



IMPROVING WOMEN'S ACCESS TO LAND IN EASTERN DRC: CHALLENGES AND EMERGING OPPORTUNITIES

LEARNING FROM EMERGING PRACTICES

SECURING LAND AND PROPERTY RIGHTS FOR ALL

IMPROVING WOMEN'S ACCESS TO LAND IN EASTERN DRC: CHALLENGES AND EMERGING OPPORTUNITIES

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EXECUTIVE SUMMARY

A. TOR & METHODOLOGY


Access to land and natural resources is essential to social and economic development, providing housing, food and livelihood security. In eastern DRC, rural and indigenous populations exist in tenuous tenure security situations, and the reasons for conflicts over land are many and varied, ranging from natural resource exploitation to ethnic conflict to state weakness, just to name a few. Added to this mix is over two decades of armed conflict between a multitude of armed forces, which has caused massive waves of prolonged displacement, severely impacting women and children, many of whom are widows and orphans. However, long before these stressors, customary land practices had systematically discriminated against women, denying them control and security in the land that they work for their husbands and fathers. Despite recent efforts by the Congolese government to address this inequality, women continue to struggle to gain access and control to land, as awareness of rights and state enforcement power remains low.

UN Habitat has been working in the eastern DRC since 2009, and the purpose of this study is to help better understand and integrate gender issues into existing programming, and to guide future activities to improve and support women's access to land in the region. The study seeks to develop a baseline understanding of women's access to land, with particular focus on the barriers under customary and statutory regimes faced by women as daughters, wives, widows, displaced, and how they are coping with these conditions. Although there have been recent legislative efforts to remedy the situation, the gap between legislation and implementation remains large, and there is a need to examine the impediments to improvement. Women

often suffer disproportionately during conflict, and the DRC is no exception; women are symbolic targets in war, they lose their husbands and the little claim to land and security they possess, they are denied the right to go home, and can be stripped of what remaining possessions they have solely because they are women. Gender neutral programs are not enough to overcome the barriers that culture, history and war have created, and there is a need to develop targeted actions that can help rebalance the scales.

Despite these bleak conditions, there are signs of hope, and this study also seeks to understand how women are coping with the resources they have and a determination for change. Women are starting to speak out, and are demanding information and education and the right to claim what is theirs. Their actions are coinciding with increasing recognition by development organizations of the importance of the gender aspect of development and the systematic discrimination that women continue to face. Practitioners are realizing that supporting women's access to land both empowers women and achieves larger developmental goals, because as women become stronger and more self-sufficient, they are using these additional resources to care for their children and families, and improve the future of the country. A final aim of this research was to find these success stories and examine how they can be better supported to spread their message of change and demand for a better and more inclusive future.

Methodology: Information for this report was gathered through a combination of desk study of existing literature and field work, which was conducted between 7-22 May 2014. Due to time constraints, only four areas were targeted to allow a more in-depth examination of the dynamics and practices around women's access to



land, as these areas are representative of many other parts of the provinces. The four sites spanned three provinces: Kitchanga and Masisi Centre in North Kivu, Mahagi in Province Orientale, Ituri, and Minova in South Kivu. Visits to nearby villages were also made where time allowed. Sites were selected that could provide a cross-section of viewpoints on women's access to land, and that had some penetration by UN Habitat and its partners to examine the impact of their activities. The fieldwork included approximately 23 focus group discussions with men, women, youth, civil society, displaced persons in camps, and customary leaders; please note, all names of people whose stories are included in this report have been changed to protect their privacy. An additional 7 interviews were held with targeted UN Habitat partners and government officials.

Where this study references information reported, it is important to understand that this is how the speaker perceived the situation; it was impossible to verify everything that was shared with the study team. Both in recognition of this challenge and to obtain a cross-section of various viewpoints and experiences on women's access to land, discussions were held with people of various education and engagement levels – i.e., persons engaged in civil society activism, those who had participated in awareness raising trainings, people from the community who have not had such exposure and represent more base-level perspectives, etc. Unsurprisingly, there were conflicting accounts from different groups of people, indicating that much closer attention must be paid to actual realities on the ground, and more time spent on examining the impact of laws, policies, and other interventions.

B. SUMMARY OF RECOMMENDATIONS

1. IMPROVING WOMEN'S POSITION IN THE CUSTOMARY SYSTEM

Mediation: Helping women negotiate for better conditions in customary systems. Mediation has been a successful mechanism and space for women to negotiate for better positions regarding access to land in customary settings. Mediators must also ensure that they make specific efforts to talk with women involved with conflicts (which may entail private conversations without male members of the family), and also talk through how the conflict and any possible outcomes will impact the women involved. Where tenure documents are obtained as part of a mediation compromise, mediators must ensure that they are jointly issued, and not simply to the head of household. Particularly in larger, community level conflicts, it is important that mediators not lose sight of the way women experience this conflict, and to use the access provided opportunity to educate the larger audience on women's rights, to speak with the women themselves about their problems, and to work together to improve the situation. Finally, mediating institutions should study the common types of land conflict cases that women experience and develop specific trainings and activities in response. Some examples could be creating support groups for widows to fend off neighbors or family who try to take their land, or groups for daughters to plan and advocate for their inheritance rights.

Linking women and customary leaders: combine efforts of women and customary leaders. With the amount of control and influence that customary leaders have, it is both important and effective to work with them to support women's access to land. Empowering

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Continued

women to approach and build links with customary leaders can create positive change for women that overcomes major social obstacles. Evidence suggests that several customary leaders are seeking to improve women's access to land, and more involvement of women themselves in such initiatives can provide a substantial boost to these efforts; i.e., combine the efforts of chiefs and women to promote civil registration of marriage, facilitate a consistent process for women to obtain customary tenure documents. Additionally, outside actors like UN Habitat should develop synergies between their programs with customary leaders and women to create forums where the two parties come together to discuss relevant issues, such as bringing women to meetings of the Committee des Sages.


Facilitating return and access to land for displaced women. Projects that provided access to land for cultivation for women in displacement had noticeably positive effects, and should be continued and replicated. However, significant gaps were observed regarding assistance for displaced women who wanted to return home but were unable to do so, due to obstacles such as male relatives or members in the community claiming their lands, or a lack of knowledge about the status of the space they lived in before displacement. UN Habitat and its partners in the Land Coalition Group span significant geographical ranges and can create networks and referral pathways to obtain and share information about different areas. Additionally, the State and other actors implementing programs to facilitate access to land for displaced persons, either via return or resettlement, should promote the use of joint title or other mechanisms to ensure that co-ownership is legally recognized, instead of acknowledging only a single head of household and assuming that benefits will be shared equitably within the family.

Providing direct assistance to obtain customary tenure protection. While there are some forms

of customary tenure protection that are available to women, such as testaments or documents like an acte de cession, women interviewed during the study typically had low levels of awareness of these mechanisms, and even those that did know about them were not certain how to access them. Trainings can help raise awareness of their existence, but direct assistance in the form of lawyers, paralegals or other advisors familiar with these processes are also needed to overcome practical obstacles, like gaining access to customary authorities. Other activities could include: facilitating sessions that explain the utility of a written testament; working with families to ensure that in the case of oral testaments, women are included as living witnesses to verify the wishes of the testator; and/or ensuring that parents show children the location and boundaries of land they will inherit.

2. IMPROVE WOMEN'S ABILITY TO ACCESS STATUTORY PROTECTION

Continue awareness raising activities with more focused goals and targeting methods. Workshops, trainings and other awareness and sensitizing activities must continue, but need more emphasis on how those who have been trained can use that knowledge to help others. Combined groups of men, women and youth should be created to speak to all demographics, and to send the message that supporting women's land rights is not for the sole benefit of women, and that empowering women will benefit the communities and country as a whole. Care must be taken to ensure that these groups are trained to demonstrate how males and females can work together equally as partners. There is also great value in the flexibility of having the ability to send in all men, all women, or mixed groups, so as to send in a messaging team that is most appropriate for the audience. Trainings need to move beyond simply delivering information, and must better focus on what individuals can do by challenging participants to use



what they learn. Some examples might include helping parents to write testaments or to register marriages, and workshop programs should include information on how to carry out such tasks and identify people who can provide assistance if needed.

Provide direct legal assistance to bridge the gap between passage of law and implementation. Just as direct assistance can help women access customary protection, so too can it help women make use of the statutory protections that are available. While trainings can provide information on legal protections such as the marriage regimes and registration processes, and the land laws and availability of joint title, many women still need help in actually accessing the statutory system. Lawyers and paralegals can play a crucial role in helping women obtain title (joint or sole), assisting with birth or marriage certification processes, defending their rights in divorce or inheritance cases, particularly in towns or more urban areas, and helping to overcome logistical barriers by filing paperwork in batches if their clients are unable to travel to government administrative centers.

Promote cooperation between formal and informal dispute resolution and other legal mechanisms. Both men and women praised mediation for its low cost and non-adversarial nature, but the lack of enforcement power is one of the major weaknesses of the mechanism. One potential solution is for the judicial and mediation systems to work together – i.e., to have judges certify and enforce mediation compromises, or for the court to refer cases to mediation if that is a more appropriate venue. More research should be done to identify and pilot creative ways for the two worlds to cooperate and support each other.

3. EMPOWERMENT: SUPPORT WOMEN TO BE DRIVERS OF CHANGE

Increase support to women's committees and association. Giving women land alone does not guarantee that they will be able to keep that land in the future; they need tools and a support network to guard against the myriad threats they face. Women have started coming together throughout eastern DRC to speak out and demand better treatment. Current efforts to assist women must not treat them as passive beneficiaries, but rather consider how to help them challenge the restrictions they face. Women's committees and associations offer context specific advice, and can be very helpful in increasing their confidence and effectiveness; their numbers also lessen the likelihood of that any individual member can be substantially sanctioned by the community for speaking out. Because social, economic, health, and safety issues are all intertwined with women's access to land, bringing together different groups with different focal areas will improve understanding of the links between all these issues and women's access to land. UN Habitat should collaborate with other UN agencies and women's groups working on various issues (i.e., health, sexual violence, education, land) to forge new and stronger links.

Economic empowerment: Women's lack of economic control and financial independence remains a major impediment to exercising their land rights; women need to be able to claim their rights, knowing that they will not be "put out" if their husbands dislike what they are doing. Strengthening their financial position will also help improve their bargaining positions within the family, and studies show that, contrary to the family unit falling apart, as implied by so many men in interviews, women who are economically empowered gain higher levels of respect within their families and communities. More needs to be done to explore how to

EXECUTIVE SUMMARY

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promote their financial autonomy, one method showing early signs of success is the formation of agricultural collectives, where women have more control over both productive resources and economic benefits. Finally, it will be important to continue education activities for all members of communities to understand the value of giving women more economic control and independence.

Political empowerment: Political empowerment is a crucial component of supporting women. Around the world, women have been historically excluded from decision-making processes and institutions at all levels in both customary and statutory systems, resulting in decisions which have effectively ensured that men maintain control over property and productive resources, buttressing systems that protect male managerial power. Even current laws that may appear gender neutral often tend to reinforce customary stereotypes and discriminations, such as the presumption of a single title-holder. Efforts need to target including more women in both customary and statutory decision-making bodies, but as this tends to be a long-term goal, current steps should focus on leveraging existing relationships and bringing women and leaders – both customary and statutory – together. Some examples could include facilitating discussions between women and the Committee des Sages in North Kivu, and bringing rural women to participate in national level discussions regarding the current land and family law reform agendas.

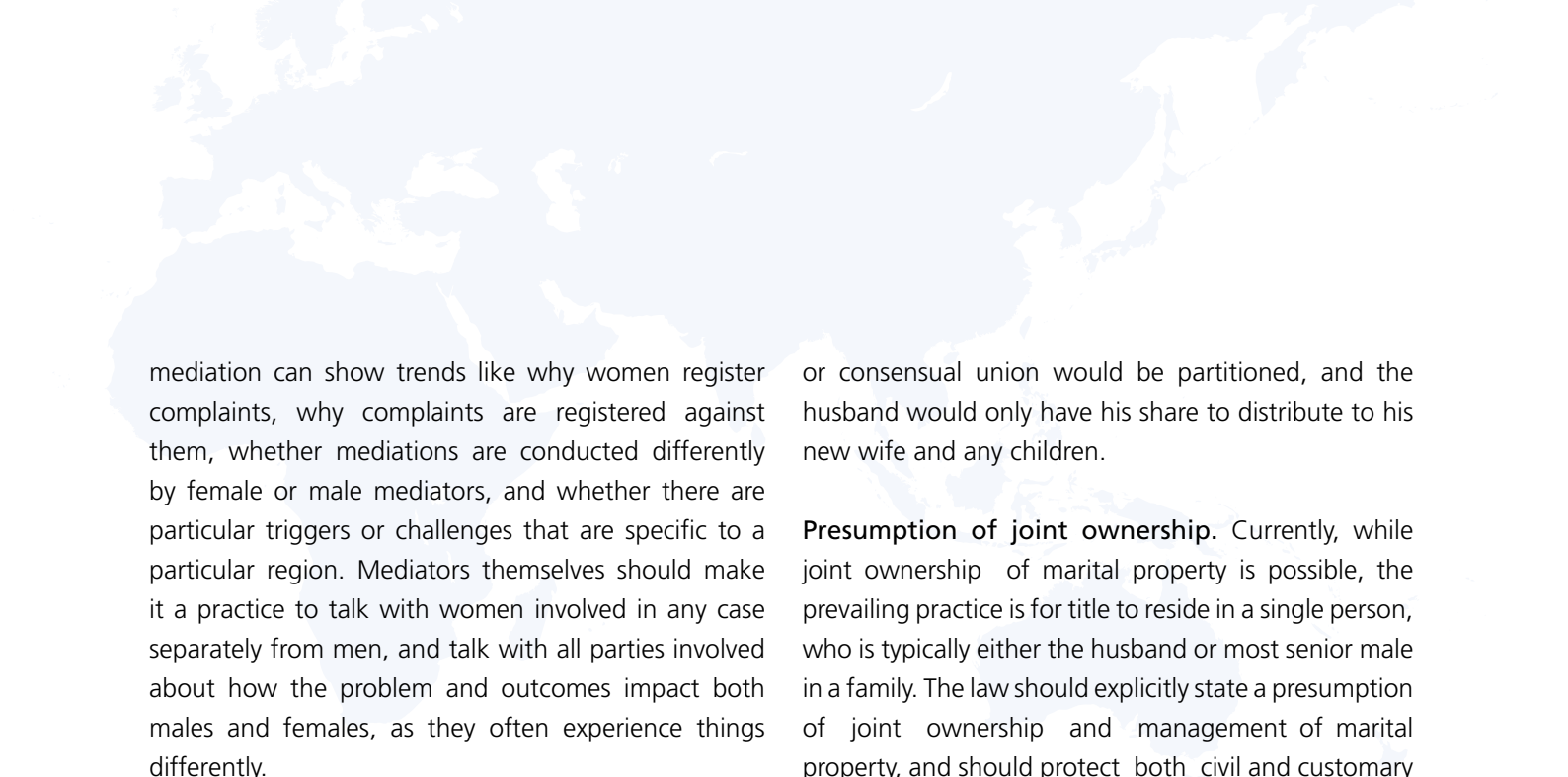
4. MAINSTREAMING GENDER ISSUES IN PROGRAMMING

Listen to women and recognize gender biases. Those seeking to provide assistance must strive to ensure that they understand the viewpoints of women, by speaking to the women themselves, as they are best placed to articulate their fears and opinions. All

women are not the same, and it is necessary to talk with women of all education and awareness levels to understand different perspectives, needs, and fears. Women have been forced to cope with existing social and cultural conditions for a very long time, and their decisions to adhere to them should not be interpreted for support for them. Many civil society organizations are still predominantly male, and while recognizing the value of institutional knowledge, we must also recognize that much of it was developed during times and in settings dominated by male thought.

Promote meaningful participation by women. Women must be more involved in activities related to land and that are intended to promote access to land; their involvement cannot be measured by numbers alone, and must go beyond mere presence. During interviews, male civil society and customary leaders alike indicated that women had less interest in such activities, and did not have time for them. However, their statements failed to account for the reality that women have never really had a choice; they are expected to care for the home and the family, and advocacy activities are an addition to their already substantial workload – the men were not offering to help share in some of these tasks and duties. We must make particular efforts to ask women if they want to be more involved in activities like advocacy and training (and many women interviewed indicated that they did), and find creative ways to overcome barriers to participation, perhaps by moving meeting location places or times to accommodate women's responsibilities at home.

Gender analyses of activities. There exists much data about the types of land conflicts and other land related issues in eastern DRC, and while some is collected at a gender specific level, much is not. Analyzing this information at a micro-level is necessary to better understand nuances; for example, gender disaggregated data about land conflicts registered for



mediation can show trends like why women register complaints, why complaints are registered against them, whether mediations are conducted differently by female or male mediators, and whether there are particular triggers or challenges that are specific to a particular region. Mediators themselves should make it a practice to talk with women involved in any case separately from men, and talk with all parties involved about how the problem and outcomes impact both males and females, as they often experience things differently.

5. ADVOCATE FOR BETTER LAWS

Protect a broader spectrum of land rights. While the DRC has made admirable strides in passing legislation to help protect women's land rights, at the moment, it only accords formal protection for statutorily recognized ownership, which tends to concentrate power and control in land over a single head of household, who is generally a male figure. Laws should be modified to extend legal protection to more land use rights, including interests less than full ownership like customary use rights that women have in marital land as has been done in Uganda, or to create a system that allows a customary user to incrementally gain statutory protection, potentially by recognizing customary land rights as a basis for formal titling.

Protect all unions. The vast majority of rural women in eastern DRC have either customary or religious marriages, and are thus denied the protection of the DRC's Family Code, which only applies to women who have civil marriages. The law should also recognize and protect the rights of these other women, as has been done in varying stages by South Africa, Liberia, and Mozambique. Other possibilities include legislation to protect women where polygamy is practiced; South African law requires that where the husband takes a second wife, all property belonging to the first marriage

or consensual union would be partitioned, and the husband would only have his share to distribute to his new wife and any children.

Presumption of joint ownership. Currently, while joint ownership of marital property is possible, the prevailing practice is for title to reside in a single person, who is typically either the husband or most senior male in a family. The law should explicitly state a presumption of joint ownership and management of marital property, and should protect both civil and customary unions. For example, South Africa's Recognition of Customary Marriages Act automatically sees all people in customary marriages as married under a community property regime, and the Tanzanian Land Act of 1998 presumes spousal co-ownership of family land.

Specifically prohibit discrimination against women in application of all law and practice. Legislation should explicitly clarify that there are no exemptions to the constitutional requirement of non-discrimination, as it must be clear that at all levels, discrimination against women in either customary or statutory law and practice is unacceptable and will not be tolerated. Any discriminatory law, custom, or practice should give rise to a legal cause of action, and judges and customary leaders should be trained to ensure they are aware of the law, and that customary law and practice is not exempt from the Constitutional requirement of non-discrimination.

01

INTRODUCTION

INTRODUCTION

A. TOR & METHODOLOGY

Access to land and natural resources is essential to social and economic development, providing housing, food and livelihood security. In eastern DRC, rural and indigenous populations exist in tenuous tenure security situations, and the reasons for conflicts over land are many and varied, ranging from natural resource exploitation to ethnic conflict to state weakness, just to name a few. Added to this mix is over two decades of armed conflict between a multitude of armed forces, which has caused massive waves of prolonged displacement, severely impacting women and children, many of whom are widows and orphans. However, long before these stressors, customary land practices had systematically discriminated against women, denying them control and security in the land that they work for their husbands and fathers. Despite recent efforts by the Congolese government to address this inequality, women continue to struggle to gain access and control to land, as awareness of rights and state enforcement power remains low.

