



# Cultivating women's rights for access to land

Country analysis and recommendations for  
**Afghanistan, Bangladesh, Burkina Faso,  
Ethiopia, Ghana, Guatemala, Malawi,  
Mozambique, Uganda and Viet Nam**



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**Uganda**  
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# Acknowledgements and contacts

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# Acronyms

<b>ACHPR</b>	African Charter on Human and Peoples' Rights
<b>ALRD</b>	Association for Land Reform and Development
<b>BRAC</b>	Bangladesh Rural Advancement Committee
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEDAW-OP</b>	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
<b>COHRE</b>	Centre On Housing Rights And Evictions
<b>CNOC</b>	Coordinadora Nacional de Organizaciones Campesinas
<b>CONGCOOP</b>	Coordinación de ONG y Cooperativas
<b>CONIC</b>	Coordinadora Nacional Indígena y Campesina
<b>CONTIERRA</b>	Dependencia Presidencial de Asistencia Legal y resolución de Conflictos sobre la Tierra
<b>COPMAGUA</b>	Coordinación de Organizaciones de Pueblos Mayas de Guatemala
<b>CUC</b>	Comité de Unidad Campesina
<b>ECOSOC</b>	Commission on the Status of Women on the situation of women and girls in Afghanistan
<b>EEA/EEPRI</b>	Ethiopian Economic Association / Ethiopian Economic Policy Research Institute
<b>EFA</b>	Education For All
<b>FAO</b>	Food and Agriculture Organization of the United Nations
<b>FIAN</b>	Foodfirst Information Action Network
<b>FONTIERRAS</b>	Fondo de Tierras/Land Fund
<b>GTZ</b>	Deutsche Gesellschaft Fur Technische Zusammenarbeit
<b>HRW</b>	Human Rights Watch
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICRW</b>	International Center for Research on Women
<b>IDLO</b>	International Development Law Organization
<b>IDP</b>	Internally Displaced People
<b>IFAD</b>	International Fund for Agriculture Development
<b>IFPRI</b>	International Food Policy Research Institute
<b>ILC</b>	International Land Coalition
<b>INE</b>	National Statistical Institute
<b>ILO</b>	International Law Organization
<b>ITPGR</b>	International Treaty on Plant Genetic Resources
<b>LTC</b>	Land Tenure Centre
<b>LAP</b>	Land Administration Project
<b>NCWID</b>	National Commission on Women in Development
<b>NGO</b>	Non-governmental Organization
<b>OAS</b>	Organization of American States
<b>PROTIERRA</b>	Comisión Institucional para el Desarrollo y Fortalecimiento de la Propiedad de la Tierra
<b>SEPTEM</b>	Presidential Secretariat for Women
<b>UNAIDS</b>	Joint United Nations Programme on HIV/AIDS
<b>UNDP</b>	United Nations Development Programme
<b>UNECA</b>	United Nations Economic Commission for Africa
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UNFPA</b>	United Nations Population Fund
<b>UNICEF</b>	United Nations Children's Fund
<b>UNIFEM</b>	United Nations Development Fund for Women
<b>UNV</b>	United Nations Volunteers
<b>USAID</b>	US Agency for International Development
<b>UTJ-PROTIERRA</b>	Juridical Technical Unit, Institutional Committee for Development and Fortification of Land Ownership
<b>VWU</b>	Viet Nam Women's Union
<b>WB</b>	World Bank
<b>WHO</b>	World Health Organization

# Introduction

This desk study provides an analysis of the constraints and discriminations that women face with respect to access to rural land with the hope of informing future policy and civil society interventions. The country studies presented below investigate statutory and customary discriminations, and they attempt to place the theme of women's access to land into a larger socio-cultural frame of reference. Conceptualized as a desk study, this report offers a unique review of existing literature on women's land rights issues providing analysis and recommendations for selected developing countries where most population depends on agriculture for sustenance. The choice of the countries covered was based on the needs of the European Union funded International Food Security Network (IFSN) project currently implemented by ActionAid and partners. Being a desk study, the authors faced considerable challenges in reaching an in-depth understanding of women's own view on the land rights question. The aim of this study is not to substitute for a detailed country level analysis but rather to highlight the need for reflection on the work that is already being undertaken and build upon it.

Women, in general, face many obstacles and discriminations with regards to their place in society. The issue of women's land access can be seen as a subset of the overall discriminations faced by women. Women's rights to land are often secondary and derived from other's rights, thus making them reliant on their male relatives and social network. Paradoxically, most national constitutions and legislation in the countries studied guarantee women the same rights as men, but as it will be shown, there is a sharp disparity between national laws and local practices. Women in every country analyzed have limited knowledge of their citizenship rights, thus leaving them susceptible to instrumentalization by men.

It is proven that empowering rural women, socially and economically, leads to positive effects on household and intra-household food security levels. Although investment in education and healthcare goes hand in hand with enabling women to assert their rights, improvements in women's access to land cannot be seen as its natural outcome. Access and control of land can provide women with security they cannot derive from elsewhere and allows independence hence often challenging the very political or customary expediency that is responsible for women's marginalization in the first place. That is why we believe that actions aimed at giving women space to voice and formulate their own needs and concerns with respect to land access issues should be of primary importance in formulation of any rural development program.

Customary practices such as land tenure, marriage, inheritance, and divorce systems are often perceived as discriminatory against women. Although it is mostly true, it is also necessary not to look past many social support systems and family survival strategies that can guarantee women a certain level of security. Understanding the transformations that these customary practices endure is fundamental to the understanding of a women's place in society and their methods for accessing

land. Customary systems are under constant reformulation and many aspects have changed due, in large part, to colonialism, post-independence regimes and conflicts. The impact of conflicts is particularly noted in Afghanistan, Ethiopia, Guatemala and Mozambique. Colonial administrators often disrupted the communal nature of land holdings and assigned titles to male heads of households ignoring women's secondary rights to land. This study does not aim to present a black and white picture of a situation that is in reality composed of many shades of gray.

Besides the impact of traditional practices and national laws on women's land access, this study reveals the importance of larger social factors and transformations on women's land rights. All the countries examined suffer from very low human development. Extremely low and unbalanced women's literacy rates in countries such as Bangladesh, Burkina Faso, Ethiopia and Guatemala often prevent or deter women from claiming their land rights or navigating complicated bureaucratic procedures for accessing credit. Women's lower education level may also weaken their land access in several countries where moves towards privatized land tenure systems are being made – Ghana, Malawi and Ethiopia, for example.

In several of the countries analyzed HIV/AIDS is profoundly altering rural living conditions – often because of changing Sex Ratios. As a result many women have become, and are becoming, the sole head of their household. Yet they are left in a weaker negotiating position with regards to access to land and other resources. The stigma of HIV/AIDS further compounds their precarious condition, thus leaving many women helpless in deterring property-grabbing after their husbands' death. In South-East Africa, there are reported cases where women were forced off property after being accused of “bringing AIDS” to the community (FAO/OXFAM, 2003).

In order to frame the issue of constraints to women's land access it is useful to identify four categories of discrimination faced by women along with some concrete examples:

- **De Jure Direct Discrimination**

(e.g.: Family laws and succession laws that directly discriminate against women)

- Although women are guaranteed equality under the Ugandan Constitution, Ugandan family laws establish different grounds for divorce for women and men, making it significantly easier for men to divorce their wives than for women to divorce their husbands.

- **Indirect Discrimination**

(e.g. Gaps in legislation or agrarian reform programs that facilitate titling to one household head)

- Mozambique's family code neither permits nor prohibits polygamous marriage, but legislation limits the number of wives a man may legally register to one, thus leaving his other wives with no legal claims to his land in case of death or divorce.

- **Interaction Between Norms of Different Nature in a Context of Legal Pluralism**  
(e.g. customary and statutory laws).
  - In Muslim regions of Ethiopia, husbands have attempted to register several of their wives as heads of households and beneficiaries of agrarian reforms in order to receive land from the government but control it themselves.
- **De Facto Discrimination**  
(Discrimination may occur in practice even in the face of gender neutral legislation, e.g. because of socio-cultural or socio-economical factors).
  - In Viet Nam, national legislation specifically encourages co-titling and guarantees women's rights to inheritance, but often tradition and customary norms regulate rural life and deny women their assured rights.

Each country study starts with a data box highlighting key figures and indicators on land, demography, women's health and education, and HIV/AIDS. The data categories were chosen to give a comparability to each country, but it is not the purpose of the study to compare the many faceted and complex situation of women's land access in each country. When available the percentage of Women-headed Households and women landowners is given. Data gathered from various sources revealed some inconsistencies, therefore attempts have been made to provide a coherent picture, but each figure should be viewed with caution. The low reliability and availability of disaggregated data on women and land points to the larger problem of the lack of information on women's land access in the international policy arena. This is followed by a Rural Women Profile that attempts to put the situation of rural women into perspective, accenting their role in agricultural work, their health and education status, and other relevant information to put the lives of rural women and their access to land into a national socio-economic and cultural perspective.

The Rural Women Profile is followed by a summary of the women's constitutional rights and the national legislation that may affect women's status such as family laws (marriage, divorce, inheritance) and agrarian reform laws. National policies for the promotion of women's rights, including land rights, are also included in this section.

This study then examines the customary systems in place in each country as one of the most important determinants of women's access to land. Customary law covers all aspects of a woman's life from marriage and divorce to inheritance and allocation of land use rights. Each country presents a variety of customary tenure systems and laws that have been shaped over time in response to countless internal and external circumstances. The customary practices of most groups forbid women direct control over land. As such, women either have no land use or, as is the case in many African societies, women have important secondary rights to land.

Each country study will then identify a set of the main constraints to women's access to land in each country. This set is not exhaustive but attempts to focus the discussion on some of the most important characteristics of each country. Finally, a set of recommendations on a per country basis is elaborated to better inform the donor community and civil society in shaping their future activities in the area of women land rights. It is clear that these recommendations are limited in nature and that local civil society representatives in each country will no doubt be able to provide more concrete recommendations and possible partners for any future campaign.

It was originally intended to present a country study of Haiti, but insufficient information was found to develop the theme of women's access to land. This case highlights the limitations of a desk study. In several countries analyzed, the theme of women's access to land is far-removed from the main concerns of national development and reconstruction (the case of Afghanistan provides an excellent example), and as such, this desk-study required inferences and hypotheses of possible situations and remedies to women's land access. A study of this type would require extensive field, legal and anthropological research as the customary land tenure systems and inheritance regimes can vary greatly from one another within a single country depending on variations based on elements such as religion, climate and agricultural techniques.

There are a number of convincing arguments for the need to strengthen women's access and control to land ranging from improvement of household food security levels to empowering women by increasing their control over produce, access to credit and enhancing their status and bargaining power. In addition, women's access to land is a matter of realization of their fundamental human right – the right to liberty, independence and property. For this reason, this study provides a comprehensive annex listing per country status of ratifications of major international treaties relevant to the issue of women and land rights. Ratification and proper implementation of these international instruments is required in order to bring forward the discourse of women's and farmers' rights onto the local and national level.

This study hopes to provide a base from which future work to give women a stronger voice in household, local and national decisions should be formulated. This study is not, however, a call to cast away customary tenure systems and practices as relics of unjust and backward societies, as these very customary systems, which from a Western point of view may appear ruthlessly discriminatory, often obscure a much more intricate picture of social support.

The main recommendation of this desk study is to begin work from the bottom by giving women a vehicle for expressing their needs and hopes in terms of land. Creating this space for dialogue amongst women will, hopefully, promote an awareness of their rights and establish strong bonds between the women that have been continually excluded from decision-making.

## Afghanistan

### **I. DATA FACT SHEET**

Land Area	65,209,000 Ha <sup>1</sup>
Agricultural Land	38,054,000 Ha (2002) <sup>1</sup>
Total Population	28,574,000 (2004) <sup>2</sup>
Population Growth Rate	3.8%(1992-2002) <sup>2</sup>
Population Density	36 per sq km (2000) <sup>2</sup>
Female Population	48.4%(2004) <sup>2</sup>
Rural Population	76.9% (2003) <sup>2</sup>
Life Expectancy [women/men]	46.3/45.8 years (2000-2005) <sup>2</sup>
Total Fertility Rate	6.8 children per woman (2002) <sup>3</sup>
Infant Mortality (per 1,000 live births)	189 (2000) <sup>3</sup>
Sex Ratio	106.6 male per 100 females(2000) <sup>2</sup>
Maternal Mortality Rate	1900 /100,000 (2000) <sup>4</sup>
Literacy Rate [women/men]	21%/51% (2000) <sup>5</sup>
Adult Rate of HIV [women]	N.A.
Poverty (extremely poor)	N.A.
Women in Agriculture	35% (estimate)
Women-headed Households	30,000 in Kabul <sup>6</sup>
Women Land Owners	less than 2% in Kabul <sup>7</sup>

**Sources:** (1) FAOSTAT; (2) UN Population Division Database <http://esa.un.org/unpp/>; (3) World Health Report 2004, WHO; (4) WHO (WHR2004)/UNICEF; (5) UNESCO, including the Education for All 2000 Assessment; (6) Barakat and Wardell, 2001; (7) According to a survey of 360 rural households by a Kabul-based research group reported by Pennington (2005) in the ABC News.

## Rural Woman Profile

Afghan society is a highly complex product of thousands of years of imperial policies, conquests and state building, as well as religious and cultural accomplishments. Violations of women's human rights in Afghanistan are part of a larger landscape that has been shaped by 23 years of conflict and must be addressed accordingly. The Afghan conflict has displayed a remarkable tendency to mutate in character. Each phase witnessed a different social and economic impact on Afghan women. Destruction of the already limited rural infrastructures occurred during the period of Soviet military occupation (1979-89).<sup>1</sup> A sharp decrease of agricultural output and depletion of livestock herds was registered due to the combined impact of large-scale exodus from the countryside, destruction of traditional irrigation systems, loss of management expertise, and widespread and indiscriminate laying of landmines. As a result rural community institutions were disrupted and the rural economy and way of life, where women traditionally played an important role, was upset. On the contrary, around 1989, Kabul, the stronghold of Soviet Administration, was flourishing and "women were to be found in all major government departments, in addition to the police force, the army, business and industry. Women taught, studied and acted as judges in the Family Court, dealing with issues relating to divorce, custody of children and other family matters (...)" (Barakat and Wardell, 2001:15). Following the overthrow of the communist regime in 1992 by the *Mujaheddin* factions,<sup>2</sup> Kabul and other cities were perceived to be centers of 'sin' and 'vice' precisely because of the high visibility of educated, emancipated, urban women. As a result, much of Kabul was reduced to rubble. In the rural areas, schools, teachers and indeed any education (other than that provided in *madrassas* or Quranic schools) came to be regarded as "agents of communism." The inter-factional fighting and instability of the Mujaheddin regime (1992-

96), which placed men and women under permanent threat, was followed by the draconian gender policies of the Taliban regime (1996-2001). Taliban social policies led to a drastic curtailing of women's freedom to move and work and be educated. These policies stemmed from their particular interpretation of Islam but also served as a way to assert conservative Pushtun values and power, serving to counter the Tajik, Uzbek and (Iranian-backed) Hazara/Shia forces of the Northern alliance. The lives of urban women and girls were severely impacted. They were prohibited to work (other than in the health sector) and forbidden to leave their homes unless accompanied by a male relative and veiled by the all-enveloping *chaddari*<sup>3</sup> (Barakat and Wardell, 2001: 8). Girls and women were explicitly forbidden to attend schools or receive education. Even private schooling at home was prohibited, although in 1999 there was an increase in such clandestine ventures in various parts of Afghanistan (E/CN4/Sub.2/2000/18). In the last period of the Taliban Regime, more girls might have had access to some form of education than it is usually believed. On the contrary, the ban on women working might have had a more negative impact on boys' education (Barakat and Wardell, 2001: 29). UNICEF estimates that currently out of 4 million children in Afghanistan, 1.5 million girls are not enrolled in classes. The security situation, distance from home, and inadequate facilities are the main reasons cited by families for not sending their children, particularly daughters, to school. (E/CN.6/2005/5).

Poor rural women may enjoy considerably more freedom of movement than their counterparts in the urban areas since they essentially live in large extended families. As Barakat and Wardell (2001) note:

*"Vast swathes of the Afghan landscape are dominated by mountainous terrain leaving many villages remote and extremely isolated (...). Such villages are commonly*

<sup>1</sup> Due to Soviet bombing of rural areas harbouring resistance to the Kabul government.

<sup>2</sup> During the years 1989-92 (from the Geneva accords in 1988 to the withdrawal of the Soviet forces in early 1989), a Jihad amongst Afghans began, between the Soviet-backed government in Kabul and the different Mujaheddin factions.

<sup>3</sup> In Afghanistan the Persian/Dari term *chaddari* is more usual than the Arabic/Urdu term *burqa* (Barakat and Wardell, 2001).

*inhabited by one kin oriented section of the community, with most inhabitants related to one another, either by blood or by marriage and consequently falling into the mahram category of male- female relationships. (...) Villages on the plains, which tend to be larger and more diverse, follow more urban patterns of settlement, with housing arranged in largely kin-oriented wards. Women tend to move freely between these family units and some older women, who emerge as trusted leaders, may be able to pass between different kinship sections.” (Barakat and Wardell, 2001:11)*

Customarily, Afghan society is characterized by a strong division of roles by gender and segregation. This custom of segregation, known as *pardah*, is meant to separate the worlds of men and women, and maintain a symbolic shelter for women. Men and women’s everyday activities are embodied and structured by *pardah* through a code of behaviour, which regulates the association of the two sexes to different locations and prohibits any contact. The practice of female seclusion varies with age, education, class, wealth, ethnicity and residence (urban/rural) (Barakat and Wardell, 2001). Rural and nomadic Afghan women typically do not wear the all enveloping *chaddari* unless they have traveled to the city or their husbands have secured government employment, in which case it is worn proudly as a symbol of status and sophistication (Dupree 1998b: p160).

Women play an essential role in most of the rural economy’s key sectors. Even in the areas under Taliban control, women continued to contribute in the traditional ways to the functioning of the rural economy (Barakat and Wardell, 2001:17). Nancy Dupree (1998a) highlights the critical and closely interconnected roles performed by both women and men in agriculture. Men take care of the sowing, plowing and heavy harvesting tasks, while women do the harvesting of beans, cotton, melons, etc. Rural

women are responsible for the management of domestic food supplies. They decide how much should be sold as cash crops and how much should be kept to feed the family during winter.

However, no matter how vital a woman’s economic contribution to her family’s well being, this remains of secondary importance to her position as a wife and mother. The Afghan marriage system is patrilineal. A strong code of honor dictates that, once married a man must protect and care for his wife, her status increases significantly once she produces children, while childlessness for both men and women is considered a misfortune (Dupree, 1998a). The standing of a family – the honor of the men within it – is directly related to the reputation of its female members. Therefore, a primary obligation for women is to uphold family honor by conforming to socially and culturally accepted norms of behavior. This view is deeply held by all ethnic groups within the Afghan culture, but it is most clearly discernible amongst the Pushtuns. In general, the wide disparities in the conditions affecting Afghan women and in the different approaches to female emancipation are not determined by ethnicity but are more a function of education, affluence, the rural/urban divide, and different cultural/religious interpretations of Islam (Barakat and Wardell, 2001:13).

The strong urban bias in existing health infrastructure hurts the 75% of Afghanistan’s population living in rural areas. With an extremely low Life Expectancy at birth, Afghanistan has the second highest mortality rate and Maternal Mortality Rate in the world.<sup>4</sup> Female rates of tuberculosis infection are among the highest in the world and there is a growing risk of neonatal deaths due to tetanus – 80,000 cases have been reported in Kabul alone (WHO, 2001). The lack of legal and social protection systems makes women vulnerable to acute depression, sometimes resulting in suicide (WHO, 2001, E/CN.6/2005/5)

<sup>4</sup> The Badakhshan province reports the highest Maternal Mortality Rate in the world with 6,500 deaths per 100,000 live births (WHO, 2001).

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

After the defeat of the Taliban rule the country represented a *tabula rasa* from which to begin the process of re-establishing its constitutional and legal framework. The Bonn Agreement called for the new constitution and legal framework to be drafted "in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions," with the overall objective to support "the establishment of a broad-based, gender-sensitive, multi-ethnic and fully representative government." The new Constitution adopted in January 2004 enshrines gender equality as one of the main building blocks of the new Afghan society (UN, 2003). Women made up 20% of the Constitutional *Loya Jirga* (Assembly of Elders) delegates that drafted the Constitution. According to the Constitution, the State is obliged to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights," and "equality between all peoples and tribes" (Art.6). The State shall also observe the Charter of the United Nations, the international treaties ratified by Afghanistan and the Universal Declaration of Human Rights (Art.7). Discrimination and distinctions between citizens of Afghanistan shall be forbidden, the citizens of Afghanistan, man and woman, have equal rights and duties before the law (Art. 22). The traditions contrary to the principles of the sacred religion of Islam shall be eliminated (Art.54).

However, the new constitution does not explicitly permit women the right to own and inherit property even though both Islamic law and the Afghan laws guarantee women such right. Moreover, the Constitution does not

clearly mention nor regulate the relationship between the sources of Afghan law (Constitution, statutory law, *Sharia*, customary law and ratified international treaties).

