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**RURAL WOMEN AND GIRLS' LAND TENURE RIGHTS:
BARRIERS AND SOLUTIONS**

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I. INTRODUCTION

Human Rights Advocates (HRA) commends the Commission on the Status of Women for its dedicated focus on empowering rural women and girls and urges the Commission to address the disparity in rural women's land rights and land tenure. A human rights-based approach to advance rural women and girls' land rights is essential for full, equal, and effective participation at all levels of decision-making. The report of the Secretary-General emphasized that the empowerment and realization of rural women and girls' human rights is essential for the achievement of, *inter alia*, the Beijing Declaration and Platform for Action and the 2030 Agenda for Sustainable Development Goals (SDGs).¹ HRA urges Member States to secure and effectively actualize rural women and girls' land tenure rights.

Land law is a system of codified rules that are enforced through institutions that govern land tenure,² either through formal systems (constitution, treaty, statutes) or informal systems (customary law, religious law, traditional social/family practices), or often both.³ Rules of tenure define how an individual or community can use, control, or dispose of land, and often for a determined amount of time.⁴ Other types of law, for example, marriage and family law, are also relevant to the governance and protection of women's land rights.⁵ When formal and informal

¹ U.N. Secretary-General, *Challenges and Opportunities in Achieving Gender Equality and the Empowerment of Rural Women and Girls*, ¶ 2, U.N. Doc. E/CN.6/2018/3 (Dec. 20, 2017), <http://undocs.org/E/CN.6/2018/3>; Fourth World Conference on Women, Beijing Declaration and Platform for Action, ¶ 94, U.N. Doc. A/CONF.177/20 (Oct. 17, 1995); 2030 Agenda for Sustainable Development Goals, <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>

² OFF. OF THE UNITED NATIONS HIGH COMM'R FOR HUMAN RIGHTS (OHCHR) & UNITED NATIONS ENTITY FOR GENDER EQUALITY AND THE EMPOWERMENT OF WOMEN (UN WOMEN), REALIZING WOMEN'S RIGHTS TO LAND AND OTHER PRODUCTIVE RESOURCES 1, HR/PUB/13/04 (2013), <http://www.refworld.org/docid/5289e2126.html> [hereinafter Realizing Women's Rights].

³ KENT ELBOW, U.S. AGENCY INT'L DEV. (US AID), WHAT IS TENURE SECURITY? WHY DOES IT MATTER? LAND TENURE AND PROPERTY RIGHTS ISSUES AND BEST PRACTICES WORKSHOP 2 (September 30, 2014), https://usaidlandtenure.net/wp-content/uploads/2017/02/USAID_Land_Tenure_2014_Haiti_Training_Module_1_Presentation_2_Elbow.pdf

⁴ FOOD AND AGRIC. ORG. OF THE UNITED NATIONS (FAO), LAND TENURE AND RURAL DEVELOPMENT, 3 LAND TENURE STUDIES ¶ 3.1 (Rome, 2002), <http://www.fao.org/3/a-y4307e.pdf>

⁵ Realizing Women's Rights, *supra* note 2, at 1.

governing systems enforce different rules, it can create uncertainty and insecurity, often leading to a lack of enforcement of formal laws and conflicts.⁶

Contemporary examples are presented in this paper in which the State's formal laws do not safeguard women's land rights. Further, other cases are presented where formal laws are supposed to protect women's land rights, yet, in practice, the discriminatory and sexist informal laws govern, entirely negating protection of rural women's land rights. The lack of effective and consistent enforcement of women's land rights deprive them of their ability to fully participate as equal human beings in the social, cultural, economic, and political planes. Land tenure rights for rural women and girls are inextricably connected to, *inter alia*, the human right to food, housing, health, financial security, education, and freedom from violence.⁷

HRA submitted a written statement to the Commission on the Status of Women for the sixty-second session, emphasizing the need to protect rural women's land rights, specifically rural widows, who are often forced to relinquish their land tenure rights because of customary discriminatory practices.⁸ Patriarchal gender norms, including patrilineal practices, inhibit rural women and girls from land tenure. HRA offers recommendations to facilitate the shift of these long held customary practices that deprive rural women and girls of dignity and their human right to land. However, it is important for this land policy programming to start as a bottom-up approach with sufficient ground efforts that require the participation of men, boys, local officials, and other community stakeholders. Further, statistical evidence is presented in this paper that supports why guaranteeing and supporting rural women and girls land tenure rights brings economic enrichment to their communities.

