurs droits fonciers, des actions, comme les suivantes, ont été menées par certains acteurs :

-Sensibilisation des femmes sur leurs droits fonciers via de multiples moyens : films, affiches, histoires à la radio etc

-Formation de femmes en leadership afin de devenir des leaders sur la thématique pour servir de relais dans leurs communautés

-Mettre en place des groupes d'écoute au sein des fédérations régionales et locales des femmes rurales pour servir de relai et trouver des structures plus à même de les appuyer pour défendre leurs droits

-Mise en place des plateformes de discussions à plusieurs niveaux : du local au national, afin de discuter de la promotion des droits fonciers de la femme dans les contextes spécifiques aux tribus et aux régions. L'idée a été de renforcer les capacités des femmes de devenir leaders afin qu'elles puissent elle-même animer ces plateformes durant notamment les assemblée générale des quartiers, etc

Q5. Quelles recommandations spécifiques souhaitez-vous adresser au Comité pour l'élimination de toutes les formes de discrimination à l'égard des femmes (CEDAW) afin de garantir du mieux possible l'intégration des droits fonciers des femmes rurales à la prochaine Recommandation générale sur les droits des femmes rurales ?

Comment, dans un contexte national, faire évoluer les attitudes et les comportements au niveau local pour permettre un changement positif dans l'appréhension du genre et de la position de la femme rurale ? En effet, les conventions, au niveau international, restent souvent inconnues ou non utilisées par les autorités nationales. Dans ce cadre, comment pouvons nous être sûr que ces recommandations puissent réellement bénéficier aux femmes dans les communautés villageoises ? Devons nous ainsi demander la mise en place, ou renforcer en tout cas, de structures nationales de suivi de l'application des recommandations ?

8. JASIL, Mongolia

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

A1. Traditionally in nomadic pastoral societies women involvement in the decision making, as well as in land management is limited.

In many cases land use rights in pastoral agriculture legitimate man's rights, as family leader. Therefore most land use, ownership and allocation certification issued to the name of man. This means that in nomadic pastoral agriculture the land rights have some disproportion. At national level study shows that, 58% of asset registration are in husband's name compared to 34% in women's name (UNDP, 2011), but in the communities, which we are working only around 20% of land use certification and registration on the women's name (land under the housing in winter pasture camp). But in all other seasonal pasture land (spring, autumn and summer) at the common property regime, one any registration or certification at all, and only traditionally accepted pasture areas belongs to the herder's families, and rights to negotiate, and it mostly husband's business. When we facilitate/initiate the contracted land use of seasonal pastures to the herder's communities, women group of the community always was very active, as they wants to protect and sound use the pasture land, under their participation on its management. This is a case how co-management supporting the pasture land allocation to the herder's communities.

Therefore, recently our JASIL team proposed an Article to the "Draft of Land law" on the provisions related to pasture land use: " ..allocation of seasonal pasture to herders communities and herders groups shall be realized by co-management contract and it must agreed with the women group or women's representatives, as co-signatory on the contract".

This is related to provision 15.2 of the CEDAW Convention.

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

A2. The reasons and root causes for the rural women can't enjoy their land rights are connected: with the i) common property approaches of pasture land use, as "none clear rights, but all has shared or common rights again for same land", ii) general less participation of women for the decision making. For example, in most cases to the government organized or public meetings were attended mostly men, as in far distance they will travel by horse, motorcycle, etc.m but women not so easy to do this. Therefore, if meeting organized in soum (district) center than women participation will less 10% among the all participants, but if it held in bag (sub-district) center (about 10-30 km travel distance) than may be have about 20-30% women, if the meeting organized in the community area directly , than women will attend at least 50 % or more.

Therefore government policy on decentralization or community based natural resources management approaches will greatly impact on women participation on decision making on land use related aspects. But in nomadic pastoral agriculture many business and land use related activities of herders household are territorial based, so women's rights are discriminated in some ways.

In this regard, recently we have suggested following article: "project proponent or environment impact assessment companies shall ensure that at least 40% of participants was women , when they organize consultation meetings among affected local people " into the draft of: "Procedure on public participation to Environmental impact assessment".

Q3. What are the consequences for women when these rights are violated? How are women impacted?

A3. Although both women and men play important, but different roles in the management of natural resources in Mongolia's nomadic pastoralism, women's particular roles and participation in natural resource use, decision-making and implementation have been undervalued. In many cases, in research and in policy-making, women's knowledge and abilities are "simply" forgotten or neglected. Now about 87% of community members think that women participated more actively in CM than men. Women's low participation in both conservation, protection and restoration of land and natural resources and its management is a serious problem. In the case of our study sites, there are different gender issues and circumstances depending on local culture, religion, and etc. The main consequences for women when their rights are violated will be increased poverty, inequity in the family and the community, and land and natural resources management will be unsustainable. Women will be inactive in their families, community's social, economic and ecological activities and their participation in the decision making on land use will be neglected.

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

A4. Most of the women support Co-management activities and their aspirations were usually connected to improving their livelihoods and protection and restoration of pasture and other natural resources. That is why we need very active participation of women in pasture and NRM. In last 10 years JASIL has facilitated organization of 54 herders communities in 4 different ecosystems of Mongolia, and most of them have Women Groups which were self-organized. This is how to realize provisions 14.2.e, f of the Convention.

One recent case that their active participation also greatly increased by the testing of JASIL specific location weather forecasting data in 2012. Herder women have used the WFD of their specific pasture land area (summer or winter pasture area, so it means this land fully belongs to them) to better regulate cooking and heating in the home, to receive and feed fodder to young animals, provide clothing to family members, set time for milking, regulate daily products processing and drying, and plant, take care of and harvest vegetables.

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

A5. Countries need to assess how the Convention's provisions are implemented at national and local levels.

9. Kenya Land Alliance (Kenya) – paper submitted by Eileen Wakesho

A QUEST TO ADVANCING WOMEN'S LAND RIGHTS IN KENYA

Eileen Wakesho, Kenya Land Alliance

Dec, 2012

Abstract

Ownership, control and access to land are important for the improvement of women's welfare as well as their social status. Women constitute the majority of the agricultural workforce (70-80 per cent) however, their access to and control over land is globally estimated at 5 per cent¹.

In Kenya women's equitable access, control and ownership in land remains a national issue. The Government of Kenya has ratified various treaties, women's rights conventions and has a National Land Policy supporting women's rights to land. Such treaties include among others; Universal Declaration on Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)⁴ and the African Charter on Human and People's Rights (the African Charter)

Kenya is celebrated as a country with one of the most progressive Constitutions with clear provisions on women's rights to own and control land and land based resources. The Constitution of Kenya, 2010 and the National Land Policy, 2009 are among key documents that put emphasis on equitable distribution of resources for men and women in matter of ownership of Land and property. However, there is a persistent gender gap in landholding rights because, women's access to and control over land are affected by various factors in communities (FAO, 2002). These factors are many, ranging from Social, economic, legal and institutional.

This paper will seek to discuss among other things the factors hindering realization of women's land rights in Kenya despite clear Constitutional provisions.

1.0 Objectives of this paper

The objectives of this paper are:

1. To analyze factors hindering the realization of women's land rights in the rural areas of Kenya
2. To review existing gaps between legal provisions and actual implementation of the Constitution.
3. To document the consequences of violation of women's land rights in Kenya with a focus on grass roots women.
4. To recommend possible interventions to the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women

2.0 Women and Land in Kenya

Demographic information reveals that women constitute over 50% of the general population in Kenya. Muntemba, 1989 argues that in discussing women's relations to the natural resource, especially land, there is a need to consider issues of access and control. In the Kenya context, women have access to land that in many cases is owned by men in their lives: fathers, fathers-in-law or husbands. However, the rights end with use as they are unable to control the produce that comes from the land they accessed.

Most rural people, majority of whom are women, rarely have access to formal or legal land ownership due to the complexity and cost of procedures involved and the lack of awareness of legal provisions. As a result, their rights exist in a state of legal limbo, which places them in a position of considerable insecurity with regard to their land rights. The Land registration Act, 2012 has endorsed joint tenancy among spouses in pursuit of securing women rights to land and property. This however can only be realized if women, especially the rural women are empowered to demand for actualization of such provisions.

Men remain central heirs and holders of land rights in most rural communities. Women's direct access to land is often limited by a number of factors. Thus Women have indirect access to land in terms of the rights to use the land acquired through kinship relationships (Davison, 1988). These use rights or the rights to use land may not grant enough security for women especially in dissolution of marriage or in cases of death of their spouses.

The rights of such rural women tend to be very insecure and are dependent and are often subject to the maintenance of good relations between the parties involved² patrilineal. Women's direct access to land is often limited by a number of factors. Thus Women have indirect access to land in terms of the rights to use the land acquired through kinship relationships (ibid). However, these use rights or the rights to use land may not grant enough security for women when family structures break.

The situation is more complex for unmarried daughters, widowed women, single mothers and women living with HIV/AIDs. Since access and use of land among rural women is pegged on their male counterparts who, in most cases are their husband, such women are left in a rather compromised position and are certainly the most at risk when it comes to violation of their rights to access, use, own and control land

3.0 Factors Hindering Realization of rural women's land rights in Kenya

With the Constitution of Kenya, 2010 one would expect that minimal or no violation of women's land rights occurs in Kenya. Sadly, this is not the case. Many women especially the rural women continue to suffer as a result of violation of their Constitutional rights to own land and the realization of such rights seems farfetched. The promises and good intentions of the Constitution of Kenya are yet to be realized in practice because what counts as equality is substantive equality`.