#### **II. Legal Framework**

The legal framework of Afghanistan is in a state of redefinition.<sup>5</sup> The Constitution does not create an obligation by the Government to take the necessary legislative, administrative and judicial measures for the implementation of those rights guaranteed to women and girls in the Constitution and in the international treaties to which Afghanistan is a party. The enacting of such enabling legislation is crucial to individual and collective efforts to access justice and to the way women's rights are interpreted and implemented (E/CN.6/2005/5).

#### **III. Agrarian and Land Reform Laws**

Agrarian reform in Afghanistan has not been discussed. However, the call for land reform will most likely arise in post-conflict Afghanistan where landlessness is a key concern. Of special concern are the millions of Afghan refugees and internally displaced people who have returned home since the fall of the Taliban regime.

Still, millions of displaced Afghans are unable to return because of lack of access to land and housing. According to John Dempsey (a property law expert hired by the International Rescue Committee), the property-related obstacles that are preventing the return of uprooted Afghans are the destruction of homes, the presence of landmines, the paucity of arable land, hostile property occupations, interethnic tensions (mainly between Pashtuns and Tajiks), lack of the rule of law and of effective property recording systems, inequitable social relations and inadequate dispute resolution mechanisms. Gender discrimination is also mentioned as limiting the access to land, as part of the general situation of tenure insecurity. Most refugees did not own land in the first place but

<sup>5</sup> Refer to IDLO.

worked as sharecroppers, tenants and labourers. These returning landless Afghans are hoping the government might allocate land to them. They need access to ensure their basic needs are met and ask for legal protection of their access rights (Dempsey, 2003). The removal of landmines is a prerequisite for the return of refugees and internally displaced persons.

#### **IV. National Policies**

The Berlin Conference mandated the Ministry of Women's Affairs to identify, with the support of the Gender Advisory Group, the projects to be funded and implemented by the various ministries in four priority areas namely health, education, legal protection and economic empowerment. A gender adviser has been placed in the Ministry of Rural Rehabilitation and Development. There are a growing number of national NGOs working on women's issues coordinated by the Ministry of Women's Affairs. Some NGOs with funding and support from UNIFEM have conducted awareness-raising and training programs on women's rights and provided legal aid for women (e.g. the Afghan Women Lawyers and Professionals Association and the Afghan Women Lawyers Council). The Afghan Women Judges Association provides training sessions to women judges and attorneys who were unable to practice during the Taliban regime and offers free legal counseling to women in Kabul and surrounding provinces. Another active organization is the Afghan NGO Coordination Council (whose member are the Afghan Women's Network, the Agency Coordinating Body for Afghan Relief, the Afghan NGOs Coordination Bureau and the Afghan network of women councils) (E/CN.6/2005/5).

#### **b. Customary Legal System**

Both Islamic and customary laws in Afghanistan guarantee women a right to own and inherit property, although this is often ignored in practice. Women returnees, widows and female-headed households face numerous obstacles to their right to adequate housing. Women suffer forced eviction and the illegal occupation of land; difficulties in claiming inheritance; increased speculation on housing and land; forced marriages of widows to ensure that land and property remain within the family and the inability to obtain access to courts (E/CN.6/2005/5).

Nevertheless, this situation should be seen as part of a general lack of tenure security affecting both men and women. Afghanistan is a highly communal society, in which group identity takes precedence over the individual. Islam law obliges men must to care and support any members of their extended family in need or facing difficulty (Barakat and Wardell, 2001:27).

The death, destruction and displacement of over two decades of war compounded by the effects of a prolonged drought have resulted in a highly vulnerable population in which significant numbers of people, particularly widows and orphaned children, have been left without the traditional support networks of family and community. Afghan women play a greater role in decision-making processes at the family and community level than is commonly understood (e.g. during the decades of conflict in Afghanistan women have and continue to play an important role in mobilizing and demobilizing fighters and eventually brokering peace) (Barakat and Wardell, 2001).

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- The civil war in Afghanistan has led to a growing incidence of Women-headed Households. The erosion of family and community support mechanisms that have provided the principal coping strategy for the households is resulting in increased vulnerability. In turn, households depend more on external aid and resort to desperate coping strategies such as selling possessions, joining militias and criminal activities, child labour, and in the case of women, begging or prostitution. There is a clear trend towards marriage at a younger age for women, and of the re-marriage of widows to other members of their husband's family, sometimes as a second wife (Atmar, Barakat and Strand, 1998 in Barakat and Wardell, 2001:25).
- The human development indicators for Afghanistan confirm the scale of the challenge to be addressed in various fields, education and health. The current three-year long drought combined with the high number of Afghan refugees and of IDPs adds to the enormity of the reconstruction challenge. The situation is further exacerbated by an unsettled military and political environment, and by regional/international interests that may influence both the process and the outcome.<sup>6</sup> The security situation remains critical in many parts of the country. Common crimes, including unlawful seizure of property, are reportedly on the rise. Lack of security particularly affects women and girls since it limits their freedom of movement to reach schools, health-care facilities and work. There are still many violations of women's human rights from extremist interpretations of the principles of Islam.
- The illicit drug trade and opium production (controlled by local commanders and their militias) might increase the value of land and may obstruct access to land by landless and women who already suffer limited tenure security.

- The assistance community has not adequately recognized the role played by Afghan women, thus missing some opportunities to further peace and recovery (Barakat and Wardell, 2001). There is a cultural dissonance between values advocated by many westerners and those held by Afghan women. Many of the solutions proposed for addressing gender inequity in Afghanistan are culturally insensitive and unpopular within Afghan women themselves.

## **RECOMMENDATIONS**

- Listen to the voices of Afghan women. When addressing issues of vulnerability in the Afghan context it should be kept in mind that the plight of Afghan women is inextricably linked with that of their families. Women's needs are not incompatible with those of their family and should not be addressed in isolation. In conducting local needs assessment, particular emphasis should be placed on the process, to ensure that women are enabled to contribute and that the proposed interventions serve to build their capacities. The building of sustainable peace- based cultural diversity and gender equality requires long-term efforts and commitment to complex social transformation. Any pressures to focus only on immediate results should therefore be avoided.
- Sustain current efforts to increase the enrolment rates of girls and support those women and girls who were excluded from education in the past. Such efforts should respect the variable pace of adaptation to more formal education of families with a more conservative ethos; the availability of a more 'secluded' educational environment may help to improve girl's access to education.

<sup>6</sup> Following the events of 11th September 2001 and the Taliban refusal to hand-over the Al Qaida leadership, a military campaign aimed at overthrowing the Taliban regime, and in support of the Northern Alliance began on 7th October 2001. Taliban forces retreated from Kabul on 13th November and, at the time of this writing, after one year of ruling of the new sovereign government, the general situation of the country is still uncertain.

- Promote the collection and use of sex-disaggregated data to identify especially vulnerable women who lack access to land, especially those belonging to war-affected groups (war-widows, refugees, IDP's, disable persons, etc.) and those without a clearly identifiable network of family support. Such collection should identify, in parallel, the broad range of coping strategies employed amongst vulnerable groups within the Afghan society, highlighting particularly those involving women, and children. When doing so it is important to take into consideration traditional Islamic approaches to vulnerability and care of the family.
- Make contact with the growing number of national NGOs that are conducting awareness-raising and training programs on women's rights and providing legal aid for women.
- The worldwide Afghan diaspora represents a significant and largely untapped resource for stimulating an internal dialogue among Afghan women about their status in society and their role in this period of transformation and reconstruction. The Afghan women who have migrated around the world and their families have been exposed to new cultural settings and training opportunities, acquiring new skills and qualifications. Such women could play a key role in different local contexts within Afghanistan, where their skills combined with their knowledge of Afghan languages and culture, may allow them to facilitate local dialogue based on their own experience and support interventions in areas relevant to women's access to land and other natural resources.

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# Bangladesh

## **I. DATA FACT SHEET**

<b>Land Area</b>	13,017,000 Ha <sup>1</sup>
<b>Agricultural Land</b>	9,029,000 Ha (2004) <sup>1</sup>
<b>Total Population:</b>	139,215,000 (2004) <sup>2</sup>
<b>Population Growth Rate</b>	2.3% (1992-2002) <sup>2</sup>
<b>Population Density</b>	895 per sq km (2000) <sup>2</sup>
<b>Female Population</b>	48.8% (2004) <sup>2</sup>
<b>Rural Population</b>	75.9% (2004) <sup>2</sup>
<b>Life Expectancy [women/men]</b>	63.4/61.8 years (2000-2005) <sup>2</sup>
<b>Total Fertility Rate</b>	3.5 children per women (2002) <sup>3</sup>
<b>Infant Mortality [girl/boy]</b>	57.1/60.5 (2000-2005) <sup>2</sup>
<b>Sex Ratio</b>	105.0 males per 100 females (2000) <sup>2</sup>
<b>Maternal Mortality Rate</b>	380 /100,000 live births (2000) <sup>3</sup>
<b>Literacy Rate [women/men]</b>	24.2%/45.5% (2000) <sup>4</sup>
<b>Female Literacy Rate (urban/rural)</b>	52.5%/20.2% (2000) <sup>4</sup>
<b>Adult Rate of HIV [range for women 15-49]</b>	0.2% [0-0.04%]
<b>Poverty (poor)</b>	76% of women <sup>6</sup>
<b>Women in Agriculture</b>	78% (1990-1999) <sup>7</sup>
<b>Women-headed Households</b>	8% (predominant in rural areas) <sup>4</sup>
<b>Women Land Owners</b>	3.4% <sup>8</sup>

**SOURCES:** (1) FAOSTAT; (2) UN Population Division Database <http://esa.un.org/unpp/>; (3) World Health Report 2004, WHO; (4) FAO (2004); (5) UNAIDS; (6) CEDAW/C/BGD/5 (2003); (7) FAO, 2005; (8) GoB Agricultural Census 1996

## **Rural Woman Profile**

Bangladesh is one of the seven countries in the world where the number of men exceeds the number of women. This is due to discriminations against women in terms of nutrition, food intake, and adequate health care, recently exacerbated at household level due to increasing poverty levels. Traditional socio-cultural values and practices combined with current trends in poverty levels and patterns work against raising the status of women. The patriarchal and patrilocal marriage system and the residential customs combined with the rising price of dowries to guarantee social upward mobility intensify already marked son preference. Male children are still sent to school more frequently than females. Women have limited opportunities for technical and vocational training and employment. The Maternal Mortality Rate in Bangladesh is still one of the highest in the world.<sup>7</sup>

Bangladeshi rural women are very actively involved in agricultural production constituting 45.6% of the farming population. The traditional norms of *purdah* establish a demarcated gender division of labour, abiding rules of physical separation between the sexes. As a result women are traditionally involved in post-harvest work and carry out activities in the proximity of the homestead and men perform field and market work. However, due to extreme poverty and a food crisis, such clearly demarcated roles are not the norm anymore and women often work in far-away fields. Women's tasks in rice production are already substantial and expanding further.

Women are also actively involved in forestry, fisheries and livestock production. Therefore, women face heavier work loads and their dual responsibility for farm and household production are increasingly difficult to reconcile (FAO, IFAD and ILC, 2004). Women now also contribute considerably to household income through wage labour (FAO, 2004),

but they earn 71% of what men are paid (Shehzad, 2004). Men control the production and marketing of rice, the major staple, and they also purchase most of the food so women without waged employment (mostly women belonging to families with a higher social status belong to this category) lack independent sources of income (IFPRI, 2000).

In rural Bangladesh, the seasonal variation in food availability and uneven access to food are the main causes of households' food insecurity. More than half of the country's population cannot afford an adequate diet. Food insecurity, combined with population growth, places greater pressure on land, leading to increasing indebtedness, landlessness and destitution (FAO, IFAD and ILC, 2004). This is especially the case in female-headed-households. The percentage of *de-jure* and *de-facto* female-headed households is increasing, particularly among the poorest sections of the rural population, due to extensive male out-migration,<sup>8</sup> desertion and divorce (CEDAW). About 60-70% of women from landless and near-landless households work as agricultural wage labourers, whereas women from larger farms do not participate in field activities (FAO, IFAD and ILC, 2004).

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

The Constitution establishes: that all citizens are equal before the law and are entitled to equal protection of the law (Article 27); that the State shall not discriminate against any citizen on the grounds of sex (Article 28); and that all citizens enjoy fundamental rights (including the

<sup>7</sup> "Gender inequality in rights and in access to resources imposes huge costs on the health and well-being of entire societies. In an influential 1990 article, Amartya Sen coined the term "missing women" to describe the great numbers of women in the world who are literally not alive due to family neglect and discrimination. Sen estimated that worldwide there are 100 million missing women, half of whom are in South Asia. Widespread neglect of girls' and women's health, nutrition, education, and care yields high female morbidity and mortality and high child malnutrition" (IFPRI, 2002).

<sup>8</sup> Bangladesh is marked by a high level male out-migration from rural areas seeking employment opportunities in urban areas both domestically and abroad. This results in a predominance of female population in rural areas (according to the 1991 census data there is up to 125 men per 100 women in large towns) (FAO, 2004).

right to property) (Article 26) (CEDAW/C/BGD/3-4).<sup>9</sup> The Constitution guarantees equal rights for men and women but only in the public life. It does not extend this to the private sphere, where it recognizes and allows for personal laws based on religion to regulate people's life.

## II. Legal Framework

Bangladesh is largely governed by the Civil and Criminal procedural codes enacted during British rule. During the British regime in India, the principal religious communities in the sub-continent (Muslims, Hindus, Christian, Buddhists) were allowed to accept and uphold Personal laws in the matter of divorce, dowry maintenance, guardianship and custody of children. After Indian Independence in 1947 the *Personal Laws* were recognized and applied by the courts in cases where religion and communities' normative systems were in place. When Bangladesh gained independence in 1971, it adopted the same *Personal Laws* under the *Laws Continuation Order of 1972*. As a result, followers of different faiths came under different provisions that are incorporated into the statutory laws. The *Personal Laws* that govern family life are sometimes discriminatory against women with regard to marriage, divorce, custody of children, alimony and property inheritance. Especially the latter is subject to strict regulations by the Personal Laws.

*Sharia* norms limit women's inheritance rights usually to half of men's share. Under the *Hindu Women's Right to Property Act* (1937), a widow, or all widows in a polygamous marriage, inherits the same share as a son. For Christians, the *Succession Act of 1925* provides equal inheritance between sons and daughters (CEDAW/C/BGD/5). Since independence, various laws have been formulated or amended to ensure equality and protect women's rights.<sup>10</sup> Following a flexible interpretation of the *Sharia*, significant modifications of provisions were made in the Muslim Family Laws. The *Family Court Ordinance of 1984* has, in fact, amended the procedures regarding maintenance, divorce,

dowry, inheritance, and restitution of conjugal rights among the Muslims. Moreover, there have been many recent cases, where the higher Judiciary gave verdicts on the basis of the Constitutional provisions and liberal and pragmatic interpretations of laws to protect women's rights and uphold gender equality. Such cases demonstrate that there is space for restricted application of laws that are inconsistent with the Constitution. The Government has declared its commitment to remove such incompatibilities taking into due consideration the long and prevalent traditions in society. Nevertheless, it must be stressed that there is no law allowing Bangladeshis to opt out of their personal law (to the contrary, Indians can opt out, thanks to the *Hindu Succession Act*) and the process of modifying the Personal Hindu Law will likely be very difficult due the complexity of the religious questions that will arise.

Except for inheritance, all other matters concerning property are governed by civil law. Women can administer property and execute or administrate estates. Women have the right to make contracts, including those related to credit, real estate and other property as well as other commercial transactions (CEDAW/C/BGD/5).

## III. Agrarian and Land Reform Laws

Following Muslim Rule and the British colonialization, land became a major basis for determining social status, power and prestige in Bangladesh. Control of and access to land became a source of tension between the landless farmers and the local elites and the government. Despite skewed landownership patterns<sup>11</sup> attempts at land reform in Bangladesh have to date been on an ad hoc basis and have had little success in fundamentally altering patterns of land distribution.

Following the *1984 Land Reform Ordinance*, the Coordination Council for Land Reform was formally set-up under the Land Ministry Department. Thanks to

<sup>9</sup> Cited by FAO, IFAD, ILC (2004).

<sup>10</sup> Amendment to the 1961 *Family Law Ordinance*, 1980 *Dowry Prohibition Act*, 1983 *Child Marriage Restraint to Women - Deterrent Punishment - Ordinance*, 1982 and 1985 *Muslim Family Laws Amendment Ordinances*.

<sup>11</sup> According to the 1984-85 Agriculture Census Report, 70% of rural household own only 20% of land while 30% of the population own 71% of the land (ANGOC, 1994).

a significant contribution of Bangladeshi NGOs in the implementation phase of the Land Reform the program also reached women and some became owners of government land.<sup>12</sup> The agrarian reform program gradually lost its momentum due to the lack of political will and the wavering commitment of government decision-makers (ANGOC, 1994).

Public dialogue on land reform took place before the 2001 elections highlighting ownership of land as a key factor in achieving women's empowerment. It was stressed that land reform would offer an opportunity to give husbands and wives registration with joint ownership and for implementing a new law granting equal distribution of land among sons and daughters of all religious groups (Bangladesh Center for Policy Dialogue, 2001). To be effective in this sense legal ownership might not be enough if women's control of the revenues from land is not also recognized in customary spheres of life.

#### **IV. National Policies**

Development plans of the Bangladeshi Government take women's conditions and problems into special consideration. In 1997, the National Council for Women's Development (NCWD) approved the National Policy for Women's Advancement, with the goals of establishing equality between men and women in all spheres, eliminating all forms of discrimination against women and girls, and eradicating poverty among women. The 1997 Declaration contains the Government's Plan for the implementation of the Beijing Plan of Action. A national women's organization (Bangladesh Jatiyo Mohila Sangtha) was established by the Government to promote women's issues at the Department of social protection (CEDAW, 1993).

<sup>12</sup> According to the government, a total of 16,843 acres of land have been distributed to benefit some 167,867 landless which include the landless organized by the NGOs (ANGOC, 1994).

#### **b. Customary Legal System**

Customarily, women do not claim their share of family property unless it is given willingly. Women often surrender their right to property in exchange for the right to visit their parental home and seek their brothers' assistance in cases of marital conflict. This fact was reflected in a study<sup>13</sup>, which shows that on average, a wife's total wealth represents only about 10 percent of household wealth, with land being the most unequally distributed asset (IFPRI, 2000).

In Bangladesh, marriage is not a contract between two individuals, rather it is the means by which the rights to the bride (rights to the services she will provide, to her childbearing capacity and farm labour) and to the rights that come with the bride (gifts given at the marriage) are transferred from one lineage to another.<sup>14</sup> Men have the ultimate authority on household's resources, children and the management of his wives' labour, while women, who are not given the right to land, depend on their husbands and other male relatives for access to land (Salvini, 1997).<sup>15</sup> Women in Hindu polygamous marriages enjoy fewer guarantees of male support than their Muslim counterparts.<sup>16</sup>

Women's social condition has worsened over the last decades due to rising dowry prices. A main cause behind this are the higher and middle caste family strategies to marry their daughters to young men with stable jobs in urban areas. This results in a significant worsening of women's dependency contrary to the improvement of other indicators (e.g. access to paid jobs and education) for women from lower classes. For young girls the exposure to basic and higher education might well mean that they become "too intelligent", or less modest, reserved and submissive to their future husbands. Another distressing outcome of this is the steady growth, during

<sup>13</sup> This study was conducted by IFPRI (2000), the Bangladesh Institute of Development Studies, and the Institute of Nutrition and Food Science, Dhaka University, in 1996 using data from a household survey in 47 villages.

<sup>14</sup> Dowry is paid by the bride's family in cash, jewellery or land and is the major cost associated with a female birth. The failure to marry away a daughter is a source of dishonour for the family (Patil and Wali, 1995).

<sup>15</sup> In Bangladesh, as in most patriarchal societies, women's reproductive performance is more frequently the basis for their self-esteem and social status. Moreover, it is the only guarantee they have of support in old age.

<sup>16</sup> The Koran limits the number of wives a man can marry to four - the number of wives should be proportional to the man's capability to guarantee each wife an adequate standard of living. Such guarantees and limitations do not apply to Hindu women in polygamous unions.

the last decades, of the number of violent crimes against young women without dowry or married women with poor offerings (threatened by the incessant requests for additional payments as dowry by their husband and his family). The implementation of existing legal provisions is impeded by ignorance about women's legal rights and the Government's limited capacities to counteract these crimes. Combined, these types of social transformations may worsen and further exclude women's from access to land.

### **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- The unequal status of women in society and in public life is largely a reflection of their unequal status in the family life. Women's lower socio-economic status, lower literacy, lesser mobility, and increased rate of crimes against women are some of the practical obstacles to the fulfillment of their fundamental rights.
- The number of women-headed-households is growing steadily due to extensive male out-migration but also due to desertion and divorce. These households are either landless or have small, marginal holdings (FAO, 1995).
- Despite women's growing role in agriculture and their increasing contribution to household income through wage labour, there is evidence that the social and customary practices and norms that already deprive Bangladeshi women of equitable economic opportunities, training and access to resources risk to further exclude women from any hope of direct access to land.
- Inheritance laws treat men and women differently in terms of land distribution. Islamic law provides rights of inheritance for women, but precludes inheritance on an equal basis with male heirs. Under Hindu law of inheritance women are almost always deprived of property. Beyond enacting legal instruments, Bangladeshi society faces a long process of social reflection to ensure greater acceptance of the measures taken to reform personal/religious laws.