UN- Habitat has been working in the eastern DRC since 2009, and the purpose of this study is to help better understand and integrate gender issues into existing programming, and to guide future activities to improve and support women's access to land in the region. The study seeks to develop a baseline understanding of women's access to land, with particular focus on the barriers under customary and statutory regimes faced by women as daughters, wives, widows, and displaced, and how they are coping with these conditions. Although there have been recent legislative efforts to remedy the situation, the gap between legislation and implementation remains large, and there is a need to examine the impediments to improvement. Women

often suffer disproportionately during conflict, and the DRC is no exception; women are symbolic targets in war, they lose their husbands and the little claim to land and security they possess, they are denied the right to go home, and can be stripped of what remaining possessions they have solely because they are women. Gender neutral programs are not enough to overcome the barriers that culture, history and war have created, and there is a need to develop targeted actions that can help rebalance the scales.

Despite these bleak conditions, there are signs of hope, and this study also seeks to understand how women are coping with the resources they have and a determination for change. Women are starting to speak out, and are demanding information and education and the right to claim what is theirs. Their actions are coinciding with increasing recognition by development organizations of the importance of the gender aspect of development and the systematic discrimination that women continue to face. Practitioners are realizing that supporting women's access to land both empowers women and achieves larger developmental goals, because as women become stronger and more self-sufficient, they are using these additional resources to care for their children and families, and improve the future of the country. A final aim of this research was to find these success stories and examine how they can be better supported to spread their message of change and demand for a better and more inclusive future.

Methodology: Information for this report was gathered through a combination of desk study of existing literature and field work, which was conducted between 7-22 May 2014. Due to time constraints, four areas were targeted to allow a more in-depth examination of the dynamics and practices around women's access to land, as these areas are representative of many other parts of the provinces. The four sites spanned three provinces: Kitchanga and Masisi Centre in North Kivu, Mahagi

in Province Orientale, Ituri, and Minova in South Kivu. Visits to nearby villages were also made where possible. Sites were selected that could provide a cross-section of viewpoints on women's access to land, and that had some penetration by UN- Habitat and its partners to examine the impact of their activities. The fieldwork included approximately 23 focus group discussions with men, women, youth, civil society, displaced persons in camps, and customary leaders; all names of people whose stories are included in this report have been changed to protect their privacy. An additional 7 in-depth interviews were held with targeted UN- Habitat partners and government officials. Finally, the analysis in this report benefited significantly from the data collected by UN- Habitat and its partners during the past 5 years of programming regarding land issues in the Eastern DRC, particularly in regards to understanding the types of land conflicts that have been brought to external actors for assistance with resolution.

Where this study references information reported, it is important to understand that this is how the speaker perceived the situation; in recognition of this challenge and to obtain a cross-section of various viewpoints and experiences on women's access to land, discussions were held with people of various education and engagement levels – i.e., persons engaged in civil society activism, those who had participated in awareness raising trainings, people from the community who have not had such exposure and represent more base-level perspectives, etc. Unsurprisingly, there were conflicting accounts from different groups of people, indicating that much closer attention must be paid to actual realities on the ground, and more time spent on examining the impact of laws, policies, and other interventions.

The similarity of the issues and challenges described by women across the different provinces of Eastern DRC speak to the prevalence and widespread nature

of women's inability to access land in the region. To balance the possibility that persons interviewed who had previous contact with UN- Habitat or its partners may have had greater awareness of laws and services than the average person would have, the study team also made deliberate attempts to speak with ordinary men and women from the community who were not part of civil society and had no affiliation with actors intervening in land issues. Finally, questions and answers were translated between local languages, Swahili, English, and French, and there are always potential issues of accuracy where multiple languages are used. It is hoped that these findings will serve as a springboard for more in-depth and targeted research into the major issues that have been identified here.

B. BACKGROUND

Driving through eastern DRC, one is struck by the wonder of rolling hills, towering mountains, and green fields. There is land as far as the eye can see, and it is hard to believe that it is not enough, and that people continue to struggle, to fight over land and to prevent others from owning and accessing it. Delving deeper, the problem perhaps is less a lack of land, but rather how it is distributed. In North Kivu, South Kivu and Ituri District (in Province Orientale), massive swathes of land are reserved for wealthy concessionaires, or granted for natural resource exploitation projects.¹

¹ See also: Inge Wagemakers et consorts, « lutte foncière dans la ville : gouvernance de la terre agricole urbaine à Kinshasa », In *Afrique de Grands lacs, Annuaire 2009-2010*, p.184 ; Vlassenroot, K., « Une lecture de la crise congolaise », in Vlassenroot, K. et Raeymaekers, T. (sous la direction de), *Conflit et transformation sociale à l'Est de la RDC*, Académia Press, Gant, 2004 ; Christol Paluku et Clément Kibambi, *L'implication des communautés locales dans la production du droit et la résolution des conflits fonciers en milieu rural : cas des territoires de Masisi et Rusthuru en RDC*, AAP, Goma, 2008 ; GRET, *Etude sur la problématique foncière au Nord-Kivu*, RDC, 2010 ; Chris Huggins, *Land, Power and Identity, Roots of violent conflict in Eastern DRC*, November 2010; Thierry Vircoulon et Florence Liégeois, *Inventer une politique publique dans un État failli Le défi de la sécurisation des droits fonciers dans l'Est du Congo*, Avril 2012 ;

Other areas, particularly in North Kivu, are still battlegrounds for competing rebel groups and the FARDC, rendering them dangerous and uninhabitable for many and prompting waves of displacement. Historic competition with immigrants of Rwandan and Burundian descent has further limited the availability of land.

To better understand the setting of land issues in eastern DRC today, it is helpful to understand the country's history regarding land use and ownership, particularly from the perspective of today's customary land users. Before colonialism, small states and chiefdoms defined by boundaries of clans or ethnic communities and headed by the Mwami (the customary chief) were the institutional basis of social structures. These chiefdoms were broken down into smaller units, each with their own customary leader. Viewed as the supreme leader, the Mwami held the power to grant property rights (typically inalienable) for some form of payment or tribute.²

With the advent of colonialism in 1885, the state declared ownership of all land "without master," essentially turning most of the country into the private estate of Leopold II of Belgium, mixed with concessions, private land titles, and small areas subject to "customary rights." Congolese people could occupy land, but the right to own land was reserved for Europeans, who held over 5,000,000 hectares in concessions by 1960. Pockets of land that were directly occupied or under cultivation were recognized as "occupied by natives," but the expanses of fallow, forest, and other communal lands were now claimed as property of the state.³

1 continued: Rapport de la mission conjointe JMT- UN-Habitat à Luofu, du 07 au 10 février 2011, Richard Mulendevu, Pluralisme juridique et règlement des conflits fonciers en République Démocratique du Congo, Paris, L'harmattan, 2013; Matabaro, S.M., "La crise foncière à l'est de la RDC", in Marysse S., Reyntjens F. and Vandeginste S. (eds.), L'Afrique des grands lacs. Annuaire 2007-2008, Paris, L'Harmattan, (2008) Mugangu Severin, Crise foncière à l'est de la RDC

2 Interviews with customary leaders; see also Vlassenroot (2006) for further discussion.

3 Long (2011)

Shortly after seizing control in 1965, Mobutu passed the "Bakajika Law,"⁴ which reclaimed state ownership of all land, forest and mineral resources in the newly-named Zaire, effectively cancelling all concessions and titles granted before independence on 30 June 1960. In 1971, the Constitution was amended to cement the state (and Mobutu's) claim on Zaire's rich natural resources⁵, and the subsequent Land Law of 1973 fully nationalized all lands. Article 53 made the soil the "exclusive, inalienable, and imprescriptible" property of the state, while Article 387 dealt a further blow to customary lands, proclaiming that any lands occupied by local communities were now Public Lands.⁶

Competition for land with outsiders had also begun before the Belgians' entry; significant numbers of Rwandan and Burundian immigrants had settled in what is today North and South Kivu, and customary leaders still feel their arrival contributed to today's scarcity of land. Others have written about how migrants of Rwandan descent (the Banyarwanda) were particular beneficiaries of Mobutu's vastly expanded powers: one scholar notes that as Mobutu's main ally in the Kivus at the time, many of the Banyarwanda obtained Zairian citizenship under the nationality law of 1972 and were able to gain access to large tracts of the most fertile lands in North Kivu.⁷

4 L'Ordonnance-Loi n° 66-343 du 7 juin 1966, dite «loi Bakajika» - Art.1: «La République du Congo, Zaire reprend la pleine et libre disposition de tous ses droits fonciers, forestiers et miniers concédés ou cédés avant le 30 juin 1960. FAO Gender and Land Rights Database (2014).

5 La Loi n° 71-008 et n° 71-009 du 31 décembre 1971 portant modification de la Constitution. Art.10: «Le sol et le sous-sol zaïrois ainsi que leurs produits naturels appartiennent à l'Etat». FAO Gender and Land Rights Database (2014).

6 La Loi n° 73-021 du 20 juillet 1973 portant régime général des biens, régime foncier et immobilier et régime des sûretés, modifiée et complétée par la Loi n° 80-008 de 18 juillet 1980. - Art 53: Le sol est la propriété exclusive, inaliénable et imprescriptible de l'Etat. - Art. 387: Les terres occupées par les communautés locales deviennent, à partir de l'entrée en vigueur de la présente Loi, des terres domaniales. FAO Gender and Land Database (2014)

7 Vlassenroot (2006)




Beneficiary of mediation and STDM process in Luhonga, Masisi Territory, North Kivu Province. Photo © UN-Habitat 2015.

Against such a backdrop, it is easy to overlook the plight of women's access to land as simply the by-product of unfortunate history, suffering the same fate of all customary land users. As a result, well-intentioned efforts to assist and support customary land systems tend to treat all users – men, women, and youth – the same, when their situations are dramatically different. In reality, women have been restricted to a subservient role in DRC's customary land systems as far back as most can remember. Women could access land through the men in their lives, but were denied the ability to control or make any claim to land beyond what her father, brother or husband allowed her to use. In many of the tribes, girl children were and still are seen as less valuable than their brothers, and wives have no ability

to counter the wishes of her husband. While the ever-increasing pressures on land continue, this cannot be used as a justification to continue oppressing women and denying them the rights to access land to which they are entitled.

Women have voices, but are just beginning to speak out. The culture of the eastern DRC is one dominated by men, and actors seeking to help improve their fate must find ways to allow women to express themselves – their fears, hopes, and expectations. This study has set out to begin that task, by speaking with the women and those who impact their lives about what they are going through, what they want to change, and how they hope to get there.



PART II. NO WHERE
TO GO: THE REALITY
FOR WOMEN ON THE
GROUND

A. SECURITY OF TENURE FOR WOMEN

As detailed discussions on the international framework on HLP rights are readily available, this section only briefly mentions key instruments. The right to adequate housing (which includes the component of security of tenure) is protected by Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), and includes an obligation on the part of states to, at a minimum, refrain from violating such rights through their actions, and to take reasonable measures to prevent foreseeable violations by non-state actors. Additionally, the right to tenure security cannot be subject to any form of discrimination, further underscored by the Convention on the Elimination of Racial Discrimination (CERD) and the Convention on the Elimination of Discrimination Against Women (CEDAW). This protection includes a broad spectrum of tenure forms, including ownership, rental, informal settlements, and customary usage.⁸

Security of tenure guarantees that people can access and enjoy their home and their rights to land without fear of forced eviction, and enables them to improve their housing and living conditions. Contrary to dominant belief, freehold title (full, statutory legal title) is not the only instrument of tenure security; other forms include lease rights, possession rights, and customary use/occupancy rights.⁹ All forms of tenure warrant baseline protection to guard against forced eviction, and a key advantage of a security of tenure analysis is the ability to understand and respond to the housing situations of the displaced as they are, rather than how they should be.¹⁰

⁸ ICESCR; United Nations Committee on Economic, Social and Cultural Rights (UN CESCR) General Comment 3 and 4

⁹ Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context, Raquel Rolnik, 30 Dec 2013, UN Human Rights Council

¹⁰ Williams, Rhodri, "From Shelter to Housing: Security of Tenure & Integration in Protracted Displacement

There are both customary and statutory mechanisms that help inhabitants maintain some security of tenure, which will be discussed in turn below. However, tenure security is typically analyzed at the household level, where the family is seen as a unit, and it is assumed that all members of the family have equal levels of security. This study will break from that pattern and show that across the visited sites, the contrary was painfully obvious, with women and girls feeling far less secure than men and boys, primarily because of cultural and social practices, lower levels of knowledge about statutory laws affirming women's rights, men's refusal to allow women to exercise these rights, and the inability of the state to enforce and protect those rights.

B. WOMEN AND LAND UNDER CUSTOMARY REGIMES

Women are the primary workers of agricultural land in the eastern DRC; more than 70% of women work the land, and they produce 75% of the food in rural areas.¹¹ Yet they are still extremely limited in their ability to directly control the use of land, or the economic gains from their work on land, being viewed as less important, or contributing less, than men. As in much of rural Africa, customary land management systems still dominate most of eastern DRC, and so prevent women's access to land in three major ways: (1) they prevent women from owning land; (2) they prevent women from inheriting land, and (3) they prevent women from being involved in decisions and speaking about issues around land use.

Land ownership and control is important to women no matter their status, conferring both economic strength and bargaining power within a household. Regardless

¹¹ United Nations Committee on the Elimination of Discrimination Against Women (2011)

of their nature – whether customary or statutory – these rights can promote the well-being and economic development of women, and can provide both economic access to key markets and social access to non-market institutions, such as household and community-level governance structures.¹²

One myth often used to justify the denial of ownership and control of land involves the contribution of women to the household. Activities that bring in more money, such as raising cash crops like coffee, are often reserved for men, while women are restricted to activities that are more difficult to value (like raising children) or petty trading. It is thus argued that because the men do all the difficult tasks and bring in the money, they should control any productive resources. In interviews, male customary leaders described women's tasks as the "easy" work – taking care of the house, cultivation, harvesting and selling, while men did the "hard" work – like building, clearing land, and hunting.

While there is no denying that men may have challenging tasks, it is equally clear that the women's work is far from easy, and is arguably more difficult than men's. Other studies have reported that in developing countries, women work longer than men, with their workdays averaging between twelve and eighteen hours, while men average between eight and twelve hours.¹³ Testimony from women interviewed during this study suggest similar circumstances in eastern DRC. Women's work never ends: their agricultural work lasts through the entire season, and they work far longer hours in the day as they are also expected to manage the home – cooking, cleaning, and caring for the children as well as her husband. Men in Anghal chefférie (Ituri) commented that when looking for a

wife, "looks are not important;" instead, it is better to be sure that she is physically strong, as she is expected to do agricultural work from morning to the afternoon, then prepare food at home, and then go to the market in the evening.

Displaced women often face even more substantial challenges as they are in unfamiliar areas where it is more difficult for them to find land and work. Women from Kalinga Camp in Masisi report that one of the few ways to earn money is to transport kasiksi (a local wine made from bananas); a mostly uphill journey of 20 km will earn only 2000 Congolese Francs (CFs) (about \$2.22). The work is causing pregnant women to suffer miscarriages, but they continue as there are few alternatives. Another option is to look for land owners who want agricultural workers, but these jobs are little better as they typically entail a 2-3 hour walk each way to the farm land, and the women still face a discriminatory pay scale for a full day's work: it was reported that men are paid 1500 CF/day (about \$1.67), women are paid 1200 CF/day (about \$1.33), and women with babies are paid 1000 CF/day (about \$1.11).

Girls of all ages are also expected to work the land, and female youth in Masisi Centre ranging from the ages of 15 to 22 years all affirmed that they would work the farm, often walking between one and three hours each way, and working all day instead of being sent to school with their brothers, or fitting it into their schedules after school if their fathers were willing to pay their school fees. Despite all of this, women are still denied control over the benefits of their labor; in Nyalebe Village in Ituri, some women described working in the fields and the house, while their husbands sat at home, "just waiting for her to give him money."

¹² Giovarelli (2006)

¹³ Wing & Smith (2003)

1. WOMEN: DEFINED BY MEN

Across all four study sites, and as is common in many customary land regimes, women are defined by their relationships to men. They cannot access land as women in their own right, but rather as a daughter or sister, or wife or widow. While each area and people have their own particular customs and traditions¹⁴, women typically faced similar barriers in all locations; indeed, the similarity of conditions faced by women throughout Africa is striking, as has been observed by many scholars.¹⁵ The common themes which will be discussed below include: the inability of women to inherit land, women accessing land mainly through husbands and sons (with unmarried women and widows without sons typically at the mercy of the goodwill of their brothers and husband's family); and particular vulnerability due to the widespread practice of polygamy.

a. Daughters: Girls cannot inherit land because they will get married.

Under the customary rules in the sites visited, female children did not inherit land from their parents. The most common explanation given was that girls would marry and have land from their husbands, though this reasoning ignores the reality that women do not have land from either their fathers or husbands. Rather they possess only temporary use rights that can be revoked at the mercy or death of the men in these households. Male youth in Minova (South Kivu) were questioned further about what they thought would happen to women if there were problems with their marriages and their husbands left them. They replied that "marriages are forever," and they do not think about divorce or abandonment. However, that same group almost

immediately admitted that there were many problems in their areas related to divorce, and almost all could think of cases where women had been forced to leave their husband's land, providing clear examples where the purported rationale behind custom was no longer aligned with reality.

Even where families were more supportive of allowing daughters to inherit, her rights were significantly curtailed in comparison to her brothers. Women in Mukwinja (Kalehe Territory, South Kivu) who had been able to inherit land said that their brothers first chose the parts of land that they wanted, and then the girls would get whatever was leftover. Further, the daughters inherited only use rights, the particularities of which depended on what the remaining men of the family said. In some instances, she could rent out her land, but in many others she could only cultivate. In no case did the women have the right to sell the land without permission from the male head of the family; it was also up to each family to decide whether she was able to pass on whatever rights she had to her children.

BOX 1:

In Ukazu Groupement in Aghal chefférie (Ituri), a woman and her husband came back to her family land after her parents died. They did not have any money, and so she took part of her share of the land and rented it for 30,000 schillings (about \$12) to a man for cultivation so she could pay for her children's school fees. After learning of this arrangement, a relative of her late father took her to court and told her she could not do this again, because the land was not hers.

Still, most female youth expressed a reasonable amount of certainty that even if they could not inherit family land, they could stay there until marriage, reporting little fear of eviction from brothers. However, the stories shared by women after husbands/fathers die and the number

¹⁴ For example, in Masisi territory (North Kivu), the Hutu do not consider females to be "complete" until she is married; daughters are not part of a family until they marry, at which they obtain an identity in their husband's family.

¹⁵ See, e.g., Wing & Smith (2003), Coomaraswamy (2002), Nyamu (2000), Rose (2004).

of succession conflicts recorded by mediation actors suggest that this security is highly questionable, and dependent upon the following factors: her knowledge of the laws protecting her rights to inherit and ability to access that system, the social legitimacy of her right and attempt to inherit (i.e., how the community reacts), and her level of confidence in the future should she attempt to claim these rights.

b. Wives: This is your husband's land, not yours.

Women leave their father's household when they get married. The groom pays the father of the bride dot, or a bride price, and she becomes part of the household of her husband. Generally, women reported being able to access her husband's land, but restrictions on usage were common, especially in the village. For example, despite being the primary workers on agricultural land, women often cannot control what was planted or how those profits were used; one woman in Nyalebe (Ituri) said that her husband's family showed her a line on her husband's land that "she could not cross," and further instructed that she could not plant perennial crops. At best, women and men could talk together about these decisions, but more commonly, the women reported that men decided how land and money was used.

Outside of the village setting, some women reported having money to purchase their own land, but they could only have it in their name if they were unmarried. All men and women reported that according to custom, a married woman must put land in her husband's name even if she pays for the land, or "there would be conflict." This discriminatory custom remains even after the man's death; in Mukwinja in South Kivu, women reported that even if widows purchased land, they were still expected to put the land in a male name – either one of her sons, or if she had none, in the name of her dead husband.