The realization of these good intentions requires programmatic implementation efforts and vigilance on the part of the citizenry. There are a number of on-going efforts under the new constitutional dispensation to reform the land sector while acknowledging the need for equitable distribution of resources as a way of enhancing economic development and in the spirit of Vision 2030. The new land laws that came into effect in May, 2012 and the draft family bills³ are among the on-going legislative. This has been realized by joint advocacy efforts from the civil society organizations in Kenya, Kenya Land Alliance among them.

The efforts have not been without hindrances among them being:

i) Societal Attitudes and Perceptions

Where the law has been inclusive of women rights to own land, social attitudes have prohibited such ownership thus limiting the enjoyment by women of the benefits that flow from such Constitutional provisions. Retrogressive attitudes have undermined efforts to address inequity in land ownership between the sexes. Societal attitudes and perceptions are best overcome by promoting good practices and approaches. There seem to be laxity in promoting existing good practices as a strategy to overcome retrogressive attitudes as far as women's right to own land is concerned.

ii) Compromising Legal provisions

The Constitution of Kenya, 2010 was locally generated thus making it susceptible to the influence of local conditions. As a result, Kenya has retained a pluralistic legal system which recognizes customary law to coexist alongside statutory law to the extent that it is not repugnant. Pluralism of law may not be absolutely negative, however any discrimination in Customs are unconstitutional. The Constitution of Kenya eliminates all forms of gender discriminations⁴ thus providing room for gender neutrality. Communities find it easier to relate to the customary law that they have lived with for many years, than the formal law that is guided by the Constitution.

Similarly, the Law of Succession Act 67 gives daughters the same rights as sons to inherit their parents' property. However the Act does not require the equitable distribution of a parent's assets amongst his or her children and particularly, it does not obligate a father to provide for a daughter. This gives room for fathers to continue the customary practice of transferring land to their sons on the assumption that a daughter will marry and gain access from the husband's side.

The decision on whether to transfer land to a daughter is solely at the discretion of the father even where access to land through marriage is not certain for the daughter. This particular legal provision for a daughter's right to inherit from her parents becomes ineffective for lack of a willingness to break away from deep rooted tradition and the fact that there is nothing in the law that compels a parent to make a disposition in favour of their daughters. This provision is unconstitutional as it outrightly discriminates the girl-child. The need to implement the Constitution to the letter cannot be emphasized any less. To this effect, Federation of Women Lawyers in Kenya, FIDA has filed a petition challenging this section and calling for it's repeal.

iii) Poverty levels among rural women

The ability for women to own land and property has also greatly been affected by poverty. The rapid growth of a land market as a result of population pressure and land accumulation by the rich has put the price of land so high, outside the reach of many women. While a majority of men in Kenya own land through inheritance, women who according to customs and traditions embraced

by many people are not to inherit land, are left with buying as the only option to owning land.

Such obstacles lead to only a small percentage of women in comparison to men managing to buy land in their own names. Women's lack of collateral for credit purposes due to lack of title deeds leaves women in a cycle of landlessness thus become increasingly dependent on unwilling husbands or fathers for access to land. Women's equal access to and control over land is an issue of equity, poverty reduction, food security, sustainable development and most important a human rights issue.

iv) Acceptance of negative cultural practices as norm

More often than not, inhumane treatment against women prevails because it is considered to be part and parcel of the way of life. Cultural practice done over time find acceptance within the community regardless of their impact. Many cultural practices are unwritten but surprisingly find authenticity within the society. This, considering the fact that the Constitution of Kenya outlaws gender discrimination in law, customs and practices related to land and property in land.⁵

Traditions gain acceptability; even women themselves who are placed in a disadvantaged position by traditional practices end up accepting the violation of their rights and lose the will to demand for their rights. The National Land Policy acknowledges that cultures and traditions continue to support male inheritance of family land while there is lack of gender sensitive family laws

v) Lack of awareness

Ignorance and low literacy levels are powerful machines that slowdown efforts geared towards uprooting retrogressive cultural practices. This can be a justification why certain cultural practices are deep rooted in rural areas where illiteracy levels are relatively high. Women are thus vulnerable to being victims of such cultural practices and believe.

It is for this reason, that Civil Society Organizations in Kenya including Kenya Land Alliance, KLA are prioritizing public education and awareness projects targeting women. Eviction of widows from their matrimonial home is against the Constitution yet many widows in places like Kisumu and Kakamega are left homeless after in-laws forcefully evicted them. Due to ignorance, they have no idea of existing structure where they can seek redress within the law. In addition to ignorance many women lack the confidence, experience and resources to obtain what they are legally entitled to.

Florence Butegwa conducted a study in 1988 in Nairobi and Busia. The study revealed that out of the 400 women interviewed, almost 60% of them thought they had no right to own property in their own names.⁶ Due to the ignorance, many widows rarely transfer ownership of land to themselves when their husbands die, and even when they do so, they are usually regarded as trustees for their male children until those same male children grow up and kick them out⁷

Among both men and women, there is still minimal gender and human rights awareness, of the serious repercussions that the denial of women's rights continue to have in many spheres of development.

vi) Registration of land in one partner's name (Husband's name)

Many rural women do not have their names included with that of their husbands in the title deed. The perception is that title deeds need only to carry the name of the husbands. Such perceptions are sometimes created by men with claims that the space available on the title deed can only fit one name and not two. In such cases women are at risk of suddenly becoming landless, as has happened in many cases where the husband sells the family land in bars without the consent of the wife. The new land laws: Land Registration Act, 2012 in response to such cases have endorsed joint titling in the spirit of the Constitutional principles of protecting matrimonial property during and in termination of marriage. The married women property Act of 1888 demands that upon divorce, women still have to prove their contribution to the marital home in court. The contribution of the wife is to be of monetary value. The draft Matrimonial Property Bill, 2012 that if passed into law will repeal and replace the Married women's property act acknowledges that contribution is not only in monetary value but includes domestic work and management of matrimonial home, child care and companionship. Ownership of matrimonial

property, shall be deemed to vest in the spouses in equal shares irrespective of the contribution of either of them towards the acquisition thereof, and shall be divided accordingly upon the occurrence of divorce or dissolution of the marriage ⁸

vii) Poor representation on decision-making bodies

Women form approximately 52% of the total population in Kenya. However, despite their numbers, women are still not well represented in many institutions. Thus, many bodies or institution dealing with land issues are skewed towards the male gender. Without gender aware officials on bodies dealing with land allocation, inheritance and any dispute dealing with land, a male bias among these officials tends to be experienced by women, thus standing in the way to women's enjoyment of their rights.

The Land Development and Governance Institute, LDGI's 6th score card report of May, 2012 indicates that out of thirty two District land offices across twenty seven counties, out of four hundred and sixty six respondents, ninety three were female and three hundred and seventy three were male. This translates to approximately 20% female staff in the District land offices.

The National Land Policy, notes that in a quest to realizing women's land rights, there is need for proportionate representation of women in institutions dealing with land at all levels. The National Land Commission, established by the Constitution and guided by the National Land Commission Act of 2012 is a reflection of the spirit of the Constitutional as the gender representation of the Commissions was not more than two thirds of either gender.

4.0 Consequences of Violation of women's Land and property rights

The continued violation of land rights among rural women is not without consequences which include but is not limited to:

4.1 Weakening of the National economy

The backbone of Kenya's economy is agriculture, thus land is an extremely important asset for the inhabitants of the country. Women constitute 75% of the workforce tilling and cultivating agricultural land for both economic and domestic use, thereby ensuring food security. However, only 1% of women in Kenya own the land on which they work.⁹

Without land ownership, women are unable to take advantage of the wide range of benefits associated with ownership and control of property.¹⁰ Land and other forms of property (such as livestock, tea and coffee plantations) not only provide sustenance, but can be the basis for income generation. It has been recognized internationally that gender inequality in land laws cripples the nation's economy.¹¹

4.2. Increased poverty among women

Despite the fact that women represent 51% of the Kenya population, their representation in post primary education, wage employment, enterprise ownership and decision making processes is limited¹² This is thus reflected in their purchasing power. Title to land is a condition in Kenya for securing loans and credit facilities for other activities. In addition, women's subsistence and small-scale farming is usually unpaid labour and not considered in monetary value. This in essence means that rural women in Kenya may not be able to access monies from lending institutions due to lack of collateral. These factors greatly perpetuate poverty among women and their dependents, thus hampering Kenya's economy.

5.0 Recommendations of possible interventions to ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women

The quest to advance rural women's land rights is entangled in many things, among them being attitudes, traditions, customs and religion. This in essence means that to realize women's land rights, change of attitudes and perceptions must be in the centre of the process. Efforts to change attitudes and perceptions require ample time and consistency. Low literacy levels and low representation in land governance institution have been among hindrances to realization of women's land rights. This has started changing with the gender representation in the National Land Commission. Thus, the following are recommendations on possible measures to ensure that land rights of rural women are integrated into its forth coming general recommendation on the rights of rural women:

1. There is need to protect women's equal rights to property and inheritance through promotion of legal literacy and legal assistance to rural women and awareness-raising campaigns
2. There is need for a holistic training of government officials especially those in land governance institutions to focus on women's land rights focusing on the importance and consequences of violation of the same
3. Women living with HIV/AIDS are among the most vulnerable in matters of land rights. As guided by the National Land Policy, the Government should protect the land rights of persons living with HIV/AIDS and to ensure that their rights are not unfairly expropriated by others.
4. Due to the minimal awareness levels among rural women, participation in decision making from their end has been minimal. There is thus a need to promoting rural women's participation in decision-making, including support for women's organizations, labour unions or other associations and civil society groups promoting rural women's land rights in Kenya

5. Promoting gender-sensitive budget initiatives at the national and local levels that support the allocation of resources for the benefit of women in rural areas;
6. There should be support to both formal and non-formal education and training to build the capabilities of girls and women in rural areas in a quest to minimise and hopefully eliminate gender stereotypes
7. Considering the current position of women in matters of lack of access to credit due to no collaterals, resources should be mobilised to enhance increasing women's access to existing savings and credit schemes through development of saving and credit schemes that take into consideration the plight of women on matters of land ownership and possession of title deeds
8. Gender evaluation criteria should be carried out intensively to addressing the lack sex-disaggregated data and develop a systematic and comparative research base on rural women that will inform policy and programme plans and decisions.