## RECOMMENDATIONS

- Resource control in societies is a function of status and prestige attached to specific resources and the loci of decision-making. Understanding these factors in Bangladesh will help avoid the negatives consequences of altering the social norms and household power distribution too drastically and too quickly, which have resulted in unintended results (such as women borrowing for men and domestic violence). It must be kept in mind that the process of reformation of the personal/religious laws has its own pace and should be led from bottom-up approach.
- Promote disaggregated data to assess the situation of different groups (e.g. very poor versus higher classes) with regard to dependency from male support and access to land and credit. The growing poverty in rural areas and the subsequent migration to the cities might impact them in different and even opposite ways – it may allow some women to exit their seclusion to look for a job or may worsen their dependency.
- Sustain civil society organizations in their efforts to support women's economic and social empowerment through the creation of mass awareness. A number of Bangladeshi NGO's are lobbying to remove reservations from the Article 2 and 16.1(C) in favor of a Uniform Family Code for all citizens, many others are working increase women access to land and their awareness of the issue. Among the latter are the Bangladesh Women's Farmers Movement and the Association for Land Reform and Development (ALRD), a federating body of 273 NGOs, peasants and landless organizations in Bangladesh, involved in the struggle to establish land rights.<sup>17</sup>

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<sup>17</sup> According to the International Land Coalition ALRD is currently the main organization in Bangladesh working exclusively on land reform issues and provides an excellent entry point to engaging civil society organizations on the land issue  
<http://www.landcoalition.org/partners/ppalrd.htm>

# Burkina Faso

## **I. DATA FACT SHEET**

Land Area	27,360,000 Ha <sup>1</sup>
Agricultural Land	10,400,000 Ha <sup>1</sup>
Total Population	13,393,000 (2004) <sup>5</sup>
Population Growth Rate	3.17% <sup>2</sup>
Population Density	41 per sq km (2000) <sup>2</sup>
Female Population	49.7% (2004) <sup>2</sup>
Rural Population	81.4% <sup>2</sup>
Life Expectancy [women/men]	46/43 years <sup>2</sup>
Total Fertility Rate (per 1,000 live births)	6.67 children per female <sup>2</sup>
Infant Mortality [girl/boy]	115.6 / 127 <sup>2</sup>
Sex Ratio	100.1 males per 100 females <sup>2</sup>
Maternal Mortality Rate	1000 /100,000 (2000) <sup>3</sup>
Women s Literacy Rate	15% (35% of men) <sup>4</sup>
Adult Rate of HIV [range for women 15-49]	4.2% [1.5 3.7% ] <sup>5</sup>
Poverty (extremely poor)	51.7% of women compared to 48.3% of men (1994) <sup>6</sup>
Women in Agriculture	93% <sup>4</sup>
Women-headed Households	11% (17.3 urban / 10% rural) <sup>6</sup>
Women Land Owners	8.4% <sup>7</sup>

**SOURCES:** (1) FAOSTAT; (2) UN Population Division; (3) Unicef Burkina Faso at a Glance; (4) FAO, 2005; (5) UNAIDS; (6) CEDAW/C/BFA/4-5; (7)GoBF Agricultural Census, 1993.

## **Rural Woman Profile**

Agriculture is the base of Burkina Faso's society, culture and economy. Supplying 90% of the population's source of income, agriculture activity is heavily controlled by men, while women provide much of the needed labour. 93% of Burkinabé women work in agriculture and they make up to 48% of the country's agricultural workforce (FAO, 2005). Besides being responsible for raising children and supplying the household with water and firewood, Burkinabé women also play a complete role in farming activities. In some areas, are responsible for feeding and milking livestock, petty trading (selling food), and building. Girls are marginalized in education with only 36% of Burkinabé girls enrolled in school in 2001, and it is assumed that rates are even lower in rural areas. The low enrollment rates are evidenced by the even lower female literacy rates. Rural women's health is hampered by poor access to healthcare facilities. Rural infant and child mortality rates are double the urban rates. Furthermore, rural women have no access to national social security because only registered, privately employed citizens are entitled to it (CEDAW/C/BFA/4-5).

Burkina Faso's international obligations and national legislation assert non-discrimination and gender neutrality with regards to land ownership. However, in practice traditional land tenure regimes in rural areas often discriminate against women. The disjunction between law and custom is evident in Burkina Faso.

## **II: WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

Burkina Faso's 1991 Constitution is gender neutral and non-discriminatory. Article 15 guarantees the right to property but does not make any specific mention of women's land. Sex discrimination in marriage is not permitted under Article 23 (GoBF, 1990).

#### **II. Legal Framework**

Burkina Faso's Constitution and national laws are primarily based on the French legal tradition. They establish a non-discriminatory legal framework for the country.

The Family Code (Code de la personne et de la famille), passed in 1990, contains provisions on marriage, inheritance and divorce, including the rights of women in the division of property. Although the Family Code prohibits levirate (the forced marriage of a widow to the deceased husband's heir), it does permit polygamy (Art. 257 and 267) (GoBF, 1991). Polygamy is an important consideration when examining Burkinabé society - nearly 52% of all Burkinabé women are in a polygamous marriage. In rural areas 55% of all marriages are polygamous. Women in polygamous marriages have the right to divide the inheritance with the deceased's other wives. However, it often occurs that some wives are not lawfully married (only customarily) to the husband, and therefore have no rights to land under the Code (CEDAW/C/BFA/4-5). In monogamous marriages property is held in common. In a polygamous marriage, the same rules apply, but each wife receives a fraction depending on the number of wives. Children may inherit property, including land, from their parents regardless of their sex (Art. 733). In practice, however, daughters will most likely renounce their

inheritance to their brothers (FAO, 2002). The Code clearly specifies that women may inherit land from their husband, but as will be seen below, most customary inheritance schemes ignore national law.

The Code also establishes the full legal capacity of men and women, although matrimonial regimes may limit rights (Art. 298).

### III. Agrarian and Land Reform Laws

The 1984 Land Reform Law<sup>18</sup>, revised in 1996<sup>19</sup>, places all lands under state tenure and stipulates that land can be transferred to private individuals. The law makes no distinction on the basis of gender. The law states, "urban and rural lands composing the national domain are attributed to physical persons without distinction of sex or marital status." The reform establishes Village Territorial Management Commissions (Commissions villageoises de gestion des terroirs), which are responsible for managing the land use rights and allocating land to individuals. Both men and women may lead the commissions, but in practice they are men dominated. Moreover, only one representative of a women's organization is assured a seat on the 9-person committee (Diallo, 2002).

### IV. National Policies

The Ministry for the Promotion of Women (Ministère de la promotion de la femme) has developed and is implementing a Plan of Action to promote Burkinabé women's rights. The programs are designed to promote women and girls' rights, reinforce their role in the management of the environment and households, as well as awareness-raising programs on the inequalities faced by women (GoBF, 2003).

### b. Customary Legal System

Burkinabé national law is clear with regards to woman's equality, but many ethnic groups' traditions continue to discriminate against women. The customary regimes that dominate the land tenure systems in Burkina Faso have developed over generations as unique responses to the environment and cultural traditions of each group. The major groups present in Burkina Faso are the Mossi, Fulani, Bwa, Senufo, Lobi, Goin, Bobo, Wimama, and Luni. The customary land tenure systems of these groups often incorporate restrictions to women's land rights (Kevane and Gray, 1999).

Many Burkinabé ethnic groups, including the Mossi, have a spiritual connection to their land. In common with many African groups, they believe that land is a gift from ancestors to ensure the groups survival. Land is allocated and land use conflicts are resolved by the "earth priest" (*chef de terre*). No person may claim an individual right to the land other than the land allocated to him by the earth priest. The "earth priest" is a symbol of the group's ancestors and their continuing right to the land (Kevane and Gray, 1999). A woman may never be an earth priest (FAO, 2002).

The majority of Burkinabé women can only hope to receive a small plot of land from their husband - otherwise, they have few ways to claim land. The women's use rights are temporary and they are responsible for growing crops for their families' use, such as cereals, legumes, and peanuts. The land they are given is often of poor quality and far away. Moreover, women are not allowed to plant trees, as this symbolizes appropriation (Diallo, 2002). The only way a woman can have direct control over land is to take responsibility for a deceased husband's plot, although this is not assured (Kevane and Gray, 1999).

<sup>18</sup> Ordonnance n° 84-050/CNR/PRES portant réorganisation agraire et foncière au Burkina Faso.

<sup>19</sup> Loi n° 014/96/ADP portant réorganisation agraire et foncière au Burkina Faso.

Living in the center of the country for over 6 centuries, the Mossi represent the largest ethnic group in Burkina Faso.<sup>20</sup> This group has dominated the government since independence in 1960 (Kevane and Gray, 1999). Mossi society is strictly patrilineal, but women play an important role in agriculture. Land passes from father to son, and daughters do not inherit land from their birth family (Lastarria, 2002). Women are not allowed to have direct land rights under Mossi customary law; they are dependent on male relatives or their husband for land allocation (Platteau, 2000). Once married, women are no longer the responsibility of the birth family. Women may borrow land from others outside their family, but it is noted that her tenure security is very limited (FAO, 2005). If a woman returns to her birth family, it is only in the worst-case scenario, and she is then entitled to a small plot of land (Platteau, 2000). Most Mossi families are Muslim, but they do not follow Shari'a land laws, which entitle women to inherit land (Lastarria, 2002). Overall, Mossi attitudes with regards to women's status in the family are changing, due in part to external cultural influences and increasing level of education. As a result, women's attitudes towards polygamy are also going through transformation. However, Mossi women, as Lastarria notes, still face many obstacles:

*"Women in Mossi communities, and particularly women with children, are almost totally dependent on their husband's family and resources. They receive no productive resources from their birth family and have only use rights to some of her husband's resources." (2002:10)*

Literature on other Burkinabé ethnic groups is less complete, though it appears that the Mossi style discrimination against women holds true for other groups. The Bwa ethnic group (estimated at 150,000 – 300,000 people), living in southwest Burkina Faso, is an example of a society without an established political hierarchy

(Kevane and Gray, 1999). Under the Bwa inheritance regime daughters have no right to any land (except in rare cases small tobacco plots) and are forced to marry outside the family (Kevane, 2003). Women's role in agricultural production in Bwa families is increasing especially in cash-crops such as cotton. Despite the inheritance regime, more women have started to cultivate their own plots of land (Kevane and Gray, 1999).

The Lobi in southern Burkina Faso do not allow women to have personal plots nor are they permitted any land access. The Goin ethnic group allow women to rent land from their husbands if they are married to someone far from their family's village. Pougouli women have no access to land, while the Dagara women have use rights to their husband's land (Kevane and Gray, 1999).

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- The lack of enforcement of national family and land laws that guarantee women's equal rights coupled with traditional systems that often deny women direct access to land.
- Women often suffer from the fact that the national Constitution and legal framework does not recognize customary marriage regimes, which may provide additional tenure security for women, especially those in polygamous marriages.
- The *Commissions villageoises de gestion des terroirs* enjoy significant powers of land allocation, but women are heavily underrepresented among the Commission's members.
- Burkinabé women's extremely low literacy rates place them at an even sharper disadvantage to claim the landrights guaranteed to them by national law.

<sup>20</sup> The Mossi population is estimated to be 3.5 million in Burkina Faso (University of Iowa, 1998).

## RECOMMENDATIONS

- A clearer understanding of why and what constitutional guarantees of equality would provide for women's inheritance rights is needed. The effects of enforcing the laws must also be examined so as to avoid any potential negative consequences for Burkinabé women.
- Promotion of initiatives that give women an arena to express their needs, concerns and hopes with regards to land access through creative workshops and community discussions should be carried out. The creation of a space for dialogue among women within various communities might serve as a place to exchange strategies on how to claim land rights and how to use land more effectively. This approach would help the overall understanding of household livelihood strategies and raise awareness of the subject among rural populations. Such initiatives should complement any existing rural development projects. Giving women the platform to express their concerns will also help to design more appropriated projects and advocacy campaigns.
- Girls' educational opportunities must be expanded in order to give them the necessary skills to assert their land rights.

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## Ethiopia

### **I. DATA FACT SHEET**

<b>Land Area</b>	100,000,000 Ha <sup>1</sup>
<b>Agricultural Land</b>	30,671,000 Ha (2002) <sup>1</sup>
<b>Total Population:</b>	72,420,000 (2004) <sup>2</sup>
<b>Population Growth Rat</b>	2.8% (1992-2002) <sup>2</sup>
<b>Population Density</b>	62 per sq km (2000) <sup>2</sup>
<b>Female Population</b>	50.3% (2004) <sup>2</sup>
<b>Rural Population</b>	84.5% (2003) <sup>2</sup>
<b>Life Expectancy [women/men]</b>	48.6/46.5 years (2000-2005) <sup>2</sup>
<b>Total Fertility Rate</b>	6.2 children per women (2002) <sup>3</sup>
<b>Infant Mortality (per 1,000 live births)</b>	114 (2000) <sup>3</sup>
<b>Sex Ratio</b>	98.7 males per 100 females (2000) <sup>2</sup>
<b>Maternal Mortality Rate</b>	850 /100,000 (2000) <sup>4</sup>
<b>Women s Literacy Rate</b>	32,4% (47 % of men) (2003) <sup>5</sup>
<b>Adult Rate of HIV [range for women 15-49]</b>	4.4% [5.3-13.1] <sup>5</sup>
<b>Poverty (extremely poor)</b>	53% of households lie below the national poverty line when net farm income plus non farm income are considered <sup>6</sup>
<b>Women in Agriculture</b>	N/A
<b>Women-headed Households</b>	20-25% <sup>7</sup>
<b>Women Land Owners</b>	18.6% <sup>8</sup>

**SOURCES:** (1) FAOSTAT; (2) UN Population Division Database; (3) World Health Report 2004, WHO; (4) WHO (WHR2004)/ UNICEF; (5) UNDP, 2003; (6) EEA/EEPRI, 2002 sample survey in FAO, 2005; UNAIDS; CEDAW; (7) Bruce, 1998; (8) GoE Agricultural Census, 2001/2002.

## Rural Woman Profile

Ethiopia is the third most populous country in Africa and one of the poorest countries in the world. During the last decades the Ethiopian population has suffered from famine, drought, civil war, the fall of a military government, and a military conflict with Eritrea (1977-1991). These events have led to a number of policy changes that have impacted tenure systems and property laws. Ethiopia is characterized by a remarkable ethnic and religious diversity. Over 85 ethnic groups have been identified in Ethiopia representing most of the major world religions, including animist belief systems (Webb, von Braun, and Yohannes 1992).<sup>21</sup> This diversity is also a reflection of a significant variety in agro-ecological zones resulting in a multiplicity of farming systems adopted around the country (IFPRI, 2001). The rural population is nearly totally dependent on land for their livelihoods. Yet, because of declining farm size, tenure insecurity and subsistence farming practices the Ethiopian agricultural output has been insufficient to feed the growing population for over two decades resulting in increasing rates of chronic poverty (EEA/EEPRI, 2002). According to a survey conducted by Ethiopian Economic Association (EEA/EEPRI) in 2002 48% of the sample cases own landholding less than the minimum area required for minimum food production and this proportion increases to 75% in the Tigray region<sup>22</sup> (EEA/EEPRI, 2002). The proportion of single women is highest in the Tigray Region (30%), a possible reflection of the high male mortality associated with the civil war. Seventy-seven percent of the Tigray female-headed households are classified as poor to very poor, especially those residing in remote villages. Most of these households have farm land, but their land holdings are small and they do not possess oxen since women are not allowed to plough, which is considered a male task. As a result such women are unable to sustain their families using their land based on the customary sharecropping

arrangements and for their basic needs (fuelwood, fodder and other foods, etc) depend on access to common resources (trees, forests, bushlands, borderlands, and wild and domesticated plants etc.). They also resort to daily labour and other income generating activities, which are scarce in rural areas (Howard and Smith, 2005). Most of the 22% single headed households reported in the country are headed by females, who tend to be older women, principally widows and divorcees<sup>23</sup> (IFPRI, 2001).<sup>24</sup>

Rural women face a disproportionately higher responsibility in the household and lack opportunities for education due to an intra-household resource distribution that disfavors women. The persistent economic poverty in the country has had a direct and negative impact on women's lives (CEDAW/C/ETH/4-5, 2002). One of the most damaging results for women of the conflict was their loss of property rights resulting from the death of male relatives and displacement.

In Ethiopia, there are significant pressures on pastoralists to sedentarize. The Government plans to have a large percentage of them settle within 20 years. This process is likely to have a relevant impact on land 'ownership' and use, not least from a gender perspective (FAO/OXFAM, 2003)

<sup>21</sup> Cited by IFPRI (2001).

<sup>22</sup> The minimum size requirement ranges from 0.56 ha (enset producing areas of the South) to a little over 1 ha (Oromiya).

<sup>23</sup> Two thirds of marriages end in divorce or separation. In the research by IFPRI (2001) 35% of husbands and 22% of wives were involved in previous marriages.

<sup>24</sup> The 1997 Ethiopian Rural Household Survey (ERHS) was undertaken by the Department of Economics of Addis Ababa University (AAU), in collaboration with the International Food Policy Research Institute (IFPRI) and the Center for the Study of African Economies (CSAE) of Oxford University. The survey covered approximately 1,500 households in 15 villages all across Ethiopia. Sample households within villages were randomly selected while the villages were chosen to ensure that the major farming systems be represented as well as all major agroecological, ethnic, and religious groups.

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

During Ethiopia's socialist regime (1975-91), the Constitution emphasized men's role as the guardians of the land and other means of production. No place or role was left for women (Mwagiru, 1998). The 1994 Ethiopian Constitution guarantees access to land for all Ethiopians, thus granting women equal inheritance rights and equal rights to access, use, administer and transfer land but does not specifically address the obstacles that women face in relation to property rights, particularly in the current period of reconstruction. Article 40 of the Ethiopian Constitution states that, "The right to own rural and urban land as well as natural resources belongs only to the state and the people. Land is an inalienable common property of the nations, nationalities and peoples of Ethiopia," (40.3) "The right of Ethiopian peasants to free allotment of land and not to be evicted therefrom is guaranteed (...)," (40.4) and that "every Ethiopian shall have the full right to immovable property he builds on the land and to the improvements he brings about on the land by his labour or capital. This right shall include the right to alienate, to bequeath, and where right of use expires, to remove his property, transfer his title, or claim compensation for it..." (40.6) (GoE, 1994).<sup>25</sup>

The Constitutional recognition of women's secure tenure rights, control of the land and the benefits accruing from it, has encouraged many women who were refugees in Kenya to settle back in their former lands and engage in the process of reconstruction. However, the Ethiopian Constitution is less clear with respect to women's rights than the letter of the law (Mwagiru, 1998). The Constitution delegates the individual states to implement these

constitutional guarantees and to date only the Amhara National State has done so. All land in the Amhara state is state-owned and has been equally distributed between men and women. However, married women and those supported by their families have not benefited from the distribution, which has only provided land to single, income-generating women (Human Rights Watch, nd).

#### **II. Legal Framework**

In recent years, specific changes have been made to the family and succession laws in Ethiopia to enact the Constitutional provisions with regard to the protection of women's rights and counteract discriminatory customary norms. The revised Family Code came into effect in 2001 at the federal level. It recognizes equality between women and men, husbands and wives and provides them with equal choices (CEDAW/C/ETH/4-5, 2002). As Ankumah, (1996) reports

*"...the Revised Family Code (...) grants spouses equal rights in the management of the family (art. 50(1)); provides (with some exceptions) for community of property in relation to property acquired after marriage, creating a presumption of common property for goods registered in the name of one spouse and requiring the consent of both spouses for property transfers (arts. 58, 62, 63 and 68); and envisages joint administration of family property (art. 66). The Ethiopian Code also envisages community of property for de facto unions lasting for not less than three years (art. 102)".<sup>26</sup>*

The law of succession under the *Civil Code* is also under revision to guarantee, women and men equal treatment in accordance with the constitutional provision. Under the proposed laws women and men will enjoy the same rights and entitlements to the succession of property. The *Penal Code* is also being amended in accordance with the

<sup>25</sup> Emphasis added.

<sup>26</sup> Cited by FAO (2002) pp. 29-30.

Constitution (CEDAW/C/ETH/4-5, 2002).

### III. Agrarian and Land Reform Laws

The Derg military government, which seized power in Ethiopia in 1974, prioritized the need for land reform and nationalized all rural lands in March, 1975. Peasant Associations (PA) were formed as local administrative units in rural areas and given the responsibility to allocate use rights over land to each household following criteria agreed upon by the community, mostly family size and land availability (Bruce, 1998). Under the government's 1975 "land to the tiller" reform, land distributed was allocated only to people who farm, whether males or females and registered in their names. Since the fall of the Derg, many conflicting land claims have emerged<sup>27</sup> and the Transitional Government of Ethiopia was faced with the challenge of creating a system of tenure that would meet the diverse demands of displaced and forcibly resettled populations and rural people tired of land distributions (Bruce, 1998: 169). Many regions of the country have not experienced land reallocations in recent years (IFPRI, 2002). Some states uphold customary law as valid law for regulating the personal rights of women - including property and succession rights (Mwagiru, 1998). Other regions declare the superiority of the Constitutional provision guaranteeing women equality with men.