The argument offered by men was that women's ownership of land was a threat to the family – and the consistent use of this argument across location and ages was striking. Customary chiefs from North Kivu said that custom did not give women autonomy to preserve peace in family and prevent conflict. Male youth in Minova (South Kivu) and Masisi Centre (North Kivu) said that if women had the land in their name, they would "take the land and run" if there were problems in the family. Essentially, these men are implying that for the family unit to remain stable, women must remain disadvantaged. While the truth of the argument is dubious, its pervasiveness crosses country and continental borders: other studies in Uganda report that in focus group interviews, men stated "if a woman owned property, she would have no need to stay married and could leave any time,"¹⁶ and similar statements have been attributed to men – including government actors – in South Asia.¹⁷ None of the men seemed to consider the difficulties routinely faced by women because their husbands had that ability to leave, and often did so, abandoning their wives and leaving them to fend for themselves.

c. Widows, Divorced, or Abandoned: The land must stay in the family; you must leave.

Where male interviewees did not support the rights women had to access land under statutory law, there was an interesting split about what should happen to wives if their husband died or divorced them. Adults, who were likely thinking about their own wives, tended to say that women should return home to her own family, implying that if the marriage was over there was no reason she should stay on the land of her husband's family. In contrast, male youth seemed to think about their sisters as they typically responded that "she should stay on her husband's land because there would

¹⁶ Giovarelli (2006)

¹⁷ Agarwal (1994)



A training workshop in Masisi Territory, North Kivu Province. Photo © UN-Habitat 2014.

be conflict if she tried to come home.” This reflects the reality of women being denied access to both her parental and marital home, each side telling her to go to the other. Participants in all discussion groups acknowledged that they all knew of several cases in their communities where women were evicted from their homes and lands after their husbands died, as well as cases where women who were trying to return home after marriage were unable to do so.

If widows are allowed to stay, it is typically with severe restrictions. She is allowed to cultivate, but her husband’s relatives will tell her where, and she is often there only to hold land for male children. As in the case of daughters above, widows also typically could not rent out the land, and they could never sell. Further, she could only stay as long as she did not remarry; several women in Mukwinja (South Kivu) and Masisi (North Kivu) pointed out the unfairness of this custom as there were no negative repercussions for male widowers who took another wife.

Whether she has any children also plays a role in the outcome. While there are a few variations, the general practice is that if a widow does not have any children, or only has small children, she can be forced off the land by her husband’s family. It was reported that in Minova

(S. Kivu), if a widow had no sons she would have to leave, and throughout Mahagi (Ituri), if a woman did not give birth to a son, she was not considered a “wife.” Forced remarriage was also common: if she agreed to marry her dead husband’s brother or other relative, she could stay. However, most women interviewed did not want to do this. In Nyalebe (Ituri), women who were randomly chosen and agreed to speak with the study team were representative of the problems created by these customs. One woman explained that she had been forced by her late husband’s family to leave their land because she had borne only girls. Another explained that she came to the village after her husband died because she did not want to do “*lagu*¹⁸,” and so was forced to leave because she would not marry her brother-in-law. Both women were renting land in Nyalebe because they had nowhere else to go.

Women who have been divorced face even worse conditions. IDP women in Kitchanga (North Kivu) report that in cases of divorce, tradition dictates that men keep the house and land and the women must leave, regardless of reason or fault. Customary leaders and male interviewees gave the explanation that women were not allowed to keep land from a marriage because

18 *Lagu* is the term in the local language for the custom for forced remarriage; in French the term is “*sorrorat*” or “*levirate*”

then she would be taking land away from the children. However, even this rationale appears to be about keeping land in the patriarchal line because as used, the term children was referring only to male children.

d. Polygamy: I have a new wife now; what shall I do with you?

In all study areas, there were accounts of serious problems due to husbands taking on second wives. Cadre de Dialogue et de Mediation (CDM), one of UN- Habitat's partners providing mediation services in Mukwinja, relayed the following stories of two recent cases:

BOX 2: CDM CASES

Case 1: One man had taken two wives, both of Rwandan origin, and then subsequently decided to abandon them both to become a Christian. He then agreed to keep one of them, and she demanded that they get legally married. These two had purchased some land together, and the man suggested selling that land to provide some support to the woman he was leaving. The would-be wife rejected the idea and refused to give the other woman anything. After mediation, the parties were able to come to some terms of compensation for the abandoned wife.

Case 2: A married man decided that he wanted a second wife, and in doing so, he forced his current wife out of their house. He refused to pay any school fees for their children, would not give her any land for cultivation, and put her and the children in a house of far inferior condition than the one in which she had been living. After the woman came to CDM for help, the mediators brought in the man's father, who agreed that his son had been wrong. The father ultimately gave the first wife some land, but said he would only send one child to school.

Although the mediators were able to help the parties find some kind of solution in these cases, the outcome was far from ideal for the women involved. In the first case, the two women were pitted against each other because the man did not have the ability to support either of them, as evidenced by his suggestion to sell jointly owned property to compensate the other woman. In the second case, the first wife was abandoned by her husband, and got some assistance from her father-in-law only after outside parties were brought in to intervene. In both cases, the women were not given choices about their husband's decision to take another wife and had little say in what recompense they would receive.

Of course, some men try to maintain two wives more responsibly than others. One man in Masisi Centre said that he had two wives and had purchased a plot of land for each of them. However, he did not appear well prepared to deal with unexpected events that might happen within one, let alone two families, as he complained that one of his daughters was having children out of wedlock and he did not know what he could do or how he was supposed to care for more children.

2. RENTING, SHARECROPPING, AND OTHER COPING MECHANISMS

The practice of women renting land appears acceptable regardless of whether customary or statutory laws govern land usage. Women in all study areas indicated that if a married woman had to leave her husband's land, she could rent a house in which to live if returning home was not an option, as was the case for several women in Nyalebe Village after their marriages ended. Rental housing is also an option for IDP families who can afford it and want to leave the camps. Other NGO workers in Masisi Centre reported that while many

IDPs were in camps, there were large numbers being “hosted,” with increasing rumors that the hosts were being paid either with money or through the labor of the persons staying with them.

IDP women in Kitchanga reported that rental housing in the area was between \$5 and \$15 per month, and if they could reach an agreement with the landlord, they would usually have to give a 3-6 month guarantee payment up front. While there was no written lease or other such agreement, the renters would receive “mapatano” – a document that functions as a receipt which describes the accommodation, the duration period, the amount paid, the obligations, and the name of the landlord.

The women said that their husbands kept these documents, but most believed that they could access them if they wanted to. In Masisi Centre, rental housing is also being used by youth who are living without their parents. However, rent is a large expense, and many fear that if they have a bad harvest or are unable to find work, they will have no place to live.

BOX 3

Beatrice is 22 years old and lives with her 4 sisters. She has her diploma, and would like to continue studying, but she has no money and she is working to earn the rent for the house she lives in with sisters. The land she cultivates is 27km from where she stays, so she walks 3 hours to the field (6am – 9am), works 3 hours (9am – 12pm), and walks 3 hours back home (12pm – 3pm) to start work at the house. She would like to meet someone to help her pay the rent.

Both married and single women report that if they have money, they can rent land for cultivation, with different variations depending on the region. As with married women who purchase land, married women who rent land for cultivation reported that the land had to be

in the husband’s name. Even if the woman provided the money, she was still expected to give any monies earned from the land and her labor to her husband. One woman in Nyalebe complained that if she rented agricultural land, her husband would only pay for one season; if she wanted to continue she would have to find the money, but that she would still have to give any money she earned to her husband.

Most women report that they would like to rent land for cultivation, and for IDP women, renting land is one of the few ways in which they can access land during displacement. There is significant variation in prices based on the region: women in Masisi Centre reported that it cost \$100-\$150 to rent 1 hectare of land for a season, while in Kitchanga the women reported it was \$10 to rent a *carré* (30m²) for a season. However, most women were generally unable to rent land because of the cost.

Responding to this reality, alternative systems are used, such as *métayage* (sharecropping) in North Kivu, where a *carré* of land (25m x 50m) from a private owner is used in return for a payment of crops. A similar practice called *salongo* was noted in South Kivu, but in the case of *salongo*, both women and men in the community likened the practice to slavery, describing onerous terms: in return for a 25m x 50m parcel for themselves, they had to work for the landowners at least twice a week from 7am until 2pm, and they could lose their land if they missed even one day of work. While technically, both men and women could access land via *salongo*, the men in Mukwinja noted that there were certain landowners who would only accept women, and the men feared for the safety of their wives, reporting what they believed to be a common practice of the women being forced to use sex to “negotiate” with the landowners if they did miss any work, further highlighting the risks that rural women face in trying to access land for their families.

3. EXCEPTIONS: FEW AND FAR BETWEEN

When asked if there were any customary land practices that were good for women, the only example that was offered by women themselves was that of “Kihanga” in North Kivu. This practice can be used if families do not have sons; the father can choose one of the daughters to assume the role of carrying on the family name and line. She has children but does not get married, and her children assume her family (i.e., her father’s) name. She inherits everything that the son normally would – including the land. All the women who knew of this practice felt that it was positive, but it is of note that it only allows a woman to inherit land by stepping into the shoes of a man; she does not inherit in her own right as a female.

Customary chiefs in Masisi also mentioned the practice of “dédommagement” which requires men to give a part of land to their wife if they get a divorce, and custom dictated that the wife should get the best land available. However, interviews did not indicate that the custom was followed in practice; very few women interviewed had heard of dédommagement, and those who had said husbands in their area almost never did this. None of the women spoken to during the study knew anyone who had received land in this manner.

4. WOMEN AND CUSTOMARY TENURE SECURITY

Historically, customary land rights were not recorded in writing, but orally through a group of living persons, usually trusted advisors of the chief who was giving the land. However, over time it appears that there has been some movement towards using written forms. Although the names vary across the provinces, it appears fairly common for customary land regimes to use some kind of written document to indicate a person’s ownership or use right and to provide some measure of tenure security against others in the community.

People refer to a document called an “*Acte de Cession Coutumiere*” or “*Acte de Reconnaissance Coutumiere*” for rural land, or a “*fiche parcellaire*” for a town spot, which serves as proof of ownership. Technically, such documents only provide protection against others in the community, but interviews with land administration officials suggest that the government acknowledges that they represent existing use of land, even if not afforded full legal protection. This document is signed by the Chef de Groupement, and indicates the name of the person, the area of the land, and its borders (north, south, east and west). As is typical in customary systems, the boundaries are given in relation to the land of other persons, so this may not necessarily prevent boundary conflicts with neighbors in and of itself. Officially, customary chiefs in North Kivu say that women can come to them and request the document, including during marriage, but awareness of the practice was low and even for those who knew about it, the process – and chiefs – were difficult to access.

Practically speaking, social and cultural barriers would also make this difficult, as men and women interviewed expressed the view that such documents could be issued in a woman’s name only if she is unmarried. That said, existing activities suggest that there is potential to use this document to help increase tenure security, as UN- Habitat and its local partners are helping people, including women, to obtain these documents after a land conflict is resolved to prevent future conflicts. However, a main impediment appears to be cost: the Local Land Coordination group in Masisi was able to help 9 families obtain an *acte de cession* between September 2013 and February 2014, but only with the help of funding from UN- Habitat, as the *actes* were \$100 each.¹⁹

¹⁹ Interview with Local Land Coordination group in Masisi.



**Beneficiaries of mediation and STDM process
in Luhonga, Masisi Territory, North Kivu Province.
Photo © UN-Habitat 2015.**

C. WOMEN AND LAND UNDER STATUTORY REGIMES

In contrast to the overtly discriminatory customary land regimes, the DRC's current formal legal environment has become more conducive to protecting and promoting women's rights; the challenge remains to how to best assist: the women to access to rights, the state to enforce them, and citizens to understand how respecting them will benefit the country's development.

1. INTERNATIONAL LAW AND INSTRUMENTS

a. International Treaties: ICCPR, ICESCR, & CEDAW

The DRC has ratified several international legal instruments that affirm its pledge and responsibility to eliminate discrimination against women, promote their rights including equal access to land, and punish those who use violence against them. These include: the International Covenant on Civil and Political Rights (ICCPR) (accession 1 November 1976), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (accession 1 November 1976),

and the Convention on the Elimination of Forms of Discrimination Against Women (CEDAW) (ratified 17 July 1980). The Universal Declaration of Human Rights also has many relevant provisions which are the basis of the ICCPR, ICESCR and CEDAW, but as a Declaration, is not subject to ratification. As detailed discussion on the import of these instruments to women's rights is readily available elsewhere, this section only briefly highlights some of the most salient points.

Of particular relevance to the current discussion are the DRC's obligations under CEDAW, which include:

- The obligation to eliminate discrimination against women in economic and social life, to ensure equal rights to family benefits and financial credit²⁰
- The obligation to eliminate discrimination against women in rural areas to ensure equal participation in and benefit from rural development, especially because of the significant roles they play in the economic survival of their families, including their work in the non-monetized sectors of the economy"²¹
- The obligation to accord women equal rights in civil matters and legal capacity, such as to conclude contracts and administer property, any contracts of private instruments with legal effect to restrict women's legal capacity being null and void,²² and
- The obligation to take all appropriate measures to eliminate discrimination against women in matters relating to marriage and family relations.²³

Together, these instruments also specifically affirm women's rights to land and other natural resources:

Under international human rights law, women have a right to own and administer property without

²⁰ CEDAW, Art 13

²¹ CEDAW, Art 14

²² CEDAW, Art. 15

²³ CEDAW, Art. 16

discrimination,²⁴ and to “equal treatment in land and agrarian reform.”²⁵ Within the family, both spouses have equal rights in the “ownership, acquisition, management, administration, enjoyment and disposition of property.”²⁶ Women’s water rights are protected by article 14(2)(h) of the CEDAW (right to adequate living conditions, including in relation to water supply). Natural resource rights are also instrumental to the realization of the right to adequate food, which is recognized, without discrimination, in article 25 of the UDHR and article 11 of the ICESCR.²⁷

b. The Pinheiro Principles

The Pinheiro Principles are a set of guidelines that provide guidance on how to address the complex legal and technical issues surrounding housing, land and property restitution. These principles are highly relevant in the context of the DRC given the large numbers of displaced people, including women and children in the country. These principles also underscore the importance of women and women’s rights in the process, as evidenced by principles 3 and 4:

Principle 3: The right to nondiscrimination.

- 3.1 Everyone has the right to be protected from discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, disability, birth or other status.
- 3.2 States shall ensure that de facto and de jure discrimination on the above grounds is prohibited and that all persons, including refugees and displaced persons, are considered equal before the law.

Principle 4: The right to equality between men and women.

- 4.1 States shall ensure the equal right of men and women, and the equal right of boys and girls, to housing, land and property restitution. States shall ensure the equal right of men and women, and the equal right of boys and girls, inter alia, to voluntary return in safety and dignity, legal security of tenure, property ownership, equal access to inheritance, as well as the use, control of and access to housing, land and property.
- 4.2 States should ensure that housing, land and property restitution programs, policies and practices recognize the joint ownership rights of both male and female heads of the household as an explicit component of the restitution process, and that restitution programs, policies and practices reflect a gender-sensitive approach.
- 4.3 States shall ensure that housing, land and property restitution programs, policies and practices do not disadvantage women and girls. States should adopt positive measures to ensure gender equality in this regard.

Principle 3 introduces the general overarching recognition of the right to nondiscrimination and the rights of displaced persons to equal treatment, while Principle 4 hones in more closely on ensuring gender equality. Together, these two principles affirm that not only must the restitution process not discriminate, but that states must actively ensure gender equality. Principle 4.2 explicitly recognizes joint ownership rights of both male and female heads of households, the importance of which is stated in the Handbook on Implementing the Pinheiro Principles:

²⁴ UDHR; arts. 2 and 17, CEDAW, art. 15

²⁵ CEDAW, art. 14(2)(g))

²⁶ CEDAW, art. 16

²⁷ Cotula (2002)

This provision is meant to combat sex discrimination which may occur when only male ‘heads of households’ are informally recognized as rights holders or when they are provided with formal title to housing or other property ownership rights, leaving women without legal control over what should also be treated as their property. This bias is often most visible when women are regarded as the ‘head of the household’ only if they are single or otherwise unaccompanied by a man. To avoid this, the Principles call for recognition of joint ownership rights within families. As such, restitution programs should seek to implement a gender strategy, in particular where the status quo effectively discriminates against women’s right to ownership, either in law or in practice. This can be ensured by conferring equal rights to women and/or joint ownership rights when restitution claims are considered by the relevant judicial bodies.²⁸

2. REGIONAL LAW AND INSTRUMENTS

a. African Charter for Human Rights (“Banjul Charter”) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (“Maputo Protocol”)

The DRC has also assumed obligations under regional agreements, including the African Charter on Human and Peoples’ Rights (the Banjul Charter) (signed 9 Sept 1999) and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol) (ratified in 2008). The Maputo Protocol notes that despite the ratification of the Banjul Charter by States, women in Africa still continue to be victims of discrimination and harmful practices, and includes strong substantive provisions for the protection of women’s rights, as well as provisions to ensure greater representation of women in decision-making processes.

In ratifying the Maputo Protocol, the DRC pledged to combat all forms of discrimination against women through legislative, institutional and other measures. This includes the commitment “to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices 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 women and men.”²⁹ Per Article 9, the DRC also undertook the responsibility to take specific positive action to promote participative governance and the equal participation of women in political life, by ensuring “increased and effective representation and participation of women at all levels of decision-making.

The Maputo Protocol emphasizes the importance of land and natural resources to women: Article 15 requires States to provide women with access to water and land as part of the right to food security, and Article 16 guarantees the right to adequate housing. Article 19 goes further, mandating that that States promote “women’s access to and control over productive resources such as land and guarantee their right to property” and “women’s access to credit, training, skills development and extension services at rural and urban levels in order to provide women with a higher quality of life and reduce the level of poverty among women.”

Other scholars have noted that in contrast to CEDAW, which has been criticized as failing to consider the power and meaning of culture and community membership in women’s lives, this instrument also explicitly recognizes the impact of cultural practices on women. Article 17 guarantees women the right to live in a positive cultural context and to participate at all levels in the determination of cultural policies, and mandates that

²⁸ Handbook on Implementing Pinheiro Principles (2005)

²⁹ Maputo Protocol, Article 2.

States take measures to enhance this participation. Thus, the Maputo Protocol presents a unique opportunity to support women's ability to participate in reforming and redefining cultural practices and customary law in their countries, by affirming their right to engage in the discourse that shapes customary law, something they have been traditionally denied.³⁰

b. Great Lakes Protocols on IDPs

The 11 states of the Great Lakes region host over half of Africa's displaced persons, with massive population movements fueled by more than a decade of wars in the region. Refugees and IDPs face considerable barriers to reintegration when they try to return home, and in response to these challenges, the United Nations and the African Union initiated the International Conference on the Great Lakes Region (ICGLR) in 1996. From the mid 1990s, the ICGLR process convened both state and non-state actors to address these issues, and in December 2006, the Pact on Security, Stability and Development in the Great Lakes Region (the Great Lakes Pact) was signed, containing new laws, programs of action and mechanisms to provide a framework for economic and social development moving forward.³¹

Besides the Pact itself, these components included the Declaration on Peace, Security, Democracy and Development (the Dar es Salaam Declaration) and 10 Protocols which lay out more concrete legal frameworks regarding 4 priority areas: economic development and regional integration; democracy and good governance; humanitarian and social issues; and peace and security.