⁶ Elbow, *supra* note 3, at 2.

⁷ Realizing Women's Rights, *supra* note 2, at 5.

⁸ Human Rights Advocates (HRA), *Statement Submitted [on Widow's Legal Rights]*, UN Doc. E/CN.6/2018/NGO/3 (Dec. 7, 2017), <http://undocs.org/E/CN.6/2018/NGO/3> [hereinafter HRA Statement].

II. THE STATUS OF RURAL WOMEN AND GIRLS' LAND TENURE AND BARRIERS TO EQUITY

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) explicitly states that Parties shall “accord to women equality with men before the law.” (CEDAW, Art. 15.1). It also states women and men have equal rights to contract and administer land (CEDAW Art. 15.2), and calls on State Parties to “take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families.” (CEDAW Art. 14.1). It calls on States to “condemn discrimination against women in all its forms... and to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.” (CEDAW Art. 2(f)). It also acknowledges the need for States to “modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.” (CEDAW 5(a)). However, despite the fact that 189 States are party to CEDAW,⁹ these protections have not been implemented consistently, and the following facts reflect the unequal principles of land ownership.

Rural women represent a quarter of the world’s population,¹⁰ and comprise, on average, 43% of the agricultural labor force in developing countries.¹¹ In fact, women are responsible for

⁹ U.N. TREATY COLLECTION, *Multilateral Treaties Deposited with the Secretary-General, c. IV, No 8. Convention on the Elimination of All Forms of Discrimination against Women*, DEPOSITORY STATUS OF TREATIES, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en (accessed Feb. 26, 2018).

¹⁰ Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 34 on the Rights of Rural Women*, ¶ 3, UN Doc. CEDAW/C/GC/34 (March 4, 2016) [hereinafter CEDAW Gen. Rec. 34]

¹¹ FOOD AND AGRIC. ORG. OF THE U.N. (FAO), *THE STATE OF FOOD AND AGRICULTURE 2010-11: WOMEN IN AGRICULTURE, CLOSING THE GENDER GAP FOR DEVELOPMENT 5* (Rome, 2011), <http://www.fao.org/docrep/013/i2050e/i2050e.pdf> [hereinafter Women in Agric.].

about 60 to 80% of food production in developing countries.¹² Yet, women’s land rights are substantially lower than land rights of men, some figures state that women own less than 20% of the world’s land.¹³ However, among rural women, they fare far worse,¹⁴ perhaps as low as owning less than 10% of land, as indicated by a survey of 34 developing countries by the Food and Agriculture Organization of the United Nations (FAO).¹⁵ In fact, although rural women throughout Africa “produce 80% of food... they own only one percent of the land.”¹⁶ For example, in stark contrast, men in Nigeria own 87% of the agricultural land compared to women owning only 4%, and a small percentage is jointly owned.¹⁷ In Bangladesh, men own almost 88% of the agricultural land compared to women owning about 10%, and a small percentage is jointly owned.¹⁸ In Vietnam, men own almost 72% of the agricultural land compared to women owning about 15%, and a small percentage is jointly owned.¹⁹ On the average, there is a large discrepancy between land ownership of men and women, it is clear that there is no gender parity in land tenure rights and systemic practices exist that maintain this status quo.

A. Formal Legal Instruments Must Include Equal Land Rights for Women

The first step in ensuring that rural women and girls’ can fully exercise their land tenure rights, is to eradicate any laws that exclude women from equal access to land. It is important for

¹² SWEDISH INT’L DEV. COOPERATION AGENCY (SIDA), QUICK GUIDE TO WHAT AND HOW: INCREASING WOMEN’S ACCESS TO LAND, WOMEN’S ECONOMIC EMPOWERMENT SERIES 1 (Sept. 1, 2009), <https://www.sida.se/contentassets/ea78527fda4645c380f290a0fcfd651/15231.pdf>

¹³ Monique Villa, *Women own less than 20% of the world’s land. It’s time to give them equal property rights*, WORLD ECON. FORUM (Jan. 11, 2017), <https://www.weforum.org/agenda/2017/01/women-own-less-than-20-of-the-worlds-land-its-time-to-give-them-equal-property-rights/> (accessed Feb. 28, 2018).