Footnotes

- 1 *A Gender Perspective on Land Rights*. FAO. www.fao.org
- 2 Hilhorst T., "Women's Land Rights: Current Developments in Sub-Saharan Africa", in Toulmin C. & Quan J (eds) *Evolving Land Rights, Policy and Tenure in Africa*, DFID/IIED/NRI (2000) p 182.
- 3 Family Bill include: Matrimonial property Bill, Marriage Bill and the Succession and Inheritance amendment Bill
- 4 See Article 27 and 40 (f)
- 5 Article 60 1 (f)
- 6 Butegwa, 1986
- 7 Fiona Mackenzie, *Local Initiatives and National Policy: Gender and Agricultural Change in Muranga District, Kenya*. 385 (1986).
- 8 See Draft Matrimonial Property Bill, 2011
- 9 Oduol, 2002.
- 10 Steinzor, 2003.
- 11 Bardasi E, Blackden CM, Guzman JC. Gender Entrepreneurship and Competitiveness in Africa. In: World Economic Forum, World Bank and African Development Bank, *The African Competitiveness Report 2007*. Page 70.
- 12 Institute of Economic Affairs-Kenya, June, 2008

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10. [Keshab Dahal-Abhiyan, Nepal](#)

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

After the popular movement and coming in new political era of republic Nepal, Some key rights has been insured by the state and constitutionally it shows that men and women are equal in republic Nepal. Therefore some provisions are announces to encourage women for land rights.

- *Government policy that provides tax rebate to women if they decide to buy land.*
- *Constitutional provisions of equal property/ land rights between men and women.*
- *Legal provision to have access to parental land (inheritance of parental property).*

Bust women are facing several challenges in my country. The main challenges are patriarchal bureaucracy, male focus government mechanism and difficulties to a woman to sell land without the consent from her husband/ son. It shows if women have ownership on land, this is only paper ownership, In practical life they couldn't use their land as owner.

Q2.What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

- *Gender based discrimination between men and women and the patriarchy, based on Hindu traditional culture and values (domination of men over women in decision making and power*
- *Inadequate opportunity to women to participate in decision making within household, community, politics and policies. You may include some data of women's representation in GoN jobs, political representation and in elected positions.*
- *Low self esteem among women because of inadequate opportunities to exposure resulting to low level of confidence; and high male domination at every aspects of life*
- *Gender, caste and class based discriminations are the major reasons that rural women couldn't enjoy their rights. We are working to empower women, educating them to claim the rights through organizing them around peaceful campaign.*

Q3.What are the consequences for women when these rights are violated? How are women impacted?

- *Have created high dependency of women to men*
- *Perpetuation of male domination and gender based violence*
- *Low voice and representation of women in decision making forum at different levels*
- *Women into poverty trap*
- *Agency of women - not flourished*

Q4.What are some good practices around the promotion and protection of the land rights of rural women?

Policy provisions - constitutional and land related (equal rights), tax rebate to register land (encouragement to women) and the good practices. To promote the land rights to the women NGOs are promoting women movement. Similarly formation of land rights groups at different levels with women activists - collective voice of women for their land rights in some areas of Nepal

- Land rights education programmers are the good practices. Government of Nepal deducts the rate of land registration tax to women and some women have get benefit by this provision. Therefore 10 percent of land ownership of the women raises 12 percent. This is good result in this issue.

Q5.What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

- Customized national and international advocacy to develop and implement policies that protect women from GBV and have access and control over resources, including land*
- Support governments to prevent and protect women from GBVs*
- Equal land rights to both men and women & sons and daughters*
- Provision of fast court services on women's issues*

11. Landesa, USA

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

Landesa works in three main countries/regions: China, India, and sub-Saharan Africa.

To generalize, in all regions, formal law is or is on its way to giving women equal rights to own and access land, however socioeconomic, structural, and cultural factors are often keeping them from exercising those rights. Women are less likely than men to own land, the land they do own or access is usually smaller and of poorer quality, and their rights are often more tenuous.

In rural China, women are equal under formal law. However, because rural land is owned by collectives which give 30-year use rights to individuals, women (who usually relocate to their husbands' natal villages upon marriage) often effectively do not have rights to land.

In India, land rights are regulated at a state level. In general the formal law is not discriminatory towards women, but custom discourages women from asserting their rights. For instance, the Hindu Succession Act specifies that daughters and sons should inherit equally. In practice, however, daughters rarely assert their right to inherit. Similarly, dowry has been banned in India since 1961 but continues to be practiced. The fact that dowry has been provided for a daughter may be used as justification for keeping her from her inheritance.

In sub-Saharan Africa, specifically East Africa, laws again vary. In Kenya, a far-reaching constitution was just passed which specifically protects the rights of women and the rights of people to land. The land laws are currently being amended to reflect this protection. However, as in India and China, the laws do not always reflect custom.

In much of East Africa, women do not customarily own land, and while formal law may nominally protect that right, formal law also often recognizes customary law. Custom can thus be used to keep women from asserting rights to own or inherit land, regardless of provisions in formal law.

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

In some areas, formal law still discriminates against women or does not clearly define what rights women have. Even where law is clear, implementing regulations may not have been passed that reflect the rights, or the laws may not work to support women's rights holistically (across land, inheritance, and family laws, for example). For example, even where law mandates joint ownership by spouses, forms for registering land might fail to include a second line to record both spouses¹.

In some cases, governments have no committed resources to properly implement. Officials may be corrupt or biased. For instance, in India those implementing land titling programs have sometimes assumed it is sufficient to title rights in the name of just the male head of the household. In other areas, officials and community members are outright resistant to the idea of women's land rights.

As discussed above, there is often a disconnect between land rights for women in practice and those in formal law. Especially in areas where the primary way to acquire land is through inheritance, land is often governed by customary law, which can have more legitimacy with local people than formal law and is more likely to discriminate against women or give women rights which are secondary to those of men. Therefore, even when the formal government protects women's land rights, custom may keep women from attempting to exercise those rights.

Women's rights to land are therefore often dependent on their relationships with men like husbands and fathers. In China, for example, women are given rights to land in their fathers' homes. Formally,

they retain these when they marry and move to their husbands' homes, but in practice they lose those rights and do not gain new ones.

Furthermore, even where custom grants women rights to land, in areas where there is pressure on the land, women are often the first to be displaced. For instance, in one community in Kenya members reported that widows have a lifetime right to use their deceased husband's land; however in practice many of these widows were chased off the land as land became scarcer and more valuable.

Even when women and men formally have equal rights to land, when land is distributed by the government program officials often focus allocation on heads of households, who are typically male, and expend less effort to target women, who are often harder to reach. In fact, women are usually less able to access information than men, and therefore may not even be aware of their rights to land. Even when they are aware, they often have difficulty accessing enforcement institutions, and may feel pressured to maintain social or household harmony by not "rocking the boat" and asserting their rights.

Q3. What are the consequences for women when these rights are violated? How are women impacted?

When women are unable to exercise their rights to own, use, or access land, they, and often their children, are left vulnerable to homelessness, loss of livelihood, malnutrition, disease, and death.

For instance, without secure access to land, women have less capacity to adapt to changing ecological conditions. In Rwanda, a study found that women are the primary farmers but, because they are granted only temporary insecure use rights to the land they farm, they do not invest in measures to reduce soil erosion, which has led to severe environmental problems². Similarly, a study in Uganda found that when women farmers did not have secure rights to the land they farmed, many chose not to let it lie fallow when that would be beneficial, contributing to soil degradation³.

Women often also hold primary responsibility for providing for their children, and are left unable to do so when they are denied access to land.

Where women lack land rights and ownership rights, they are also less likely to be reimbursed or resettled if they lose their land due to conflict, climate change, or government takings.

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

The most important practice is encouraging gender-sensitive laws and regulations. Lawmakers and advisors should strive for gender-sensitive laws rather than simply gender-neutral ones that fail to consider the practical effect of the laws on women. Laws that directly address women's land rights include the 2010 Kenyan constitution, which establishes that "gender discrimination in law, customs and practices related to land and property in land" must be eliminated⁴ and Tanzania's Village Land Act of 1999, which protects "the right of every woman to acquire, hold, use, and deal with land, to the same extent and subject to the same restrictions...as the right of any man⁵."

Countries should ensure that land laws supporting women's rights are not undermined by other laws, such as family and inheritance laws. For example, Rwandan laws provide wives co-ownership rights to all marital property by default. However, because polygamy is illegal (but common), the provision provides no protection to women in polygamous marriages⁶.

Countries must also consider their implementing regulations. In Guatemala, state-sponsored land programs require that land rights are documented in the name of both spouses or in the name of the woman only⁷. In Rajasthan, India, incentives are offered to landowners for land that is registered jointly or in the name of the woman head of the household only⁸.

When making recommendations about legal reform, people must consider the cultural context of a country, which can affect the implementation of laws that otherwise appear gender-sensitive. For example, a law in Liberia giving women a one-third interest in property her husband “owns” seems progressive, but does not apply to the vast majority of women because most land in Liberia is governed by customary regimes and is not considered “owned.” Similarly, a 2002 study found that little joint titling was occurring under a project in West Bengal India, because the area at that time lacked the concept of co-ownership of marital property⁹.