According to the 1975 land reform, only household members who have been allocated land are regarded as household heads and have the right to participate in PA deliberations and in decisions to rent out land or to give it away (e.g. to children) (IFPRI, 2001). Nevertheless, in most cases, women's access to land remains conditional upon the absence of a suitable male head of household (e.g. due to separation or death of the husband) (IFPRI, 2001). Usually only single women with households have been given land as PA members. Furthermore, women's land rights in polygamous unions have sometimes been illegally

acquired by men.<sup>28</sup> Subramanian reports of conflicts that arose in Muslim regions "when husbands tried to claim land by registering each of their wives as members in PAs" (Bruce, 1998:173). Moreover, women who were displaced from their land by conflicts were generally unable to reclaim that property during the following reconstruction period and the Ethiopia written law has hardly alleviated the problem (Mwagiru, 1998). According to Subramanian "The reform worsened women's rights in some way. Women who had controlled land as *rist*, freehold or other pre-revolutionary tenures, lost them. Those who did not own any land before the revolution benefited only as members of household. (...) In the most recent land distribution in Tigray and some areas in Wello and Amhara, wives were allocated their own holdings alongside those of their husbands, but it is not clear whether this trend will become more generalized in the future" (Mwagiru, 1998: 173). Nevertheless, the land reform has had an impact on local customs that rarely grant women the right to inherit land from their lineage.

Land reallocations have, and most likely will, challenge public officials in the various states to apply the constitutional guarantee of equal rights for women.<sup>29</sup> Through their land allocation function, local administrations have facilitated - albeit reluctantly - the attribution of land use rights to women (e.g., Gopal and Salim 1999; World Bank 1998).<sup>30</sup> Another indication that external intervention may have an impact on local customs is the observed link between the concept of fault-based divorce and conversion to non-Orthodox Christian faith. The fairly recent spread of Catholicism and Protestantism to rural Ethiopia, particularly in the South, seems to be correlated with the perception that fault plays an important role in financial settlement upon divorce (IFPRI, 2001).

The land tenure issue in Ethiopia has attracted widespread attention and debate among national private and public

<sup>27</sup> The Derg land reform later moved from establishing a pattern of small holder agriculture on to promoting collectivization, villagization, forced settlement, compulsory grain procurement and control of grain marketing and pricing (Bruce, 1998).

<sup>28</sup> Polygamous households are virtually absent among the Tigray and Amharas, while polygamy is more frequent among non-Christians. (Mwagiru, 1998).

<sup>29</sup> The Oromia State Government is considering a major selective reallocation of land in the region to distribute land to new households and deal with past injustices, Bruce, 1998.

<sup>30</sup> Cited by IFPRI (2002).

actors, NGOs, and the donor community yet it remains a challenge that needs to be addressed based on a systemic research and analysis. To overcome the public/private dichotomy that is the centre of current debate on land tenure in the country, various studies have pointed out that a more flexible land holding system centred around the guarantee of tenure security based on a mixture of private, state and communal holding might generate significant support among farmers (EEA/EEPRI, 2002). Research in Ethiopia has shown that when land sales are prohibited but land rental is regulated, land redistribution can increase efficiency and equity by giving greater land access to women and younger households capable of using these lands productively (IFPRI, 2004).<sup>31</sup> A study by IFPRI<sup>32</sup> shows that when women control assets, more is spent on children's education and the rate of illness among girls decreases (IFPRI, 2002).

#### **IV. National Policies**

The Ethiopian National Policy on Women established a cooperation with non-governmental organizations (NGOs), civil society and international development partners (bilateral and multilateral). The activities being carried out aim at promoting women's rights, advocating for proper implementation of policy objectives and of the CEDAW, ensuring that women are not victims of systemic oppression, discrimination and unequal distribution of social, economic and household power, resources, positions, responsibilities and opportunities. These efforts are coordinated by the Women's Affairs Office (WAO) in the Office of the Prime Minister and Women's Affairs Departments have been established in the sectoral ministries. Government efforts have been directed at improving and updating women's legal literacy in order for women to exercise their own rights. They have also worked on raising the awareness and the sense of responsibility of law-enforcement agencies about women's rights under the Constitution, national laws (e.g. the newly adopted Family

Code) and international human rights instruments and treaties (CEDAW/C/ETH/4-5, 2002).

#### **b. Customary Legal System**

Ethiopia is characterized by a multiplicity of patrimonial laws and customs. The cultural makeup of the country is in fact extremely varied and fragmented – especially in the South – which implies variations in the status of women prevalent in the various parts of the country. Semitic traditions tend to dominate in the north (Orthodox Church of Ethiopia), Cushitic traditions in the south (animist beliefs) and east (Sunni Muslims and recently converted Protestants), and Nilotic traditions in the west (Sunni Muslims). In spite of the last decades' political turmoil, local traditions regarding land tenure have remained relatively untouched in some isolated areas of the countryside. Patriarchal rules prevail in the Muslim and Protestant south. Important exceptions include the *enset*-growing areas where women seem to play a more central role in cultivation (because they do not need to rely on animal traction) and due to the more egalitarian rules prevailing in the Orthodox north (IFPRI, 2001).

In the case of the customary land tenure systems prevalent before the 1974 Constitution - referred to as *rist* and prevalent in the northern part of the country - sons and daughters had an equal right to inherit land since lineage could be traced both through their father and mother to claim land (cognatic descent). In practice, however, given the prevalent patrilocal marriage system, women's rights to land were often ignored or implicitly traded in exchange for family support (IFPRI, 2001).

Presently, there are sharp differences in customs across locations, ethnic groups and religions with regard to

<sup>31</sup> Despite the absence of formal land markets, informal markets are operational although limited. Rights to land are transferred through mortgage, renting, sharecropping, sales, gift, contracts, exchange of plots, inheritance, etc. Sharecropping of land is the dominant practice (44.4%), followed by land sales (31.1 %), and renting (16%). Sixty percent of land transfers are temporary while thirty-seven per cent are permanent (EEA/EEPRI, 2002).

<sup>32</sup> IFPRI researchers Agnes Quisumbing and John Maluccio conducted a study in Bangladesh, Indonesia, Ethiopia, and South Africa on women's decision-making power relative to their husbands', cited by IFPRI (2002).

divorce and inheritance. Nevertheless, in general, customary laws do not allow women to enjoy their land and property (Mwagiru, 1998). Daughters rarely inherit anything from their parents. The same is true for female-headed households, who sometimes gain access to land from their husband or husband's family, but hardly ever from their own lineage.

Land and livestock that are inherited after marriage come primarily from the husband's family. The inheritance system is thus primarily designed to enable the surviving spouse to continue operating the farm and taking care of the children. Yet, most of the land user rights held by the household come directly from the PA. This implies that transfers of land following marriage, divorce, or death must be implicitly or explicitly supported by the PA. A married couple is more likely to be headed by a woman (that means that she has control over productive resources) if the wife brought more assets into the household, was married before (and thus obtained assets through previous unions) or already had children from a previous marriage. Control over assets is associated with larger claims over these assets upon divorce (IFPRI, 2001).

In order to examine women's welfare in rural Ethiopia, both their individual rights and the informal entitlements women have to community resources matters need to be analyzed. Community norms establishing informal women entitlement on communal resources (e.g. free access to firewood and grazing land) might compensate for weak inheritance rights and for the negative effect of patrimonial laws and customs on women. Some communities in Ethiopia have chosen to house and feed widows and wives of villagers who serve in the army (IFPRI 2001).

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- Women in Ethiopia may have legal rights on paper but such rights are not socially recognised and enforced. Ethiopia's customary laws limit women's primary rights to land. The Constitution does not explicitly guarantee women inalienable land and property rights.
- Women's secondary rights to land and resources are being reduced under privatization. Privatization of property has broken down the support mechanisms that helped poor households in case of need and has limited the access to cooperative work, upon which women (and especially female headed households) particularly depended for access to labour. Women suffer from the increasing shift in control over land from community-based ownership to male-dominated elites. The growth of Islam in Ethiopia risks to tighten men's control on women and increase women's labour burdens and it is likely to impact negatively on women's rights to land. Women's high illiteracy rates further weaken their position (FAO/OXFAM, 2003).
- Although a woman in Ethiopia might have access to land through her husband once she is married, she is likely to lose it if a conflict erupts. Many women, following the 1977-1991 civil war, were widowed and lost their lands. There are no provisions on how lost rights can be reclaimed. Affected women have little access to the courts, as many cannot afford them, but there are no alternative methods of resolving these conflicts. This absence is likely to have a very negative impact on women access to land now and in the future (Mwagiru, 1998).
- There are no a strong women's movements in Ethiopia at the national, regional and local levels (CEDAW/C/ETH/4-5).

## **RECOMMENDATIONS**

- In Ethiopia's ethnically based regions more information should be gathered on how transition to new land reallocation, planning and administration by the new state governments, is actually affecting women's access to land and how ethnic and/or religious factors affect women's land access and tenure security (Bruce, 1998).
- In order to examine women's welfare in rural Ethiopia, both their individual rights and the informal entitlements that women have to community resources, should be studied. The impact on such entitlements and rights of the evolution of customary tenure systems into new community based systems need to be assessed (IFPRI 2001).
- There is need for legislation that defends firm and inalienable land and property rights for women during peace as well as in the event of conflicts. Women should be given priority and support in reclaiming their land and property formerly owned or inherited by the displaced people. Such laws would help the reconstruction process (Mwagiru, 1998).
- More efforts are needed to increase familiarity with the newly adopted Family Code, particularly at the regional level and to make women aware of their land rights and support them to realize those rights.

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# Ghana

## **I. DATA FACT SHEET**

Land Area	22,754,000 Ha (2002) <sup>1</sup>
Agricultural Land	14,450,000 Ha (2002) <sup>1</sup>
Total Population	21,664,000 (2004) <sup>2</sup>
Population Growth Rate	2,4 (1992-2002) <sup>2</sup>
Population Density	60 per sq km (200 in rural areas) (2004) <sup>8</sup>
Female Population	49% (2004) <sup>2</sup>
Rural Population	52% (2000) <sup>2</sup>
Life Expectancy [women/men]	63,8/60,3 (2002) <sup>2</sup>
Total Fertility Rate	4,2 (2002) <sup>3</sup>
Infant Mortality (per 1,000 live births)	62 (per 1,000 live births) (2000) <sup>3</sup>
Sex Ratio	(/100 female) 99,1 <sup>2</sup>
Maternal Mortality Rate	540 (per 100,000 live births) (2000) <sup>4</sup>
Women s Literacy Rate	63,2% (2000) <sup>5</sup>
Adult Rate of HIV [range for women (15-49)]	3.0% [0.02%] <sup>7</sup>
Poverty	N/A
Women in Agriculture	N/A
Women-headed Households	37% (2005) <sup>6</sup>
Women Land Owners	N/A

**Sources:** (1) FAOSTAT; (2) UN Population Division Database; (3) World Health Report 2004, WHO; (4) WHO (WHR2004)/ UNICEF; (5) UNESCO, including the Education for All 2000 Assessment; (6) FAO 2005; (7) UNAIDS; (8) Duncan 2004.

## **Rural Woman Profile**

Sixty two per cent of the nearly 15 million people in Ghana live in the rural areas where agriculture is the first source of income (Bruce, 1998).<sup>33</sup> As in many other Sub-Saharan countries, women in Ghana are at the forefront of rural economy. Ghanaian women account for about half of the agricultural labour force and produce around 70% of Ghana's food crops<sup>34</sup> which cover 40 percent of all the cultivable land (COHRE, 2004; Duncan and Brants, 2004).

Within the clear division of labour typical of Ghanaian rural communities, women trade-off between non-productive and productive roles. Childbearing and rearing responsibilities are considered non-productive roles included among the domestic tasks that guarantee the reproduction of the labour force (Duncan and Brants, 2004). Women's productive role comprises both production for the market, and subsistence/home production. As a result, women's farming work can include working as independent farmers and wage workers. Their activities consist of planting, weeding, watering, harvesting, transporting farm produce, agro-processing and marketing of small amounts of crops, whereas men market larger amounts of farm produce.

Ghanaian women also have a community-management role. This voluntary unpaid work consists of the supply and maintenance of collective resources such as water, health care and education (Duncan and Brants, 2004).

Despite the major role women play in development at all levels, they still suffer disparities in access to education, health, and economic resources. Ghanaian women have a much higher level of illiteracy than men. Additionally, as far as HIV/AIDS is concerned, women face the greatest burden (UNFPA, 2001). At the end of 2001, over 51 percent of the population suffering from HIV/AIDS

was women (COHRE, 2004) but other sources report higher percentages (WiLDAF/FeDDAF, 2005). Women in Ghana are at high risk of dying from pregnancy related causes. Maternal Mortality Rates in Ghana are estimated at 540 per 100,000 live births. This fact has serious consequences on the economic and social life of the communities (WiLDAF/FeDDAF, 2005).

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

Under Article 11 of Ghana's 1992 Constitution, customary law is considered to be part of the common law of Ghana (COHRE, 2004). The Constitution endorses the authority of communities' chiefs and divides land into public and customary tenures.

Under the section, *Fundamental Human Rights and Freedoms* the Constitution protects the right to equality of all (Art 17.1) and states that, "(...) a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status" (Art 17.2). Under the section *Directive Principles of State Policy* the Government of Ghana take all necessary steps to ensure the full integration of women into the mainstream of economic development of the country (Art. 36.6). Article 36 warrants women the ownership of property and the right of inheritance (Art 36.7). Article 22 guarantees both spouses a reasonable portion of each other's estate regardless of whether or not the spouse wrote a will before their death. In this way, the Constitution permits courts to override a will if it does not provide adequate protection for the surviving spouse and children (Duncan/Brants, 2004; GoG, 1992).

<sup>33</sup> Rural areas in Ghana are densely populated. Despite the national average of 60 persons per square kilometer, rural density is much higher. During the 1990s it almost reached 200 persons per square kilometer (Bruce, 1998).

<sup>34</sup> The major cash crop grown in Ghana is cocoa. Growing cocoa requires high labour inputs, huge capital for land acquisition and input such as seeds, insecticides, implements. Most women have been unable to take advantage of the new opportunities provided by the cocoa industry because of lack of necessary capital inputs and labour requirements. Therefore, these opportunities are often taken by men (Duncan and Brants, 2004).

## II. Legal Framework

In spite of its 35 years of independence in which Ghana has experienced nine different types of administration (three civilian and six military), women have been able to achieve some recognition of equality through the law.

Like most African countries, Ghana has a pluralistic legal system, including customary laws, Islamic law, and the general law based on the English law. Certain laws have been integrated into a legal superstructure. The 1971 *Matrimonial Causes Act*, for example provided, for the first time, for matrimonial cases and other connected matters, for both monogamous and polygamous marriages (Wanitzek, 1991).

Another example of an integrating decree in the area of law of succession is the *Intestate Succession Law* (Wanitzek, 1991). The 1985 Intestate Succession Law (PNDC Law 111), amended in 1991, includes a certain number of laws which have improved the situation of wives and children in the event of an intestate death of a husband allowing them to inherit money and goods accumulated during marriage (ILO, 2000). The 1985 law is considered one of sub-Saharan Africa's most comprehensive pieces of succession legislation and an important landmark in women's inheritance rights in Ghana. The law provides both spouses equal rights to inheritance. The law also stresses on the importance of the nuclear family and aims at giving the largest portion of the estate to his/her spouse and children. This law replaces customary laws, which do not consider widows part of her husbands' family and is therefore not entitled to any property (Duncan and Brants, 2004). Nevertheless, customs consider land part of the family lineage and *Intestate Succession Law* cannot prevent the land from being passed to men. Women in polygamous marriages are further ignored by the law because the term 'spouse' is used, in the singular.<sup>35</sup> Finally, the *Intestate Succession Law* does not cover non-

formalized unions (COHRE, 2004).

The *Administration of Estates Law* (1985, amended in 1998), provides additional protection to women and children. It poses that when the value of the estate is considered too small under the law (equal to or less than 10 million *cedis*) then it should be devolved entirely to the spouse or the child in order to protect the needs of beneficiaries (Duncan and Brants, 2004). Another important law that has improved women's situation in the last years is the *Customary Marriage and Divorce Registration Law PNDC Law 112* (1985). Together with the 1971 *Matrimonial Causes Act* it aims to create a legal framework for marriages in order to support women seeking divorce under both customary and ordinance marriages. Finally, the *Children's Act* protects young girls from an early marriage (COHRE, 2004; WILDAF/FeDDAF, 2005).

## III. Agrarian and Land Reform Laws

Community-based systems remain the dominant form of land tenure in Ghana. However, the economic growth of the past few decades has pushed land markets and land privatization taking advantage of the increasing traditional smallholding cocoa's production in the southern region (Sacco, 1995).

Nevertheless, the Government of Ghana has sought to reduce the power of local chiefs through legislation. The 1982 *PNDC Proclamation* states that customary land transactions involving monetary compensation need to have the approval and concurrence of the Land Commission.<sup>36</sup> The 1994 *Office of the Administrator of Stools Land Act* requires chiefs to establish land accounts for the deposit of all payments collected by the stool, including rents. In addition, in order to solve the problem of insecurity of titles in the customary system caused by the increasing claims over entitlement to land, the *Land*

<sup>35</sup> In Ghana, 23% of currently married women are in a polygamous union, a decline from 28% in 1993. (Abantu for Development)

<sup>36</sup> The Lands Commission was first established by the 1969 Constitution under the Lands Commission Act 1971. It is a governmental body which has the authority to regulate the size and duration of transfers as well as judge their fairness. The Land Commission was the most powerful, delegated authority with respect to land in the country. However, it did not meet expectations due to many constraints such as excessive political interference and control of the state, the weak management, obsolete statutory enactments and regulations, etc. (Kasanga 2000).

*Registry Act* and the following *Compulsory Land Title Registration*, enacted in 1986, require that all persons with claim to land must register it in the local registry (Bruce, 1998). The *Land Title Registration Act*, which includes freehold, usufruct, lease and tenancy agreements, should make land transactions safer, simpler and cheaper, limiting frauds and minimizing legal actions (Duncan and Brants, 2004).<sup>37</sup> These registration measures may be seen as part of an overall move towards privatizing land, which often has negative consequences for women.

#### **IV. National Policies**

The Ghanaian National Land Policy sought to reinforce the main objectives of the *Land Title Registration Law*. The Land Policy was issued in Ghana in June 1999 by the Ministry of Lands and Forestry and it was later amended in 2002 (GoG 2005); it sought to raise effective and efficient management of land in the country by improving tenure security through land registration, reducing prolonged land boundary disputes, conflicts and lawsuits, stimulating economic development, reducing poverty and promoting social stability and equity (GoG, 2005). The Land Policy has been strongly criticized for its over concentration on government interests (such as compulsory acquisition) and a lack of sensitivity to the specific needs of the most vulnerable groups in society, especially women and the poor (Duncan and Brants, 2004).

After the launch of the National Land Policy, the government of Ghana instituted the Ghana Land Administration Project (LAP) as a vehicle for the implementation of its long term administrative reform program in collaboration with the World Bank, GTZ, and FAO. The LAP aims to develop a sustainable and well functioning land administration system. It also focuses on providing assistance to traditional authorities, by establishing administrative structures, and to giving women and the landless tenure security (GoG 2005).

Abantu for Development is a grass root organization of Ghanaian women's, active in defense of women rights and land rights in particular. Abantu issued a manifesto demanding representation of women in the land commission equity in access to and control of land, and guarantees of women's inheritance rights (Kachingwe, 2004).

#### **b. Customary Legal System**

It is believed that up to 80 percent of all marriages in Ghana are contracted under customary law. Most of the land in Ghana has been administered by customary "governments" named "stools" in the South and "skins" in the northern region of the country. Supreme chiefs and councils of elders hold the offices of the stool and skin land and have the role of custodian over land in each jurisdiction. They hold the land in trust of the community which means that, through an allodial title, the land belong to that community. Family land is common only in certain regions of Ghana. It is vested in landholding families and administered by family heads and senior family members (Bruce, 1998).

Even if the State sought to provide marriage legislation accorded with the English law through the *1971 Matrimonial Causes Act*, in Ghana the concept of family is still closely associated with blood ties. Marriage itself does not create a new family. Lineage is a fundamental notion in Ghana, where it is considered a social institution and cohesive force that maintains the social structure of a community (COHRE, 2004). Every Ghanaian belongs either to a matrilineage or a patrilineage.<sup>38</sup> In Ghana, the Ewe, Ga, Dangbe and Krobo are examples of patrilineal societies (which is the dominant inheritance system practiced in the Volta Region) whereas the Fanti, Akyem

<sup>37</sup> Such measures have only been applied to the Greater Accra Region because of the limited efforts to expand its coverage (Duncan, 2004).