¹⁴ CEDAW Gen. Rec. 34, *supra* note 10, ¶ 5.

¹⁵ Villa, *supra* note 13.

¹⁶ U.N. ECON. COMM’N FOR AFRICA, IMPROVING ACCESS TO LAND AND STRENGTHENING LAND RIGHTS OF WOMEN IN AFRICA 7, ¶ 2.1, (May 2017), <http://repository.uneca.org/bitstream/handle/10855/24140/b11874053.pdf?sequence=1>

¹⁷ FOOD AND AGRIC. ORG. OF THE U.N. (FAO), *Distribution of Agricultural Land Area Owned by Sex*, GENDER AND LAND RIGHTS DATABASE, http://www.fao.org/gender-landrights-database/data-map/statistics/en/?sta_id=1169 (accessed Feb. 22, 2018) [hereinafter FAO, *Distrib. of Agric.*].

¹⁸ *Id.*

¹⁹ *Id.*

countries to understand that it jeopardizes their economic progress to exclude women from land tenure rights.²⁰ In spite, of the various international human rights instruments that guarantee women's equal rights to land,²¹ there are many countries with formal laws that deny women their right to land tenure either via their constitution, property laws, or marital laws.²²

The FAO launched the Gender and Lands Rights Database (GLRD) to provide-up-to-date country information on women's land tenure developments.²³ The data indicators from GLRD make it easier to identify countries that do not recognize gender equality in ownership or control of land in their formal legal instruments, regardless of marriage status. In addition, the database provides information as to treaties that are ratified. The following countries are all parties to CEDAW, yet do not recognize land tenure equity in their formal instruments. In Sierra Leon, no legal instrument recognizes women's right to own or control land (Sierra Leone Const., 1991, Sec. 27; The Matrimonial Causes Act, 1960).²⁴ In the Republic of Chile, although Art.19(2) of the constitution states that women and men are equal before the law, Civil Code, Art. 135 and Art. 1749, grant the husband all administrative rights to communal property/land, including his wife's individual property/land.²⁵ Similarly, in the Republic of Ecuador, the Constitución Política del Ecuador, 2008, Art. 69(3) and Art. 324, guarantees equal rights and equal

²⁰ CEDAW Gen. Rec. 34, *supra* note 10, ¶ 6

²¹ Universal Declaration of Human Rights art. 2, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); International Covenant on Civil and Political Rights art. 2, 3, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights art. 3, Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Elimination of All Forms of Discrimination against Women art. 2, 14, 15, and 16, Dec. 18, 1979, 1249 U.N.T.S. 13. The following also provide language that guarantees women's right to access, use, and control of land: Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, New York, Dec. 18, 1990, *entered into force* July 1, 2003, 2220 U.N.T.S. 93; and Convention on the Rights of Persons with Disabilities, G.A. res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (Dec. 13, 2006).

²² Realizing Women's Rights, *supra* note 2, at 1; FAO, Distrib. of Agric., *supra* note 17.

²³ FOOD AND AGRIC. ORG. OF THE U.N. (FAO), *Country Profiles*, GENDER AND LAND RIGHTS DATABASE, <http://www.fao.org/gender-landrights-database/country-profiles/countries-list/en/> (follow "List of Countries" for external link) (accessed Feb. 22, 2018) [hereinafter LAT].

²⁴ *Id.* (select Sierra Leone)

²⁵ *Id.* (select Chile)

opportunity to men and women as to access to property and decision-making in the management of their land; however, it conflicts with Civil Code, Art. 180, that grants the husband all administrative rights.²⁶

As a first solution to gender parity in land tenure rights, these States, as parties to CEDAW, must eradicate any and all laws that do not grant women equal control over their land and at all levels of decision-making. These laws reinforce discriminatory gender norms that place women as subordinates to men and deny women the full participation in decisions over their land tenure. Changing discriminatory gender norms is a process that requires both a top-down approach by removing laws that deny women land rights and decision-making powers, and bottom-up approach through educational ground efforts. States can advance this process by removing the systemic, top-down mechanisms of these laws and ensure that women can fully exercise their land tenure rights.