Projects and reforms must include rights awareness among women, local customary institutions, and formal legal institutions regarding the law, as well as women’s vulnerabilities and gender differences with respect to land. Include men and recognize that they are important change agents.

Projects should build the capacity of government officials through gender training and other tools. Ensure that officials understand the laws that protect women’s land rights and have tools to ensure proper implementation. For instance, photographs of spouses on joint land title deeds were used as a tool to help secure women’s land rights in marriage in Ethiopia¹⁰.

Community-level actors such as local leaders should be targeted. The strongest resistance to women’s land rights can often be found at the community level, but focusing on that level can help bring about real change. For example, a project advocated for women’s property rights through respected tribal elders in Kenya, helping widows with HIV who had been evicted to regain control over land and family property.

In order to reach desired project outcomes, a gender focus must be integrated throughout the project life. Projects that plan for gender differences in land projects from the beginning are better able to include women and treat them equally.

Projects should include the knowledge and concerns of local women in designing projects so they are tailored to women’s needs. Local women can assist in designing trainings, identifying property rights holders in households, and helping researchers understand the household makeup and customary systems from women’s perspectives.

They must also include gender analyses and gender-differentiated data collection in social assessment. Projects should identify all property rights holders and/or resource users within households and communities, and account for women’s lower status, differences in accessing education and services, and the lineage and marriage practices of the communities.

Everyone must be trained on gender and women’s land rights, including staff and beneficiaries. Separate trainings for men and women can yield more female involvement, and trainings must address the cultural norms that create opposition to women’s land rights.

Baseline studies should capture the gender issues before project interventions. Projects should collect and analyze sex-disaggregated data throughout and after the project, to adjust methodologies and targets as needed and to measure project impact.

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

CEDAW Committee should include a statement recognizing that land is often the most important asset for the rural poor, but that rural women are usually constrained in their ability to own, access, or control the land they rely on for their and their families’ well-being. Governments must work to ensure that women have secure rights to land they rely on that do not require consultation or approval beyond that required of men. These rights must be clearly defined, long-term, enforceable, appropriately transferable, and legally and socially legitimate.

Footnotes

- 1 M. Benschop, *Women's Rights to Land and Property, UN-Habitat, Commission on Sustainable Development 4-5 (2004)*.
- 2 Randolph, Sheron and Rickie Sanders. "Constraints to agricultural production in Africa: A survey of female farmers in the Ruhengeri prefecture of Rwanda." *Studies in Comparative International Development* 13(3): 78-98 (1988).
- 3 R. Giovarelli and B. Wamalwa, *Issue Brief – Land Tenure, Property Rights, and Gender: Challenges and Approaches for Strengthening Women's Land Tenure and Property Rights 2 (USAID 2011)* (citing K. Mason and H. Carlsson, *The Development Impact of Gender Equality in Land Rights, in HUMAN RIGHTS AND DEVELOPMENT: TOWARDS MUTUAL REINFORCEMENT* (P. Alston and M. Robinson, eds., Oxford U. Press 2005)).
- 4 THE CONSTITUTION OF KENYA (2010). Art. 60(f).
- 5 *Village Land Act (1999) art. 3(2)*.
- 6 F. Santos, D. Fletschner, and G. Daconto, *Enhancing Inclusiveness of Rwanda's LTR Programme, paper presented at World Bank Land Conference, Washington, DC (2012)*.
- 7 C. Deere and L. Magdalena, *Empowering Women: Land and Property Rights in Latin America (2001)*.
- 8 Department of Planning Government of Rajasthan (DPGR), *Gender Responsive Budgeting for the Department of Social Welfare in Rajasthan (2006)*.
- 9 J. Brown and S. Chowdhury, *Women's Land Rights in West Bengal: A Field Study (2002)*.
- 10 USAID, *Strengthening Ethiopia Land Tenure and Administration Program Project (ELTAP) Trip Report (2008)*.

12. National Federation of Communal Forests and Pastures (NFCPA), Albania

I also decide!

Albora KACANI

National Federation of Communal Forests and Pastures of Albania

Taking into account the fact that May of this year was declared the month of Europe in our country, not without reason, we decided to dedicate this number of the newspaper on participation and enhancing the role of women in decision making and the published articles will be just by female authors. Albania has already entered the path to acquiring the status of candidate country for the EU membership and for this it should meet certain criteria.

Among them is also taking concrete steps to strengthen the protection of human rights, especially for women. According to the National Strategy on Gender Equality and Domestic Violence, 2007-2010, low participation of women and girls in decision making at lower levels appear in leading positions in central government with only 11 posts and only 2% of leadership in local governance.

Today, after 100 years having the right to vote and choose, women in our country still have very low representation in decision making. All these inequalities are conditioned by many economic, cultural, social, etc. factors.

Albanian women have always been part of agro forestry activities like collecting foliage, grass, kindling, medical plants, in many cases even more difficult activities, such as cutting and keeping firewood. According to the FAO report, 3/4 of households in developing countries depend on wood for their cooking - firewood are used and collected mainly by women, as happens today in our rural areas.

Men like women have their roles and responsibilities in forest and agricultural activities. After all, their successful realization makes both sides beneficiary, in the benefit of the family, community and society. But in our days what is the role of women in decision making? This role at the household level, village, or even nationally, is very weak. Also it is noted that their representation in politics, public institutions or non-governmental and governmental organizations, is disappointing. Their representation on municipal and communes' boards and administration is low even though they have the capabilities needed. Women, by their nature, play an important role in the reduction and mitigation of conflicts of ownership.

This low level of representation leads to their exclusion on taking the decisions and few opportunities to hear their voice.

During this period, the National Federation of Communal Forests and Pastures of Albania has taken different initiatives to discuss with various levels of decision making to improve the policies and strategies leading to sustainable management of communal forests and strengthening the role of women in decision making. The destruction of nature and natural resources, the future of the country seeks an opposition from the whole society. Therefore, we think that being together and increasing the number of women in our joint actions, may face challenges to increase in all decision making structures of our participation to 30%.

The National Federation of Communal Forests and Pasture, last year took the initiative of creating a special women's section within it, which aims to support and empower women living in rural areas, especially in the communes.

Transmitting the objective "30% of women in decision making" in the Federations, initially the boards have begun to improve their structures and the example given from the Regional Federation of Shkodra, who set in the role of regional coordinator Ms.Eva Sterkaj, regional Federation of Diber with coordinator Ms.Malvina Shehi, Federation of Lezha elected as vice chair Ms.Albana Lleshaj, the Regional Federation of Elbasan appointed Ms.Alketa Shebegu and the Regional Federation of Kukes

Kukes appointed in the coordination another woman, Ms. Mirsie Nela. Currently the Forests User Association of Forests and Pastures in their analysis reflected that the weak point is the participation of women on their boards. Their power and their best representation will help to improve the network, functioning and growth and health care of resource management, providing appropriate products and services to communities in order to increase welfare.

It is we women, our self that through our voice, should decide for a better representation, seek better rewards, greater participation in educational, academic institutions, training and professional courses, and recognize the equal right of property or use of natural resources.

There can be no sustainable development without social equality; there can be no development without proper management of natural resources on which our economies depend. We need sustainable development, to raise living standards and welfare. Changes in global and country level cannot occur without the commitment of everyone.

Therefore, it is important that both men and women to make decisions that will affect the good of everyone in poverty alleviation and social development, for which women hold a significant weight.

13. Star Kampuchea, Cambodia

In Cambodia, despite the inclusion of the strategic protection of women's equal rights in land ownership in the Land Law (2001), women are more likely than men to be landless or have significantly smaller plots of land. Women make up more than half of the agricultural work force and they have potentially more important role in reducing food insecurity and poverty. However, landlessness is especially significantly higher for women, particularly among those who are solo heads households. They are twice as likely to have sold their land compared to male headed households. Landlessness for female-headed households is one in five (21%), compared to one in eight for households in general¹. Growing landlessness and near landlessness, combined with diminishing access to common property resources are increasing poverty and jeopardizing the food security of rural households, especially for women. Loss of farmland and of access to natural resources undermine coping mechanisms on which women depend to bridge gaps in income and compensate for transitory food shortages.

The evidence concerning the role of land titling in promoting gender equality is decidedly mixed. Despite the government efforts to take into account gender issues into land reform laws and policies, a gender analysis carried out by USAID in 2006 reported that the confusion and costs certifying ownership right have had negative impact on women's land rights, especially the female-headed households². As a significant number of women have little or no schooling at all, especially among the indigenous groups and ethnic minorities, they have limited or hardly any understanding of the land law and the titling procedures. As such, this group is most vulnerable to having their land rights ignored, and persistently face challenges in judiciously protecting their equal rights to access and ownership of land. Another important challenge is that the joint title between husband and wife does not necessarily confer legal rights, as customary practices may not fully recognise women's ownership rights³.

A more serious recent setback is a surge of violent land disputes and conflicts due to government-bestowed commercial and agri-business leasing of tracts of land, including protected areas and forests⁴. This has inevitably resulted to massive dispossession of lands and livelihoods of thousands of land poor rural and urban communities. Growing landlessness, combined with diminishing access to common natural resources and livelihoods are increasing poverty and jeopardising the food security and well-being of many poor households. This has especially negatively affected women and ethnic minorities who are engaged in a wide range of activities in land and common natural resources, and whose voices and interests are often ignored. An Amnesty International report (2011) on land evictions in Cambodia found out that while forced evictions have a negative impact on entire communities, they are particularly hard on women because of the breakdown of community support networks and the separation of families caused by husbands leaving far-flung settlements to find work. This leaves many poor families in an even more destitute and desperate situation. Many are forced to remove their children from school, especially girls. Many would suffer health problems, including emotional and psychological illnesses, as a result of compounded losses of homes, livelihoods and incomes, and an insecure future for their children and families.