Given the high levels of displacement within eastern DRC, these instruments are very relevant to the context of displaced women's access to land in DRC, particularly the Protocol on the Property Rights

of Returning Populations and the Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children. However, gender equality and the need to combat discrimination is highlighted as an integral, overarching principle in all the instruments. For instance, Article 2 of the Protocol on Democracy and Good Governance includes the "prohibition of ethnic, religious, racial, gender or regional discrimination" as a core constitutional principle; and Article 4 of the Protocol on the Protection and Assistance to Internally Displaced Persons notes that States undertake to

Respect and uphold Security Council Resolution 1296 applicable to the protection of the civilian population during armed conflict as well as Security Council Resolution 1325 applicable to the protection of women and their role during armed conflict, including their participation in decision making and administration of programs, with respect to their safety, welfare, health needs, sanitary care, reproductive rights, food distribution, and the process of return;

Provide special protection for women, children, the vulnerable, and displaced persons with disabilities; [and]

Ensure the safe location of internally displaced persons, in satisfactory conditions of dignity, hygiene, water, food and shelter, away from areas of armed conflict and danger, and having regard to the special needs of women, children, the vulnerable, and persons with disabilities.

³⁰ Bond (2010)

³¹ NRC/IDMC (2008)

Protocol on the Property Rights of Returning Populations (the Property Protocol):

The Property Protocol is the first multilateral instrument to provide a regional framework to address conflicts over land and property, and addresses a key issue for successful return and reintegration of displaced persons in the Great Lakes region people: access to land and the recovery of land that was lost, confiscated or expropriated during the process of displacement and exile. The Property Protocol recognizes that land and property disputes in the context of displacement is a source of recurring conflict and impedes the achievement of durable solutions for IDPs. This Protocol affirms the basic principles of protection, namely the right of every person to own property, the right to equal protection of law, and the principle of non-discrimination,³² and aims to create a legal basis for resolving disputes relating to property which includes both judicial and traditional mechanisms.

Responsive to the reality that most property in Africa remains under customary administration and that state institutions are often inaccessible at local levels, the Property Protocol also takes the unique step of specifically providing that disputes should be addressed by both administrative and traditional authorities.³³ In addition to reaffirming the protections of international law regarding equality and non-discrimination in the ICCPR, ICESCR, CERD and CEDAW, the Property Protocol also pays special attention to the needs of vulnerable groups, particularly women and children. A specific objective articulated in Article 2 is to “Provide special protection for the property of returning women, children, and communities with special attachment to land in the Great Lakes Region.”

Article 5, “Protection of the Property of Returning Spouses,” goes further, explicitly addressing the problems faced by displaced women, including widows and single women, when they try to return to their area of origin after displacement:

- Member States undertake to deal with special claims of protection by returning spouses, single parents, and single women with respect to disputes on the ownership of family or other property when a displaced spouse is deceased.
- Member States undertake to eliminate gender based discrimination against women according to the International Convention on the Elimination of All Forms of Discrimination Against Women, the African Charter on Human and Peoples’ Rights and the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa.
- Member States shall give effect to the legal capacity of returning women and all women, including single women, to own land and other property in their own right, without discrimination of any kind.
- Any land or property registration scheme established under Article 4(1)(d) shall accord women the legal capacity to register title to land or property owned by them under both customary and statutory land tenure systems so as to enable them to own such land or property in their own right, and to avoid conflicting claims relating to their ownership of such land or property
- Member States undertake to ensure that legislative, administrative, legal and other mechanisms shall be established to guarantee that returning spouses succeed to the property of their deceased spouses.

³² Protocol on the Property Rights of Returning Populations, Article 3

³³ Protocol on the Property Rights of Returning Populations, Article 4

Protocol on the Prevention and Suppression of Sexual Violence Against Women and Children (The Sexual Violence Protocol):

The Sexual Violence Protocol acknowledges the scale of sexual violence against women and children, including harmful traditional practices and rape, emphasizing that sexual violence is related to displacement both as a cause and effect. This Protocol makes clear that States must end impunity for sexual violence by punishing perpetrators, and better protecting and supporting women and victims. The language defines sexual violence expansively, with the definition including, but not limited to, the following acts:

- Rape
- Sexual Violence
- Grievous bodily harm
- Harmful practices, inclusive of all behavior, attitudes and/or practices which negatively affect the fundamental rights of women and children, such as their right to life, health, dignity, education and physical integrity, as defined in the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;
- Sexual exploitation or the coercion of women and children to perform domestic chores or to provide sexual comfort.³⁴

³⁴ Article 1(5)

c. The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("the Kampala Convention")

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa ("the Kampala Convention"), adopted by African governments in 2009, entered into force on December 6, 2012, and stresses that states bear primary responsibility for protecting and assisting IDPs within their borders. The Convention was officially ratified by the government of the DRC on July 8, 2014 through Law No. 14/025.

The Kampala Convention reflects the norms outlined in the 1998 UN Guiding Principles on Internal Displacement, which were also integrated into the Great Lakes Protocols, and is another example of the DRC's stated commitment to protect IDPs. The Kampala Convention provides clear objectives and responsibilities

which include the responsibility to promote national measures to "prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions,"³⁵ and confirms the state's obligations to prevent arbitrary displacement, and ensure the protection of the human rights of IDPs, including humane treatment, non-discrimination, equality and equal protection of law.³⁶

Notably, the Kampala Convention uses broader definitions of arbitrary displacement, and recognizes that people may be displaced for reasons other than armed conflict. Article 4 makes clear that the prohibited categories of arbitrary displacement also include "displacement as a result of harmful practices" and "displacement caused by... violation of human rights."³⁷ As applied to the circumstances faced by women, the state has the obligation to prevent their being forced from their land because of harmful customary practices and violations of their human rights.

³⁵ Kampala Convention, Article 2(a)

³⁶ Kampala Convention, Article 3(1)

³⁷ Kampala Convention, Art. 4(4)

However, if women are displaced, the Convention specifically addresses the state's responsibility to "take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security." Article 9 explicitly acknowledges that women often require special assistance, and stipulates that the states will provide special protection and assistance to IDPs with special needs, such as female heads of households and mothers with children, and will take special measures to ensure reproductive and sexual health of IDP women, as well as providing "psycho-social support for victims of sexual and other related abuses."³⁸

Finally, the Convention notes that both women and men have equal rights to obtain necessary identity documents, like civil certificates, birth certificates, and marriage certificates, and have the rights to have such documents issued in their own names.³⁹ Birth certificates and marriage certificates can establish the legal rights of women to inherit land, and when combined with the commitments made by the DRC in the Property Protocol discussed above, this provision makes clear the responsibility of the DRC to ensure that women have the right to civil documents in their own name to prove and protect their land rights.

3. NATIONAL LAWS

Unfortunately, there is greater contradiction in the DRC's national legal instruments. While the Constitution has strong language about equality and the Land Law is technically described as gender neutral, provisions in other laws like the Family Code and Labor Code continue to undermine equality for women and perpetuate discriminatory customs and practices.

³⁸ Kampala Convention, Art. 9(2)

³⁹ Kampala Convention, Art. 13(4)

a. The Constitution

The Constitution establishes strong, substantive rights for women, and equally strong obligations on the part of the State to protect those rights. The Constitution affirms that men and women "are born free and equal in dignity and rights"⁴⁰, "that they "are equal before the law and have the right to equal protection by the law"⁴¹, "and that they cannot be subjected to any discriminatory measure in any matter."⁴²

Article 14 is of particular relevance, as it provides that the State has the duty to ensure the elimination of all forms of discrimination against women and ensure the respect and promotion of their rights; must take measures to address all forms of violence against women in public and private life; must ensure full participation of women in the development of the nation, and must guarantee the application of the principle of parity between women and men in national, provincial, and local institutions.⁴³

While Article 14 states that measures must be taken to fight all forms of violence against women in their public and private life, Article 15 goes further, and charges the State with the responsibility of eliminating the use of sexual violence, and condemns any sexual violence committed against any person with the intention to destabilize or to displace a family as a crime against humanity punishable by law.

⁴⁰ DRC Constitution, Art. 11

⁴¹ DRC Constitution, Art. 12

⁴² DRC Constitution, Art. 13

⁴³ DRC Constitution, Art. 14 provides: *Les pouvoirs publics veillent à l'élimination de toute forme de discrimination à l'égard de la femme et assurent la protection et la promotion de ses droits. Ils prennent, dans tous les domaines, notamment dans les domaines civil, politique, économique, social et culturel, toutes les mesures appropriées pour assurer le total épanouissement et la pleine participation de la femme au développement de la nation. Ils prennent des mesures pour lutter contre toute forme de violences faites à la femme dans la vie publique et dans la vie privée. La femme a droit à une représentation équitable au sein des institutions nationales, provinciales et locales. L'Etat garantit la mise en oeuvre de la parité homme-femme dans lesdites institutions. La loi fixe les modalités d'application de ces droits..*

In regards to land, Article 34 of the Constitution provides that the State guarantees the right to individual or collective property acquired in accordance with law or custom⁴⁴, and holds that no one may be deprived of his/her property except for reasons of public utility and in return for prior payment of just compensation under the conditions established by law. When read through the lens of Article 14, this requires the State to ensure that women are not discriminated against in either law or custom regarding this right to acquire property, and the right not to be deprived of property.

The Constitution recognizes customary authority and law, but only to the extent that it is not contrary to the Constitution:

The customary authority is recognized. It is transferred in conformity with local custom, provided that the latter is not contrary to the Constitution, the law, public order and morality The customary authority has the duty to promote national unity and cohesion.⁴⁵

Thus, customary law that discriminates against women or impedes their ability to participate fully and on equal terms as men is not sanctioned by the Constitution, and women have the right to challenge such customary norms in statutory courts.⁴⁶

b. The Land Law of 1973

As discussed in the introduction, under the Congolese Constitution and law, all land belongs to the state. After the Land Law was introduced in 1973, a land market emerged, and as per Article 61, a private entity can be granted use rights in the form of an official registration

certificate for the state. The normal certificate grants a renewable, temporary, and alienable use right of 25 years. A perpetual use certificate is available, but only to Congolese citizens. The claim is considered unassailable after two years.⁴⁷

To obtain this certificate, a person must bring their base documents to an office of the Land Administration; these might be an act of donation, gift, succession, sale, etc. After receiving these documents, the land administration must go see the area and conduct an investigation to ensure that the person's claim is valid, after which a survey can be arranged.⁴⁸ As explained by the Brigade Fonciere in Masisi Centre (North Kivu), the time required to complete this process depends on the size of the area to be surveyed, as well as the financial capability of the person making the request. The official cost of a survey as set by the government in Kinshasa is relatively high, at \$50 for a residential parcel, and \$100 per day for agricultural land; as a rough estimate, surveying 5 hectares of land takes approximately 7 days and costs \$700.

These types of administrative barriers to obtain and prove statutory ownership are difficult for much of the population, but they are especially prohibitive for women.

Even while the law is technically gender-neutral, customary practices prevent women from accessing the legal process. For example, women's claims to land often do not arise to the full level of ownership required to obtain an act of succession or sale, or other document acknowledged by the Land Administration, and they are often not allowed to have the financial independence that would be needed to for them to meet the administrative costs of statutory procedures.

⁴⁴ Despite this acknowledgment, there is still great uncertainty about what type of right a "customary land right" is in legal terms, as this has never been clarified under DRC law.

⁴⁵ DRC Constitution, Article 207

⁴⁶ For more on cases throughout Africa that have made such challenges, see Ndulo (2011).

⁴⁷ Matabaro (2008); Beck (2012)

⁴⁸ Interview with the Provincial Land Minsiter (North Kivu) and land administration in Masisi

c. *Family Code: Law No. 87-010 of 1 August 1987*

The Family Code is also an important piece of legislation with significant impact on women's ability to access land. While the provisions on inheritance and civil marriage support women's access, they are significantly undercut by other parts of the Code, as discussed below.

Inheritance, Arts. 755 et seq: Both a husband and wife can leave a testament, or will, to indicate their wishes about how their property is to be divided amongst his/her heirs. The will can be either written or oral, but in its absence, the Family Code provide rules on how property is to be shared, and identifies three categories of heirs: 1) the children, those born both in and out of wedlock; 2) the surviving spouse, parents, and siblings of the deceased; and 3) both paternal and maternal aunts and uncles of the surviving spouse. The Code does not distinguish between male and female heirs, so all qualifying persons in each category share the portion to which their category is entitled. The children in category 1 receive 75% of the inheritance, and the persons in category 2 share the remaining 25% (the persons in category 3 inherit if there are no qualifying persons from category 2 alive to receive that share). If there are no heirs, all property reverts to the state.

Civil Marriage Regimes, Arts. 487-537: Viewed by many as one of the strongest protections for women's access to land, the civil marriage regime details three different regimes:

- Separation of Property (*Le regime de la separation des biens*): husband and wife each keep property acquired before and during the marriage
- Communal Acquisitions (*Le regime de communauter reduite aux acquets*): each spouse keeps property acquired before the marriage, and property acquired during the marriage belongs to both spouses. To sell, give, rent, etc., land or buildings (residential house, commercial property, field, farm, etc.), both spouses must consent. If one refuses, the owner must get court authorization to proceed with the sale.
- Universal Community Property (*Le regime de la communauter universelle*): all things acquired before and during the marriage belong to both husband and wife, except for gifts from a donor who forbids communal ownership and strictly personal property such as clothing. Regarding inheritance, heirs will only share the half of the deceased spouse.

As a woman typically enters marriage with no property of her own, she has nothing to keep separate ownership of after marriage, so the universal community regime is viewed as the most protective for her. In the words of one customary advisor, "The separation of property and communal acquisition regimes are for rich people; the universal community regime is the best for everyone else (paraphrased).⁴⁹ " This view is fairly widespread: the women activists and collectives in all study areas were teaching women about the protections afforded by the universal community regime, and youth in Masisi Centre and Mahagi also said they would choose the universal community regime when they got married. The Code itself makes community property the presumption; per Article 489, if the spouses do not choose or if the marriage is annulled, the default of community property will apply. However, regardless of which regime is chosen, Article 499 stipulates that the consent of both spouses is required to sell, mortgage, or otherwise transfer interest in marital land.

⁴⁹ Interview in Mukwinja (South Kivu)

The cost of obtaining a civil marriage appears to differ by location. In Mahagi (Ituri) and Masisi Centre (N. Kivu), men complained that civil marriages were too expensive – \$50 – to obtain. In Mahagi in particular, the feeling was that the bride price was already very high under the Alur custom, and so paying an additional \$50 for a civil marriage was an impractical idea. In Mukwinja (S. Kivu), the customary chief was also a public official, and so was able to register couples for civil marriages through his office, and the price was only \$20.⁵⁰ However, even at \$20, the men in Mukwinja still complained that the expense was too high. In practice, it appears that men often make the final decision as to whether a couple would get a civil marriage; in various locations women reported being unsuccessful in their attempts to convince their husbands to be registered, and this issue was reported as a substantial area of work among women’s activist groups.

Contradictory Provisions of the Family Code: While many praise the virtues of women’s rights to land under civil marriage and inheritance provisions, those protections are severely undermined by other parts of Family Code, which still contain many discriminatory provisions that ensure women’s position in the household remains subservient to men, and violates the DRC’s obligations under the international treaties it is bound to follow.

For example, Article 490 provides that that whatever the matrimonial regime, the management of commonly owned property is presumed to be entrusted to the husband. Thus, even under the community property regime, the law presumes that management is entrusted

to the husband. Article 497 further stipulates that “if the management and administration of property acquired by the wife in the exercise of a profession undermine the harmony of the household, the husband can take control.”

Other discriminatory provisions restricting women’s autonomy include:

- Article 165: Provides that the wife must live at the domicile of her husband, instead of establishing that the married couple chooses their home together, denying women the right of freedom of movement.
- Art. 444: Provides that the husband is the head of the household, and that the wife must obey her husband, effectively ensuring that wives cannot take decisions on her own
- Art. 448: Provides that the wife must obtain husband’s authorization to effect all legal acts for which she must present herself in person. The husband’s permission is required to purchase, sell, rent, sublease, open a bank account, make a deposit, or conclude a transaction.⁵¹
- Art. 450: Provides that a wife must obtain the husband’s permission “to go to court in a civil case, to buy or sell property or enter into an obligation.

3. PROVINCIAL LAWS

Provincial Edict No 002/2012 of 28 June 2012⁵² in North Kivu is an example of a government attempt to regulate the customary usage rights of land. Although the impact of this edict is yet to be seen, it has the potential to improve women’s access to land if properly used.

⁵⁰ There was some confusion as to the current price, but according to men interviewed in Mukwinja, it appears that while the cost had previously been \$40, it has now been reduced to \$20.

⁵¹ This provision is currently under revision, but remains into effect until updated or revised legislation is issued.

⁵² Provincial Edict No 002/2012 of 28 June 2012 on the relationship between traditional leaders, land managers and farmers in the management of customary land in the Province of North Kivu.

For instance, it mandates that customary chiefs take action to promote women's access to land and prohibits all forms of discrimination against women regarding this right of access. Combined with the requirement that chiefs deliver some kind of customary land title, this edict has the potential to change customary practices and strengthen women's tenure security.

Additionally, the edict includes a provision requiring mediation before a "Comité foncier agricole," a non-judicial body created with the purpose of attempting to resolve rural land disputes. Ensuring that statutory and customary leaders include women in these collaborative structures can facilitate an important role for women in local land governance.

D. OBSTACLES TO ACCESSING RIGHTS AND PROTECTIONS

Although chiefs explained that there were customary practices in place to protect women, like *dédommagement* or providing a widow with land, it is clear that they are often not respected. And while statutory law that overrides harmful customary practices can provide redress for some women, most are unable to access those protections. This next section will discuss some of the major obstacles that prevent women from accessing these rights and protections, including: (male-dominated) social and cultural norms; lack of economic autonomy and decision-making power; sexual violence; armed conflict and displacement; and no access to justice (either customary or formal).

1. MALE-DOMINATED CULTURE AND SOCIETY

Unfortunately, as others have noted, "legal solutions that do not recognize customs followed as 'law' are largely ignored by the rural poor because individual women who depend on their family and community for survival cannot act against those norms."⁵³ On power relations within the family, one scholar suggests that the more capable a person is of surviving outside the family, the greater his/her bargaining power would be, and identified five factors that help assess the situation: 1) private ownership and control over assets, especially arable land, 2) access to employment and other income-earning activities, 3) access to communal resources like forests, 4) access to traditional external social support systems, and 5) access to support from the State or NGOs.⁵⁴ In the context of eastern DRC, social customs and practices consistently disadvantaged women in regards to the factors 1, 2, and 4, which plays a key role in ensuring women's subservient position relative to men. Recent research by the Norwegian Refugee Council also finds discriminatory social norms and socio-economic disadvantages as the most significant challenges for displaced women in their study countries, noting that post-conflict environments marked by a breakdown in the rule of law and the necessary infrastructure further prevent women from accessing and utilizing statutory legal protection.⁵⁵ Across the continent, there is a common theme of custom and culture inhibiting the advancement of women's rights and their ability to access land, despite improvements in state legislation. Studies of women and land in Uganda, Rwanda, and Kenya, just to name a few, consistently highlight the failure of states to implement legal protections, that many implicitly support discriminatory practices

⁵³ Giovarelli (2006)

⁵⁴ Agarwal (1994)

⁵⁵ Norwegian Refugee Council (2014). The study countries are: Afghanistan, Ecuador, Lebanon, Liberia, Palestine (Gaza), and South Sudan.



Participants of the STDM and GEC training in Goma. Photo © UN-Habitat.

against women by exempting cultural and religious practices from requirements of non-discrimination.

While every culture is of course unique, there are common challenges faced by women in these societies, including the prevalence of polygamy, the treatment of women as property, and the inability of women to inherit land. As noted above, Article 207 of the DRC's Constitution makes clear that customary authority and law are recognized, but only to the extent that they are not contrary to the Constitution, and thus does not privilege such discriminatory practices simply because they proclaim themselves customary law.