B. Oppressive Social Gender Norms Affecting Rural Women and Girls

The Committee on the Elimination of Discrimination against Women identified Article 14 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as the only provision in an international human rights treaty which specifically pertains to rural women.²⁷ The Committee acknowledges the numerous ways in which rural women and girls face an intersectionality of discrimination and are often the victims of harmful practices, including physical and psychological harm increasing risks to their sexual and reproductive health.²⁸ Generally, harmful practices are associated with serious forms of violence or are themselves a form of violence against women and girls; although the nature of the

²⁶ *Id.* (select Ecuador)

²⁷ CEDAW Gen. Rec. 34, *supra* note 10, at ¶ 2.

²⁸ *Id.* at ¶ 22 (Citing CEDAW, *Joint General Recommendation No. 31/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices*, ¶ 9, U.N. Doc. CEDAW/G/GC/31/CRC/C/GC/18 (Nov. 14, 2014))

practices vary by region and culture, the most prevalent and well documented are female genital mutilation, child and/or forced marriage, polygamy, crimes committed in the name of so-called honour, and dowry-related violence.²⁹ Additional harmful practices include extreme dietary restrictions, even during pregnancy, body modifications such as fattening or thinning for marriageability, resulting in an epidemic of eating and health disorders, breast ironing to protect girls from early pregnancy or sexual harassment, virginity testing and related practices, binding, scarring, branding/infliction of tribal marks, corporal punishment, stoning, violent initiation rites, widowhood practices, accusations of witchcraft, infanticide and incest.³⁰ These practices are strongly connected to and reinforce oppressive patriarchal power relations and gender roles that keep women and girls subordinate to men. Reinforcing the normalcy of these harmful practices is a significant barrier to rural women and girls' dignity and limit their power decision-making over all contexts, including decisions over their body, health, and education.³¹

It is also relevant that a correlation exists between an increase in human rights abuses, including harmful practices and men's violence against women, in relation to women's lower socio-economic status.³² Poverty silences and prevents women from self-agency, and often they remain in violent relationships because their abusive partner is tied to their access to food, housing, and land.³³ States have an obligation to eliminate these harmful practices as they deny rural women and girls the ability to fully exercise their freedom and human rights.³⁴ In fact, for

²⁹ Committee on the Elimination of Discrimination Against Women, *Joint General Recommendation No. 31/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices*, ¶ 7, U.N. Doc. CEDAW/G/GC/31/CRC/C/GC/18 (Nov. 14, 2014) [Hereinafter CEDAW Jt. Rec. 31].

³⁰ *Id.* at ¶ 9.

³¹ *Id.* at ¶¶ 9, 61.

³² Realizing Women's Rights, *supra* note 2, at 2. (See UNDP, VOICES AND VISIONS: THE ASIA PACIFIC COURT OF WOMEN ON HIV, INHERITANCE AND PROPERTY RIGHTS (2008)); (See also PRADEEP PANDA & BINA AGARWAL, MARITAL VIOLENCE, HUMAN DEVELOPMENT AND WOMEN'S PROPERTY STATUS IN INDIA, 33 WORLD DEVELOPMENT No. 5 (2005)).

³³ Realizing Women's Rights, *supra* note 2, at 2.

³⁴ CEDAW Jt. Rec. 31, *supra* note 29, at ¶¶ 61-62.

rural women and girls who are faced with a plethora of oppressive patriarchal practices, land rights are even more imperative, as it is perhaps the most vital asset for ensuring food security and their ability to rise out of poverty, as well as a first step to personal autonomy.³⁵

Ensuring rural women and girls' land tenure rights advances their feelings of legitimacy, often translating to other autonomous decisions for women regarding their body, safety, and healthy sexual practices.³⁶ Owning land affects the decision-making processes within the household and in the community, thus, granting rural women land rights allows them the opportunity to redefine their role and status within and outside their home.³⁷ This is a step towards challenging the patriarchal power relations. However, it is not enough to grant rural women the legal rights to own land, unless these rights are secured from the informal discriminatory cultural and religious laws/practices.