Forced evictions and massive land-grabbing have thus seriously undermined the commitment and obligations of the Government of Cambodia in a number of international human rights treaties that it ratified, particularly, the Convention on the Elimination of Discrimination against Women (CEDAW), specifically the provisions of Articles 14, 15 and 16.

NGOs are encouraged to participate in the process of monitoring Cambodia's compliance with CEDAW by submitting a "shadow" report especially within the context of Articles of 14, 15 and 16 and specifically on the government's compliance in light of its commitment to ensure and protect women's rights to land. This should be complemented with actions using participatory approach on raising awareness and engaging communities and relevant government bodies at all levels of

governance on CEDAW (Articles 14, 15 and 16) with emphasis on assessing and addressing women's status on rights to land.

Recommendations to the CEDAW Committee:

1. There is a need to strengthen measures to guarantee women's participation in the Public Awareness and Community Participation (PACP) which the Ministry of Land Utilisation and Planning has created to inform and educate communities on the on-going land titling and administration programme of the government. Currently, women's participation, especially the women from indigenous communities, has been rather limited as the programme has not taken account rural women's barriers in access to participation and learning: time and place of meetings, and use of interactive and participatory approach which is suitable for people with little or no education. A vast majority of poor Cambodian rural women have none or little schooling.
2. As land-based and forest-based hostilities are increasing and further disadvantages the poor and landless, there is a need to harmonize the enforcement of the Land Law and Forestry Law, and the Law on Protected Areas to effectively guarantee and protect the land rights of the poor and indigenous peoples, majority of which are women. The Protected Areas (PA) Law is silent on gender and women's equal rights.
3. The Sub-Decree on Economic Land Concessions (ELC) contains a number of Articles 3, 4, 5, 35 and 42) to safeguard the rights of communities but are often violated and ignored: protecting livelihoods and ensuring employment, conduct of community consultation, solutions for resettlement issues, conduct of Social and Environmental Impact Assessment (SEIA) to minimise social impacts and adjudication of land rights of occupants, who mostly women and their families.
4. Coordinated actions are needed to improve women's access to legal education and understanding of CEDAW, Land LAW and their rights. Their lack of understanding is not only a major impediment to their participation in discussions and debates in the land reform process but has posed serious challenges to their access to justice.

Footnotes

1 World Bank Gender Assessment, 2010.

2 USAID, Cambodia. March 2006. Gender Analysis and Assessment.

3 Velasco, E, and Tous, S. 2010. Analysis of Gender-Responsive Policies in Forestry, Land, Agriculture, Disaster Risk Reduction and Climate Change Adaptation, For Oxfam Great Britain in Cambodia

4 As of April 2010, the government has granted Economic Land Concessions (ELCs) to about 87 companies covering land area of slightly over a million hectares of the total 18 million hectares of land of the country. Further, since January 2011, agro-farm businesses have been allowed to exploit 237,000 hectares of land in 12 conservation areas in Cambodia with some concessions including primary forests at the heart of several national parks.

5 Amnesty International, 2011. Evictions and resistance in Cambodia: Five Women Tell Their Stories.

14. [Susie Jacobs, Independent Researcher, Manchester Metropolitan University, UK](#)

Q 1: What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

These vary very widely, from ignoring women's inputs to agriculture, to limited rights under customary or shari'a law to substantial state backup for women's rights and some commitment to equity. Attention to local contexts and histories, as the ILC recognises, is crucial but so is commitment to equity for women.

- Laws to safeguard women's rights often remain on statute books, unenforced or weakly-enforced: e.g. abandoned when (predictably) resistance or backlash takes place. Nevertheless, the commitment apparent in law and the legal sphere does assist eventual achievement of rights.

Zimbabwe, a note: at the moment, there exist few legal or practical safeguards for landholding. There is an urgent need to clarify these both for men and women.

Q 2: What are some of the reasons/root causes for why rural women do not enjoy their land rights (in the region/ country in which you work..)?

- Land rights are in practice, often mediated through family/kinship and community relations, and these institutions are often discriminatory towards women, particularly as wives. This is most pronounced in patrilineal kinship systems but may occur in other systems as well (e.g. the bilateral kinship/ family systems of most of Europe and Latin America). Although traditional 'peasant'/household-based economies are now being eroded and threatened by a variety of forces, within these wives, daughters and [where relevant] daughters-in-law tend to be highly subordinate. As in most households globally, women remain responsible for 'domestic' labour and for childcare as well as for much farm work. Limited spaces for autonomy do sometimes exist – e.g. for sub-Saharan African women on their 'own' plots; or concerning how to allocate time between particular tasks [but not whether or not to perform the tasks]. Overall, however, smallholder women are often in highly subordinate positionings. In most societies and across social groups including in rural social sectors, women may be subject to household/domestic or intimate violence, although there are often community controls on very extreme violence. Rural women asserting rights may be seen to have broken an invisible 'contract' concerning appropriate feminine behaviour.

Depending on the farming household's class positioning,, cultural norms, etc. labour may be hired in, or the household may depend on 'family' labour, including that of wives and daughters. Women's labour is of huge importance for family farms but this is often not recognised; thus, women rarely gain status and decision-making powers through their own labour. (An aside: one might say that this is 'alienated' – in this case not to a capitalist but to a 'head of household'). Additionally, in many contexts the husband or father has the ability to direct the labour of his wife/wives and daughters, and beliefs about maleness may be linked to such ability and to landholding in general (see Jacobs, 2012).

- A note on north Viet Nam: in the past, rural people had strong and protected land rights under the decollectivisation carried out with Doi Moi. These have been undermined by provision not to allocate land to people born after 1992 and these people are now reaching maturity. Land rights are further undermined, as elsewhere, by various 'land grabs' or state decisions not to use existing land for agricultural purposes. So the security of agricultural land for cultivation is now in doubt for many rural dwellers. However, provision for women's land rights in general have been strong, although somewhat marred by failure to allocate land to married women within the 'new' village if this differs from her natal village.

Family processes at the meso- (middle) and micro-levels are also important, however. In recent interviews (July, 2012) within the Red River Delta, a number of married women said that a large

inhibition on their asserting rights was simply the social norm that wives 'preserve family harmony' through not disagreeing or causing arguments. If women assert their rights at any level – and therefore 'disrupt harmony' – then their own reputations and that of their family will be at risk. Norms such as these are difficult to change, but agencies such as the Women's Union, inclusion of women's rights in schooling and in agricultural extension, could be helpful. Formation of independent women's groups would also be useful, although this is likely to be for the future in the particular country context.

- Zimbabwe: A number of women seem to have gained land rights in the current 'Fast-Track' resettlement, but these remain fragile and often, linked to political party membership. The new settlers receive relatively little state support in comparison with past land reforms, and this is likely to affect women disproportionately- although not exclusively.

- In general: in situations of widespread violence and intimidation (which occur in many contexts and countries) women's rights will always be insecure and often violated, including through sexual violence.

Q3: What are the consequences for women when rights are violated? How are women impacted?

Without assuming either that women have firm 'rights' either under customary or statutory regimes, violation of rights under CEDAW and other human rights protocols leads to a variety of unjust outcomes. These include:

- poor health through overwork (wives often work on their husband's farms, on their own plots if they have these as well as within the household, etc as discussed; female headed households are chronically overworked...)*
- relatedly: depression, feelings of worthlessness through lack of social status and acknowledgement of contribution; it is well-known in studies of health that feelings of lack of control and autonomy lead to poor health outcomes;*
- marginalisation within households and communities apart from some acknowledgement of the role of motherhood, particularly if the woman has borne sons;*
- lack of acknowledgement of women's existing knowledge about agriculture, raising small livestock, etc. with consequences for production and continuity of agricultural practices;*
- lack of education and also extension advice, can affect women's considerable input into agricultural production as well as household production through lack of advice and training, or lack of basic education in order to benefit from training;*
- the above can result in inefficiencies in terms of agricultural production;*
- women are most likely to conserve and redistribute resources within the household. This has been shown to be the case in a number of studies; at the same time, we should guard against views seeing women only or mainly through the lens of their roles as mothers. Like men, women deserve rights as human beings, not only as mothers or family members...*
- women's considerable contributions to communities if not acknowledged, may lessen community viability – particularly in face of threats to traditional land rights. Women also do much unseen work in terms of community cohesion and this is the case in rural as well as urban areas.*
- Where women may face violence or marginalisation if they do assert rights: this is likely to impact on their ability to contribute effectively to agriculture as well as in other respects (see below).*

Q 4: What are some good practices around the promotion and protection of the land rights of rural women?