<sup>38</sup> A matrilineage consists of all persons, male or female, who are descended in a direct bloodline from a common female ancestor; in a patrilineage, the common ancestor is a male (Duncan and Brants, 2004).

and Ashanti are examples of matrilineal societies (Duncan and Brants, 2004). Lineage influences the political and socio-economic organization of society and determines the property and succession rights. As a result, women's access to land is indirect in the customary system, as their right to use the property is tied to their relationship with husbands, fathers, brothers and sons. A study conducted in the Volta region revealed the strong impact of marriage on women's access to land among patrilineal communities. Women generally gain secondary access to their husbands' land through marriage, but lose their lineage land access's right at the same time.<sup>39</sup> According to the study, widows with children are generally permitted to continue farming on their husbands' land after his death as they raise the deceased's children. But widows without children are usually not permitted to stay and use the land of their husbands - which was generally inherited by a brother - after his death (Duncan and Brants, 2004). In terms of child's inheritance, in the patrilineal preference is usually given to sons over daughters, even if the sons are younger than the daughters (Duncan and Brants, 2004).

The Anlo's community of the Southern zone of the Volta Region, observe a curious inheritance practice called grandmother/grandma land (*mamanyigba*) whereby land is passed from mother to daughter.

*"(...) Grandma Lands refer to lands that were formerly given to trokosi women known by the name of "Fiasidi." Unlike a typical trokosi, the Fiasidi were privileged women upon whom the community conferred much respect. The Fiasidi received deity lands, which they could cultivate whilst serving in the shrine, and were given additional land in exchange for their services, which they could pass on to their children. The Fiasidi often felt more inclined to pass their land on to their daughters as a counter measure against existing discriminatory inheritance patterns. The grandma land was initially used by women basket weavers*

*for the cultivation of reeds and wickers (...)"(Duncan and Brants, 2004:10).*

Nevertheless, through this particular inheritance system the claims of daughters to land are seen only as a privilege and not as a right that can be enforced before a court of law (Duncan and Brants, 2004).

In general, it seems that men maintain the positions of authority in both matrilineal and patrilineal systems. Neither system protects women's rights of inheritance even if it is believed matrilineal systems provide women with better access to land (COHRE, 2004).

<sup>39</sup> According to the study only 5% of the female respondents were allowed to keep their lineage land after marriage.

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- Although the *Intestate Succession Law* requires that a portion of the deceased person's property must be left to their spouses, community traditions continue to override this measure, leaving women without land. Additionally, most women do not know that the law exists or are not aware of the guarantees it provides to them, including the protection against eviction and property-grabbing. Finally even if they are aware about its contents, they often lack support in the process for claiming their rights.
- Sometimes women suffer tenure insecurity because lineage and extended family structures give way to smaller family units (the nuclear family structure imported from the colonial period on) where women secure access to resources is not longer safeguarded by the community. This raises questions about the evolution of the customary system and its consequences on women's property rights and should stimulate local dialogue about what components of the traditional norms should be maintained or instead be allowed to phase out.
- Many factors such as high rates of illiteracy among Ghanaian women and insufficient access to information contribute to the lack of awareness about their rights.
- Expansion of commercial agriculture has crowded out women from crop production forcing them into insignificant, petty trade in order to provide food for their family.
- Small-scale farmers, and women in particular, do not usually have access to credit because financial institutions are situated in urban areas and transaction costs are too high for both lenders and farmers. Agricultural credit is considered very risky and financial institutions often ignore it.

## **RECOMMENDATIONS**

- The guarantee of women's tenure security and the protection of women's land rights require full participation of traditional and customary chiefs. This participation can be achieved through a process of tenure reform that documents and recognizes the registration and classification of land titles considering the broad range of rights' holders. Greater convergence between customary law and civil law is needed. Civil law should be revised, taking into account regional, tribal and village-specific differences in inheritance rights. The aim should be to reform, not to replace, customary law.
- Specific programs to raise awareness and inform women about inheritance and succession laws, as well as how to access and use land properly, are needed. The content of inheritance rights and laws should be thought in secondary schools and adult education programs, better if by local teachers, trained as paralegals, in order to reach communities in their language. Literacy programs are also a key priority area.
- In the case of Ghana it is important to integrate women's land rights approach with livelihoods (FAO/OXFAM). Security of tenure is not sufficient if an enabling environment is not established that includes improving access to land, access to credit, technology, markets, inputs, training and extension services. ActionAid Ghana reports that training of women in the use of agricultural technology resulted in women's increased interest and claims of land ownership.

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## Guatemala

### **I. DATA FACT SHEET**

<b>Land Area</b>	10,843,000 Ha (2002) <sup>1</sup>
<b>Agricultural Land</b>	4,507,000 Ha (2002) <sup>1</sup>
<b>Total Population</b>	12,661,000 (2004) <sup>2</sup>
<b>Population Growth Rate</b>	2.7% (1992-2002) <sup>2</sup>
<b>Population Density</b>	103 per sq km (2000) <sup>2</sup>
<b>Female Population</b>	46.6% <sup>2</sup>
<b>Rural Population</b>	54.9% (2000) <sup>2</sup>
<b>Life Expectancy [women/men]</b>	70.8/63.4 years (2000-2005) <sup>2</sup>
<b>Total Fertility Rate</b>	4.5 children per woman (2002) <sup>3</sup>
<b>Infant Mortality (per 1,000 live births)</b>	45 (2002) <sup>3</sup>
<b>Sex Ratio</b>	95.0 males per 100 females <sup>2</sup>
<b>Maternal Mortality Rate</b>	240 /100,000 (2000) <sup>4</sup>
<b>Literacy Rate (women/men)</b>	38.9%/24% (2000) <sup>6</sup>
<b>Adult Rate of HIV [range for women (15-49)]</b>	N/A <sup>5</sup>
<b>Poverty (extremely poor)</b>	75% of rural women 80% of indigenous women
<b>Women in Agriculture</b>	35.4% <sup>7</sup>
<b>Women-headed Households</b>	16% <sup>7</sup>
<b>Women Land Owners</b>	N/A

**SOURCES:** (1) FAOSTAT; (2) UN Population Division Database; (3) World Health Report 2004, WHO; (4) WHO (WHR2004)/ UNICEF; (5) UNAIDS; (6) UNESCO; (7) FAO 2002.

## **Rural Woman Profile**

Indigenous people form the majority of the population in Guatemala, and they also represent the poorest and the most vulnerable section of the society. Most live in the temperate highlands making this area the most densely populated region of Guatemala. Gender, ethnicity and geography pose a triple challenge to indigenous, rural women who are perceived as socially inferior. Poverty affects 75% of rural women and 80% of indigenous women (FIAN, 2004).<sup>40</sup>

Although, socially, their role is acknowledged mostly in terms of their reproductive capacities, Guatemalan rural women participate in almost all the agricultural and livestock activities. Fifty percent of all income in rural households is the result of women's work. Guatemalan women represent 49.6% of the population and 80% of them depend on land and agriculture for their livelihood. They are responsible for 25% of the work in traditional production and the export economy. Women are actively involved in wheat, beans, maize and coffee production with a special role in the post-harvest stage. In addition, many women participate in the seasonal or permanent wage-earning labour force of commercial agriculture (FAO, 2003).

In Guatemala, the large coffee, sugar-cane and banana estates employ a considerable number of indigenous and Mestizo women whose working conditions are precarious and whose health is endangered by the use of chemicals. Women workers are also unlikely to have legal contracts and are generally employed for a few months of the year.

Women in rural Guatemala are at greater risk of disease and premature death because they often lack adequate health-care services. Even though the reduction of maternal mortality was among the targets set forth in the

peace agreements, less than 50% of rural women receive state medical care during childbirth (CEDAW/C/GUA/5).

Guatemalan rural women have one of the highest illiteracy rates in Latin America, reflecting long-standing discrimination. There are also substantial differences between urban and rural areas. Indigenous Guatemalan girls have the lowest literacy levels because of misalignment of school programs and curricula which are inadequate for rural and indigenous realities. Many indigenous women are monolingual and this prevents their integration in the formal education system. Consequently, unemployment affects women more than men, because they must combine a job with housework and looking after their families (CEDAW/C/GUA/5).

Armed conflict has increased vulnerability among women leaving nearly 50,000 widows – the majority of which are young indigenous women with children. Many widows who became the head of the household live in the western highlands region (ECLAC, 1997).

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

Article 4 of the 1985 Constitution recognizes the equality of all human beings. Article 46 stipulates that, in human right matters, treaties and conventions take precedence over the Constitution. As such, the definition of discrimination contained in the CEDAW convention can be invoked before a court of law (GoG, 1985).

<sup>40</sup> Even though the last country census noted that 43% of the population in Guatemala is indigenous, different sources found figures which describe Guatemala as one of the few Latin America countries where indigenous represent the majority of the inhabitants: 70-80% of the entire population.

## II. Legal Framework

With regard to gender equity, Guatemala made great strides during the 1990s in reforming and modifying statutes and codes to recognize women and men's equal rights, including specific language regarding gender equity.

Guatemala approved legislation that recognizes the equal rights of women and men, wives and husbands, daughters and sons. Concerning the right to property, the civil code establishes provisions for marriage settlements (articles 116, 121, 125), community of property (article 122), separation of property (article 123), community of acquisitions (article 124), subsidiary regime and property of each spouse (article 127) (FAO, IFAD, ILC 2004).

Guatemalan legislation recognizes *de facto* unions (FAO, IFAD, ILC 2004).<sup>41</sup> In spite of the fact that the constitutions and civil codes now recognize the concept of 'dual-headed household', there is a low incidence of joint land registration between spouses.

## III. Agrarian and Land Reform Laws

Guatemala suffers from vast land distribution inequalities. The Agrarian Reform implemented in 1952 was aborted and since then no significant programs of land redistribution have taken place. During the 1990s, within the framework of the 1996 Peace Agreement, redistribution policies lost priority in the public discourse to the promotion of economic growth and supporting a *Market Based Land Reform* (LRAN, 2002).

Three institutions were created in Guatemala by the *Agreement on Social and Economic Aspects and the Agrarian Situation* in order to work towards the achievement of legal certainty of land use, tenancy and property: CONTIERRA (Presidential Office of Legal Assistance and Resolution of Land Conflicts), UTJ-PROTIERRA (Juridical Technical Unit, Institutional

Committee for Development and Fortification of Land Ownership) and FONTIERRAS (Land Fund). The Government created FONTIERRAS in order to facilitate land access to the rural poor and also to regularize land tenancy (property titles) in favor of small landholders (Barham, Carte and Useche, 2004). The experience of FONTIERRAS represents a model of market-assisted land reform. The role of this land fund is to foster a land market, providing credit for land purchase, and a subsidy to help with the capitalization of productive enterprises formed by poor peasants. Decree n.3 of the *Land Fund* intended to promote policies and programs to secure the equal access of rural women to credit and the land market. Explicit provisions have not been made for joint titling of land or for targeting women for other aspects of the program such as technical assistance and credit. The focus was on family farming and household heads (LRAN, 2002).

Guatemalan farmer organizations such as CONGCOOP (*Coordinación de ONG y Cooperativas*) and CNOC (*Coordinadora Nacional de Organizaciones Campesinas*) note that in the negotiation process, FONTIERRAS' role has been weak and women's participation negligible, given that FONTIERRAS' staff prefer to work with groups of men (CNOC, 2004).

Even though the Guatemalan government recognizes the equality between women and men's land rights, land co-titling and co-ownership, few Guatemalan women take part in the agrarian reform programs (only 8% of women participated in 1996) (Deere and Leon, nd).

The only time national laws have been successfully implemented has been when they were supported by grassroots organizations. Resettled women form most of the grassroots women organizations working on land access issues. Their experience has given them a good

<sup>41</sup> Art 48 Guatemalan Constitution.

basis to work on access to land. The *Coordinadora de mujeres por el Derecho a la Tierra y la Propiedad* is the most involved organization on women's land access and rights (Deere and Leon, nd).

#### **IV. National Policies**

In October 2000, the *Governmental Agreement No 337* established a Presidential Secretariat for Women (SEPREM), which is a governmental body with the status of a State Ministry with the mission of promoting the comprehensive development of Guatemalan women. SEPREM issued its National Policy for the Advancement and Development of Women: Equal Opportunity Plan 2001-2006. Although SEPREM has led a process of awareness raising at all levels of Government and mainstreaming development projects and programs for women to overcome existing inequities, gender-disaggregated statistics are hard to find. SEPREM signed an Agreement with the National Statistical Institute (INE) to conduct more specific and disaggregated surveys (CEDAW/C/GUA/5). This activity is based on the Agreement on Social and Economic Aspects and the Agrarian Situation, in which the Government guarantees to take women into development plans, programs and strategies, recognizing the equal rights of women and men in the house, in the workplace, in the production sector and in social and political life and ensuring that women have the same opportunities as men to access credit, land ownership, housing and other resources.

The Land Trust Fund Act amended by Congressional Decree No. 24-99 incorporates the concept of co-ownership for couples that are married or in the *de facto* unions and individual ownership for single women.

In its Agricultural Policy 2000–2004, the Ministry of Agriculture, Livestock and Food included a policy component on gender equity and advancement programs

to secure the equal participation of rural women and youth (CEDAW/C/GUA/5). The objective was to integrate rural women into the development of productive activities, promoting their access to land and other productive resources and their ability to form associations and organizations, in order improve their economic and social conditions. One specific proposal was to check that rural policies on access to land, financial and other resources demonstrably include women (CEDAW/C/GUA/5).

#### **b. Customary Legal System**

As in most Latin American countries, Guatemalan women are excluded from decision making because of the gender division of work and the prevailing patriarchal culture where the male household head makes all the major decisions regarding the family and the farm. Guatemalan customs, traditions and attitudes are deep-rooted in society and influence the laws and institutions. As such, women lack access to land and to services associated with production-related activities, such as credit, technical assistance and training.

Gender discrimination with regards to land, is closely related to son preference in inheritance patterns. Men hold privileged positions in the household and male preferences prevail in the community-led land distribution and land market programs carried out by the Government.

The usual way for indigenous and poor women in Guatemala to acquire access to land, apart from the rare appropriation authorized by redistribution programs or land deeds, is by inheritance. Even though most Latin American civil codes provide for equal inheritance of property by all children, in practice daughters are rarely given land, or are given a share much smaller than that of their brothers. The

practice of daughter exclusion persists largely because upon marriage women move away, effectively losing their claims to family land. As a consequence most women are involved in property indirectly through their spouses.

At the community level women don't participate in decision-making. The *Juntas Directivas* of the communities are composed exclusively of men and during official meetings women often attend without speaking or voting. Women's legal capacities are limited and communitarian programs stimulating participatory and organizational skills have never been implemented.

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- Guatemala society is ruled by an “apartheid regime” where the indigenous population is excluded from every social and economic process. Within indigenous communities women are even more marginalized by their male relatives.
- Women's representation in Guatemala is minimal – even within the *campesinos* movements and in the government institutions.
- Guatemalan women often do not speak about their situation, because they are not recognized as citizens or individuals. Indigenous women make up the majority of this voiceless population.
- Women do not benefit from FONTIERRA's programs, which should provide titles to those that do not normally have a right to secure tenure under customary arrangements.
- Lack of legal recognition of women's role as producers impeding women access to credit, social security.

- The customary system favors men over women especially with regard to land.
- Lack of access to credit, especially for indigenous communities in general which do not have the necessary means to obtain credit, such as good organization and property to secure it.
- Lack of disaggregated by gender and ethnicity data on women access to land and resources.
- Lack of appropriate education for indigenous women which would enable them to understand the relevant laws and improve their capacities to claim their rights.

## **RECOMMENDATIONS**

- A complete understanding of the customary law is fundamental, but it is important to recognize that the systems are under constant evolution and are influenced by many external factors. This continual evolution is also part of the cultural change that needs adapted institutions and programs focusing on women. More essentially, however, women need basic education, recognition of their civil rights, and promotion of their land rights with complimenting legal assistance over the long term.
- Support implementation of national policies and programs aimed at women's empowerment. Although programs should not be focused solely on women, as there are many male actors that would react to a loss of power. The promotion of women's rights may launch an internal crisis and could unintentionally have negative impacts on women. Promotion of women membership in farmers' organization must become recognized as empowering to all concerned and female leadership should be encouraged.
- Identify and support grassroots organizations already

working to improve women's land access in Guatemala. An emphasis should be placed on programs that create spaces for dialogues and give women the knowledge and capacities to claim their land rights.

- Support studies to gain more complete understanding of women's need for land as part of personal and household's livelihood strategies.
- Promote women's involvement in local decision making, especially with regard to land administration and management.
- Promote training and education programs to meet women-specific needs with regard to basic education, legal knowledge and agriculture.
- Support organizations to launch a media campaign to raise awareness of indigenous and women's land inequalities and land rights.

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## Malawi

### **I. DATA FACT SHEET**

<b>Land Area</b>	9,408,000 Ha <sup>1</sup>
<b>Agricultural Land</b>	4,090,000 Ha (2002) <sup>1</sup>
<b>Total Population</b>	12,337,000 (2004) <sup>2</sup>
<b>Population Growth Rate</b>	1.9% (1992-2002) <sup>2</sup>
<b>Population Density</b>	99 per sq km (2000) <sup>2</sup>
<b>Female Population</b>	52% (2004) <sup>2</sup>
<b>Rural Population</b>	83.9% (2003) <sup>2</sup>
<b>Life Expectancy [women/men]</b>	40.6/41.6 (2005-2010) <sup>2</sup>
<b>Total Fertility Rate</b>	6.1 children per woman (2002) <sup>3</sup>
<b>Infant Mortality (per 1,000 live births)</b>	117 (2000) <sup>3</sup>
<b>Sex Ratio</b>	98,6 men /100 females (2005-2010) <sup>2</sup>
<b>Maternal Mortality Rate</b>	1800 /100,000 (2000) <sup>4</sup>
<b>Literacy Rate [women/men]</b>	54%/74.9% (15 to 24 years old) <sup>5</sup>
<b>Adult Rate of HIV [range for women (15-49)]</b>	14,2% [3-5%] <sup>6</sup>
<b>Poverty</b>	64% <sup>6</sup>
<b>Women in Agriculture</b>	96% (2005) <sup>7</sup>
<b>Women-headed Households:</b>	26% (2005) <sup>7</sup>
<b>Women Land Owners</b>	51.6% <sup>8</sup>

**SOURCES:** (1) FAOSTAT; (2) UN Population Division Database; (3) World Health Report 2004, WHO; (4) WHO (WHR2004)/ UNICEF; (5) UNESCO, including the Education for All 2000 Assessment; (6) UNFPA; (7) FAO 2005; (8) GoM Agricultural Census, 1993

## **Rural Woman Profile**

The British protectorate of Nyasaland became the independent nation of Malawi in 1964. Malawi is one of the poorest countries in the world and the most overpopulated country in South East Africa with a Life Expectancy among the lowest in the region. Despite the fact that Malawi arable land accounts only for 23% of the total, for more than 80% of its population rural and agricultural activities form the bulk of households' livelihood strategies (Chirwa, 2004).

As in many neighboring countries, the female population exceeds that of the male population (52%). About 93% of women live in rural areas where they are primarily involved in subsistence agriculture. Studies demonstrate that close to 30% of rural households in Malawi are headed by women who are divorced, separated, widowed, unmarried, married in polygamous unions or married to husbands who are migrant workers (Bruce, 1998). With their roles limited to household tasks and work in the fields, women do not expect to own land or make decisions on how the land should be used (ILC, 2003). Understanding Malawian land use and management is made complex because of the coexistence of both patrilineal and matrilineal systems (SARPN 2005).<sup>42</sup> Malawian women also face significant health problems. The country has a very high Maternal Mortality Rate. HIV/AIDS is a major threat affecting 8% of the population, with prevalence rates higher for women, especially for females from 15 to 24, as they are three to four times more likely to be HIV positive than men. HIV prevalence among pregnant women is estimated at 16.4% (UNFPA, 2002). One of the consequences of the high HIV/AIDS infection rate is that orphaned children are often removed from school, undermining their education and future skills base.

Speaking about women's rights to land is made difficult because of the general tenure insecurity prevalent in

Malawi – a phenomenon that has never been experienced in the country's tenure history. Due to the contrast between the large-scale estates and the smallholder sector and the recent privatization and expansion of the multinationals (producing maize and tobacco), poor and landless households face increasing tenure insecurity. In 1988, 56% of rural households farmed on less than 1 ha of land while 80% farmed on less than 1,5 ha (Chirwa, 2004; Walker, 2002).

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

Malawi's 1994 Constitution gives men and women equal rights. It states: "(...) women have the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status (...)." Women in Malawi have the same rights as men in civil law, including equal capacity to enter into contracts and to acquire and maintain property rights regardless of their marital status. In the case of divorce "(...) women have the right to a fair disposition of property that is held jointly with a husband and to fair maintenance, taking into consideration all the circumstances, in particular, the means of the former husband and the needs of any of the children (...)". The Constitution also states that any law that discriminates against women on the basis of gender or marital status shall be invalid. Customs and practices that discriminate against women, such as the deprivation of property, including inherited property rights, shall be eliminated (Art 24) (GoM, 1994).

<sup>42</sup> Malawi is a part of the matrilineal belt that runs through Zambia, Tanzania and Mozambique (SARPN 2005).