C. Customary Laws/Practices that Discriminate Against Rural Women and Girls

Land ownership is recognized as a symbol of identity, status, certainty, and safety as it becomes an agency for capital investment and foundational to other rights, such as health, housing, food, physical and financial security, education and sexual and reproductive health and rights.³⁸ The staggering low statistics of rural women's land ownership significantly impacts their livelihood. The customary cultural and religious patrilineal practices often prohibit rural women from land control or ownership, including discriminatory practices of land distribution in marital relations, and denial of land inheritance to widows.³⁹ The customary, often local,

³⁵ HRA Statement, *supra* note 8, at 2 (*Citing* ANA PAULA DE LA O CAMPS, ET AL., FOOD AND AGRIC. ORG. OF THE U.N. (FAO), GENDER AND LAND STATISTICS: RECENT DEVELOPMENTS IN FAO'S GENDER AND LAND RIGHTS DATABASE (Rome, 2015))

³⁶ Realizing Women's Rights, *supra* note 2, at 2.

³⁷ *Id.* (See also ACTIONAID INTERNATIONAL, SECURING WOMEN'S RIGHTS TO LAND AND LIVELIHOODS A KEY TO ENDING HUNGER AND FIGHTING AIDS, ACTIONAID INTERNATIONAL BRIEFING PAPER 7 (June 2008)).

³⁸ *Id.* at 3; Villa, *supra* note 13.

³⁹ HRA Statement, *supra* note 8, at 2.

discriminatory land tenure practices in Jordan, India and Uganda, disregard the formal national laws that give women land tenure rights.⁴⁰ In some instances, the husband or his family coerce the woman into gifting her inherited land to the his family by threats of physical harm or violence.⁴¹ For rural women who rely on the land for their sustenance and their economic well-being, denial of land rights diminishes their ability to make survival choices for their families and themselves, essentially their right to life.⁴²

It is imperative to understand the multi-layered process of ensuring, actualizing, and protecting rural women and girls' land rights. The mechanisms of poverty and the informal discriminatory customary cultural and religious laws/practices become a barrier for their ability to fully exercise their land rights. If progress is not made to address these barriers, women's socio-economic power will remain stagnant, inhibiting forward progress, and the cycle of subordination will continue.⁴³ It is necessary to bring awareness and education from a ground-up approach to shift these discriminatory customary practices, and in doing so, give women a presence and a voice in important decision-making processes.

III. RURAL WOMEN AND GIRLS' LAND TENURE RIGHTS ARE CURTAILED BY THE PRACTICE OF INFORMAL CUSTOMARY LAW IN SEVERAL COUNTRIES

In February 1996 and December 1997, the General Assembly adopted resolutions for the 'Improvement of the situation of women in rural areas,' in part, stating that Governments need to become more aware of strategies and programmes to improve the situation of women in rural

⁴⁰ *Id.*

⁴¹ *Id.* at 3.

⁴² Realizing Women's Rights, *supra* note 2, at 3.

⁴³ *Id.* at 2.

areas.⁴⁴ Further, the December 1997 resolution was more specific by inviting Member States to develop strategies to help rural women by:

“Designing and revising laws to ensure that women have equal access to and control over land, unmediated by male relatives, in order to end land rights discrimination; according women secure use rights and full representation in the decision-making bodies that allocate land and other forms of property, credit, information and new technologies; and, in the implementation of the Beijing Platform for Action, according women full and equal rights to own land and other property, inter alia, through inheritance; land reform programmes should begin by acknowledging the equality of women's rights to land and take other measures to increase land availability to poor women and men... .”⁴⁵

As discussed above, informal customary cultural and religious practices, especially in rural areas, often abridge women’s full exercise of land tenure rights through patrilineal practices. These discriminatory norms become customary law, and States must acknowledge these oppressive practices and be held accountable. Article 2(f) of CEDAW, states in part that Parties should “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.”⁴⁶ It is clear that if States do not take appropriate measures in defeating discriminatory customs, rural women’s land rights and women’s rights progress will continue to be obstructed. The data indicators from GLRD make it easier to identify the countries which allow their informal customary laws/practices to curtail the formal laws and thus deny rural women their land rights.⁴⁷ This data was used to identify countries that do not enforce formal laws over discriminatory customary laws. Concurrently, methods are presented that could minimize the ill