- i. Make sure agricultural extension is effective and resourced in general, and oriented to women's needs, including having women extension officers (as was taking place in Zimbabwe before 2000);*
- ii. Women need state and local government backup for any rights they have; there are many 'rights' languishing on statute books that are never enforced. Lack of enforcement has a number of causes, including financial constraints, lack of political will; 'local' or community opposition from some men and women; from traditional or religious leaders, and occasionally, from local officers. However, the latter groups can also be allies in gaining land and other rights for rural women.*
- iii. Agrarian and land reform programmes have in the past frequently awarded land or land permits to men as 'household heads' and this still continues (see Jacobs, 2010). This inadvertently strengthens male control over land and within households, and disenfranchises women, particularly wives. Agrarian and land reform programmes must address this central plank with urgency. The policies are undermining rather than promoting real rural democracy since 'democracy' cannot occur without the full inclusion of women including rights over resources.*
- iv. Official, including international, recognition that rural sectors of society are likely to become increasingly female in terms of composition is taking place and is likely to be helpful. Some adjustment of policies and perspectives may need to accompany the recognition of 'feminisation'.*
- v. Promotion of rural women's organisations and networks is of great importance; these rarely exist and where they do, may be weak (Budlender, 2011). It is difficult for rural women to meet for a variety of social, cultural and practical reasons. Where local organisations are democratic and effective, they should be built on; where they do not exist, they perhaps cannot be set up 'for' women but local support from (feminist) outside bodies may be helpful, if this is handled sensitively. Without sensitivity the accusations of 'outside' interference may take place.*
- vi. Measures against violence against women (VAW), should be included as part or programmes: women asserting land rights often encounter violence (or at a minimum, threats of violence) and may lose any land gained because of this. Such measures should be an integral part of any programme, not an afterthought.*
- vii. A general point: women's rights are best protected, promoted and enforced in situations of peace and democracy and in political processes with a commitment to redistribution of resources to the poor and most marginalised – and with a commitment to women's economic and personal rights as part of this. Achievement of such a situation is beyond the remit of CEDAW, but the aim is nonetheless important.*
- viii. Women's rights should not be secondary: they should have land rights the equivalent or the same as men's in whatever tenure regime they are part of, whether this be based on communal/traditional tenure, more contemporary communal or collective forms, or on private and individualised tenure.*

Q 5: What specific recommendations do you have to the UN Committee for the Elimination of Discrimination against Women (the CEDAW Committee) to best insure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

a. Strengthened recognition of land rights as a crucial underpinning for rural women's rights. This may sound obvious, but because these are difficult to obtain in practice, deflection from the issue of land rights (e.g. to income generation in general) is common.

b. Backup for rights both for married women and single/divorced/widowed women. The latter may need different types of attention, depending also on the social, environmental and legal contexts. e.g. for married women, attention to the household in particular, although also the community; for women headed households, community and normative constraints are particularly important. For instance, may find it difficult to command labour, may be subject to suspicion, etc. because they are 'alone'. Married women asserting rights strongly may face divorce or desertion and understanding of the difficulty of life as a woman-headed household may deter many. Types of backup might or may involve: provision of infrastructure for rural areas and for small farms, including education and childcare; marketing services, extension advice and in social transfers. The development or strengthening of local participatory political institutions is also of importance. Therefore, serious consideration of the types of backup or support that married, divorced, single and widowed women need is crucial as part of formulation of policies regarding land rights.

c. Consideration should be given to how rights will be enforced at the local level. What would make land rights work effectively within local contexts? Which agents and agencies would be of assistance?

d. A more thorough discussion of linkages of claims to women's land and resource rights to violence, and to consideration of how this might be combated would be helpful. Violence occurs across societies and social groups, but also varies somewhat according to particular contexts, so 'answers' and responses may be both particular (i.e. fitting particular circumstances: e.g. post conflict; periods of rapid social change; resource conflicts) and general in nature.

References:

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15. SWADHINA, India

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

Like most of the laws in India, the succession laws in India too are divided and formed as per the different religious and custom-based norms of the country. These laws are wide and varied in nature and do not offer a uniform solution to the question of land rights, especially with regard to land rights of women. As a result we have the Hindu Succession Act, the succession act as per the Muslim Personal law, the Christian Personal Law, the land rights of the tribals etc. While the Hindu Succession Act which has been amended in 2005 presents a more pro-women picture, the other acts are not yet totally in favour of women, especially married women. Lack of uniform law poses a real problem in carpet-implementation of the land rights laws for women. Religious and social obligations make it difficult for the policy makers to introduce a single succession law that is pro-women. As a result – while one group of women is gradually beginning to enjoy equal rights, the other group is still waiting for their chance.

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

1) Customs and traditional bindings: In the Indian context, marriage plays a crucial role in the socio-economic status of women. A woman's life is almost always divided into pre-marriage and post-marriage status. As per general custom (except for a few isolated cases) a woman has to go to her husband's house after her marriage. If we want to understand the issue of property rights of women in India we have to look back into the evolution of Indian custom and society. Originally in the Indian system the girls were married off to far off places. Those days the system of communication and transportation was poor and it was expected that the girls would not come back to her father's house except in case of some family functions or events, but even that was a rarity. So during the time of marriage the women were sent with their share of her parental asset in the form of "Stree Dhan" (a woman's asset). Since the question of 'sending land' did not arise they were given ornaments, money, utensils in lieu of their share of their father's property. With changing times and degeneration of mind-set this 'stree-dhan' became dowry – it was no longer something that the bride's father gave willingly but is now forced to give. The bride no longer had any control over these assets – it straightaway became her husband's property. But correspondingly no change was made with regard to her right over her father's land. So in the process she no longer inherited any movable or immovable property of her own from her father.

In her husband's house she toils in the fields day long – providing as much (and even more) labour to the agriculture as her husband but is neither given, nor does she ask for any right over this land because according to customs her husband is her 'care-taker' and is responsible for her food, clothing, shelter. So the question of ownership does not arise. This was an unwritten arrangement for ages now.

The problem arises when a woman becomes a widow. With the death of her husband – her caretaker, a woman loses all her security. Normally in the rural areas once a woman becomes widow, she would normally come back to her paternal house. There is no question of re-marriage or owning the husband's property. Back to her own home she is treated merely as a burden and not a co-owner of the property. She toils day long in the fields for the sake of two meals a day and shelter.

2) Non-binding social systems: Though in the Indian system, a great deal of importance is attached to marriages there are no binding systems attached to it. Which means there is no intersection of social customs and legal norms. Almost all rural marriages are only social marriages without any legal document to support it. This makes the position of the woman very, very vulnerable. If a man

feels, he discards his wife and marries another woman. The first wife then normally loses all her right over her husband's property and land. Even though second marriages are not legally accepted, there is no way she can prove her point because she does not have a legal document to support her own stand and position as a wife.

3) Traditional Mind-set: In the Indian system, in the post-independence era many laws which were pro-women were introduced. There were amendments to existent laws in favour of women but the overall condition of women did not change. It is because while the laws changed, the mindset of the people remained the same. The men have had their 'taste of power' so they did not want to stake it, the women on the other hand were conditioned to being 'meek and accepting' and compromised with every kind of situation. The end result is that the women have remained without any rights despite many legal provisions and support. The same holds true for land rights. For instance, the Hindu Succession Act provides equal rights of a woman over her husband's property as well as her parental property but the reality is that no woman actually 'dares' to ask the same from her parents or even her husband.

4) Economic Control = Power = Violence : Why is it that women do not ask for their rights – be it social rights or legal rights? It is mostly because they are made economically dependent on the male members of her family. In India, land being the biggest source of economy, it is the first thing that men lay claim over. Control over land means control over its produce, control over its sale. Overall it gives them the monetary control. Once they have the monetary control they can subjugate women through domestic violence on them. And because they can subjugate the women, the women do not dare to ask for equal rights over land and related economy. So the entire thing functions like a vicious cycle.

5) Lack of awareness on legal remedies: Land is one such aspect which in Indian context is more controlled by social aspects. While people are aware of land documents like 'pattas' the legal provisions regarding land are mostly unknown. And this is more profound in the rural areas. While a woman from the city may still get to hear about the amendment in the Succession Act through the newspapers, how do we expect a woman from an interior rural area where there is no provision of a newspaper to know about this amendment? Unless a woman from the rural area knows that she cannot be merely thrown out from her husband's house and left without any right over his land, how can she ever think of protesting, leave alone taking legal recourses. There is a tremendous lack of communication between the policy makers and the beneficiaries, as a result of which the true benefits of law do not reach the ones intended to. For instance though there is Right to Forest Act meant for the tribals, how many tribals get to know about their rights? Or even if they know, how many of them can access those rights?

6) Lack of adequate legal support system: Though there are a number of different legal support systems introduced by the government at different levels there is still a lot to be desired. One, the legal processes are often too time consuming and long which deter the women from such processes. A woman who has lost control over her land cannot afford to fight a long legal battle where her question of livelihood is at stake. Two, lack of legal assistance cells at the rural level make the women apprehensive of approaching for legal remedies. Where to go, whom to speak to, how to approach – unless these questions are answered women, do not feel comfortable of undergoing legal processes. Three, co-systems which can validate and strengthen a woman's position like legal marriage registration office, rural women's commission to address issues like domestic violence are absent at the grass-root level. Unless these systems also run parallel, the issue of rights of women over her land cannot be ensured.

7) Lack of education: High rate of illiteracy among women is one of the prime causes why the legal rights of women over land do not get implemented in a proper way. Lack of education makes it very difficult for women to read and understand the legal documents related to land. Another very profound problem seen in the villages is taking away of legal ownership of land through fraudulent

means as the women cannot sign their names. Many women have lost their share in the land due to this reason.

8) Advent of Consumerist market oriented culture : It is not just a question of lack of right and control over land, it is also a question of control over agriculture. And this is where one of the crucial problem lies. In the olden days, though the women's right over land was not secure, she did have some agricultural control because most agricultural activities required the direct participation of women. Seed preservation, preparation of manure, preparation of home-made pesticides were all done by women and hence she had her opinion on such agro matters. However with the advent of consumerist culture and the commercialization of agriculture these controls have gradually been weaned away from women. Ready-made hybrid seeds are purchased from the market, costly chemical fertilizers are used, home-made herbal insecticides have long been given away in favour of chemical pesticides. The short term benefits of these steps are exciting and people are misled into believing that these are right form of agricultural practices. As a result women are no longer looked upon as integral part of agriculture but as mere hands of labour. This has tremendously depreciated the position of women.