These norms and customs have been created and enforced in a male-dominated culture, and the problems and possible reforms continue to be discussed in a predominantly male society. Thus, one of the first challenges is understanding how the women

themselves perceive barriers to their access to land. As a starting point, the study team asked all interviewees what they perceived as primary obstacles to women's access to land rights, revealing interesting differences based on age, gender, and education level.

- Most male groups placed a relatively high burden on the women themselves, stating that women needed more knowledge of their rights, and that they needed more conviction and courage to claim their rights.
- Women activist associations agreed that more education and awareness were needed, but they placed more emphasis on women's lack of autonomy and economic power. Female activists clearly understood the feelings of helplessness faced

by most rural women – they might be unhappy with their situation, but there is little they can do as there are no alternatives. They cannot go home, and they have no financial independence and so could not survive without their husband and community.

- Community women and girls definitively identified men and boys as their biggest obstacle. While they may not have known all the intricacies of law, they were clearly aware that they were entitled to

land rights, but said that their husbands, brothers, or fathers were the main problem. For example, women in Mahagi said that if they tried to do anything themselves – withhold money, report problems about land, etc. – their husbands would “close the door” and put them out. Even if women are able to use the channels available to them to claim their rights, they still face social repercussions, as in the case of Dadi below:

BOX 4

Dadi is a 25 year old female who moved away from her family with a man whom she did not marry, and when the relationship did not work out, she tried to come back home. At that time, both her parents had died, and her brothers and other relatives did not accept her. She went to court to try and claim her rights to her family land, and when the judge called her family in for information, they refused to attend. One member finally went, and when the judge asked him why they were treating her like this, the family finally relented and gave her a piece of land. However, now Dadi is upset because she has a problem with her family. She does not know what to do, because her family gave her the land with very strict conditions, forbidding her to sell the land, or even build on it. Dadi would like to sell the land, because she has a 9 year old son, and she is afraid that if she passes the land on to him, the problems will continue and the family will treat him very badly as well.⁵⁶

⁵⁶ Interview with woman in Ituri

The Alur culture in the territory of Mahagi in Ituri District (Oriental Province) is representative of some of the harmful and degrading conditions women face. To illustrate, the following are examples of local names given to baby girls: “Pacuto” (le village est mort⁵⁷); “Fuambe” (chez nous n’existe pas⁵⁸); “Nyirac” (la fille est mauvaise⁵⁹); “Fwaling” (la famille est éteinte⁶⁰); and “Nyakanyaka” (sans valeur⁶¹). In the same vein, men are called “Wopacu” (owner of the village), while women are called “Myapacu” (the one who will go). In addition, “Lagu,” the practice of forcing a widow to marry one of her husband’s brothers or other relative is quite common; as mentioned above, several women interviewed had moved away and chosen to rent land instead of marrying their brother-in-laws.

Commission Foncière de l’Ituri (CFI) in Anghal, one of the local mediation groups supported by UN Habitat, recounts stories of how men, from husbands to chiefs, discriminate against the women. As an example, when they approached a chief in the Cubu chefferie regarding one of their mediation cases, the chief refused to participate, telling the mediators that, “Women have no right to speak where I am and about land issues.”

In more urban areas like Masisi Centre (North Kivu) and Minova (South Kivu) where actors like UN Habitat, AAP, APC, NRC, and the Land Coalition Group have been carrying out capacity building and mediation activities relating to land, there is a higher awareness that the customary regimes which deny women many rights to land are harmful and should be changed. However, the levels of acceptance of change vary from one location to the next.

57 The village is dead

58 Home does not exist

59 The girl is bad

60 The family is extinct

61 Without value; worthless

More disturbingly, there are indications that “custom” is being changed or has changed to further concentrate power over land in the hands of men at the expense of women. For example, customary chiefs in Masisi explained that both sons and daughters should inherit land equally, but that a daughter loses her rights when she marries, at which point her share would revert back to her father, brother, or other responsible male. Men interviewed in Kitchanga expressed support for the customary principle of equal inheritance among children, but reported that their sons would not allow it. One father said that his son threatened to kill him or the sister if land was left to her; interestingly, that father also said that in his time, both sons and daughters could share land. The reverse was reported by male youth in Mahagi and Masisi Centre, who said that they believed in equal shares for their sisters but that their fathers (and in some cases mothers) would not allow it. Regardless of who was to blame, women across eastern DRC indicated that the “customary” practice now is to deny female children any family land.

Even where parity between siblings was recognized, it did not necessarily translate into equality between men and women more generally. Male youth activists in Masisi Centre said “boys and girls are equal” and that their sisters need land. Some also commented that times are different now; they will work and find their own land, and so there is enough for their sisters. But when it came to a husband and wife, the predominant view of the same youth was that the man should control the land because he is the “chief” of the household, and if this hierarchy was not respected then “there would be problems.”

Of all male participants interviewed for this study, the youth in Minova had the least supportive view of women’s rights, putting forth arguments such as, “the Bible says that women must submit to men,” and “if a woman has her name on title to land, she will take it and

run away if there are any problems in the marriage.” This rather dramatic difference in viewpoint may be attributed in part to the fact that youth interviewed in other areas had attended educational programs UN Habitat and its partners are implementing on land rights. This contrast both demonstrates the value of such activities in terms of supporting women’s rights, but also the baseline views of those without such exposure.

Given the widespread discrimination against women and their rights to land, it is unsurprising that actors in North and South Kivu indicate that inheritance disputes are primary drivers of land conflicts. Underscoring what happens when women try to claim their rights, customary chiefs offered the observation that the number of land conflicts in their communities increased when women first started claiming their rights, but that

they appear to have decreased as awareness of formal laws have gone up. Again, the perspectives of male leaders imply a clear bias of women, as the described the cause of conflict as an act by women – that of claiming their rights – rather than the act of men and society at large withholding or denying those rights.

Data from the mediation work of UN- Habitat and its partners indicate that primary conflict types in each province differs slightly, based on the particular circumstances. For example, succession appears to be a much larger driver of conflict in North Kivu than in South Kivu, where the main cause of registered conflicts is the destruction of crops, as discussed below in Box 5. In contrast, in Ituri the main conflict types identified related to illegal occupation. For a fuller analysis of conflict mediation data, see Appendix 3.

BOX 5: SUCCESSION AS MOST COMMON CAUSE OF CONFLICT IN UNHABITAT MEDIATION DATABASE FOR NORTH KIVU

Data about the mediation work of UN Habitat and its partners reveal that out of the 570 cases instituted by women in North Kivu, 168 of them (approximately 30%) were about a conflict related to succession. This trend is also seen in cases instituted by a male against a female in North Kivu; of the 212 cases in this category, 55 (or approximately 26%) were succession conflicts. The following tables represent an analysis of the types of conflicts handled by UN Habitat and its partners in North and South Kivu, broken down by the gender of the parties.

SUCCESSION CONFLICTS IN NORTH KIVU

CATEGORY	NO. OF CASES	No. of Succession Cases	Succession Cases as % of Total
Female vs. Female	93	35	38%
Female vs. Male	477	133	28%
Male vs. Female	212	55	26%
Male vs. Male	1789	288	16%
N/A*	93	N/A	N/A
All Cases	2664	511	19%

SUCCESSION & DESTRUCTION OF CROP CONFLICTS IN SOUTH KIVU

CATEGORY	NO. OF CASES	Succession Cases	Succession Cases as % of Total	Destruction of Crop Cases	Destruction of Crop Cases as % of Total
Female vs. Female	80	8	10%	35	44%
Female vs. Male	248	41	17%	63	25%
Male vs. Female	119	12	10%	28	24%
Male vs. Male	725	64	9%	186	26%
N/A*	2	N/A	N/A	N/A	N/A
All Cases	1176	125	11%	312	27%

*This category includes cases that involved communities as parties, and were not cases between individuals or individual families.

Gender specific data for conflict types was not available for mediation work in Ituri, but data still shows that women are clearly implicated: In the first quarter of 2014, out of 81 documented conflicts involving 1140 households, 321 households (28%) were headed by women. Out of the 52 conflicts involving 302 households that were resolved in January 2014, 80 households (26%) were headed by women.⁶²

The custom of “dot,” or the bride price that is paid by the groom to the family of the bride is still prevalent across the many cultures in eastern DRC. The particular method and size of dot seemed to vary across the study areas, but was the most extensive in Mahagi, where people described dot as normally including certain numbers of cows and goats, as well as other items like cloth, drinks, and furniture. Interestingly, some male youth suggested that the custom was an impediment to women’s ability to claim land rights because it was too high and made men feel like they had purchased their bride, as they would an object or other piece of property. If this is indeed true, it is but another justification given for discrimination against women over which they have no control. Generally, negotiations are done between the parents of the bride and groom, but this usually means that is discussed between the males of the two families; in Mahagi, one man described dot as “for the father; it is not for the women.”⁶³

Other literature also talks about bride price as a harmful practice that reduces women to an object purchased by her husband, but there are conflicting views on this, as in some societies, women themselves view the bride price as a sign of honor. There is some indication that the issue is also complex in eastern DRC. For example, male civil society leaders described the custom as business between the fathers, having nothing to do with the girls, and these men believed that the custom did not mean anything to the brides themselves, who were only concerned about marriage. However, women in Mukwinja in South Kivu had definitely positive feelings about dot, describing it as “a symbol of honor in front of family and community,” suggesting that they viewed the amount given by the husband with pride, perhaps as a tangible statement of their value where few other means were available.⁶⁴

⁶³ Interview with civil society activists

⁶⁴ This phenomenon has also been observed among the female Dinka women in South Sudan.

2. LACK OF ECONOMIC DECISION-MAKING POWER AND AUTONOMY

In its 2011 report on the DRC, the UN Committee on the Elimination of Discrimination Against Women noted that women have become the breadwinners in many families, and that 80% of households owe their subsistence to women. Nevertheless, men and women alike in all study areas indicated that men maintain economic control, and that women must show what money they have to the men, otherwise there would be conflict. All women interviewed expressed a desire for more say in how money was spent, explaining that they were the ones responsible for taking care of household needs, like food, cloth (for clothing), school fees, etc.

BOX 6:

The most common comments from women describing how men spent money:

- “He will drink it all.”
- “He will spend it on women.”
- “He will find another wife.”

When men were asked about why they did not give women more economic control, their responses included:

- “Women don’t understand money.”
- “They can’t know how to spend it.”

In the best situations, women said that they and their husbands talked together about the family needs and how money should be spent, although only a few women across all the study sites appeared so lucky. Some indicated that they might talk together with their husband, but that he would make the final decision and there was nothing that she could do about that. Most also said that although they had to show any money they made to their husbands, the men would not do the same. IDP women who found it especially difficult to earn money made modest requests, suggesting that

they would be satisfied if they their husbands would also show the money that they had so they could talk about how to spend it together.

This lack of financial autonomy and the perceived wastefulness of their husbands have led women with more education and confidence to defy this tradition. In female focus group discussions, there were usually one or two women (typically either activists, or in one case, the wife of a local chief) who laughingly told the others that after their husbands “drank the money away,” they started keeping it with them, usually telling the men that they used it to pay school fees or to buy food. Other women said that they started spending the money on things they needed and then only gave their husbands what was left.

As mentioned above, women activists and members of associations are well aware of the cascading effects of lack of economic independence and emphasize the need to help women gain more autonomy as a primary goal. Synergie des Associations Féminines de Kalehe (“SAFKA”), a women’s association in South Kivu, wants to help women with “*ulinzi*,” (the protection of money), commenting that men would take women’s money and then use it on other women, or to find another wife. They said this was a challenge, because although it is legal for women to have bank accounts in their name, most husbands would not allow it. Of note, the Family Code still prohibits a wife from opening a bank account without his permission, although this provision is under currently under revision.

Related to economic independence is the ability of women to work. Although the current Labor Code now allows married women to work without her husband’s authorization,⁶⁵ a sensible desire for harmony within the household and the historical failure to educate girls prevents many women from doing so. Fortunately, there are indications that this is starting to change. Female

youth in Masisi express wanting to become doctors and teachers, and SAFKA in Minova advises women that they can do any business they wanted to, like building or driving motor taxis (activities which are traditionally viewed as suitable for men only).

The idea of women participating in a collective to increase their economic power has taken root in several areas, but care must be taken in designing such projects, as evidenced by one chief’s efforts in Mukwinja.

BOX 7:

In Mukwinja, the chief is trying to promote women’s participation in a coffee collective, although this has been received by people with more mixed results. Anyone with 100 coffee trees can join the collective, and the chief says that is trying to convince men to give 100 trees to their wives so they can be individual members as well. In theory, this would mean that when profits are divided, the husband and wife would receive their share individually, rather than together as a couple. However, women from the community stated that they did not know any females who were individual members of the collective, and a male teacher from the community said the collectives were causing harm because they used young girls as workers at night. In addition to safety concerns, he also said the work was also disrupting their studies. He pointed to one student who used to be near the top of her class before she started working on the plantation; now she has slipped to the bottom and is always sleeping in school because she is so tired.

While the actual impact of any collective will be determined by how it is implemented and run, women will still need to overcome any barriers posed by their husbands if they wish to join:

⁶⁵ Labor Code, Art 111

BOX 8:

In a focus group discussion, women in Nyalebe who said that they did not have money to rent land for agriculture were asked whether it was possible for people to rent land together. After giving the matter some thought, the women decided that perhaps 10 of them could combine resources to buy or rent land. They were also asked to share what they thought were positive and negative aspects of such a plan. Everyone in the group thought it was a good idea because it would give them some independence and provide them more economic strength. However, the bad point they raised was that it might cause problems with some of their husbands who would not like them having their own money.

3. SEXUAL ASSAULT AND VIOLENCE AGAINST WOMEN

Numerous reports highlight the staggering rates of violence against women in eastern DRC,⁶⁶ where sexual assault against women, and denial of land rights for women, are methods used by men to maintain power and control. In general, violence against women is about men claiming and exercising power, and accounts from the women interviewed confirm that sexual violence is also used to prevent women from challenging that power by preventing her ability to access land. From intimidation meant to prevent women from claiming land rights, to violence to force them to leave, to raping a woman to claim her as a wife, sexual violence is a perpetual fear that women are forced to cope with in their daily lives.

66 See, e.g., <http://www.irinnews.org/fr/report/90113/rdc-repenser-la-violence-sexuelle-analyse>; Canada: Immigration and Refugee Board of Canada, Democratic Republic of the Congo: Domestic and sexual violence, including legislation, state protection, and services available to victims (2006-March 2012), 17 April 2012, COD104022.E, available at: <http://www.refworld.org/docid/4f9e5e532.html> [accessed 29 June 2014]

Of grave concern is the fact that they cannot talk about sexual violence committed against them with their husbands or men in their family.

Men interviewed in Minova say that rape is not a issue now that the armed conflict is over, but the women make clear that it is still a very present danger – they just can't tell their husbands, because then they will be turned out of the house, and if young men find out that girls have been raped, they refuse to marry them. The life of most women still revolves around family and a husband, and they feel that the safest alternative is to seek treatment in secret, and hide the assault from the men she knows. Even in families who are willing to take action, the most likely outcome is negotiation between the families of the victim and the attackers, forcing her to simply accept what has been done and be socially marked for the rest of her life. Women from SAFKA say that this creates serious emotional and psychological problems for some women, who become timid and unhappy but have no alternatives because they have nothing without family and community. Women who tell their husbands about their horrific experience are often cast out, and seeing this, other women decide that it is better to suffer in silence.

BOX 9:

A woman who was engaged and set to be married in two week was raped by soldiers. She told her fiancé, thinking that he would understand, but he turned away from her and said he could not marry her now. The girl is still in the community, suffering with her fate, and her family is unhappy because they had to return the dot to her former fiancé after he called the wedding off.

Women and girls are also driven prostitution, or forced to trade sexual favors, to access land or to earn money. IDP women in Kitchanga reported high numbers of young girls who would come home with money for their parents.

Although they knew what the girls had done to earn the money, the mothers said that there was nothing they could do, because they needed the money for the family. In Mukwinja, South Kivu, because the terms of *salongo* are so severe, men reported that women are often forced to give sex to the landowners to keep their jobs – and access to the land – if they miss a day of work. Ironically, the men who raised this issue said that if it happened to their wives, they could not be told; if the women reported such a problem, they would leave them because they did not want to “share.”

Just as in armed conflict, women are also chosen as symbolic victims in land conflicts when they turn violent, as illustrated in the heart-breaking case reported by one of UN- Habitat’s partners, the Commission Foncière d’Ituri, antenne d’Anghal in Mahagi:

BOX: 10

The long-standing land conflict between the communities of Djupagasa and Djupio was marked by severe violence, including the burning of over 300 houses. In 2007, Djupagasa people went to the house of a Djupio family living in their area and raped the wife so violently that despite best efforts to treat her, the woman died a few months later. In 2011, they came back to the same family and raped the daughter, who subsequently fled to Uganda and has not returned since.⁶⁷

Mahagi is also known for its culture of “mob justice,” with numerous reports of violent crowds taking matters into their own hands. This setting creates an environment where violence is used thoughtlessly, and almost casually against women, particularly if they try to claim land rights. Women in the Nyalebe Village say

with a resigned acceptance that if they do anything against their husband’s wishes or that makes him unhappy, they will be beaten.

Women activists in Mahagi also have many stories of women they have worked with. Representatives of the women’s associations interviewed gave the following examples of some of the women who had come to them for help: a widow who was chased from her coffee plantation by a machete-wielding brother-in-law, and a woman chased from her home after her brother-in-law lied and told the husband the children were not his. Female activists also report that it is common for men to use the “mob justice” mentality against wives they no longer want by accusing them of witchcraft. They report that women are continually victimized, because doctors (who are almost always male) will not examine a rape victim, and she cannot bring a case in court without a medical certificate.

4. ARMED CONFLICT AND DISPLACEMENT

The constant cycles of armed conflict and displacement also have severe impacts on women’s ability to access land. While it is possible that in some cases, women are able to assert more control and claim more rights after conflict, particularly if the men in their lives have been killed during the conflict (as has been observed in Rwanda⁶⁸), this is more likely to happen if the women are able to stay on their lands and in their homes. Typically, if women are driven out of their areas and forced to live into camps or with community hosts, they lose the ability to assert this control. Instead, lacking both formal and informal rights to land and property and little voice in governance, these women are unable to provide for themselves and their children, further perpetuating cycles of poverty and inequality.⁶⁹

67 Interview with Cadre de Dialogue et de Mediation in Mahagi

68 Rose (2004)

69 Kapur (2011)



A focus group in session at Kitshanga, Masisi Territory, North Kivu Province. Photo © UN-Habitat 2014.

IDP women in Kitchanga, Masisi Centre, and Minova all recounted similar problems regarding their inability to access land. Because they did not have their own fields, women and girls were forced to look for whatever work was available or turn to prostitution if they found none; many admitted that they went into host community fields in hopes of stealing something for themselves and their families. In Kitchanga, women trying to go find water or wood reported being blocked by the men from the local communities if they did not give some money for the resources they were taking. While none of the women reported active conflict or violence between themselves and host communities, they all mentioned being spoken to in a discriminatory manner, often with ethnic or other slurs.

Generally, the displaced women also confirmed that the conflict and displacement did not break some of the more harmful practices they suffered before. For example, if they were raped or attacked (as is common during armed conflict), they said “it still was not good to tell your husband,” even if it was while she was doing something for the family. One woman said that she had been out trying to steal a bit of food for her family when the police came and raped her, but she could not tell her husband. None of the IDP women interviewed noticed any discernible difference in her control or power within the household, and in many cases, reported that things became worse because the strain that displacement put on the family.