⁴⁴ General Assembly, *Improvement of the Situation of Women in Rural Areas*, G.A. Res. 50/165, ¶ 2 (Feb. 16, 1996); General Assembly, *Improvement of the Situation of Women in Rural Areas*, G.A. Res. 52/93, ¶ 2 (Dec. 12, 1997)

⁴⁵ G.A. Res. 52/93, ¶ 2(e) (Dec. 12, 1997)

⁴⁶ Convention on the Elimination of All Forms of Discrimination against Women art. 5, Dec. 18, 1979, 1249 U.N.T.S. 13

⁴⁷ LAT, *supra* note 23.

effects of the informal laws within the current legal framework. The following are some examples of a few of these countries:

A. Madagascar: Informal Customary Law/Practice of Patrilineal Inheritance and Land Certification Curtails Gender Equitable Formal Law

The contradictions and discrepancies between statutory law and customary practices in Malagasy law reflects the realities on the ground and the lack of enforcement of gender equitable land rights.⁴⁸ In particular, although the law 68-012 confers male and female heirs' equal rights of inheritance, in practice, the custom is to perpetuate the father's name and estate (*mamelona ny anaran-drainy*) through male heirs.⁴⁹ This law provides that all heirs will agree that male heirs will receive the land, while female heirs will receive their share in the form of a lump sum of money only.⁵⁰ Further, there are formal laws in place that allow for joint registration of marital property (law 2015-019). For example, when a man registers for land certificates, the staff at local land offices do not ask him about family status, or inform him that if he is married, his wife must be present to consent his sole ownership of the property.⁵¹ These customary practices lead to women being denied rights to their land, despite the formal laws in place. It is important to note that Madagascar is also a party to CEDAW.

In some communes, the lack of awareness among municipal offices of the formal laws of land management inhibit women's ability to exercise their land rights.⁵² The lack of information allows for the continued patriarchal customs in which land certificates only record the name of the husband, who may also be unaware that he can register his wife. Staff at local land offices

⁴⁸ FOOD AND AGRIC. ORG. OF THE U.N. (FAO), MADAGASCAR AND LEGAL PLURALISM: CAN CUSTOMARY AND STATUTORY LAW BE RECONCILED TO PROMOTE WOMEN'S LAND RIGHTS?, GENDER AND LAND RIGHTS DATABASE AND LAND PORTAL (2014) (Online Discussion Summary June 3-23, 2013) [hereinafter Madagascar]

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

should be trained to ask a man's family status upon registering. If married, they should require that his wife be present if he requests sole ownership. However, the husband must be informed that his wife has the right to jointly own the land. Yet, for such formal legislation to be effective it needs to be coupled with strong oversight and an emphasis on ground effort awareness and education in the community and for local enforcers.

B. Zimbabwe – Informal Customary Law Curtails Gender Equitable Formal Law

Zimbabwe has a formal legal system that operates in parallel with customary law. Customary laws are generally unwritten but are recognized by Zimbabwe's 2013 constitution, which defines them as "the customary law of any section or community of Zimbabwe's people." (Const. of Zimbabwe of 2013, cap. 18, part 3, para. 332.). Thus, customary law is a powerful cultural force, and particularly potent with respect to marriage and inheritance matters, which impacts many facets of life in the country.⁵³ Although formal law provides for gender equality, the customary laws and practices often do not. In fact, some customary laws view women as minors and thus deny rural women their land rights, as these informal laws take precedence over the formal legal system.⁵⁴ This was supported by the Supreme Court in 1999, when it ruled that a woman could not inherit her father's property under formal law, even if she was named in his will.⁵⁵ Thus, it is clear that State institutions and officials can often be reluctant to enforce formal law, and instead adopt the customary patriarchal norms that deny rural women land rights.