Q3. What are the consequences for women when these rights are violated? How are women impacted?

The causes of violation of rights are the effects as well. The violation of the basic rights of women over their land and property ensure that the system of subjugation continues and the rights remain violated forever. Though appearing like a single problem a lot of questions are associated with the violation of land rights:

1) The question of livelihood: Land is the prime source of livelihood for rural India. It not only provides daily bread, it provides additional economic security. Normally when a woman is married she works in the field with her husband and though most often she does not question her right to that land, she feels that her right to the land is secure through her husband. But once her husband dies she is in deep trouble. Unaware of her legal stand, she faces constant threat by her husband's family and is made to believe that her right to the land is gone with her husband. Or what if her husband throws her out of his house? She has an option to go back to her parents but once married she is unwanted there. It now becomes a question of her livelihood, her survival. She is neither much educated nor has she travelled much and the only skill that she knows of is agriculture. But without her land, there is no way she can sustain herself. Her only option hen lies in working as petty labourer for others. So in spite of legally owning a land, her livelihood stands threatened.

2) The question of good-living: Since economy is a prime determining factor in a normal rural life and right to land equates control of economy, it becomes the determinant factor in every woman's life. Several factors like food, nutrition, health, education are all related to this single aspect. Because a man controls land, money and economy, he is considered the bread-winner of the family and this is how a male child begins to get all the attention since childhood – the best food is kept for the male child, if he is sick he gets the best medical attention, he gets to go to the best school. The girl child gets just the opposite treatment. In India, one of the prime excuses that parents offer as to not educate their girl-child is: “Anyway she is going to get married off one day. How is her education going to help us or her?” And this trend continues into the adulthood. As a result, the woman eats the left-over only after her family has eaten, she continues to suffer from chronic diseases and she doesn't get to read the newspaper. And all her right to good-living is taken away because it is assumed that she has no right over land or property.

4) The question of subjugation & violence: Since land is the only source of power in the rural areas much of subjugation, torture and violence have the root-cause in land-grabbing. Need to exert control over land has resulted in continued practice of age-old systems like “witch-hunting” where vulnerable women like widows, childless or unmarried having some land to their name are branded

as witches by local power-players and are either killed or driven away and then their land is ultimately taken away. In recent years many land-related disputes have led to gang-rapes of women as an attempt to exert control and power.

5) The question of security: Women in India are treated almost like a property – only to be transferred from one hand to another – from that of father to that of husband. They neither have decision-making power nor have control over their lives. And this all stems from a feeling of insecurity that is sowed in their minds that nothing is actually theirs and they are dependent on their father, brother, husband or son for their survival. The security of ownership is not made to be known to them and they feel they are merely dependents. It is this insecurity that makes them bear every form of domestic violence – fearing that they would have nowhere to go if they are thrown out of the house. This makes them resilient, all-accepting and fearful.

6) The question of justice: Whether accepted or not, it is a known fact that the contribution of women to agriculture is maximum – even surpassing men. So when a woman's right over land where she puts in her best effort is not given, it no longer remains a question of rights alone, it becomes a question of justice. Recognition of her right to her land is an acknowledgement of her contribution to the agricultural work-force and lack of provision of that right is sheer injustice.

7) The question of social-recognition: The moment we are commercializing agriculture and introducing agricultural practices that are not pro-women, we are taking away from them their social recognition as an agriculturist. They are then becoming merely agriculture labourer who work as per the guidance of the male members. This not just takes away their social recognition but takes away their self-pride. They no longer have the privilege of saying, “The produce from this field came through seeds that I provided”.

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

Swadhina has been working on the issue of land and property rights of women for many years now. There are different methods which have been tried-out, practised and adapted in the rural situation and some of the good practices for the promotion and protection of land rights. Here are some of them:

1) Creating Socio-legal Awareness: The biggest hurdle of lands rights policy implementation is lack of awareness at the grass-root level. There is need to build a sustained awareness campaign on this. The awareness campaign focused on two aspects – the social upliftment of women and legal provisions for women. The social aspect focused on issues pertinent to women's overall empowerment as well as co-related to the issue of land rights like women's right to education, need to learn signature, women's right over agriculture, land-based activities, income-generation etc. The legal aspect helped local people in understanding law and legal provisions in a simplified manner.

2) Creative methods of Awareness-building: To change the mind-set of the people overnight is not an easy task – there is a lot of sensitivity attached to it and it cannot be merely done by introducing laws or legal provisions. One way to do this is to amalgamate local culture and ethos into the awareness-building methods. Swadhina, for instance, tried out different creative methods that were well-accepted in the local tribal areas where it was being implemented. Posters in dazzling hues but which did not appear expensive, arranging video-shows in local tribal dialect with a distinct storyline but highlighting the issue of land-rights, cultural shows upholding the status of women were all part of the awareness building method. In keeping with local tribal custom Swadhina also introduced “Earth Festival” which were three-day long festivities focusing on the theme of “Women and Mother Earth”. Through exhibitions, cultural programmes, music, dance and tree-worship the fact that women and land are co-related was highlighted.

3) Promoting Functional Education: Functional education was offered to adult women through

functional literacy classes which were not merely adult education centres for women but focused on overall development of their lives – things that would empower them. Aspects like clock reading, measuring body temperature, understanding nutritional needs were taught along with laws on women through easy ways like cartoon booklets. Those who did not know how to sign were also taught to sign their names and told to use them as a tool to claim their rights.

4) Building linkage between policy-makers and grass-root beneficiaries: Swadhina organised several interactive sessions between the rural women and men and groups comprising of lawyers, government representatives, teachers etc. This helped in two ways – one, the rural people got first-hand information about the different norms and rights including the different government policies and two, it offered a realistic picture of rights-based policies and how far it has been implemented to people who have influence over different policy decisions.

5) Strengthening grass-root based women's groups: One of the ways to strengthen the rights of the women is to build in a strong support-base for them where they can approach them if their rights are violated or they face any violence. For this Swadhina promoted grass-root level women's groups at each of the villages. Members of the women's groups were provided socio-legal leadership trainings to encapacitate them. These groups are also being encouraged to apply for joint-ownership of land of commons to promote group income-generation.

6) Strengthening ownership position and protection of women: Re-marrying and discarding the first wife altogether is a very common practice in rural India. Not only are the rights of the first wife taken away, she becomes a victim of violence and abuse if she dares protest. In order to arrest this tendency Swadhina has been promoting legal registration of marriage at the rural level. Through Marriage Registration Camps at the village-level Swadhina is stressing on the fact that a legal certificate of marriage automatically establishes her identity as a wife and guarantees her equal rights to her husband's land and property. She is no longer vulnerable of being evicted of her house and land overnight by her husband or his family. Moreover it protects her legal rights as wife in case her husband remarries and she can lodge a complaint against him with no obligation of proving her identity as his first wife. Volunteers at the marriage registration camps help in explaining the procedures, help in filling up of registration forms and do the follow-up since the marriage-registration offices are located far away.

7) Promoting traditional women-friendly practices: Swadhina has relentlessly worked to promote traditional agro-practices that require the participation of women. Seed Preservation trainings, saving grains in community granary by the local women's groups, promoting home-based compost pits, kitchen garden have all been undertaken to promote the need to go back to traditional systems of agriculture which are long-term, health-friendly, good for the environment and need the maximum participation of women.

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

There are certain needs identified by Swadhina as very essential for ensuring land rights of rural women based on field-level experiences of Swadhina:

1) Formulating a Global Policy on Land Rights of Women: With different countries across the globe having different policies on land rights of women – some pro-women and some not so much in favour of women there is a need to document and develop a fresh global policy exclusively on land rights of women based on current perspective and changing global scenario. And to promote the recommendations of the global policy there needs to be a fresh commission of women's activists, social activists and land rights activists who can carry on dialogue with different governments to adopt the recommendations of the global policy.

2) Building Social Consciousness: There is a definite and immediate need to build public consciousness on land rights of women. There is a need to arouse public consciousness to be able to pressurise government and policy makers to introduce pro-women policies for land rights irrespective of any religion or caste. There has to be a uniform policy regarding land rights of women.

3) Building Social Awareness: India today is a Polio-free nation, thanks to the sustained awareness campaign on the issue using all forms of media, direct home-to-home interaction and celebrity endorsements. A similar social awareness is needed to spread awareness on land rights of women. The pro-women policies need to be brought out to the rural areas through campaigning on radio, television. One good way to build in awareness is to use the help of the local Panchayat to undertake village-based awareness programmes on this issue. Local NGOs may be invited to take active part in these awareness programmes.

4) Strengthening women's position in the family: In order to protect and strengthen a woman's natural right it is necessary to legalise it. Like the government has made Birth Certificate and Death Certificate compulsory for different activities like school admission, succession of property etc, it is high time to ensure that all the marriages are legally solemnised too. And to ensure that the rural areas are not left out it is recommended that the Block Offices be given the authority to function as marriage registration offices as well. Also to validate the necessity of the Marriage Certificates it is important to provide it a multifunctional character, similar to the lines of a Ration Card or a BPL Card where it can be used for availing joint schemes, joint accounts etc. The marriage certificate would give the woman a legal natural right to her husband's property, even on his death.

5) Promoting Functional and Legal literacy of women: There is a need to re-formulate and re-organise adult education programmes of the government where the focus would not be just on literacy but would have a more functional aspect including building knowledge on food, nutrition, health, legal provisions etc. The education programme must be designed in such a way that the rural women are aware of their rights and know how to acquire these rights. The literacy aspects must be co-related with the rights aspect like learning signature, being able to understand different important documents like land documents (pattas), savings book etc.