However, access to land for women in displacement can make a tremendous difference, as reported by women from Camp de la Poste in Minova, who were assisted by NGOs:

BOX 11:

In Camp de la Poste, the women described a project sponsored by CEPAC and FIDA which negotiated with landowners for one year of access to a *carre* of land (25m x 50m) for agriculture for each of the 445 families in the camp.⁷⁰ Without their assistance, the women said none of the families could have accessed such land; the typical cost to rent land around the hills in Minova was \$100 for the year. They praised the project, explaining that the sponsors had put the rented parcels in the name of the women in the family. The women explained this was the safest thing to do, because if the man had the ability to control what happened, “he would take it into town and trade it for drink.” In contrast, the women would ensure that the land was planted with crops that could be eaten or sold to provide for the family.

The women in displacement who had lost their husbands were also very concerned about the land that they had left behind in their host communities. Several women in Kalinga and Kahe Camp (Masisi) said that they could not go home even if the conflict there ended, because other men had taken their land. One reported that her husband abandoned her, and that a son of one of his other wives who was a soldier had taken the land she helped buy and threatened to kill her if she returned. Another said that a customary chief in her home area had taken her land because her husband had been killed in the conflict, and he said that women could

not own land. Several widows reported that they had previously lived on concession and plantation lands, which were destroyed because of the war, and now they were old with no family, and had nowhere to go.

5. ACCESS TO STATUTORY PROTECTION AND JUSTICE

All women spoken to expressed the belief that statutory protections and legal rights were their best chance at claiming their land rights, but the inability for most to access them was clear.

Access to Land Title: Cost and location are significant constraints to accessing statutory processes. Generally, official land administration offices are only located at the central provincial, district or territory level (i.e., Masisi Centre, Kitshanga, Goma, Bukavu, kalehe, Kisangani, Bunia, Mahagi, etc.), so people in villages or towns at the chefferie or sector level must travel to these centers to access such services. While on their face, these concerns are equally applicable to men and women, generally women have less autonomy, money, and freedom of movement than men, because customary and social practices. Low numbers reported by the land administration office in Masisi further suggest that the formal title certification process should be made more accessible.

70 The IDPs did not have to pay to use this land, and it was not clear whether the NGOs paid the landowners to facilitate the IDPs' access.

BOX 12: NUMBERS OF TITLE CERTIFICATES ISSUED IN MASISI ⁷¹

LOCATION	No. of Men receiving title certificates	No. of Women receiving title certificates	Total No. of certificates issued
Brigade Foncière Kitchanga of (2013)	11	2	13
Brigade Foncière of Masisi Centre (2013)	21	0	21
Brigade Foncière of Masisi Centre (Jan-May 2014)	10	0	10

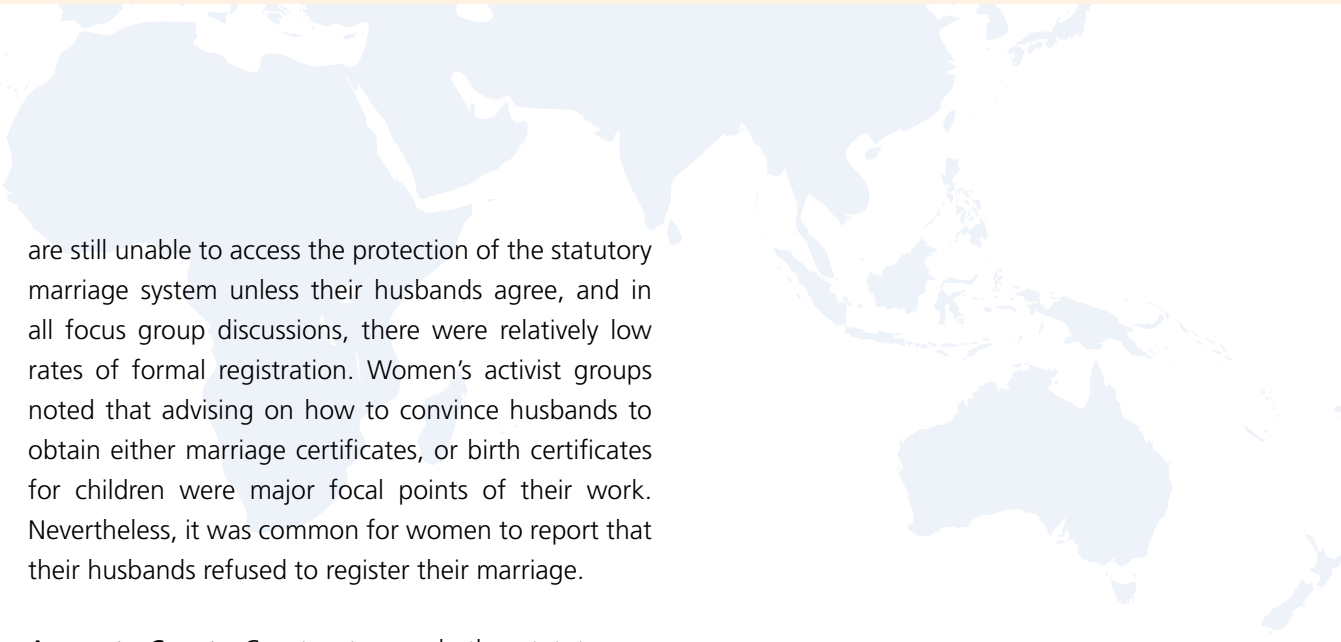
⁷¹ Numbers as reported by the Brigade Foncière offices in Kitchanga and Masisi Centre.

Although the land law itself appears gender neutral in that it makes no distinction specifying that only men can obtain certificated title, its requirements still have a discriminatory impact on women because of institutional and social biases. For example, even though the DRC laws do not specifically bar women from obtaining formal statutory title, the process requires that the name on the title must come from the base document demonstrating the applicant's claim to the land that must be presented to the land official, such as the act of donation, gift, inheritance, or sale. While women can legally have their name on these document, customary practices prevent married women from doing so. As has been emphasized already, all women confirmed that if they did so, "there would be conflict."

Similarly, even though the concept of joint title is a familiar one under Congolese law, land belonging to a married couple is generally only registered in the husband's name, whereas land owned jointly between unrelated men is more likely to have every individual's name on it. For instance, if three men purchase land

together, then all three names are on the bill of sale and subsequently on the title certificate. The Brigade Foncière in Masisi Centre confirmed that if that land is sold later, the land administration must ensure that there is written evidence of the consent of all three persons. In contrast, when a husband and wife purchase land together, the names are recorded as "[Husband], married to [Wife] ..." indicating that he is married, but not indicating their joint ownership. In practice, this means that if the husband decides to sell that land at a later time, written evidence of the wife's consent is not required, and indeed, the land administrator explained that if a married man came to transfer title of land that he sold, the presumption would be that the wife had consented.

Access to Marriage Certificates: Like the land administration offices, government centers where the civil marriage registration process is available are only located at the central provincial, district or territory level, and the same limitations of cost and location apply here. Even if they can overcome those, women



are still unable to access the protection of the statutory marriage system unless their husbands agree, and in all focus group discussions, there were relatively low rates of formal registration. Women's activist groups noted that advising on how to convince husbands to obtain either marriage certificates, or birth certificates for children were major focal points of their work. Nevertheless, it was common for women to report that their husbands refused to register their marriage.

Access to Courts: Court systems, whether statutory or customary, are also more difficult for women to access than for men. Most customary courts are presided over by the chief, and the advisors and decision-makers are almost always male. It was commonly reported that in many of these forums, women were not allowed to speak, and needed a male representative to present their side. Women interviewed during the study expressed little hope of justice or fairness from customary tribunals, and most said they were not avenues worth pursuing. Those who had money were more able to access statutory courts, but as social norms were often stronger than a formal justice system that has little presence or power in everyday life, judicial proceedings and rulings in their favor were often ignored by male wrong-doers, sure that they had custom on their side.

Women tend to lack the political power to change laws because they have extremely low representation in formal political processes. Analysis by the Women's International League for Peace and Freedom argues that Congolese women are not effectively represented and have never participated in the governance of the country since independence in 1960. Their work from 2010 found that although women constituted 63% of the electorate, the representation of women was only 7.2% in parliament and government, with the highest proportion in Kinshasa (13%), and the lowest in South Kivu (3%).⁷²

72 Mbambi and Faray-Kele (2010)

WHAT CAN WE DO: BUILD ON BETTER PRACTICES

In almost all the focus groups conducted throughout this study, there was widespread recognition that women's land rights are a significant issue that needed to be addressed. The question from everyone – men, women, youth, activists, etc. – was “What can we do?” Improving women's rights of access is indeed a large and challenging task. However, there are encouraging signs of change, and there is something for everyone to do. This section will highlight promising activities currently taking place in the field, and discuss how they can be supported and scaled up to improve women's position in the customary system; support women to become drivers of change, mainstream gender issues into intervention programming, and advocate for improvements in law.

A. IMPROVING WOMEN'S POSITION IN THE CUSTOMARY SYSTEM

1. REDEFINING CULTURAL NORMS

Women in the DRC, as in many other developing countries, place heavy reliance on the mechanisms of the State to protect and enforce their rights, a logical connection since the rights they are fighting for are articulated in international human rights instruments not acknowledged within customary systems. However, the reality on the ground is that state institutions are still struggling and remain inaccessible to the vast majority of women in rural DRC. Even in countries like Tanzania and South Africa where significant legal reforms to improve women's land rights have been made, critics often note that implementation has been slow and ineffective.⁷³ Similarly, in the DRC, although some efforts have been made to avoid explicit creation of statutory bars to women's land rights, actions by the state to promote and protect women's access to land have been lacking.

Further, the majority of land management in eastern DRC remains under customary administration and leadership, and is likely to remain so for the foreseeable future.⁷⁴ Thus, advocating for better laws and institutions is not enough. This is highlighted by accounts from women who were able to use the formal courts to vindicate their claims, only to be denied their land rights because the state could not enforce its judgments, and were further penalized by social norms.

BOX 13:

After a neighbor encroached on Lily's land, she went to the court in Masisi Centre to prove her claim to her land. The court pronounced judgment in her favor, finding that her neighbor was illegally occupying her land. However, when Lily tried to get a written copy of the judgment from the court, an employee of the office demanded money for the document. She paid him, but instead of giving Lily the papers, the person insisted that she give him more money, and has steadfastly refused to give her the judgment. She believes that her neighbor also paid the man to ensure that she did not receive evidence of her case.

One of the key characteristics of customary systems is their flexibility, and the fact that they can and do change. By definition, customary law is based on social and communal norms, and as social norms change, so can customary laws and practices. Laws and norms, whether customary or statutory, are not neutral articulations of the way things always have been and always will be. Rather, they are an expression of a chosen narrative to preserve particular social, economic and political paradigms, and a strong argument can be made that many of these norms no longer reflect acceptable social practice.

⁷³ Accord, Oxfam and ActionAid (2011)

⁷⁴ Severin Mugangu Matabaro, Op. Cit ; Christol Paluku et Clément Kibambi, Op.cit, Document de programmation de la réforme foncière en RDC (juillet 2013).



Beneficiary of mediation and STDM process in Luhonga, Masisi Territory, North Kivu Province. Photo © UN-Habitat 2015.

As has been alluded to previously in this report, there are indications that customary practice regarding women's access to land has actually changed to the detriment of women, such as the diminished protection for widows and stronger resistance to daughters inheriting land.

The tension between women's rights and rights of groups to practice their culture has been well documented, and those who wish to deny women land rights often attempt to characterize the fight for women's rights as a war on culture. While this dichotomy is neither true nor helpful, Radhika Coomaraswamy, the former UN Special Rapporteur on Violence Against Women, has observed that "any struggle for women's equality and dignity in third world and minority cultures is seen as the secret weapon of western imperialism," and "strategies aimed at improving women's rights have to take this inevitable fact into consideration."⁷⁵

For the situation of women to improve, advocates must reshape the debate, and can start by examining two very important questions:

- 1) Whether these discriminatory practices are – or ever were – representative of the "community" voice, or whether they have become a way for a particular part of that community to preserve power, and
- 2) Whether the social norms that justified discriminatory customary practices are still relevant and active today.

⁷⁵ Coomaraswamy (2002)

On the first question, one should further examine who the community is, and whether discriminatory practices actually represent their desires and beliefs. Of the denial of land rights for women, all men interviewed during this study said that it was "our way," but who is "our?" Women are traditionally denied both voice and decision-making power in customary systems, and it belies reality to argue that their inability to inherit land is something that they believe is an integral part of their heritage. Even for women who uphold the practice, as in the case of mothers denying their daughters rights to inherit land, this is more likely explained by the fact that "for many women, their sense of identity arises as a result of their experience as women, living within groups primarily governed by men" and those that resist are "branded as traitors or bad women who bring the group into disrepute."⁷⁶ In eastern DRC, questioning tradition can result in expulsion, as evidenced by women's references to being put out of their house if they argued with their husbands. These traditions were instituted by male-dominated societies, often to perpetuate the superiority of men. As Coomaraswamy notes, "women's lack of inheritance is central to the practices of patriarchy and the belief that the continuity of the family depends only on father and son," and that "the belief that male labor is bread-winning, while female labor in the home is only supportive, justifies many of these inheritance laws as fruits of the labor of male members of the household."

⁷⁶ Coomaraswamy (2002)

On the second question, as to whether the justification for discriminatory practices are still relevant today, one need only look at the history of which customary practices men have chosen to keep. As discussed earlier, women have never really been given land of their own to control, but in the past, custom and community norms ensured that their use and access was generally guaranteed. Whether because of colonialism or outside western influences, when previous communal or spiritual ownership regimes collided with more individualized notions of ownership, women lost much of the customary protection as the idea that land belonged to one rather than many heavily favored male heads of households. Additionally, customary leaders indicated that where it was once common practice to ensure that women were given land and taken care of in cases of divorce or widowhood, again in the spirit of the community as a whole unit, as land pressures and the prevalence of individualized notions of ownership increased, this safety net was also lost, resulting in the now common practice of women being cast out.

Advocates of community rights and women's rights should not work at cross purposes, but rather must seek to ensure that all members of the community are allowed to speak, to avoid perpetuating the power of one group over another in the name of "culture." Understanding the fluid nature of customary laws and utilizing State support enshrined in the Maputo Protocol, both groups should help women take a more active role in engaging with and reforming the customary system, to reshape the narrative such that it is genuinely representative of the community and in line with current realities. As big of a task as this sounds, it is already starting to happen, and there are several activities that can be improved and scaled up to achieve greater impact.

2. MEDIATION: HELPING WOMEN NEGOTIATE FOR BETTER CONDITIONS IN CUSTOMARY SYSTEMS.

Most women interviewed for the study did believe that things were better for them now than before, and one of the biggest improvements they mentioned was their ability to talk with men about land matters, something which was generally not allowed under past custom. They attributed this development to a combination of awareness activities that teach both men and women about women's rights, and mediation, which most said has made a tremendous difference.

Mediation provides a space where women can talk directly with men about their land rights, and serves as a mechanism that allows women to negotiate for better treatment within their traditional settings. Although drawing on international human rights and statutory law for support, mediation often takes place in areas where the state is weak and unable to enforce the law, so women are often unable to claim the full extent of their land rights under law. However, even in these cases, the mediation process serves as a bridge that helps gradually change what is acceptable within the community. This process of seeking and pushing for change has tremendous value in and of itself, as has been similarly observed by other scholars on women's land rights in Asia:

It is not just an increase in women's command over economic resources, but also the process by which that increase occurs that has a critical bearing on gender relations. Land rights are not a 'given' and will not be 'provided' to most South Asian women without contestation. Acquiring those rights ... will require simultaneous struggles against many different facets of gender inequities embedded in social norms and practices, access to public decision-making bodies at every level, gendered ideas and representations, and so on.

It will require shifts in power balances in women's favor in several different arenas: within the household, in the community and market, and at different tiers of the State apparatus. Even to organize collectively often requires challenging existing norms, such as breaking the traditional bounds of female seclusion in some communities for attending public meetings.⁷⁷

UN- Habitat data indicates that if there are resources available to help women with problems related to land, they will use them: 575 and 328 women instituted land conflict cases for mediation with UN Habitat and their partners in North and South Kivu respectively. Mediation has also provided an arena for conflicts between men and women where, unlike traditional customary adjudication spaces, decision makers are not only men and women can speak for themselves. In North Kivu there were 212 cases where men instituted cases against women, and in South Kivu, 119. While these numbers are relatively small, women are likely to have a better chance of defending themselves within the mediation arena as opposed to a customary or statutory court, and as more women believe in the value of the process, the more likely they are to come forward and use it.

At the moment, the goal of mediation activities is not to improve women's rights per se; rather, they more generally seek to maintain and preserve peace and inject a greater sense of fairness in conflict resolution. Mediation has the potential to do much more, particularly because it is a period where parties expect the status quo to change, and so presents a unique opportunity for women to speak and obtain better terms for themselves. This process can be used as a vehicle to improve women's access to land on a larger scale, instead of simply case by case. This can be done by actively engaging and encouraging more

female mediators, and by studying and applying the lessons that have been learned during cases that involve women trying to access their rights. When mediators help parties negotiate their compromises, women's legal rights in land should be used as benchmarks; even regarding customary wives who are not technically afforded legal rights under DRC law, those families should understand the evolving laws regarding women and land. Including these standards as part of the framework in which a compromise is reached can help guard against women negotiating from a position where the parties think that women are entitled to nothing, and make the subtle but meaningful shift to understanding that even if this particular individual does not have a specific statutory right, this is due more to a legal technicality than her identity as a woman. While it is perhaps unrealistic to demand that all outcomes follow the law to the letter, it is more dangerous to unintentionally create a pattern of encouraging women to forgo their land rights in exchange for an immediate compromise.

Mediators should ensure that decisions made during negotiations consider how they will impact women going forward. For example, where mediations involve a family obtaining an acte de cession or acte de reconnaissance, the mediating institution should seek to strengthen tenure security for both men and women, by placing both the husband and the wife's name goes on the document, and perhaps a notation of the entire family if there are daughters involved. Without this detail, the mediation will have served to de facto strengthen the men's claim to the land alone. Taking such a step before there are family problems includes the second advantage of helping men understand how they can protect the women's rights – something they may become less interested in after marital conflicts arise.

⁷⁷ Agarwal (1994).

Additionally, when international actors are involved in larger, inter-community conflicts, they have a unique ability to access what is happening to the women of those communities in a way that others may not. Looking at the land disputes in Sete in Ituri, or Shombere in South Kivu, trying to resolve only the dispute between the communities fails to account for what happens to women during such significant conflict. Where conflicts turn violent, just as in armed conflict, women become pawns, victims and widows.

BOX 14:

A UN Habitat mediator involved in the Shombere case gave one account of a husband and wife from opposing sides of the conflict; the husband asked the wife to return to her kin while the dispute was being settled, because he feared that they would be killed if they remained together. While asking her to go was certainly better than simply leaving her or sending her away (as was suggested would have happened in the past), it still shows that the woman remains a symbolic target – she could be attacked, even though she had nothing to do with the conflict and no control over what was happening.

There are many things that women can suffer during conflict: their houses are burnt, their crops are destroyed, and their husbands may die – all things that they cannot control. Ignoring these events now will weaken the women's tenure security in the future, as irrespective of how the husband dies, the wives are likely to face the typical problems of being forced by her husband's family to leave or being encroached upon by opportunistic neighbors, and being unable to return home. Mediators should think of the access they have to a community and its land issues as an opportunity to also speak with the women as individuals, identify barriers to access, and help strengthen their tenure security.