## II. Legal Framework

Malawian law is an example of legal dualism – customary and statutory systems coexist. After independence, Malawi was released from British jurisdiction and in 1968 the existing body of laws and norms were collected and organized into the Laws of Malawi. Nevertheless, application of customary law has been entrusted to traditional courts since 1969 (Sacco, 1995). Although the Malawi government abolished the traditional courts in the mid-1990s, and made efforts to limit the application of the customary law, the inconsistency between statutory and customary law still persists in areas such as marriage, divorce and inheritance.

The *Wills and Inheritance Act* of 1967 is the main legal instrument which provides guidelines on how property, including land, of a deceased person may be disposed. It makes a wife and children primary heirs of a deceased husband, reserving at least 50% of the total estate – private land only – for them (ILO, 2000). The 1965 *Land Act* is silent on women's traditional rights and it does not provide guidelines on how men or women inherit land in case of death of a spouse or close relative (FAO/OXFAM, 2003).

A new law in 1998 (the *Wills and Inheritance Bill*) increased widows' rights. Despite the fact that there are no formal restrictions on Malawi women acquiring rights to private, freehold land in their own name, only a small minority of women (2,7% of the registered owners) have either the financial resources or the social independence to do so. Women also face difficulties relating to the application of the law as their access is often diminished by biases within the land administration system. This is combined with women's general lack of information about buying and registering land, claiming ownership, wills, or contesting land rights (ICRW, 2004). The result is that although women have *de jure* access and control to land, their

*de facto* position is that they do not enjoy equal access, control and ownership of land.

## III. Agrarian and Land Reform Laws

The Land Act, enacted after independence from Britain, makes provisions for matters relating to customary (72% of the total), private (8%) and public land (20%) (Walker, 2002; ECA, 2003). The Government of Malawi recognizes customary tenure even if the country is moving towards a unified land registration system. According to the 1965 Land Act, customary land is vested in the Head of State and the Minister shall administer, control and dispose of it (GoM, 1965). As will be shown, there is an ongoing national dialogue on the drafting of the new land law. Some civil-society organizations are raising concerns over the risk that land titles may be registered in the name of the male head of the household. There are also concerns among customary leaders that they may lose their control over land if current policies are translated into law (David Palmer, personal communication).

## IV. National Policies

A Presidential Commission was created in 1996-1998 to undertake a broad review of land problems throughout Malawi and make recommendations for a new land policy. This Commission made a review of existing norms that discriminate against women and proposed legislation to bring the law into compliance with new constitutional standards (Report of the Presidential Commission of enquiry on land policy 1996-1998).

In order to increase tenure security of customary land through land registration and protection by law, a Presidential Commission on Land Reform was established in 1996. Its work led to a National Land Policy, formulated in January 2002, that has not yet been translated into law.<sup>43</sup> One of the main recommendations of the Malawi Presidential Committee is that the traditional

<sup>43</sup> World Bank, EU, DFID and USAID contributed to the implementation of the Land Policy.

supervisory role of chiefs, clan leaders, headpersons and family heads in land matters be formalized to allow uniform administrative procedures and transparency in all customary land transactions (GoM, 2002). Although the proposed National Land Policy recognizes women as a marginalized group, it excludes them from effective access to land when it makes reference to providing support and service to people that have the “ability and resources to make productive and sustainable use of land” (SARPN, 2005). In fact, even if statutory tenure law does not discriminate against women in terms of obtaining land rights, in practice women face socio-economic obstacles such as lack of education and resources to buy or to lease land. In addition, cultural practices discourage women from participating in land allocation committees and in decision-making. A number of local groups and NGOs, including the Nkhomano Centre for Development, have been working on raising awareness among women about their rights to own land and how such rights can empower them with greater ability to increase their family incomes (ILC, 2003).

The Government addresses women's concerns through the Ministry of Gender, Youth and Community Services. The Ministry's efforts are directed to improve women's literacy level, socio-economic status, and standard of living and promote non-discriminatory cultural practices in the matter of women's access to property rights, including land. The Ministry sought to address the longstanding tension between statutory law and customary practices that persisted even after the government abolished the traditional courts in the mid-1990s. The Ministry conducted a variety of activities designed to increase public understanding of the national legal framework and the rights it is intended to uphold through statutory law. The Ministry also produced the booklet, *Women and Law in Malawi*, serving as an everyday guide to CEDAW that was targeted to people living in rural areas. The guide

identifies nine major legal issue areas and more than 100 laws relating to the provisions of CEDAW which should be interpreted and applied with reference to the convention (ICRW, 2004).

The National Commission on Women in Development (NCWID), established within the Ministry of Community Services, coordinates government and NGO activities. The Nkhomano Centre for Development is a partnership between marginalized rural and urban communities, NGOs and relevant government institutions. In parallel to its educational and awareness raising activities directed to rural communities, Nkhomano offers paralegal services and advocates for human rights and democracy through the national radio and print media. The Nkhomano Centre also informs the population about the new Constitution, the Land Policy and the *Wills and Inheritance Act*, and explains documents, written in English, in the local language, to women who have a low literacy level and need assistance to understand the implications of the laws and how to exercise and protect their rights (ILC, 2003).

## **b. Customary Legal System**

Malawi's main ethnic group is the Chewa in the Southern and Central Regions, representing 57.2% of the entire population and whose language, Chichewa, is the second official language in the country. In the Northern Region, the main ethnic groups are the Ngoni, Tonga, Ngonde and Tumbuka. Other ethnic groups are Yao, Nyanja and Ngoni (CIA, 2005; Bruce, 1998).

In Malawi's traditional tenure system, land was assigned by chiefs and village leaders to the clan or the community, and was cultivated by the household (Sacco, 1995). In terms of women access to land, women's customary land

rights depend on the marriage regime practiced in their community. Matrilineal marriage is practiced in more than 50% of the country with two prevalent forms *chikamwini* (or *uxorilocal*, the husband moves to the wife's village), and *chitengwa* (or *virilocal*, after paying the bride prize the man takes the wife to his village but the children belong to the woman's lineage). Widows suffer land insecurity in a *chitengwa* marriage. Upon the death of her husband she must leave the husband's village and consequently loses her land rights. In a *chikamwini* marriage the same situation is experienced by widowers (ECA, 2003). Under matrilineal marriages land is inherited by sons from their mother's brother and women do not have full ownership and control of it because uncles control the land owned by the women. The 1996-1998 Presidential Commission in Malawi cited matrilineal inheritance as a major cause of conflict over property (including leases) between cousins; consequently, the commission suggested that sons should inherit directly from their fathers (ICRW, 2004). It also noted public preference for a rule that would permit direct inheritance to all categories of property by surviving spouses and children (SARPN 2005).

In patrilineal marriages, commonly found in the northern region of Malawi, where land inheritance occurs through the male lineage; women can only access land through their husbands and sons (SARPN, 2005). In such marriages, a divorced woman loses the right to cultivate her field and has to return to her own village. Upon her husband's death, she can use the land that her husband owned as long as she remains unmarried. As the sons grow old, she shares her land with them (ECA, 2003). When a man dies in patrilineal systems, the property he leaves behind, and even its use rights, may be grabbed or disputed by the extended family, leaving his widow and children property-less and even forcing her to move away from the marital village or residence (Ngwira, nd).

In the patrilineal environment, husbands and paternal relatives have more control and disposal rights over property. Distribution after death does not take into account a wife's contribution or ownership rights. There is a tendency for the relatives of the man, including female ones, especially sisters, to identify with his property (ICRW, 2004). On the opposite, women in matrilineal societies can have important advantages in negotiating their claims to the property of the lineage, including land, especially in *uxorilocal* societies where men go to live in their wives' villages (Walker, 2002). Nevertheless, these historical matrilineal societies have been greatly modified over the last century and, under European and Muslim influence, have been slowly evolving into patrilineal systems. Both matrilineal and patrilineal systems recognize polygamy.

In both matrilineal and patrilineal systems of marriage women have few or no independent rights to property because even when they inherit property, it is usually in the limited context of user rights (ICRW, 2004). There have been many efforts in Malawi to change customary inheritance systems in order to enable the most vulnerable people (especially wives in patrilineal systems) to acquire land (Sacco, 1995).

## **IMPACT OF HIV/AIDS IN RURAL WOMEN'S ACCESS TO LAND**

The impact of HIV/AIDS on household's land management in Malawi is gendered. In rural Malawi, where customary tenure predominates, HIV/AIDS has a negative impact on the ability to retain land for the most vulnerable groups such as widows and orphans. In customary tenure, women's access to land is often linked to their ability to make use of it. Therefore, the household's access to land is frequently dependent on the presence of an able adult male.

As a consequence, where the headship of a household passes from male to female due to HIV/AIDS, the ability of that household to access and retain land becomes uncertain. Additionally, widows and children of AIDS patients are sometimes denied the right to inherit agricultural land from their husbands or fathers.

Women at risk to lose their rights to matrimonial land upon the death of their spouses are found to employ a range of strategies to ensure that they continue to have some level of access. Such strategies include remarriage (to gain access to a new piece of land), celibacy (to secure the permission of in-laws to continue to access part of the late spouse's land) and relationships with the late spouse's brother, in order to keep the right to the matrimonial land. These strategies are mostly practiced in patrilineal systems but also result in cultural practices that potentially increase the transmission of HIV/AIDS (SARPN, 2005). Some direct financial impacts of HIV/AIDS can be in the form of medical and funeral expenses while indirect costs may be related to absenteeism resulting from illness or from care of the ill and consequent loss of income. The liquidation of assets, including land, as a coping strategy, may be another consequence of HIV/AIDS.

### **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- In spite of the existence of legal instruments that outlaw practices that discriminate against women, the dispossession of widows and orphans of land is becoming more prevalent with the increased mortality due to HIV/AIDS. Women's secondary access through marriage in customary systems can, as soon as the marriage ends, force them off their land. Even if women have the right to access land under the legal system, few of them have the resources to purchase land on the open market.
- Malawi is one of the few countries with strong evidence that the government's insistence on modifying customary tenure systems is having an adverse impact on the rural population's access to resources. In particular, the move towards privatization of land is increasing overall tenure insecurity and in particular further limiting women access to land and other natural resources, because titles are commonly registered in the man's name. In addition, women's entitlement to community resources is restricted due to privatization of communal lands.
- Women's low level of education and the fact that laws are written in English bars their awareness of their rights and ability to claim them.

## **RECOMMENDATIONS**

- Support civil-society campaigns to ensure that the gender sensitivity proposed by the National Land Policy is implemented. This requires that the provisions of the foreseeable land law assume a degree of gender bias in favor of women in order to reverse the prevailing situation.
- Support civil society lobbying efforts on the drafting of the land law stemming from the Presidential Commission recommendations. Efforts should be directed to include provisions to improve the land tenure security of those affected by HIV/AIDS, particularly widows and orphans, in order to enforce their ability to retain such land and utilize it effectively
- Support existing initiatives aimed at women's empowerment through adult informal education (including education on sexual and reproductive health and HIV/AIDS prevention), and through campaigns aimed at raising communities awareness of the negative implications of discriminatory practices on vulnerable members of society, and on rights and responsibilities enshrined in law.

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# Mozambique

## **I. DATA FACT SHEET**

<b>Land Area</b>	78,409,000 Ha <sup>1</sup>
<b>Agricultural Land</b>	48,435,000 Ha <sup>1</sup>
<b>Total Population:</b>	19,182,000 (2004) <sup>4</sup>
<b>Population Growth Rate</b>	2.6% (1992-2002) <sup>4</sup>
<b>Population Density</b>	22 per sq km (2000) <sup>2</sup>
<b>Female Population:</b>	10,038,000 [51.6%] (2004) <sup>2</sup>
<b>Rural Population</b>	67.9% (2000) (62% 2005) <sup>2</sup>
<b>Life Expectancy [women/men]</b>	42.6 / 41 2,4
<b>Fertility rate</b>	5.7 children per woman <sup>6</sup>
<b>Infant Mortality (per 1,000 live births)</b>	146 (2000) <sup>6</sup>
<b>Sex Ratio</b>	97 males per 100 females <sup>2</sup>
<b>Maternal Mortality Rate</b>	1000 / 100,000 (2000) <sup>5</sup>
<b>Women s Literacy Rate</b>	29.7% <sup>7</sup>
<b>Adult Rate of HIV [range for women (15-49)]</b>	12.2% [2.7% 4.4%] <sup>4</sup>
<b>Poverty</b>	N/A
<b>Women in Agriculture</b>	92% of women work in smallholder agriculture
<b>Women-headed Households</b>	22.8% (24.6% in rural areas) (1991) in some provinces 30-60% <sup>8</sup>
<b>Women Land Owners</b>	23% <sup>9</sup>

**Sources:** (1) FAOSTAT ; (2) UN Population Division ; (3) CEDAW/C/UGA/3 ; (4) UNAIDS ; (5) UNICEF; (6) WHO; (7) UNESCO; (8) Baden, 1997; (9) GoM Agricultural Census, 1999

## **Rural Woman Profile**

After an exceptionally violent conflict, Mozambique gained independence from the Portuguese in 1975. Soon thereafter, the country entered a long period of civil war between the government FRELIMO and the rebel group RENAMO that killed an estimated one million people and dislocated close to five million (IDPs and refugees). Following the peace accords of 1992, the country started a rebuilding process that continues to this day. Unfortunately, the conflicts left many lingering effects on women, and rural women in particular. They were often used as sex slaves by militants, forced to grow food for soldiers, and made up a majority of the displaced population (Baden, 1997). Poor health and educational services are relevant handicaps facing women in Mozambique, and their low literacy level may have significant impacts on their ability to claim land rights.

Mozambican women almost invariably provide more labour to agriculture than men (especially when their husbands migrate for temporary work in South Africa) and 92% of women work in smallholder agriculture (Norfolk, 2004). In the South, which is more influenced by Islam,<sup>44</sup> women perform most of the agricultural tasks except for clearing land (and thus establishing a claim to it). In the North, where many matrilineal groups are located, men are more active in agricultural work and the women are responsible for seed selection, storage and looking after chicken and goats. Women are responsible for providing care to household's members and taking care of the sick. As a result of the conflicts, Women-headed Households form a considerable portion of Mozambican families, but they often have less land, less access to labour, must travel further to their land, and grow less diverse crops than male-headed households. Although data is not updated, in 1991 22.8% of households were women-headed, but in some provinces anecdotal evidence shows that this

figure may actually be somewhere between 30-60%. Data shows that in male-headed household women control approximately 20% of the land, and in Women-headed Households close to 90% of the land (Baden, 1997).

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

The Mozambican Constitution declares that all land is property of the State, and that land cannot be sold, mortgaged or alienated (Art. 46.1). Importantly, the new Constitution allowed rights to be given on the base of occupancy, thus authorizing legally recognized customary tenure (Myers, 1995). Moreover, the universality of land use is enshrined in the Constitution, stating that every Mozambican has the right to enjoy the use of land (Art. 46.3). With regards to women it states "Men and women shall be equal before the law in all spheres of political, economic, social and cultural affairs. (Art. 67) (GoM, 1990).

#### **II. Legal Framework**

Until the mid-1990s, Mozambican law was based entirely on colonial Portuguese law. Statutory laws, however, were often put aside, and customary laws regulated family issues. Many problems arose because of the rigidity of statutory law and the variations in customary laws throughout Mozambique. Following the civil war between the Socialist government and the RENAMO rebels, Mozambique instituted a dual track legal system employing both statutory and customary laws (Waterhouse, 1997). In 2003 a Family Law was passed that replaced the colonial era laws that did not take local customs into any consideration. The 2003 Family Law raised the minimum age of marriage from 14 to 18, legally recognized

<sup>44</sup> Mozambicans practice a variety of religions and beliefs: Catholic 23.8%, Zionist Christian 17.5%, Muslim 17.8%, other 17.8%, none 23.1% (CIA, 2005).

customary marriages and importantly, stipulated that women can inherit land. In the previous family code, a woman needed the consent of her closest male relative to enter into contract, obtain a loan or a job. The new Family Law also eliminated the past provisions that gave men family property in the case of divorce by establishing joint property rights in official and customary marriages, and stipulating that property distribution must be agreed to by both parties (Oxfam America, 2003). An important element in the law is that men are not automatically designated head of the family (thus having the legal power to make official decisions), it must be decided by the couple together – this is especially important for the many families where the husband works for months at a time in South African mines. Interestingly, the new Family Law does not recognize nor prohibit polygamous marriage, but current legal norms do not allow men to register more than one wife (IRIN, 2003). Some organizations have pointed out that the new Family Law does not adequately protect widows' inheritance rights from property grabbing by relatives (IRIN, 2003).

### III. Agrarian and Land Reform Laws

Under Portuguese colonial rule, customary land tenure systems were not given official recognition and were ignored by administrations who gave large land concessions to cotton, sisal and tea plantations (in the North), timber and mineral extraction companies (in the Center) and Portuguese companies and individuals (in the South).<sup>45</sup> In the 1950s the colonial government launched a campaign to encourage Portuguese settlers to enter commodity production, the result of which was that these settlers (with the help of the military) seized large tracts of land from local populations (Tique, 1995). The result of the colonial policies, as in other colonized African countries, was a disruption of customary practices associated to land, as the colonial government manipulated the customary leaders to their favor.

As Mozambique gained independence, the FRELIMO government nationalized all lands and customary systems came under attack. The official government policy of collectivized agriculture forced families to abandon their land and move to communal villages (Tique, 2002). The 1997 Land Law presents a successful attempt to give women more decision-making power in land matters, as well as formally recognizing customary land tenure systems. The law states, "As a means of universal wealth creation and social well being, the use and exploitation of land is a right of all Mozambicans." The law reaffirms the State's control over land, but also notes that the land use titles can be given to both "men and women" (Art. 13). The law also stipulates that use rights (*uso e aproveitamento*) can be transmitted through inheritance, without distinction, on the basis of sex (Art. 16) (GoM, 1997). The Law's support of customary tenure systems and collective titling was a major step towards improving the localized control of land management, but it also stipulates that customary laws only have effect if they do not contradict the Constitution (Waterhouse, 1997). In rural areas, the Ministry of Agriculture encourages a debate, and then allocates land. In addition, a committee known as the Council of 9, made up of traditional leaders and local authorities, makes decisions on the allocation of land (FAO/OXFAM, 2003).

Waterhouse points out that women have gained direct and recognized control over land in several parts of Mozambique through local officials redistributing lands that were abandoned after independence to families (including Women-headed Households) (Waterhouse, 1997).

### IV. National Policies

The Mozambican Ministry of Women and Social Action was created to promote women's rights, but this study was not able to determine what actions the Ministry is carrying out concerning women and land. Many authors,

<sup>45</sup> One such example is the Mozambican Company, which operated for more than 60 years and had the right to grant land concessions.

however, have stressed the importance of the civil-society land campaign to implement the 1997 Land Law. Civil society organizations played an important role in promoting the 1997 Land Law and diffusing information throughout the country. Two Land Campaigns were organized, in large part by the NGO ORAM (*Organisacao Ruralede Ajuda Mutua*) and UNAC (*Uniao Nacional dos Camponeses*), to promote the implementation of laws and raise awareness of citizens' land rights, especially women's rights. One of the campaign's achievements was the publication of tracts showing women that they have the same rights as men, and promoting the creation of associations of women discriminated against by customary law. The second campaign focused on promoting dialogue about women's land rights within the family and the need to change discriminatory customs (Norfolk, 2004). Moreover, the campaign gave women strategic advice to apply for individual land use titles or band together with other discriminated women to apply for collective titles (Mutangadura, 2004).

## **b. Customary Legal System**

Mozambican customary laws are not easily categorized, but they are entrenched throughout the country (Myers, 1995). An important consideration when examining Mozambique's customary systems is that newly independent Mozambique's government FRELIMO attempted to eradicate customary laws and tenure systems insisting on nationalizing land and undermining the powers of traditional leaders. Although the government wanted to abolish the customary systems that it viewed as archaic relics of the colonial rulers, it did not have the operational capacity to do so and as a result the customary land tenure systems remained in many rural communities (Kloeck-Johnson, 1998). The rebel group

RENAMO was most influential in northern and central Mozambique and protected many of the traditions and customary laws in place. As a result customary law was practiced and official laws were ignored (Tique, 2002). In the mid-1990s traditional leaders asked the government to reinstall their local decision making powers,<sup>46</sup> and the 1997 Land Law recognized local adjudication of land use and registered community-held land in a wave of recognizing the importance of customary law in Mozambique.

Customary land tenure systems in Mozambique are both patrilineal and matrilineal, and it is often noted that matrilineal groups (Ajaua and Makua tribes) are found to the north of the Zambezi River, while patrilineal systems are found to the south (Tique, 2002). Matrilineal groups are often small scale and dispersed throughout rural isolated areas, while the patrilineal groups are frequently found in areas where livestock grazing is practiced (Myers, 1995).<sup>47</sup> It is important to point out that there is a gradual transformation from matrilocal (where the husband moves to the wife's home) to virilocal marriage arrangements in the country (UNDP, 2002).

In both groups women have no right to inherit land, but gain use rights through male relatives (husbands, sons). In matrilineal groups land is passed through the mother's lineage, but it is generally the woman's brother that often has the right to allocate use and often tries to encourage his nephews (sisters' sons) back to the land for their labour. However, it is noted that the northern matrilineal systems provide more flexibility and more equitable wealth sharing mechanisms (Myers, 1995). In the patrilineal systems land is passed directly from father to son since women are destined to leave the family (Tique, 2002) (Waterhouse, 1997).