⁵³ BETHANY BROWN, ET AL., HUMAN RIGHTS WATCH, YOU WILL GET NOTHING: VIOLATIONS OF PROPERTY AND INHERITANCE RIGHTS OF WIDOWS IN ZIMBABWE 3 (2017),

https://www.hrw.org/sites/default/files/report_pdf/zimbabwe0117_web.pdf [hereinafter HRW Zimbabwe]

⁵⁴ WORLD BANK, GENDER AND AGRICULTURAL SOURCEBOOK, AGRICULTURAL AND RURAL DEVELOPMENT 150 (2009), <http://siteresources.worldbank.org/INTGENAGRLIVSOUBOOK/Resources/Module4.pdf> [hereinafter Gender and Agric.]

⁵⁵ *Id.*

According to the FAO, an estimated 80% percent of women in Zimbabwe “live in rural areas, marry under customary law and do not register their marriages.”⁵⁶ Because the Matrimonial Causes Act of 1985 does not protect the widows that married under unregistered customary law, rural women are significantly affected and denied any inheritance rights.⁵⁷ Further, the only option for a widow to obtain recognition of her marriage posthumously, and thus also her marital property, is by her in-laws’ verification.⁵⁸ Yet, the in-laws stand to benefit if they decline to verify the marriage, and instead claim their son’s land. Thus, rural women face significant obstacles to assert their marital/inheritance rights because of the conflict between the laws purported to protect their rights and the customary practices.

These discriminatory practices are difficult to address if the formal legal authority does not step in to rectify the gender inequities in both formal and informal legal systems. In fact, the various marriage laws must be consistent and address the realities of rural women. In doing so, rural women who are either unaware of formal marriage registration requirements or unaware of the implications of not registering will not be systemically deprived of their land rights.

C. Bolivia, Nicaragua, Cambodia: Failure and Success of Informal Customary Law/Practice of Land Titling Curtail Formal Law

Bolivia, Nicaragua, and Cambodia implemented land titling programs that intended to aid women and curtail patriarchal practices, but these ended with varied results. Despite the land titling programs initiated in Bolivia and Nicaragua that were to address and grant women equal land tenure, local implementers resisted and derailed the good intentions of these programs.⁵⁹ Even with the positive and specific language that granted both men and women equal land rights, the patriarchal customary practices of giving title to the head of household followed suit, and

⁵⁶ LAT, *supra* note 23 (select Zimbabwe).

⁵⁷ *Id.*

⁵⁸ HRW Zimbabwe, *supra* note 53, at 2-4.

⁵⁹ Gender and Agric., *supra* note 54, at 127.

most of the land was titled to men.⁶⁰ According to the research by the World Bank Group, International Fund for Agricultural Development (IFAD), and FAO, it is imperative to note that gender-neutral laws can be inherently biased, and therefore land legislation must explicitly recognize women's equal rights to land.⁶¹ Further, it is the regulation and local implementation of these laws that become pertinent as the local process on its own can pose barriers for women to own land,⁶² as was the situation in Bolivia and Nicaragua.

However, in Cambodia, a land titling project proved to be successful because of the ground efforts to address gender issues at the local level, specifically through educational campaigns.⁶³ These campaigns included both the participation of men and women, and the organizers were careful to ensure that illiterate women were provided with appropriate information, including information in pictorial form.⁶⁴ These examples, prove that legislation and land right reforms must be coupled with efficient educational ground efforts.

Thus, land reforms must include ground efforts which educate and bring awareness to the local community and local authorities of gender inclusive land rights. It is imperative that rural women partake in these discussions and become visible to the community and have a voice in the process. Further, religious leaders in the community must also be made aware of these new land reforms because often religion has a strong hold on gender roles that limit women's decision-making processes.⁶⁵ The shift in involvement of women in their community by default re-defines their role and lays a foundation to their empowerment.

⁶⁰ *Id.*

⁶¹ *Id.* at 144.

⁶² *Id.*

⁶³ *Id.* at 131.

⁶⁴ *Id.*

⁶⁵ Madagascar, *supra* note 48.