6) Developing centralised data of available land of commons: In co-operation with the various block offices a centralised region-wise data bank of available land of commons must be developed. The data must be made available on-line, along with a resource mapping of the area at the block-offices and a printout of it must be made available from time to time at the local Panchayat offices. Alongside local women's group must be encouraged to utilise these land of commons on joint ownership basis.

7) Supporting women's ownership of land and participation in agriculture: Just like the housing scheme of Indira Awas Yojana in Jharkhand where the ownership of the house is given to the women, similar support schemes need to be introduced wherein the ownership of women is supported through special incentives in terms of agro-loans etc. Similarly the pro-women agricultural ventures like sale of local variety, non-chemically treated, preserved seeds; manufacture of home-made manure by women need to be supported by the government.

8) Building rural-level watch-groups: Violation of land rights of women is a serious issue and needs to be dealt seriously. For this, it is very important to build local level watch-group committees in the similar frame as state-level women's commissions. For better access of the rural women these need to be placed rurally. The members would have an advisory role – to provide advise to the rural women on different socio-legal remedies. On the other hand they would also act as a watch-group to ensure that the land of commons acquired by women's group are utilised by the women themselves and not by the men in their garb, they would see that the subsidies and schemes on land acquired in the name of women are utilized by them and mostly to ensure that there are no violation of rights of women and related violence in the area.

16. Women in Law and Development in Africa (WILDAF), Togo/West Africa

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

The law governing land ownership in Togo, draws its essence from legal instruments such as international legal conventions, treaties and protocols, regional and national texts.

Togo has made an effort to include in national legislation, the principles and values enshrined in various international instruments. It is, among other things, the Constitution of the Fourth Republic, the Family Code, the Order No. 12 of 6th February 1974 on agro-land reform, the Decree No. 55-581 of May 20th, 1955 on the reorganization of State lands in Cameroon and Togo, promulgated in Togo by the Order No. 561-55 / C of 14th June 1955 and the Decree of 23rd December 1922 making applicable in the territory of Togo, the decree of 24th July 1906 on the organization of the system of land ownership in French West Africa.

Under Article 11 of the Togolese Constitution of 14th October, "the woman has the same rights as the man before the law."

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

The Order of February 6, 1974 has mainly economic goals whose implementation should be through the creation of a national land, a national real common heritage so as to enable the achievement of agricultural development program based on the requirements of the development of the national economy. Togo consecration to a complex land tenure in which customary law and modern law coexist is the origin of the exacerbation of the problem of access to land. Following the land reform carried out by the Order of 6 February 1974, efforts to establish a modern system of land registration have limited results. The procedure is lengthy and expensive, so that the majority of rural people do not have the means to implement it.

The major difficulty is the duality of the legal regime of land: a regime under modern law going alongside with the customary. The former does not yet succeed in eliminating the latter which is still very strong.

Overall, we can say that the agro-land reform initiated in 1974 has not had a positive impact on Togolese access to land in general and on women access to land in particular.

Q3. What are the consequences for women when these rights are violated? How are women impacted?

In most Togolese customs, women are excluded from sharing in rural land while a high proportion of Togolese women are exercising in agriculture (56.4% of the active population in 2004). Unfortunately, sociocultural and psychological habits and customs prevailing in different environments, with variations, does not facilitate women access to land, which is the main factor of production.

In terms of access to land, the main mode is the transfer by inheritance (54.6%), then comes: usufruct (47.1%) and leasing (31.9%) (Study Report on land policy and women's access to land in Togo). Traditionally, women do not inherit land neither from their parents, nor from their husband. They can therefore only access to land by lease or loan, for the enjoyment of a usufruct which does not ensures a safe operation. Tenure insecurity has resulted in the inability of women to engage in perennial crops (they usually grow food crops), to make sustainable investments. In short, women are prevented from enjoying the sustainable exploitation of land.

It should be noted that certain customs recognize women's right to access the land by inheritance from its author. But these customs do not confer the right to bequeath to her children. The heiress can sell the land inherited only in certain conditions.

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

The issue of access to land was a good entry point for work on rural women inheritance rights. In the framework of the sub-regional project entitled "Using law as a tool for rural women's empowerment", a study was conducted in each country on land policies and women's access to land (Benin, Burkina Faso, Côte d'Ivoire, Ghana and Togo. Reports can be downloaded from the website of WILDAF: wildaf_ao.org). The results of these studies were used to advocate for the adoption of reforms favorable to women. The results of studies have been simplified for this purpose and presented as brochure. Work sessions, meetings and information days and reflection on the content of reforms, including parliamentarians were held.

676 parcels of land were obtained in profit of groups and women in a safe and sustainable condition. Reforms have taken place in several villages on the customs of succession. Women increased their economic power acquiring for themselves farmland or ensuring that family farms income is fairly distributed.

Q5. What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

- Develop land laws and the enforcement measures of land policies;
- Effectively transfer skills and resources to local land institutions;
- Ensure fairness in the promotion of women and men whose livelihood is the agricultural sector;
- Strengthen the capacity of State agencies, local governments and civil society in the land sector;
- Establish land tribunals and specialized bodies of proximity;
- Involve different types of actors, including women, to nearby structures;
- Persuading States which have ratified the international instruments to internalize them in their national legislation to allow all citizens (men and women) to benefit from it.

17. Women's Environment Program (WEP), Nigeria

Q1. What is the legal status of land rights for rural women in your region or country/ies in which you work? In your opinion do these laws/policies safeguard the rights of women to access, control, use, own and inherit land?

The Nigerian Constitution and the Land Use Act 1978 does not discriminate against women, however Customary law does. Where women have the economic powers to purchase land, the laws does not hinder them from doing same especially in the urban areas. But rural women in Nigeria have not been able to access land even though they contribute largely to agriculture produce in the country because issues of customary laws, gender bias on right to inherit land, the economic power to acquire land especially at the grassroots' level, Land Use Act of 1978 amongst other obstacle impede their access to own land. The legal status does not safeguard the rights of women to access, control, and use, own and inherit land, this is because the LUA is a clog in the wheel of development in Nigeria as it is embedded in the Constitution of Nigeria and any attempt to rectify its inadequacies requires a constitutional amendment. According to the LUA 1978 all land situated in the territory of each state in the country is vested in the Governor of the State. For southern Nigeria in particular, this means state appropriation of land from families and communities without any compensation except for economic crops and other betterment on the land. The Governor is empowered to grant statutory Certificate of Occupancy (C of O) which would be for a definite term to any person for all purposes and rights of access to land under his control, at this for citizens to get titles to land is at the whims and caprices of the Governor. In the Southern part of Nigeria land ownership is based on inheritance with strong gender bias in favour of male children. In the Northern part of the country, farmer are unwilling to submit to dictates of the Land Use Act which tends to remove their freehold rights in exchange for tenure of limited, even though, duration like 99 years.

Women own 4% of land in the North-East and just over 10% in the South-East and South-South in Nigeria.

Q2. What are some of the reasons/ root causes for why the rural women do not enjoy their land rights in your region or country/ies in which you work?

- *Customary laws: right to inheritance which is favourable to male children and customary practices against widows which robs them from inheriting the properties of their spouses even when there is a male child;*
- *The Land Use Act 1978 which vest all lands in the hands of the Governor and its other inadequacies especially its insertion into the Nigeria Constitution makes it difficult to amend;*
- *Lack of economic powers and capability to acquire land by women*
- *Lack of women empowerment*

Q3. What are the consequences for women when these rights are violated? How are women impacted?

- *Economic slavery: Women do not have economic powers and means of livelihood hence it further plunge them into poverty. 60-79% of the rural work force is women but men are five times more likely to own land. (Gender in Nigeria Report 2012)*
- *Poor land governance hinders on the achievement of the MDGs;*
- *It allows for discrimination against women even though Nigeria is signatory to CEDAW*
- *Increase in land dispute*
- *More vulnerable to the effects of climate change*

Q4. What are some good practices around the promotion and protection of the land rights of rural women?

The Federal Government of Nigeria recognizes the role that land could play in promoting democracy and sustainable economic development by empowering people economically through effectively harnessing the wealth inherent in appropriately titled and registered land. Government also recognizes that the situation in the country is far from this desirable scenario and considers that the time has come to earnestly address the problem after years for a change by CSOs. It was against this background that the Presidential Technical Committee on Land Reform (PTCLR) was set up by the Federal Government. The PTCLR recognizes that to effectively and efficiently improve the present dismal level of land registration in Nigeria, the adoption of Systematic Land Titling and Registration is imperative as has been done and is being done in several countries like Thailand and Indonesia in Asia, and Rwanda in Africa, among others. Indeed, most of all land titling projects world-wide since the 1980s has used the systematic process. To this end two (2) States have been earmark as Pilot in Nigeria i.e Kano and Ondo State while targeting five (5) Local Government Areas.

Aside from the Committee on Land Reform in Nigeria, there is on-going Constitutional Review and CSOs are calling for the removal of the Land Use Act from the Constitution which is being considered thus if this is achieved, it will provide platforms for easy amendment on the shortcomings of the LUA.

A good practice is to have a Land Policy. A National Land Policy in Nigeria can be obtainable learning from countries where there are records of good practices in line with the Framework and Guidelines on Land Policy in Africa.

Q5.What specific recommendations do you have for the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) to best ensure that the land rights of rural women are integrated into its forthcoming General Recommendation on the Rights of Rural Women?

Countries should reform their land laws that are gender blind to ensure laws/policies that are pro-poor and mainstream gender. More so obnoxious customary laws/practices that are discriminatory to women rights and access to land should be expunged. The forthcoming General Recommendations on the Rights of Rural Women should recommend as mandatory for members that are signatories to CEDAW to ensure full domestication and have Land Policies in their countries within the F&G.