3. LINKING WOMEN AND CUSTOMARY LEADERS: COMBINING EFFORTS OF WOMEN AND CUSTOMARY LEADERS TO PROTECT AND PROMOTE WOMEN'S LAND RIGHTS

Given the amount of control and influence that customary leaders have, it is both important and effective to work with them to gain their support for women's access. Empowering women to approach and build links with customary chiefs can create change in a way that overcomes major social obstacles, as in the case of women in northern Ghana:

BOX 15: GRASSROOTS SISTERHOOD FOUNDATION

The Grassroots Sisterhood Foundation supports women in northern Ghana to strengthen tenure security in several ways, including the provision of training and assistance with the development of alliances with customary leaders. A group of women in northern Ghana were able to negotiate for long-term rights to customary land in their village by collectively approaching the chief for land they wanted for a market. They made multiple visits to the chief and his counselors, and ultimately received 5 hectares of customary land, which they can bequeath to their children as the land grant was written in an official ledger, witnessed by elders.⁷⁸

Failure to gain the support of customary leaders can prevent women from accessing their rights, even if they know about them, as evidenced by the chief in the Cubu Mvura locality in Anghal chefferie, who refused to participate in mediation with CFI because "a woman cannot speak where he is." However, in the same chefferie, CFI indicated that there were younger customary leaders who were willing to engage in mediation and more supporting of women's rights, as they understood the benefits and contributions that women make to the home and community.

⁷⁸ Scalise (2012)

Evidence suggests that several customary leaders are willing to modify their behavior after being confronted with the realities and challenges that women face; in other countries, such change has been an observed strategy by customary leaders to adapt to and stay relevant in the new reality of coexisting with statutory legal systems. In the course of the study, several chiefs in North and South Kivu were identified who understood that norms regarding women's access to land were harmful and should change, and their leadership is making a difference for the women in their communities:

BOX 16: CUSTOMARY LEADERSHIP MATTERS

In Mukwinja, where the chief is able to officiate civil marriages, they report that they recorded 100 civil marriages in 2013. As the chief and his advisors actively encourage married couples to go through the process, they hope to have higher numbers for 2014; between January and May alone they have already registered 50 couples. All 150 couples chose the community property regime, under which women and men have equal ownership to all marital property.

Leaders who supported land access for women also reported that they had seen positive changes in their communities, because the women tended to spend the monies that they were able to earn on the family. Their observations are supported by other studies that have shown that while husbands might keep up to 90% of their earnings for their own consumption, a wife and mother was more likely to spend the majority of her earnings on the children.⁷⁹ However, a notable piece that was missing from their efforts to protect women's rights was the participation of the women themselves.

Although chiefs from North Kivu explained their support of the practice of *dédommagement* (entitling

women to land after a divorce), and their willingness to give women an *acte de cession* to protect her claim to land, discussions with women in the community indicated that they generally had little knowledge of such practices. More involvement of women, and better coordination between customary leaders and women regarding such activities could give a substantial boost to the ability of women to access these protections within customary systems, and to also support the efforts of the customary leaders to both improve and protect their ways.

Helping women obtain customary tenure documents without waiting for conflicts to occur would both improve their tenure security and indicate clear approval from customary authority, signaling to men in the community that this is a norm that should be accepted. This goal could be complemented by direct assistance – which may not necessarily have to be legal – whose specific aim is to facilitate this interaction between the women and chiefs to help women obtain these documents.

Similarly, despite the availability of civil marriage registration in Mukwinja, men in that community still seemed to control the decision of whether or not a couple would be registered, and the women had to rely on the will of their husbands to do so. While it is a very positive step for the chief to facilitate access, women should be supported to take on a more active role in approaching customary authorities to advocate advocating as a group for registration. Combining the support of customary leaders and the efforts and energies of the women seeking change has greater potential than either activity on its own.

Such activities and the reasoning behind them should be shared among the customary leaders; even though chiefs on a horizontal level each have autonomy on

79 Coomaraswamy (2002)

how to control their area, they can and do influence each other. In North Kivu, UN Habitat is supporting the “Committee des Sages” (“Committee of Chiefs”) that serves as a chefferie/secteur level forum where chiefs can talk with each other, and that has great potential to serve as a springboard for improvements among customary leaders. This Committee is also an opportune forum where discussions between women and customary leaders could be facilitated, to discuss opportunities and areas that need improvement.

4. FACILITATING RETURN AND ACCESS TO LAND FOR DISPLACED WOMEN

A few examples of NGOs assisting women with access to land during displacement have already been discussed, as was the impact of that land on women’s livelihoods. However, a significant gap was observed during the study in regards to women who were currently displaced and wanting to return. Several widows reported that they had land in their home villages, but that other men in their communities (sons, customary leaders, brother in laws, etc) had claimed the land as their own and were denying the women access. Other elderly women reported that they had lived on concessions or plantations, and they did not think they would be allowed to return to those areas. Most of these women did not know what to do – in addition to facing normal social constraints, they were far from their homes and did not have an ability to travel to their lands or the areas they wanted to go to.

There is no easy solution to this problem, as there are many challenges at play. However, actors like UN-Habitat and other international NGOs, along with local partners and members of the Land Coalition groups, have the capability to develop networks that span large geographic ranges to obtain and share information about different areas. One possibility would be to create a mapping of land actors and their physical locations,

and create a referral system that would allow women residing in one part of the country to have information about what is happening in another. There are already disputes over significant parts of land currently occupied by displaced persons, and both the Pinheiro Principles and the Great Lakes Protocols emphasize the importance of ensuring that women are protected.

Additionally, as the State begins implementing activities regarding return or resettlement for displaced persons in accordance with their responsibilities under the Great Lakes Protocols, it is imperative that they not treat a married household as a single unit and provide tenure security only to the head of household, leaving married women more vulnerable. Recalling the words of the IDP women in South Kivu, giving the man the land will allow him to “trade the land for drink.” Studies show that these concerns are again not specific to DRC, but rather typical for rural women without state protection worldwide, as demonstrated by the case of India:

BOX 17

In the state of Bihar in eastern India in the 1970s, men and women of landless households jointly participated in a struggle for land ownership. During that struggle, women demanded independent land rights, not only for economic security, but also because they feared that if land titles went only to their husbands, they would become even more powerless and more vulnerable to domestic violence. “Their fears proved correct: where only men received title, there was an increase in drunkenness, wife-beating and threats: ‘Get out of the house, the land is mine now;’ while where women got the titles they could now assert: ‘We had tongues but could not speak, we had feet but could not walk. Now that we have the land, we have the strength to speak and walk.’”⁸⁰

80 Agarwal (1994)

5. PROVIDING DIRECT ASSISTANCE TO OBTAIN CUSTOMARY TENURE PROTECTION

Finally, a last method to help strengthen women's tenure security could be the provision of direct assistance (legal or otherwise) in helping women access protection available under customary law. As described above, some customary leaders indicate that women are able to obtain documents like an acte de cession as proof of ownership of land, but women have low levels of awareness of such protection, and for social or logistical reasons are unable to access customary leaders. Actors like lawyers, paralegals, or others familiar with the customary system and process could be of great assistance for women who would like to obtain these documents or other forms of customary tenure protection. As cost has also been noted as a factor here, having technical assistance or an ability to come together with many other women may increase bargaining power for better terms, as in the case of the Grassroots Sisters Foundation in Ghana discussed earlier.

There are other simple steps that can be taken to protect women's rights. Outside statutory regimes, families are demonstrating higher levels of awareness of the value of leaving some kind of instruction about how belongings are to be distributed after a person's death, and people interviewed often mentioned the use of testaments. While this testament is sometimes written, it appeared more common to use an oral testament, in which the testator would explain to other trusted friends and family members – typically men – their wishes about who should inherit their property. Trainings should be provided to help people understand the value of written testaments, and assistance can be offered in preparing and witnessing the document if necessary. Where families choose to use an oral testament only, then women can gain some protection by ensuring that

other women are also included amongst the trusted persons who serve as living witnesses to attest to the testator's wishes after death.

More research should be done to see what other methods of security are available for women under the customary system, but increasing the communication and interaction between women and customary leaders will hopefully develop other modalities.

B. IMPROVING WOMEN'S ABILITY TO ACCESS STATUTORY PROTECTION

1. CONTINUE AWARENESS RAISING ACTIVITIES WITH MORE FOCUSED GOALS AND TARGETING METHODS.

Workshops, trainings, and other awareness and sensitizing activities must continue, but need more emphasis on how those who have already been trained can use the knowledge they have learned to help others. Women from SAFKA in South Kivu, men from various communities in Masisi, and youth in Ituri who had learned about land rights were eager to be more involved in activities to share the knowledge. However, given the reality that in many places, men are the obstacles to women exercising their rights, trainings must also target men and help explain the value and contribution that stronger women can make, and create a forum where men can talk about their concerns and fears answered.

Combined groups of men, women and youth should be created to speak to all demographics, and to send the message that supporting women's land rights is not for the sole benefit of women, and that empowering women will benefit the communities and country as a whole. Care must be taken to ensure that these groups are trained to demonstrate how males and females can work together equally as partners. There is also great value in the flexibility of having the ability to send in

all men, all women, or mixed groups, so as to send in a messaging team that is most appropriate for the audience. For instance, in rural areas where women and men do not speak together, a group of only women may be appropriate, but in other areas, it may be helpful to send a mixed team to show women that men do support their rights, or to show men that women are confident and capable of claiming their rights.

In interviews, many people of all ages demonstrated understanding of laws regarding women's land rights in an abstract manner – most had difficulty translating the knowledge into things they could do themselves. Trainings need to move beyond simply delivering information, and must better focus on what individuals can do by challenging participants to use what they learn. Some examples might include helping parents to write testaments or to register marriages; workshop programs should include information on how people can carry out such tasks and identify people who can provide assistance if needed. Or, the challenge could simply be applying what they have learned in their own families, as Jonas did in Box 18 below.

BOX 18: ONE PERSON CAN MAKE A DIFFERENCE

Jonas's father called his children together to discuss their inheritance, announcing his decision that only the sons of the family would receive land. Jonas's sister, who was married, was not to inherit any land. Jonas tried to appeal to his father to explain that both the girls and boys of the family needed land, but his father would not listen. Soon after, something happened to Jonas's sister, and she had to return home but the family land had already been divided. Now, Jonas's father understood what his children had tried to tell him before, so the family was able to find a solution for the sister and promised to that respect the rights of all children to land in the future.

2. PROVISION OF DIRECT LEGAL ASSISTANCE TO BRIDGE THE GAP BETWEEN PASSAGE OF LAW AND IMPLEMENTATION.

One obvious route to explore with helping women access statutory protection is by providing direct legal assistance. Congolese law offers several protections to women, as discussed in Part I above, both at the national and provincial level; indeed, the explicit mandate of Provincial Edict No 002/2012 of 28 June 2012 in North Kivu that customary chiefs must take action to promote women's access to land and deliver some kind of customary land title has great potential to integrate both customary and statutory systems and strengthen women's tenure security.

The provision of lawyers or paralegals to help with obtaining title, or protecting their rights in divorce or inheritance cases, can be an effective method of improving women's access to statutory rights, particularly in towns or more urban areas. While joint title is legally possible, many women are not aware that it is an option, so activities to raise awareness and encourage such action would also be very useful, combined with assistance to help couples change their documents from single to joint title.

Though many of the women's associations help women understand their rights under civil marriage regimes and provide advice on how to convince their husbands to agree to the process, having a lawyer or paralegal to go to when women wish to register their marriage could help facilitate and speed up the process. One strategy used in other countries is for lawyers to help couples with their paperwork and then to take these forms in batches to the courts, which also addresses the lack of transport faced by many people in villages.

Additionally, more research should be done to determine the effectiveness of marriage registration. This study was not able to analyze what happened if registered couples had problems or decided to divorce, and programming could include legal assistance for divorce cases to ensure that women are able to effectively access the protections they are guaranteed under the Family Code.

3. PROMOTE COOPERATION BETWEEN FORMAL AND INFORMAL DISPUTE RESOLUTION AND OTHER LEGAL MECHANISMS.

As discussed above, the challenges for women to access statutory protection range from technical constraints like cost and location, to men's refusal to accept the validity of statutory laws or courts. When asked why they prefer mediation, women often praise the fact that it is free and non-adversarial. Additionally, not creating a zero-sum game between parties who typically have to live together after the outcome is decided is beneficial for future social harmony. However, one of the main weaknesses of mediation is the lack of enforcement power, as mediators have little ability to punish parties that renege on their compromises.

One potential solution is for the judicial and mediation system to work together. They already interact, as mediators referenced coordination with judicial staff to ensure that mediators do not take cases that are currently pending before statutory courts. This relationship could go further, and a more cooperative relationship could allow judges to refer cases to mediation where appropriate; one judge in Ituri noted the difficulty of trying to decide land cases in formal courts, as many people lacked documentation and written records about their lands, and the court itself is often far away from the actual land that is in dispute.

Mediators from UN Habitat and its partners in Ituri and South Kivu report individual instances where judges have offered judicial recognition and support of mediated outcomes, and such partnership has great potential. There are many benefits to formal and informal systems working together; the courts would benefit from having a lighter workload and an alternate forum that is at times better suited for land disputes. In return, the court could offer its state sanctioned power to grant legitimacy to mediated outcomes. A problem that has been noted relates to cost, as some mediators have reported that judges asked for money to approve future mediation agreements. Understanding that there are administrative costs involved as it would be a state-sanctioned service, one possible solution to explore could be the negotiation of a set fee, based on the understanding that there would be a higher volume of requests for the service.

C. EMPOWERMENT: SUPPORTING WOMEN TO BE DRIVERS OF CHANGE

In every site visited, there are women who can and are serving as examples of what can be done to improve their situations. These women should be supported to serve as catalysts for change, and highlighted as examples of what can be done. Bringing different groups of women together – widows, single, married – can facilitate the sharing of experiences and advice, and encourage those who might not otherwise act to do so. Programs must not treat women simply as passive beneficiaries to receive trainings, but consider how to support women to use that information – i.e., to challenge the restrictions that custom has placed on them.

Despite the good intentions of development actors and institutions, decades of efforts to reform land and property systems in Africa have failed to improve the situation for women, due in part to what one scholar describes as the “Catch-22” confronting formal approaches to land and property reform:

Any property system must be administered locally because post-conflict central governments inevitably lack the institutional resources and funds to effectively administer a comprehensive property law scheme. Local structures are invariably dominated by male local elites, who continue to enforce gender-discriminatory customary norms rather than gender-neutral formal property law.⁸¹

The empowerment and involvement of women is imperative to change this system; first to ensure that women are involved in determining the kind of protections offered in both formal and informal law, and then in ensuring that they are afforded these opportunities as a matter of right, and not of benevolence.

1. STRENGTH IN NUMBERS: SUPPORT WOMEN'S COMMITTEES AND ASSOCIATIONS

While custom and law still relegate women to a secondary status subservient to men, women know that they have more power in numbers. In Burkino Faso, Ghana, Ugandan and Tanzania, women, lawyers' associations, and civil society groups have come together to advocate for women's property rights, educate the population, and bring test cases to court to enforce laws that protect women.⁸² Similarly, women's associations in eastern DRC that were interviewed during this study exemplify what they are capable of doing when they come together.

BOX 19: COLLECTIF DES ASSOCIATIONS FEMININES POUR LE DÉVELOPPEMENT INTÉGRÉ (CAFPDI)

CAFPDI is a collective of 19 organizations working in Kitchanga (North Kivu), that seeks to raise awareness on land rights and the benefits of mediation, and also provides support for victims of sexual violence. Their work tries to spread knowledge on how women can own land, including through the civil marriage process and birth registration. From September 2013 to May 2014 they identified 31 cases related to land conflicts, and have resolved 13. One of the more successful strategies they report is convincing parents to write wills, or testaments, to clearly express their desires about how they want their property to be divided after their death and to help prevent conflicts between children or other family members in the absence of such instruction.

These associations are of women from the community, and they offer context specific advice. For instance, women from SAFKA in Minova explained that when talking about how to convince husbands to register a marriage under the civil system, they include a recommendation that the women should “be soft, and wait until he is in a good mood.” Other tips from CAF in Masisi included strategies on how to hide money. While this may not be the approach that international women's rights advocates would suggest, it acknowledges the unpleasant reality that women must work within the context of unequal power in their marriages in ways that limit the risk of their being punished for seeking change. Bringing women together can build a stronger support network that increases individual self-esteem and confidence to negotiate for better positions and leverage within the household.

81 Kapur (2011)

82 Kapur (2011)

That said, these women should also be given more support and connected with technical specialists that can help them create more sophisticated arguments and strategies; the combination can improve the advice given while ensuring that it is appropriate and does not create more social harm than good.

Women's committees can be very helpful, particularly in settings where women tend to be underrepresented in forums that make decisions about land, and where individually women are less effective due to reasons ranging from lack of confidence or knowledge, as in Tanzania:

BOX 20: MASAII WOMEN IN TANZANIA

Although the Tanzanian Village Land Act (1999) recognizes equal rights for men and women to access, own, and control land, social and cultural practices continue to enable discrimination against women. The Maasai Women's Development Organization (MWEDO) supported women in forming committees, which then engaged in dialogue and negotiation with village officials and leaders to ultimately gain certificates for customary rights of occupancy of village land for women in their communities. MWEDO provided legal training and administrative support on to help the women secure their rights through the official certification process.⁸³

A related benefit of women being able to take bolder action in groups is the fact that it is more difficult for a society to punish or sanction women when they act in groups. While one woman refusing to follow custom can be punished by being locked out of the house, it is more difficult to respond when there are twenty women making the same demands. Consider the wife of a leader in a village in South Kivu: she is heavily involved in women's advocacy and serves as

the president as one of the women's organizations, and faces extreme disapproval from her husband for traveling for her advocacy work instead of staying home to fulfill her home duties. In addition to her unique character and dedication, her network of women and their shared convictions help protect her husband or any who support him from acting on his anger.

The problems that women face regarding access to land are complex and intertwined with many factors, such as economic autonomy and sexual violence, as highlighted throughout this report. Giving women land alone does not guarantee that they will be able to keep that land in the future; they must have tools and a support network to guard against a variety of threats. Bringing together women and groups with different backgrounds and strengths provides a more thorough and effective support package, without which the efforts of an individual may fail. During the visit to Mahagi, seven women representing different NGOs working in the area met with the study team, and while each was doing admirable work, they could have far greater impact if they were to coordinate their activities and build on each others work. The women admitted that they would work together if they could, but lacked funding for logistics like transport or travel to meet and talk with each other. It was also observed that there were gaps in one groups' work that could have been filled by others. For example, when one woman assisting survivors of sexual violence remarked that there was a need for more female lawyers to help represent victims, UN- Habitat staff members helped provide contact information for women who were doing that work in the neighboring town of Bunia.

Actors with a global overview of activities going on in their area of operations should seek out and facilitate such links, and encourage women themselves to take action where possible. UN- Habitat can reach out to other members of the UN family that work specifically

83 Scalise (2012)

with women on issues like health and sexual violence, such as UN Women and UNICEF, to give more integrated and coordinated support regarding the issues that impact women's access to land. Because social, economic, health, and safety issues are all intertwined with women's access to land, bringing together different groups with different focal areas to talk about how they relate to land rights can help develop new modes of intervention. Such an integrated approach may have the added benefit of garnering additional State support; while political systems are often wary to taking up the issue of women's land rights, there is much less controversy in regards to traditional welfare issues like health and education. UN- Habitat already has a promising start, as it has been developing training for women's groups, and can build on the following successes from its work in 2013:

- So far, in Kalehe (South Kivu), Masisi and Kitchanga (North Kivu), three synergies of women's associations have been supported, and discussions have been launched to find sustainable solutions to specific land problems faced by women. Activities for 2014 are expected to focus on advocacy to strengthen the promotion of women access to land, increasing involvement of local authorities in securing women's land rights, strengthening the capacity of land administration and awareness sessions of community members on women's land rights.
- 120 women of local associations (Collective associations des femmes, CAF) have been trained and are currently promoting peaceful land conflict resolution in Masisi and Kitchanga (North Kivu).
- An act of commitment is in process to be signed by 46 women of local associations to promote joint actions regarding women's rights in Kalehe Territory (South Kivu).