IV. GRANTING RURAL WOMEN LAND TENURE IMPROVES THE COMMUNITIES' ECONOMIC STATUS

A study by the World Economic Forum indicates that women invest 90% of their income in their immediate families, and as land owners, have more power over household decisions, greatly improving the prospects of their children and future generations.⁶⁶ Because rural women are a major provider of food and food security, the Food and Agriculture Organization (FAO) argues that improving women's access to land and productive resources to the level of men, could increase yield on their farms by 20% to 30%.⁶⁷ In fact, it could increase the agricultural output in developing countries by as much as 2.5% to 4%, improving the economy of their community.⁶⁸ Rural women hold the key to sharply reducing world hunger, particularly in places like Africa, where the hunger problem is most severe.⁶⁹ Put simply, granting women land tenure rights is a powerful economic catalyst.⁷⁰

V. CONCLUSION

It is imperative that rural women and girls' land tenure rights are ensured if the goal is to achieve women's equity and emancipation. Every woman should be able to exercise her sovereignty, and land tenure rights are a step towards that goal. By granting rural women and girls land tenure rights, there is an inherent shift in the oppressive gender norms. States are responsible to challenge these oppressive norms and ensure women's land rights through formal laws. States must require that all customary laws be subject to the rule of formal legislation. However, successful land reforms will depend greatly on civic engagement and the ground

⁶⁶ Villa, *supra* note 13.

⁶⁷ Women in Agric., *supra* note 11, at 5.

⁶⁸ *Id.* (See also Victoria Stanley, *Let's work together to make land rights for women a reality*, THE WORLD BANK GROUP, VOICES OF RURAL WOMEN (Oct. 15, 2017), <https://blogs.worldbank.org/voices/category/tags/rural-women> (accessed Feb. 28, 2018).

⁶⁹ FOOD AND AGRIC. ORG. OF THE U.N. (FAO), AFRICA REGIONAL OVERVIEW OF FOOD SECURITY AND NUTRITION: THE CHALLENGES OF BUILDING RESILIENCE TO SHOCKS AND STRESSES 1 (2017), <http://www.fao.org/3/a-i6813e.pdf>

⁷⁰ Villa, *supra* note 13.

efforts to educate all levels of participants, specifically the local implementers. Clearly, granting rural women and girls land rights improves their self-agency, and the livelihood of their families and communities. If States do not act to remedy this gender disparity, the subordination of women will only heighten the propensity of other human rights violations.⁷¹ In failing to empower rural women, States will also continue to jeopardize their own progress.⁷²

Unequivocally, the role of rural women and girls is critical to the success of the new Sustainable Development Goals agenda for 2030.

VI. RECOMMENDATIONS

Human Rights Advocates respectfully presents the following recommendations and encourages the Commission for the Status of Women to urge States to ensure, actualize and protect rural women and girls' land tenure rights by the following:

1. Secure a universal legal framework wherein rural woman have full, equal, and direct rights to land by encouraging States to undertake land reforms that denounce patrilineal practices of land tenure;
2. Address the conflict between formal and informal land tenure laws and urge States to enforce compliance of formal laws that grant rural women and girls land tenure rights by engaging and educating all levels of participants, including local authorities, religious leaders, and local community members of the ruling law;
3. Urge States to engage in ground effort discourse to address the ill effects of gender norms and informal customary laws that deny the advancement of their communities;
4. Urge States to challenge the patriarchal gender norms through the education system, and include pedagogy that requires rural women and girls to be the decision-makers; and

⁷¹ Realizing Women's Rights, *supra* note 2.

⁷² CEDAW Gen. Rec. 34, *supra* note 10, ¶ 6.

5. Urge States to ensure that new legislation provides for the amendment and/or removal of provisions contained in other areas of law, such as civil codes, personal status, family and marriage law, property law, housing and/or land law, that contradict the legislation adopted, so as to ensure a consistent legal framework that promotes women's human rights and gender equality.

The following are examples of specific methods that may facilitate solutions:

- a. Create marital property documents that upon marriage confers equal titling of property ownership and administration to both spouses, and if local institutions do not follow the rules they must be sanctioned;
- b. Educate women about their rights to own and inherit land as part of the civil marriage process;
- c. Continuously educate the local authorities that perform the authentication of land documents; and
- d. Restrict testamentary freedom, to ensure widows and children are entitled to a share of inheritance.