While still a child, a woman will work on her father's or uncle's plot, and once married will work on land allocated

<sup>46</sup> Tique (ND) notes, "In 1995 traditional chiefs (*regulos, mwenes, cabos and capitaes*) requested the government to restore their authority as leaders of their community with all benefits and rights acquired during the colonial period. Their authority, mainly of the *regulos*, was partially restored to include land allocation, resolution of land disputes and authorization to temporarily use the land they cultivated during the colonial period."

<sup>47</sup> Myers (1995) notes that this is a very simplified characterization of the North-South divide.

to her by her husband (Myers, 1995). Moreover, if a woman is divorced or her husband dies, she has no claim to the land she was cultivating and must return to her father's (son or brother) land, though some widows continue to cultivate their deceased husband's land (Norfolk, 2004). In the south, in particular, women are vulnerable to losing land use rights because of divorce, and, as Waterhouse points out, many women cannot, or choose not to, return home because of the dislocation from the war and the shame associated with sexual abuses (Waterhouse, 1997).

However, Norfolk points out that in Mozambique *"customary tenure systems have proved themselves remarkably adaptable to changing circumstances, including rising land scarcity, and the commercialization of agricultural production. They can provide means of access to resources for groups with weaker traditional claims, such as women and young people, as well as migrants and other mobile groups (2004)."*

Consequently, women have substantial use rights in Mozambique. Women often acquire temporary or permanent use rights depending on the type of product grown, and it is common that several women have varying and possibly overlapping use rights on a single plot (especially in polygamous marriages) (Myers, 1995). Moreover, women's use of common lands (for gathering fruits, firewood, etc) is vital to their livelihoods, and makes up an important part of their activities (Waterhouse, 1997). Myers (1995) points out that women often cultivate the same plot of land for as long as she needs it and that, "for all practical reasons, a plot is then recognized to be the legitimate domain of that woman". It is asserted that it is very difficult for a man to transfer land from one woman to another, and it is near impossible for him to evict the first woman if he does not divorce her in a community-recognized way. Women's rights are deeply linked to male relatives, but they also have a considerable force in and

of themselves. Women's rights are generally stronger in matrilineal groups because the family exerts force on the husband (generally with the aim of protecting the land for the woman's son).

Women's use rights often only extend so far, however, and as Norfolk quotes a Mozambican woman "When women are working, the men approve that the women have their own pieces of land, but when it comes to harvest time, the men say, "You are my own, and so whatever you are harvesting is also my own" (2004).

Moreover, many women (and men as well) remarried during periods of conflict under the assumption that their previous husband was killed. As men travel back to family areas, they often find that their wife has remarried, and as often polygamy is not tolerated for women, women must choose which husband to stay with and at the same time renounce their land use claims (Baden, 1997). In post-war Mozambique divorced women are more commonly left landless (Myers, 1995). Moreover, the HIV/AIDS epidemic is also having an effect on Mozambican women, further weakening their ability to negotiate for land access. A recent study on women's land access in Mozambique concluded that, "current processes of rural transformation in Mozambique are contributing to undermining women's customary tenure but are not yet providing accessible, alternative guarantees through formal law or 'modern' tenure regimes" (FAO/OXFAM, 2003).

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- Perhaps the most profound obstacle to women's land access is Mozambique's violent recent history. The conflicts for independence and the civil war that followed ravaged the country and had important effects on women's overall well-being. These conflicts coupled with efforts to undermine customary practices by the FRELIMO government have disrupted the social support systems that once provided Mozambican women with a number of user rights.
- Mozambican women are highly dependent on their male relatives for access to land – even in matrilineal societies – and recent transformations in rural areas are aggravating the situation. Property-grabbing by deceased husbands' relatives from widows (intensified by HIV/AIDS deaths), and divorce are some of the main reasons women lose their land rights.
- Despite the large-scale Land Campaign carried out by a number of national NGOs, many women are still unaware of their guaranteed rights. This fact is compounded by the low literacy rate and educational level of Mozambican women.
- As the country moves towards increased recognition of customary leaders, local land allocation boards and tribunals are often dominated by men and FRELIMO party secretaries that either do not understand or ignore national land laws, thus allocating land to male heads of households.

## **RECOMMENDATIONS**

- Efforts to increase women's awareness of their rights guaranteed by the 1997 Land Law and the 2003 Family law need to be strengthened. The Women's Coalition is already working to improve women's legal status in Mozambique with similar efforts to push new legislation to be added to the Family Law that deals with domestic violence and polygamy.
- Special attention should be paid to the discrimination associated with HIV/AIDS and the effects of HIV/AIDS on women's land access. In particular, a more complete understanding of the effects of HIV/AIDS on customary practices needs to be developed in order to carry out activities that help women gain access in a very dynamic customary environment.
- The effects of conflicts on women's land rights need to be better understood in order to carry out activities that properly address the psychological impacts stemming from sexual abuse, dislocation and disruption of family life. Efforts must be undertaken to rehabilitate affected women, and special attention to the impacts on their land rights should be included in order to establish a secure life for women who often do not feel that they can return home.

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## Uganda

### **I. DATA FACT SHEET**

Land Area	19,710,000 Ha <sup>1</sup>
Agricultural Land	12,312,000 Ha <sup>1</sup>
Total Population	27,821,000 (2004) <sup>2</sup>
Population Growth Rate	3.40% <sup>2</sup>
Population Density	101 per sq km. <sup>2</sup>
Female Population	13,908,000 [49%] (2004) <sup>2</sup>
Rural Population	88% <sup>2</sup>
Life Expectancy [women/men]	46.8 / 46.5 <sup>2</sup>
Fertility rate	7.10 children per woman <sup>2</sup>
Infant Mortality [girl/boy]	75.6 / 86.6 <sup>2</sup>
Sex Ratio	99.6 males per 100 females <sup>2</sup>
Maternal Mortality Rate	880 / 100,000 (2000) <sup>5</sup>
Women s Literacy Rate	44% <sup>3</sup>
Adult Rate of HIV [range for women (15-49)]	7% [7,9%] <sup>4</sup>
Poverty	N/A
Women in Agriculture	80% of agricultural workforce
Women-headed Households	N/A (some estimates reach 25%)
Women Land Owners	7% <sup>3</sup> / 16% (in 1991) <sup>6</sup>

**SOURCES:** (1) FAOSTAT; (2) UN Population Division; (3) CEDAW/C/UGA/3; (4) AAI Uganda; (5) UNICEF: Uganda at a Glance; (6) GoU Agricultural Census, 1991

## **Rural Woman Profile**

Within the Ugandan household women are responsible for childcare, cooking and caring for the sick and elderly. Women make up more than 70% of the agricultural labour force and contribute to over 80% of food production (FAO, 2004). Very few Ugandan women own land, although the government of Uganda states that 97% of women have access to land. Women are responsible for food crops while men are responsible for cash crops. Ugandan women's lower social status is evidenced by the literacy rate: 44% of women are literate compared to 75% of men. With regards to education, girls and women are at a disadvantage and are enrolled much less than men in secondary and university education. Moreover, women's health is not given high priority, especially gender-based health problems (CEDAW/C/UGA/3).

## **II: WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I. Constitution**

Uganda's 1995 Constitution is claimed to be one of the most gender sensitive constitutions in Africa. Article 21 prohibits sex discrimination, ensures equality before the law and equal protection under the law. Article 31(1), on marriage law, guarantees equal rights to both men and women at commencement, during and at the marriage's dissolution. Moreover, Article 31(2) directs Parliament to make appropriate laws for the protection of the rights of widows and widowers to inherit property of their deceased spouses (Rugadya, Obaikol, Kamusiime, 2004). Uganda employs a dual track court system including formal and informal systems. Where appropriate statutory laws

are absent, customary laws are applicable in Uganda, though statutory laws take precedence over every other customary law (FAO, 2004a). Article 26(1) of the Constitution allows women to own property individually and communally while also carrying out real estate transactions. Article 33(6) states, "Laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited by this Constitution" (GoU, 1995).

#### **II. Legal Framework**

The Ugandan legal framework is similar to many African countries that have had to redefine their systems reconciling traditional laws and colonial imposed legal structures. The Ugandan legal framework is one of the most gender-sensitive in Africa. Despite the gender-sensitive legal framework rural women rarely benefit from the provisions set out in statutory law.

Ugandan women have full legal capacity and may enter into contract under their own names (FAO, 2004a).

Women are entitled to 15% of their deceased husband's property if legally married, as are widowers. In practice, however, men usually take 100% of their deceased wife's property. Customary law provides that women and children will be taken care of by the deceased husband's family, but in practice they are disavowed of property and must move to the woman's family (FAO, 2004a).

Despite the constitutional assurances, Ugandan divorce legislation is biased against women. While both men and women can apply for divorce, women may apply for divorce only if the husband is adulterous and abandons her for more than two years or commits other specified acts. Men, however, need only to accuse the woman of adultery in order to file for divorce. The ease with which a man can divorce his wife results in less tenure security.

The Domestic Relations Bill introduced more than 10 years ago should rectify marital inequalities, but to date it has not been passed (HRW, 2005).

### **III. Agrarian and Land Reform Laws**

Under the British rule, the customary tenure systems were altered and a system known as Mailo land tenure was developed. Mailo tenure granted notable Ugandans perpetual rights to land in central Uganda, while peasants became tenants. The most important post-independence land reform was the Land Reform Decree (Decree No. 3) implemented in 1975 by Idi Amin which declared all Ugandan land public and placed it under the Uganda Land Commission (Busingye, 2002). It was not until the 1995 Constitution that customary tenure was recognized. The Constitution states that all land is vested in the citizens and may be regulated according to customary, *mailo*, freehold, and leasehold tenure systems (Rugadya, Obaikol and Kamusiime, 2004).

In 1998 Ugandan Land Act (Act 16) imposed the non-discrimination clause of the Constitution on land administration. It permits women to have complete control and ownership of land. Although the Act was a step towards more equal land rights for Ugandan women, the Act ignored a large civil-society movement for the installation of co-ownership/joint-titling (husband and wife) in the text. The ignored co-ownership clause became known as the “lost clause”. In 2004, however, the Parliament amended the Land Act with a provision known as the Security of Occupancy for Spouses. This provision allows women more control in household land decisions without co-ownership. Spouses have the right to use, access and live on their husband’s land, and they may withhold their consent to stop land transactions (Rugadya, 2004). In addition to this, there are affirmative action policies in place to ensure women’s representation on land management bodies and commissions.

### **IV. National Policies**

The Ugandan government launched the National Gender Policy in 1997, which introduced gender mainstreaming into national development policy. The Land Sector Strategic Plan (LSSP) recognized women’s unequal status throughout the country with regards to land rights and reinforced NGP policy direction. The LSSP puts specific strategies in place to strengthen the rights of vulnerable groups (Rugadya, 2004).

#### **b. Customary Legal System**

The more than 50 different ethnic groups that live in Uganda fall in to four categories: the Bantu, Nilotics, Nilo-Hamites, and Sudanic (Bikaako And Ssenkumba, 1997). Most Ugandans are Christian (66%), the rest practice Islam (16%) and animist beliefs (18%) (CIA, 2005). In general, Uganda’s ethnic groups’ customary law regimes are biased against women with regard to inheritance and property rights (Bikaako and Ssenkumba, 1997).

Customary laws regarding land, family life and inheritance are extremely important, as over 75% of Ugandan land is held under customary tenure systems (Busingye, Harriet, 2002). Ugandan society, like other African societies ruled under British colonialism, is regulated under both statutory and customary law, and often the combination of the two leads women to be discriminated against, as men choose the most convenient law to follow depending on the situation (Bikaako And Ssenkumba, 1997). Colonial laws distorted the customary tenure systems that guaranteed women a certain level of tenure security. Colonial leaders chose to give more power to individual heads of households (who became the titled landowners), thus altering the communitarian tenure arrangements, while reinforcing the patriarchal systems (Bikaako And

Ssenkumba, 1997). Many argue that through the colonial imposed private property regimes women lost many of their secondary rights to land (Tripp, 2004).

Land tenure is often regulated according to the marriage regimes in place in Uganda. Most marriages in Uganda are customary, and therefore not legally registered (Rugadya, Obaikol and Kamusiime, 2004). Moreover, many marriages are polygamous, which further reduces women's rights to land inheritance.

In Ugandan society, a woman's right to use her husband's land may be revoked for several reasons. The most common grounds for revoking women's land rights are when the husband abandons his wife or chases her away from his land. This often occurs when a husband remarries and places his new wife on his land. Moreover, an abandoned wife cannot remarry without losing her rights to her first husband's land. In most groups, a woman that separates from her husband loses her rights automatically. In other situations, land grabbing and conflicts over inheritance are diminishing women's access to land. As a result some parents are stipulating that their daughters receive land in their will, or actually transfer the land while still alive so that it may be witnessed (Bikaako and Ssenkumba, 1997).

The un-registered marriages leave women with few rights to land, and when customary divorces do occur, the woman is rarely entitled to anything. Under many customary marriage regimes, husbands may divorce their wife for not producing boys (CEDAW/C/UGA/3). If a woman divorces a man and returns to her birth family she relinquishes all rights to land. Moreover, widows are denied all rights to inherit land under customary regimes (Rugadya, Obaikol and Kamusiime, 2004). A government study of men's wills showed that only 10% of men left their land to their wife in a trust for his children, while 90%

of the wills directed the land to be given to the children directly and stipulated that the wife will be taken care of by the children (CEDAW/C/UGA/3). Discrimination against women is also evident when a woman's parents die while she is already married. In most groups, the daughters are not considered at all (Bikaako and Ssenkumba, 1997).

Specifically, in the Banyankore and Baganda groups, a woman's right to inherit land is only viewed in terms of her responsibility to take care of her children. Without children, women have no independent right to own land. In other communities, such as the Bushenyi, sons automatically inherit their father's land (Bikaako and Ssenkumba, 1997).

Despite the overwhelming patriarchal structure of Uganda, several ethnic groups practice matrilineal land inheritance. These include: the Acholi, Kigezi, Lango and Alur (Bikaako and Ssenkumba, 1997). Women in Buganda have also enjoyed more land rights than women in other parts of the country. Under the Mailo scheme women began to inherit more land, and some even bought land. In the 1990's a study showed that 39% of Women-headed Households had inherited land (although smaller plots than men), and that 30% of Women-headed Households had bought land (Tripp, 2004).

## **WOMEN, HIV/AIDS AND LAND**

Uganda's HIV/AIDS infection rate is 4% (3% for women). The result is that many Women-headed Households are being created due to the death of the husband. A recent study showed the impact of HIV/AIDS on Ugandan small-plot farmers. Newly created Women-headed Households decreased their land cultivation by 26%, compared to male-headed households (where the wife died from HIV/AIDS) which decreased their cultivated area by 11%. This

fact may result from the increasing number of distress sales following the death of a husband. Between 1998 and 2003 Women-headed Households reduced their landholdings by 11% (0.3 acres on average) (FAO, 2003).

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- Ugandan women are often discriminated against because of a combination of cultural biases against women, disfigured and weakening customary land tenure and marriage system, and the opportunism of men who can navigate between customary and statutory law as they see fit. Women's inheritance rights, protected under statutory law, are often ignored when families distribute inheritable property.
- HIV/AIDS is creating important obstacles to women's land access. As shown above, women are often left alone when their husband dies from HIV/AIDS and they do not have the capacities to utilize the land. In such cases they may be pushed aside by the husband's family or may be forced to sell the land that they cannot properly utilize.
- The disjunction between constitutional guarantees and the ruling divorce law that allows men to divorce their wives much easier than for wives to divorce their husbands harshly discriminates against women. This irregularity in the law leaves women susceptible to abandonment and quick divorce, thus leaving them with no access to land.
- The lost opportunity for the introduction of co-titling that failed in 1998 pushed women further out of decision-making rules. The 2004 modification gave women the right to withhold consent, but this is not enough to guarantee the women's voice in the household.

## **RECOMMENDATIONS**

- Rectifying the legal discrimination against women should be a priority. Actions should be taken to support existing advocacy campaigns to pass the Domestic Relations Bill. Other complimenting campaigns to bring the issue to national attention should be initiated and sustained.
- As women are increasingly losing their husbands (and thus a main link to their land rights) to HIV/AIDS, they are often forced to reduce their agricultural plots size, either through neglect or distress sales. Studies on the links between HIV/AIDS and women's land access need to be carried out.
- Studies on the effect of renting land (tenancy) should be conducted in order to determine whether it may provide the women-headed household (especially HIV/AIDS affected households) with income and labour that they lack.
- Broad-based campaigns raising the issue of women's land access are needed. Complementary local support groups should be facilitated for women to share their experiences and strategies for coping with landlessness or gaining land access. For example, ActionAid Uganda is involved in the work of the Uganda Land Alliance which runs Land Rights Centers that carry out rights advocacy through awareness creation as well as through taking up individual cases.

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## Viet Nam

### **I. DATA FACT SHEET**

Land Area	32,549,000 (2002) Ha <sup>1</sup>
Agricultural Land	8,780,000 (2002) Ha <sup>1</sup>
Total Population	82,481,000(2004) <sup>2</sup>
Population Growth Rate	1,5%(1992-2002) <sup>2</sup>
Population Density	245 per sq km (2000) <sup>2</sup>
Female Population	50,9% (2001) <sup>2</sup>
Rural Population	74.5% (2003) <sup>2</sup>
Life Expectancy	69.6 (2002) <sup>3</sup>
Total Fertility Rate	2,3 children per woman (2002) <sup>3</sup>
Infant Mortality (per 1,000 live births)	31 (2000) <sup>3</sup>
Sex Ratio	117 women per 100 men <sup>7</sup>
Maternal Mortality Rate	130 /100,000 (2000) <sup>3</sup>
Women s Literacy Rate	85,6% (2000) <sup>4</sup>
Adult Rate of HIV [range for women (15-49)]	0,3% ( 0.8%) <sup>5</sup>
Poverty [women]	46,9% (2000) <sup>6</sup>
Women in Agriculture	53,4% (2000) <sup>7</sup>
Women-headed Households	32% <sup>7</sup>
Women Land Owners	N/A

**SOURCES:** (1) FAOSTAT; (2) UN Population Division Database; (3) WHO; (4) UNESCO; (5) UNAIDS; (6) CEDAW/C/VNM/3-4; (7) FAO.

## **Rural Woman Profile**

The transition from a centrally planned to a market oriented economy in Viet Nam has shifted the basic economic production unit from the commune towards the household level. Since 1998, Viet Nam has been pursuing the political line of the *Doimoi* policy, making progress across a broad range of socio-economic development measures (APWLD, 1999). Even if peasants' life has improved significantly with the development of the agricultural economy, women still have less access than men to technology, technical knowledge, savings and capital. Rural women still face relevant disadvantages, for example their income is 3.6 times less than that of urban women.

Rural women make up 52% of the labour force in the country's rural areas and are often paid less than men for comparable work (CEDAW/C/VNM/3-4). In the two remote provinces of Tra Vinh and Dong Thap, female employees are paid only 15,000-18,000 VND a day, while a male employee's wage is as much as 25,00-30,000 VND per day (OXFAM, 2001).<sup>48</sup> Many of them have to undertake hard manual labour, working an average of 10.6 hours per day.

Women are dually responsible for farm and household management. Furthermore, women's contribution to household labour is undervalued and rarely included in national labour statistics. Women are actively involved in aquaculture, artisan fisheries and manage small livestock production and marketing (FAO, nd).

Viet Nam made significant progress in improving school enrollment among the population of 10 years old and above, reaching 91% total literacy rate and 88% among women. Nevertheless literacy rate for women above 25 years old is 15% lower than for men. The gap between urban and rural women is still higher. Fifty to sixty percent

of Bana and H'mong women and girls are illiterate (CEDAW/C/VNM/3-4).<sup>49</sup> School curricula content also needs to be revised in order to address rural women's needs and integrate some global education issues such as gender education, skill for life, family planning etc.

Rural women's health problems are mainly related to the spread of sexually transmitted disease due to poor sanitation, absence of clean water, lack of knowledge about safe sex and prostitution (the number of infected cases increased from 71,000 in 1997 to 199,000 in 1998). Cases of HIV infection are also on the rise (by July 2000 23,000 were HIV positive and 3,800 were AIDS patients) (CEDAW/C/VNM/3-4). The biggest difficulties facing Viet Nam are limited funding and poor medical equipments as well as inadequate human resources in health care services, especially for women.

## **II. WOMEN'S RIGHTS TO LAND FROM A LEGAL AND CUSTOMARY PERSPECTIVE**

### **a. National Legal Framework**

#### **I Constitution**

The government of Viet Nam has consistently upheld the principle of equality between women and men in all fields of life. The 1992 Constitution states that male and female citizens have equal rights in political, economic, cultural, social fields and in the family (Article 63). It also states that all forms of discrimination against women and acts damaging women's dignity are strictly banned (GoV, 1992).

#### **II. Legal Framework**

According to Viet Nameese law, women have the same opportunities as men to engage independently in civil transactions, contracts, property management, and

<sup>48</sup> These ethnic groups are found in the Central Highlands and Northern Mountainous areas of Viet Nam.

prosecution procedures to protect their interest in the Courts.

Article 8 of the 1995 Civil Code states that parties are equal in civil relations. Women have the same rights and obligations as men under the law (Civil Code Articles 16-19). The 1996 *Law on Marriage and Family*, amended in 2001, identifies the fundamental principle of family relations such as free consent, monogamy, and equality between husbands and wives. One of the new and significant features of the *Revised Law on Marriage and Family* is to ensure the equality, between wife and husband in property ownership certification. In case the property is owned by both spouses it must be registered in both names. According to the principle of equality the wife has the same rights, interests and obligations as the husband in acquiring, using and settling common property (CEDAW/C/VNM/3-4).

Women's equal right to property is also reflected in the settlement of common property in case of divorce. The principle of property division in the case of divorce is clearly defined in Article 94 of the *Law on Marriage and Family*. In the amended Law the division of household assets and the land-use rights are regulated by two articles (Article 97 and 98).

Women's rights to ownership of individual property is also recognize by Law (Art 33), however they are obliged to use part of that property to meet essential needs of their families in the case common property is not sufficient (art 33). Neither the husband nor wife has the right to unilaterally dispose of their own property if that deprives the family of its only source of income CEDAW/C/VNM/3-4).

Based on regulations on the rights to possession, inheritance, participation in production and business activities, the law ensures men and women the right to

bank loans, mortgages and other forms of financial credit. Despite the fact that credit via the banking system (such as the Bank for the Poor and the Agriculture and Rural Development Bank) has become more popular among rural women, women still have less access to credit than men.

Women still encounter difficulties in certifying their possession rights, especially when applying for a mortgage, as women rarely have their names on the land-use certificates (CEDAW/C/VNM/3-4). Compounding this inequality is the fact that lending procedures are complicated and women's level of education is not high enough to understand them. In the case that land is not available for collateral, household assets may be used in order to obtain a loan, however, husbands often have the final word about the use of assets in the family. All these restrictions result in limiting women's access to the formal financial services that provide larger amounts of money at lower interest rates than do private lenders.

### III. Agrarian and Land Reform Laws

The 1993 *Land Law* ushered in the transfer of land management rights from the collective to the household level. A series of land reforms allowed the State to issue land certificates to 10.4 million households for long-term use (20-50 years). Land use certificates give the right to use, transfer, release, inherit and mortgage land. Although local administrations advised families that land property should be registered in the names of both husband and wife as a positive measure to protect women's interest in case of divorce, most of the land use certificates were issued in the husband's name as he is considered head of household. The number of land-use certificates registered in the women's name accounted for only 10-12% of the total, mostly for single or widowed households (Tran Thi Que, 2000).

Recently revised Land Legislation, approved by the

National Assembly in November 2003, requires that Land Use Right Certificates must bear the names of both husband and wife, if the land belongs to both of them. If the woman's name is stated on the certificate, the law protects her and maintains her rights to the land in case of separation, divorce or being widowed. However, these laws have not been implemented (UNV, 2003).

#### **IV. National Policies**

The quasi-governmental body, Viet Nam Women's Union (VWU), is an active women's organization functioning at national, provincial, district and commune levels with 11 million members. It plays a key role in Viet Nam's rural financial market, organizing and training women for income generation, savings and credit activities. According to Article 87 of the Constitution, the VWU is also entitled to propose and submit bills, promote laws and policies that protect rights and legitimate women's interest. Rich and diversified information dissemination activities by civil society organizations, including VWU Farmers' Association have contributed to raising women's awareness of the land laws (FAO, nd).

Despite an excellent policy of gender equality in Viet Nam, women are at a disadvantage because, especially among local officials implementing the Land Law, there is lack of awareness of gender problems. This fact further limits women's access to land property.

#### **b. Customary Legal System**

*"Like a boat depends on its rudder, a wife must follow her husband."*

Women's access to land is still difficult despite of the November 2003 *Land Use Right Certificate Law*, due to lack of its implementation. This is especially true at the local level. Local officials who administer and interpret the law often revert to age-old traditions and customary practices, which favor men, and thus fail to deliver on the law's promises.

The deep influence of feudal, patriarchal Confucianism, which arrived in Viet Nam a thousand years ago, has helped to introduce ideals that promoted inequality in gender relations. According to the customary behavior, there is a perception that the man is the one who produces, maintains ownership and has the right to make decisions regarding family assets, including land, whereas woman is considered an outsider. This means that she must stay home and run the house and take care of children as the man looks after family, community and social tasks. Women's labour has no recognized economic value in Viet Nam. (Tran Thi Que 2000).

Women are not usually entitled to inherit land-use rights from their parents due to traditional son preference in inheritance and the time-honored traditions and customs in the Viet Nameese families (FAO, 2004; CEDAW/C/VNM/3-4). This is especially true in remote areas and between ethnic minorities where the understanding of women about rights and obligations of the Land Law is limited, so rarely women participate in meetings and discussion about land allocation (CEDAW/C/VNM/3-4).

Many common Viet Nameese stereotypes still influence women's life, such as the fact that they must

unconditionally obey their husband and serve him and the children; they have no rights to be involved in discussions, and even to receive guests. Sons are highly valued while daughters are despised and denied, all because they are traditionally considered valueless. Many divorced women do not have land for cultivation because their parents and their husband's parents do not give them the right to use their land. (Tran Thi Que, 2000).

Under the system of household head representation, the wife's right to joint property is as limited as children's rights, except in cases involving purchase or sale of major property for which the law requires written contracts. This seems to reinforce the patriarchal custom of passing inheritance to a son rather than to a widow. There is a high probability that when a household head dies, his son's name will be filled in on the land certificate, but not his widow's name. In the case of divorce, customarily, women may have no right to get a share of value-added family assets earned after marriage; they may be forced to leave the house empty-handed. (Tran Thi Que 2000).

## **MAIN CONSTRAINTS TO WOMEN'S LAND ACCESS**

- Although rural women have the right to participate in the formulation and implementation of rural development plans, directly or through their representative (i.e. VWU), their involvement is limited by the low level of education and the difficult economic condition. This is especially true in mountainous and remote areas.
- Prejudicial customs and practices have resulted in attitudes and conduct that give women inferior status, or that cause negligence or maltreatment of women.
- Women, especially ethnic minorities, have limited knowledge of their rights to land and obligations stipulated in the Land Law.
- Women have less access to credit due to lower educational levels that obstructs their understanding of the complicated lending procedures. Women also have less access to information. The borrowing of large funds requires mortgaged assets while in most cases men have the final word about use of assets in families.

## RECOMMENDATIONS

- Support local organizations involved in the education and training of rural women and those active in the efforts to remove the obstacles (information, bureaucracy, etc.) when attempting to acquire land rights and apply for credit. Given the high illiteracy rate among the ethnic minorities, these should be the focus of specific educational and training interventions. Issues such as gender education, skills for life and family planning should also be incorporated into the curricula. Finally, training courses exclusively for women working in the area of education should be carried out.
- Support local organizations in their efforts to sensitize local Land Administration officials with regard to the advantages of an equal access to land by women and men. Disseminate information on gender awareness in land issues to district judges responsible for the settlement of land disputes in communities.
- Privatization measures are affecting family cohesiveness, leading to disputes over access to and use of house and land. Legal systems and regulations of property within the household need to respond to these new social realities in order to ensure that all household members have equal rights, especially those who have a less powerful voice as wives (as compared to the husband), and daughters (as compared to the sons).
- Specific programs and projects carried out by organizations such as the Youth Union, Trade Union, Farmer's Association, and the Viet Nam Women's Union, focusing on women health-care, reproductive health, population and family planning, and HIV prevention should be supported.

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# Conclusion

A common feature of the countries analyzed is a combination of state and customary legal systems. This is particularly true of patrimonial laws when legal principles inherited from colonial times and introduced by governing elites or outsiders are often in conflict with traditional practices and customs. Due to the complexity resulting from legal pluralism, the ownership and control of productive assets within households depends on their location, ethnicity and creed (IFPRI, 2001). Communities are often unaware of statutory laws, while at the same time these laws might not address the important and linked issues of culture and land (FAO/OXFAM, 2003). Despite the fact that state interventions could address the limitations that women face in traditional settings, they often underestimate or misinterpret the strength and persistence of customary systems.

When assessing gendered access to resources in rural areas a variety of measures should be used. Core variables to be considered are: dowry and bride-price; ownership of assets at and during marriage; control during marriage; and laws regulating distribution of assets upon divorce or death. Nevertheless, other factors play a role in shaping women's status, such as: the family's social class; the type of marriage contract; age and education; customary norms regarding gendered control and ownership of land and livestock; and individual agricultural labour and time use. Therefore, the actual intra-household allocation of productive assets often presents a more complex picture than revealed by an analysis of customary tenure alone. Furthermore, it is essential to recognize that the community norms establishing informal entitlements for women to communal resources (e.g. free access to firewood and grazing land) might to some degree compensate for weak inheritance rights and for the negative effects of patrimonial laws and customs on women. Formal rights are easier to identify than entitlements, but they might be constrained by norms of conduct (IFPRI, 2001).

Civil wars and conflicts adversely affect social patterns, especially impacting access to land and property rights. Unfortunately, reconstruction periods do not necessarily include measures to reduce the land tenure insecurity (Mwagiru, 1998). Civil wars have created a growing number of Women-headed Households, and they have disrupted family and community support mechanisms that provide the principal coping strategy for the households and for women. In turn, households depend more on external aid and resort to desperate coping strategies such as selling possessions.

Women's secondary rights to land and resources are being reduced under privatisation schemes. Privatisation of property has broken down the support mechanisms (such as cooperative work and dedicated land resources) that help poor households in case of need. Women, in particular, depend on cooperative mechanisms to access labour needed to make their land productive. Women suffer from the increasing shift of control over land from community-based ownership to individualised rights in the hands of male elites.

The authors wish to point out that interventions to improve women's land access in rural areas should not underestimate profound effects that changing power relations and land control might have on

women and their families. Initiatives should focus on the process of social transformation more than setting clear cut and predefined targets. This style of intervention will help avoid the unintended negative consequences that may result from simple transferring of resources (such as land and credit) leading to manipulation or domestic violence. Much local dialogue is needed before the gap between values advocated by external interventions and those held by local communities will close.

Keeping the above considerations in mind, the study conducted has shown the importance of utilizing the rights based approach that acknowledges the voices of women for realization of their fundamental right to secure access to land.

# General Recommendations

## **CAPACITY BUILDING AND AWARENESS RAISING**

- Increase awareness of women's land inequalities and land rights, as well as the negative implications of discriminatory practices on vulnerable members of society. Raising awareness of the rights and responsibilities enshrined in law is essential. The content of patrimonial law should be taught in secondary schools and adult education programs;
- Support current efforts to promote female literacy, to increase the enrolment rates of girls and to support those women and girls who were excluded from education in the past especially in rural areas. Promote the use of local languages in schools for ethnic minorities;
- Lobby governments to provide legal aid to women so that they may navigate the complex procedures surrounding land and support the organizations already working in this field;
- Promote programs targeting both men and women to raise awareness of land rights and responsibilities;
- Support local organizations active in the efforts to remove the obstacles (information, bureaucracy, etc.) that women face when attempting to acquire land rights and apply for credit.
- Promote women's involvement in local decision making, especially with regard to land administration and management attempting to create equal representation of men and women in land decision-making structures;

# GENERAL RECOMMENDATIONS

- Raise awareness among local Land Administration officials with regard to the advantages of an equal access to land by women and men. Disseminate information on gender awareness for land issues to the district judges responsible for the settlement of land disputes, and communities.

## **DIALOGUE**

- Listen to women's voices. When addressing issues of vulnerability keeping in mind that the plight of women is usually inextricably linked with that of their families. This is especially true in conflict situations. Women's needs should not be addressed in isolation. In conducting local needs assessment, particular emphasis should be placed on process, ensuring that women are enabled to contribute and that the proposed interventions serve to build their capacities;
- Stimulate an internal dialogue among women on their status in society and their role in the current periods of social and economic transformation and reconstruction. Various settings can be used for this purpose. Existing women organizations (e.g. self-help groups) can provide good opportunities for dialogue, awareness raising and development of negotiations skills, which can help women challenge intra-household and lineage resource distribution;
- Women who have migrated around the world for economic and security reasons have been exposed to new cultural settings and training opportunities (e.g. the Afghan diaspora). They represent a significant and untapped resource in that sense. These women can play a key role in different local contexts in facilitating local dialogue based on their own experiences and in supporting interventions in areas relevant to women's access to land and other resources.

## **GENDER RESEARCH AND INFORMATION**

- Promote the collection and use of gender-disaggregated data to identify the vulnerable women who lack access to land, especially those belonging to war-affected groups (war-widows, refugees, IDP's, disabled persons, etc.) and those without a clearly identifiable network of family support;
- Promote disaggregated data to assess the situation of different groups (e.g. very poor, higher classes) with regard to dependency on male support and access to land and credit. It is essential that more research is conducted to assess women's changing role in the current processes of international migration, urbanization, and the spread of HIV/AIDS. Trends such as rising poverty levels in rural areas and male migration to the cities might impact such groups in different and even opposite ways;

- Promote the focus on women's land rights in livelihoods programs and the orientation of national policy and programs to provide sustainable livelihoods for women. Strengthening women's claim to land rights by clearly recognizing women as land users should be part of this initiative (FAO/OXFAM, 2003);
- Gather more information on how the transition to new land reallocation schemes, planning and administration by the state governments, is actually affecting women's access to land in different regions and how ethnic and/or religious factors affect women's land access and tenure security

### **HIV/AIDS**

- Carry out activities that focus on determining the types of discrimination women face because of HIV/AIDS and the dynamics of customary practices and shifts in practice in the context of HIV/AIDS;
- Promote research to understand the interplay between stigmas associated with HIV/AIDS, tenure and legal rights. Such stigmas may lead to the inability to market produce, denial of land rights, and even death;
- Encourage awareness raising activities that seek to minimize the stigmatization of women due to HIV/AIDS and the subsequent denial of land rights. This effort should be complemented by mutual support to strengthen the negotiating position of the HIV/AIDS affected people;
- Promote better inter-sectoral coordination and coordination of interventions at various levels (e.g. provide information on complementary services such as treatment and land rights etc). It is also important to keep the impact of HIV/AIDS on the capacity of organizations in mind;
- Support civil society lobbying efforts on the drafting of the land law to include provisions to improve the land tenure security of those affected by HIV/AIDS, particularly widows and orphans in order to improve their ability to retain such land and utilize it effectively.

### **Post-Conflict**

- Support services aiming at rehabilitating women (especially those sexually abused etc) because of the shame associated with violence;
- Guarantee the rights of return of refugees, taking into account the needs of women and girls;

## **CUSTOMARY SYSTEMS**

- In order to examine women's welfare in rural communities both the individual rights and the informal entitlements (secondary rights, included) that women enjoy to community resources should be studied. The impact on such entitlements and rights of the evolution of customary tenure systems into new community based systems need to be assessed (IFPRI 2001);
- Resource control in societies is a function of the status and prestige attached to specific resources and the loci of decision-making. Understanding these factors will help avoid the negative consequences of altering the social norms and household power distribution too drastically and too quickly, which can result in unintended results (such as women borrowing for men and domestic violence);
- Promote activities to assess the "margin of flexibility" of traditional authorities and men in order to promote a transformation of their discriminatory attitudes;
- Identify the broad range of coping strategies employed by vulnerable groups, highlighting those involving women and children. When doing so it is important to take into consideration traditional approaches to vulnerability and care of the family. An understanding of what strategies women adopt to modify resource distribution within the household and improve their access to land is required;
- Promote studies to document and understand customary land tenure systems where little research has been conducted.

## **STATUTORY LAW AND AGRARIAN REFORMS**

- Encourage the creation of an enabling framework that includes improving land access as well as providing water rights, technology, markets, inputs, training and extension services;
- Study successful examples of community titling and efforts to promote women's rights within the community through alliances with local customary leaders;
- Support co-titling initiatives to ensure that women are not marginalized in decision-making and property distribution;
- Support civil-society campaigns to ensure that National Land Policies and land laws assume a degree of gender bias in favor of women (as well as minority groups) in order to protect their land rights and tenure security and reverse the prevailing situation. (e.g affirmative action, setting of quotas);

- Support organisations that are lobbying to close loopholes in national legislation that discriminate against women;
- Encourage the understanding of why national land and family laws are not enforced. Can civil society bring national and customary laws closer? Security of tenure and the protection of women's land rights may be guaranteed with the full participation of the community and its traditional and customary leaders through a process of tenure reform that documents and recognizes the registration and classification of land titles of various types of landholders. Reforms should reflect the input from communities. Civil law should be revised, taking into account regional, tribal and village-specific differences in inheritance rights. The aim should be to reform, not to replace, customary law;
- Promote “bottom-up” approaches to land policy development and the assurance that local concerns will be included in the preparation of national policies that have local effects. Encourage the notion that the process is as important as the results;
- Assess how women's secondary rights to land and resources are being affected by privatization measures, including the effect of privatization on access to community support mechanisms and cooperative work and especially women's access to labour. Understand the link between the current process of transformation of customary tenure systems and changes in the control of resources and shift in local power structures due to processes such as privatization and expansion of commercial agriculture.

### **NETWORKS**

- Create regional level networks as tools for learning and support, especially during crisis situations;
- Networks should aim at increasing the overall awareness of women's land rights and the issues associated with improving women's status.

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## ANNEX: INTERNATIONAL TREATIES

	<b>CEDAW</b>	<b>CEDAW-OP</b>	<b>ICESCR</b>	<b>ITPGR</b>	<b>OAS</b>	<b>ACHPR</b>
	Convention on the Elimination of All Forms of Discrimination against Women	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	International Covenant on Economic, Social and Cultural Rights	International Treaty on Plant Genetic Resources	Organization of American States	African Charter On Human And Peoples' Rights
<b>Afghanistan</b>	Signed 14 August 1980, Accessed 5 March 2003 No report submitted	Not signed	Accessed 24 April 1983	Not signed		
<b>Bangladesh</b>	Accessed 6 November 1984. Submitted 5 periodic reports Reservation on Art 2: "Obligations to Eliminate Discrimination" and on Art 16.1(C): "Same rights and responsibilities during marriage and at its dissolution".	Signed and ratified 6 September 2000	Accessed 5 January 1999	Signed 17 October 2002 Ratified 14 November 2003		
<b>Burkina Faso</b>	Accessed 14 October 1987 Submitted 5 periodic reports	Signed 16 November 2001	Accessed 4 April 1999	Signed 9 November 2001		Signed 05 March 1984 Ratified 6 July 1984 Protocol not signed
<b>Ethiopia</b>	Signed 8 July 1980 Ratified 10 December 1981 Reservation on Art 29.1 relating to the settlement of disputes which may arise concerning the application or interpretation of the Convention Submitted 5 periodic reports.	Not signed	Accessed 11 September 1993	Signed 12 June 2002 Ratified 18 June 2003		Ratified 15 June 1998 Protocol not signed
<b>Ghana</b>	Signed 17 July 1980 Ratified 2 January 1986 Submitted 2 periodic reports	Signed 24 February 2000	Ratified 07 December 2000	Signed 28 October 2002 Ratified 28 October 2002		Ratified 24 January 1989 Signed the Women's Rights Protocol 31 December 2003
<b>Guatemala</b>	Signed 8 June 1981 Ratified 12 August 1982 Submitted 6 periodic reports	Signed 07 September 2000 ratified 09 May 2002	Accessed 19 August 1988	Signed 13 June 2002	Inter-American Convention on Human Rights Signed 22 November 1969 Ratified 25 May 1978 Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women Signed June 9 1994 Ratified April 4 1995	

	<b>CEDAW</b>	<b>CEDAW-OP</b>	<b>ICESCR</b>	<b>ITPGR</b>	<b>OAS</b>	<b>ACHPR</b>
	Convention on the Elimination of All Forms of Discrimination against Women	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	International Covenant on Economic, Social and Cultural Rights	International Treaty on Plant Genetic Resources	Organization of American States	African Charter On Human And Peoples' Rights
<b>Malawi</b>	Accessed 12 March 1987 Reservation subsequently withdrawn. Received 5 periodic reports	Signed 07 September 2000	Accessed 22 March 1994	Signed 10 June 2002 Ratified 4 July 2002		Accessed 17 November 1989 Signed 23 February 1990 Protocol not signed
<b>Mozambique</b>	Accessed 16 April 1997 No reports submitted	Not signed	Not signed	Not signed		Accessed 22 February 1989 Signed women's Rights Protocol 15 December 2003
<b>Uganda</b>	Signed 30 July 1980 Ratified 22 July 1985 Submitted 3 periodic reports	Not signed	Accessed 21 April 1987	Accessed 25 March 2003		Accessed 10 May 1986 Signed 18 August 1986 Signed the Women's Rights Protocol 18 December 2003
<b>Viet Nam</b>	Signed 29 July 1980 Ratified 17 February 1982 Reservation on Art 29.1 relating to the settlement of disputes which may arise concerning the application or interpretation of the Convention. Submitted 4 periodic reports	Not signed	Accessed 24 December 1982	Not signed		

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