- 15 women leaders from the localities of Mambisa, Babendi, Baniari Kilo, Mungbwalu and Bunia City have participated in a dialogue to assess difficulties and blockages for women access to land in Ituri.⁸⁴

2. ECONOMIC EMPOWERMENT

As mentioned earlier, female activists in all study areas consistently listed women's lack of financial independence as a major impediment to exercising their land rights. Women need to be able to claim their rights, knowing that they will not be "put out" if their husbands dislike what they are doing. One idea to help women gain some independence and autonomy is the establishment of agricultural collectives, as done by Ligue des Organisations des Femmes Paysannes du Congo (LOFEPACO), an umbrella organization of women's groups. LOFEPACO operates in North Kivu and supports female farmers by giving them control over production assets and technologies; the group helps provide women better materials for farming and also helps store their agricultural crops so they will not spoil. This allows the women to aggregate their crops as to fetch a higher price at market. Monies that are earned are reinvested in the enterprise as well as distributed to the members as microcredit.⁸⁵ Learning from the work of the Grassroots Sisterhood Foundation in Ghana, such endeavors can serve as an avenue of cooperation amongst women, customary leaders, and NGOs, as each could contribute a necessary component – labor, land, and technical expertise.

Women from SAFKA in Minova also expressed keen interest in working towards more financial autonomy for women, as one of their members recounted what happened to her:

⁸⁴ 2013 Annual Performance Report of UN-Habitat DRC Land Program, under USAID grant (2010-2014)

⁸⁵ Interview with member of LOFEPACO; see also <https://www.cordaid.org/en/projects/supporting-improvement-of-rice-value-chain/108512/>

BOX 21

Mami in Minova was given money from her family. She showed the money to her husband, who took it and put it in a bank account under his name. He was a businessman, and he used her money to buy coffee. After losing it, he took what he had left and went to look for another wife. Now she has problems with her family, who is angry with her for having lost the money.

SAFKA's members acknowledged that under custom, individual wives could not keep or hide money from their husbands, but they felt that it would be possible in collectives or groups. Similarly, Alur women in Mahagi expressed great interest in the idea of renting land together, but flagged the reaction of their husbands as the primary concern.

Supporting women to create an organization that could hold money in its name, rather than in that of individual members, would allow women to save and have access to monies in a way that is not viewed as withholding money from the family. It would also provide the women with a chance to demonstrate incrementally to their families that they know how to handle money, and will use it to the benefit of their family.

3. Political empowerment

Finally, political empowerment is a crucial component of supporting women. Around the world, women have been historically excluded from decision-making processes and institutions at all levels in both customary and statutory systems. These decisions have effectively ensured that men maintain control over property and productive resources, buttressing systems that protect male managerial power. Even where there is agreement that women's conditions that must be improved, this is typically couched in terms of providing assistance to them, still treating them as beneficiaries that

should be given a slightly better deal, rather than as a challenge to inequity and a discriminatory system. Part of this explanation may lie "in deep-rooted notions of appropriate gender relations shared by many men who make and implement policy, for whom empowering women to transform those relations would appear inappropriate and even threatening to existing family and kinship structures"⁸⁶ and further emphasizes the importance of helping women break the barriers of entry into the realm where these decisions are made.

For example, the chief in Mukwinja has made significant efforts to improve the plight of women: he encourages couples to obtain civil registration of marriage and reports that he is trying to convince men to allow their wives to join coffee collectives as individuals, rather than simply part of the man's household. But, when asked about whether he believes the stronger role of women has been beneficial to the homes and communities, he responded that although there was economic improvement for the home and family, he had seen a negative effect as well – that women had become "boastful." Whether intended or not, this comment implies an assumption that women should be grateful for their improved situation, and fails to acknowledge that they should also be proud that they had managed the formidable task of asserting themselves and claiming what it rightfully theirs.

This lack of a political voice has led to legal provisions, which even while appearing gender neutral, often reinforce customary stereotypes and discriminations. For instance, the law does not stipulate that marital land must be in the husband's name, nor does it preclude women from putting land in their name. However, the presumption that title goes only in one person's name reinforces the man's power as custom disallows marital land to be placed in the wife's name. A legal presumption of joint title or explicit co-ownership

86 Agarwal (1994)



Women during a training Workshop at Masisi Centre, Masisi Territory, North Kivu Province. Photo © UN-Habitat 2014.

would be more supportive of women's equality without taking away from the man, and indeed, many of the women in the field indicated that they would be satisfied with such a system, and prefer it to current practice. This observation by no means implies that the law regarding title was passed with the intent to discriminate against women, but rather is meant to highlight the importance of including the female voice and articulation of reality to ensure that provisions meant to help women actually do so. Picking up on his, one method that has achieved some success in Tanzania and Uganda has been the decentralization of land administration to local land boards or committees that require female representation.⁸⁷

Political empowerment in any country for any historically under-represented group is a long and slow

process. However, there are simpler places to start, and organizations that maintain influence with rural women, women's associations and political actors could begin by building connections and facilitating dialogue between these actors. It is commonly assumed that political empowerment requires placement in government, and while that is certainly one of the goals, nurturing the grassroots movements and building bridges between rural women and their political representatives is an equally important, and likely more manageable first step for this journey. Such steps could include bringing rural women to present their views and make their claims in discussions about the ongoing land law reform, or facilitating an audience with a group of customary leaders like the Committee des Sages. Regardless of how they start, it is clear that empowering women as decision-makers and norm enforcers will be necessary to breaking the "Catch-22" cycle seen in the DRC.

87 Kapur (2011)

D. MAINSTREAMING GENDER ISSUES IN PROGRAMMING

1. LISTENING TO WOMEN AND RECOGNIZING GENDER BIASES

BOX 22: Gender Perspectives

Question: Why aren't women able to claim their land rights?

Men: "The women need more awareness; they are still ignorant and afraid to claim their rights to land."

Women: We know we have rights. But our husbands, fathers and brothers say no. And they will put us out. What can we do?

Those seeking to provide assistance must strive to ensure that they understand the viewpoints of women, from women themselves, as they are best placed to articulate their fears and opinions. As discussed earlier, men – including the staff of civil society organizations – tended to describe the main barrier of women's access to land as their lack of knowledge about their rights, but speaking to average community women suggested otherwise. While they might not have had detailed knowledge of codes and sections of law, most knew that they had rights that they were being denied, but they had no way of claiming them, because they relied on their husbands and communities for everything. Women do need more awareness, but identifying that as a primary cause tends to overlook the more difficult issue of men's reticence to acknowledge and respect those rights.

Additionally, women have been forced to cope with existing social and cultural conditions for an extremely long time, and their decisions to adhere to them should

not be interpreted as support for them. As an example, on the issue of land title, several male NGO workers expressed an opinion that even educated women did not really want to put land in their name, explaining that their wives had put the marital land in their (the husband's) name without consulting them first. The men did not consider the alternative explanation that their wives had done so to avoid conflict that their customs had taught them to expect. Indeed, women throughout the study often admitted that if they knew there would not be conflict with their husbands, they would like to have land in their name.

While this kind of bias may not be intentional, it is important for actors wishing to intervene to look for and address it within their own institutions. Representatives of organizations working on land issues in the field were predominantly male; and unless the organization was specifically a female association, representatives of civil society organizations who met with the study team about trying to improve women's rights were often male. This imbalance can have unintended effects, particularly in evaluating what types of improvements are needed and achievable. Where the baseline is so low, as is the case with women's rights, any positive change, however small, is an improvement. However, the difference between "better" and "good" is an important one, that men and women may view differently.

The practice of kihanga, discussed in Part II, is used in families that have no male children, and allows one woman in a family to inherit land. She will not marry, but does have children who can carry on her father's name. Almost all men, and some women interviewed, viewed this as a good practice, as it does allow a woman to inherit to land. However, from a longer-term perspective, its value to women generally is debatable. This practice allows a woman to inherit land by favoring her at the expense of the others, and only by taking

on the role that of a man and refusing her the right to marry if she chooses. In *Muojekwu v. Ejikeme*,⁸⁸ a similar practice was reviewed by a Nigerian Court, who found it to be unconstitutional:

The court considered the Nrachi custom of Nnewi that «enable[d] a man to keep one of his daughters unmarried perpetually under his roof to raise issues, more especially males, to succeed him. With the custom performed on a daughter, she takes the position of a man in the father's house.» The court of appeal held that the custom was discriminatory and therefore inapplicable. It was held to be against the dictates of equity and good conscience, and it was also held to be a violation of CEDAW. It was further held to be inconsistent with public policy and as being repugnant to natural justice.⁸⁹

2. PROMOTE MEANINGFUL PARTICIPATION BY WOMEN

When customary chiefs spoke of important decision-making councils, they said women were not asked to participate because the men knew the women would not have time – they were too busy with their household responsibilities. Male civil society activists and NGO staff echoed this rationale when talking of decision-making roles in their organizations, adding that they didn't believe women had enough interest in such endeavors. Both groups of men assumed women were not interested, but failed to see that women did not really have a choice; they are expected to care for the children and the house, and no one was offering to relieve them of those duties. When faced between advocating for better circumstances for themselves or ensuring that their children are cared for, women put their families first – an observation that also reinforces studies finding that women tend to use more of their economic resources on family than men.

Women interviewed during the study consistently noted

the positive effects they felt in seeing other women in positions of respect – the actual office mattered less than whether they could speak and make decisions in public. Female mediators and activists also believed that local women were more comfortable and confident bringing their problems to other women after seeing that they had knowledge and experience in addressing issues about land rights. Thus, closer attention must be paid to the actual role and function being performed by women on staff. Looking at organizations involved in mediation in the various study regions, there were generally very few, if any women, in decision-making roles. While there were exceptions, women staff members were usually assistants, carrying out administrative or clerical functions.

Organizations that wish to engage in activities to promote women's access to land should make concerted efforts to increase and encourage meaningful participation by women, which must go beyond mere presence. It has been noted that recruiting women into many of these organizations is difficult, as work often requires time away from the home and family. However, in the same way that "gender-neutral" laws still have a disparate impact on women, so may gender-neutral job requirements, particularly in societies where women have less education and mobility, and greater family responsibilities. Whether in larger international organizations or local mediation committees, women should be asked whether they would like to assume more responsibilities, and if so, what kind of support or assistance they would need to do this. Accomplishing this task will require focused thinking on how to create spaces where women can work, but it can be done, as exemplified by UN Habitat's strategy for mediation in Ituri:

⁸⁸ *Muojekwu v. Ejikeme*, 2000 5 NWLR 402 (Nigeria).

⁸⁹ Ndulo (2011)

BOX 23:

UN- Habitat mediators explained that in certain parts of Ituri province, women had to be involved in efforts to resolve disputes related to land, particularly if women were involved in the conflict. However, it was a challenge, because culturally, women could not speak to men about such issues. To deal with the problem, the mediators created a strategy of organizing three different mediation committees in the community: one committee of men, one committee of women, and one committee of youth. Each committee was tasked with discussing the problem and possible solutions amongst themselves. Then, each committee was to select 2-3 of its members, who would then come together with the mediators and talk about what their committee had discussed. This methodology ensured that each group – men, women and youth – had an opportunity to talk about how the issues affected them and present their thoughts, but also facilitated interaction among the groups without one being dominant. The mediators explained that by allowing the women, men and youth to speak and be spoken to as a group, it allowed all members to speak without publicly pointing fingers at individuals, and to move forward with finding solutions.

3. GENDER ANALYSES OF ACTIVITIES

Some data about the types of land conflicts that are prevalent in particular regions is collected at a gender specific level (such as UN- Habitat's land conflict database that is analyzed for this report), but much is not. Gender disaggregated data is needed to better understand when, why, and against whom women initiate a dispute resolution process or register a complaint.

Such micro-level data will allow a much more thorough analysis of driving social factors, and the effects of larger trends in particular regions, such as whether women suffer disproportionately in large concession areas like North Kivu, or in areas where mob justice is common as in Mahagi. As discussed above in Part II.D., succession appears to be a much larger driver of conflict in North Kivu than in South Kivu, where the main cause of registered conflicts is the destruction of crops, while in Ituri the main conflict types identified related to illegal occupation. This offers a starting point for further inquiry about why these particular problems are so prevalent and the gendered relationships in these communities, so as to determine if perhaps the roots of the land conflicts lie in social problems that should be better addressed, rather than simply coping with manifestations of the problem case-by-case.

Unfortunately, the data available at this time does not allow deeper conclusions to be drawn about the relationship between likelihood of conflict and factors like particular categories of women, location, age, number, or other demographic factors. Examples of other relevant questions that should be explored relate to whether and how the number and gender of children involved, or the participation of male or female mediators (or both), impact the proceedings and outcome; and whether there are differences in the solutions that are reached when women are parties to the conflict. Collecting and analyzing data at this level will also be needed to understand how women's access to land can be most effectively improved, and to better express the impact of their participation in political or customary forums related to land.

As mediating actors like UN- Habitat, AAP, CDM, CFI, NRC, etc. have all noted that succession, illegal occupation, and destruction of agriculture are common problems reported by women, more activities can be designed to address those particular situations.

For example, specific sessions on the importance of a testament, and how to create and store such a document, could help prevent inheritance disputes; or support groups could be established to assist widows to fend off encroaching neighbors or land grabbers as has been done in Zambia. Whatever the case, a closer examination of existing data can provide a much clearer picture of the particular obstacles in a region, and programming can be designed to address that.

Similarly, activities like mediations can have significantly different effects on men and women in households, and mediators should consider these differences in proceeding with a case. As previously mentioned, any activity that seeks to strengthen tenure security should consider how to protect men, women, boys and girls as a household and as individuals in the future. Mediators should make it a point to speak with any women involved in a case, instead of only allowing men to speak for the family/community, and this may require additional steps like speaking with women privately, separate from men in the family. When compromises are being reached, mediators can also assist the parties by talking through, or asking the parties to describe and discuss the impact of the arrangement on each member of the household, including the men, women and children.

There should also be more cross-analyses among projects to actively seek out information about how activities in the land sector impact women. For instance, a shelter project by the Norwegian Refugee Council found that in Ngote (N. Kivu) 66 of 134 plots of land belonged to women (49%) and in Bukango 17 of 55 belonged to women (31%), who were mostly widows, female heads of households, disabled, etc. Findings like these can be further analyzed to determine patterns of how such social and traditional customs were treated in such an area, or how women were able to interact with traditional customs, for lessons that may be valuable for others.

E. ADVOCATING FOR BETTER LAWS

1. PROTECTING A BROADER SPECTRUM OF LAND RIGHTS

As has been noted elsewhere, the Constitution recognizes property rights in land acquired by custom; Article 34 notes “Private property is sacred. The State guarantees the right to individual or collective property acquired in accordance with law or custom.” However, the land law itself only accords formal protection to land that meets the requirements of statutorily recognized ownership, and despite being “gender neutral,” the process of titling “gathers and deposits different rights or bundles of rights in one owner.”⁹⁰ Thus, while under customary tenure different persons may have held different types of rights to a single piece of land, titling and registration resulted in women losing access or other customary use rights while male heads of households gained by now possessing sole and exclusionary control.⁹¹

One change would be to extend legal protection to more land use rights, other than simply formally titled land. For example, customary leaders expressed a desire for the state to expand the scope of base documents that could be used to apply for a title certificate to include customary documents, such as the *acte de cession*. Similarly, legal protection could also be extended to rights less than full ownership, as has been done in Uganda:

⁹⁰ Kapur (2011)

⁹¹ Lastarria-Cornhiel (1997)

BOX 24: UGANDAN LAND ACT

Under the Ugandan Land Act of 1998, customary land right certificates are to be issued recording all interests in land not amounting to ownership, including customary use rights, like those of women in their husband's land. Even when decisions are made in accordance with customary law, those that deny women access to ownership, occupation or use are void.⁹²

2. PROTECTING ALL UNIONS, AND EXPLICITLY STATING PRESUMPTIONS OF JOINT OWNERSHIP OF MARITAL PROPERTY

Currently, only women who have civil marriages receive protection under the Family Code. However, the vast majority of rural women in eastern DRC will only have either customary or religious marriages, and this selectiveness discriminates against these indigenous rural women who also need protection. Some countries have officially recognized rights of women under customary marriages: One example is Liberia, where widows under customary marriages have legal inheritance rights, albeit to a lesser extent than widows under civil marriages. Another is Mozambique, where the 2003 Family Law protects informal unions and provides that women who have lived with their partners for more than one year are entitled to inherit his property.⁹³

Extending the DRC's current Family Code's presumption of community property for civil marriages, property owned by any union should be presumed as jointly owned, and transferring any interest in such property must require consent of both husband and wife. This was done by South Africa's Recognition of Customary Marriages Act (RCMA 2000)⁹⁴, which in addition to

⁹² Cotula (2002)

⁹³ Kapur (2011)

⁹⁴ Recognition of Customary Marriages Act 120 of 1998, date of commencement 15 November 2000) assented to 20 November 1998, date of commencement 15 November 2008.

granting the same protections of civil marriage to customary marriage, automatically sees all people in customary marriages as married in community of property. The Tanzanian Land Act of 1998 also presumes spousal co-ownership of family land.

Recommendations from other women's rights scholars include legislation to protect women where polygamy is practiced by enacting legislation that states that where the husband takes a second wife, all property belonging to the first marriage or consensual union would be partitioned, and the husband would only have his share to distribute to his new wife and any children.⁹⁵ Again the RCMA is an example, as it requires a husband who wants another wife to enter into a written agreement stating how property is to be shared amongst the wives, and further requires that a court approve the contract.

3. SPECIFICALLY PROHIBITING DISCRIMINATION AGAINST WOMEN IN APPLICATION OF CUSTOMARY LAW

Although the Constitution mandates that the state take action to prevent discrimination against women, because it also recognizes the application of customary law, legislation should also explicitly prohibit discrimination against women in the application of customary law in case any such question arises. This has been done by Tanzania in the Village Land Act (1999), and to a lesser extent at a provincial level in DRC by Provincial Edict No 002/2012 of 28 June 2012. Ultimately, it must be clear that at all levels – national, provincial, and local – discrimination against women in either customary or statutory law and practice is unacceptable and will not be tolerated. Any discriminatory law, custom, or practice should give rise to a legal cause of action, allowing women to bring a case to court to prove or disprove constitutionality.

⁹⁵ Giovarelli (2006).

Judges and customary leaders need to be trained and made aware that customary law and practice is not exempt from the Constitutional requirement of non-discrimination.

F. SUMMARY OF RECOMMENDATIONS

1. IMPROVING WOMEN'S POSITION IN THE CUSTOMARY SYSTEM

Mediation: Helping women negotiate for better conditions in customary systems. Mediation has been a successful mechanism and space for women to negotiate for better positions regarding access to land in customary settings. Mediators must also ensure that they make specific efforts to talk with women involved with conflicts, which may entail private conversations without male members of the family, and also talk through how the conflict and any possible outcomes will impact the women involved. When mediators help parties negotiate their compromises, references to women's legal rights in land should be used as benchmarks. Including these standards as part of the framework in which a compromise is reached can guard against women negotiating from a position where the parties think that women are entitled to nothing, and make the subtle but meaningful shift to understanding that even if this particular individual does not have a specific statutory right, this is due more to a legal technicality than her identity as a woman; women should not be encouraged to forgo their land rights in exchange for an immediate compromise because they do not meet these technical requirements.

Where tenure documents are obtained as part of a mediation compromise, mediators must ensure that they are jointly issued, and not simply to the head of household. Particularly in larger, community level conflicts, it is important that mediators not lose sight of the way women experience this conflict, and to use

their access as an opportunity to educate the larger audience on women's rights, to speak with the women themselves about their problems, and to work together to improve the situation. Finally, mediating institutions should study the common types of land conflict cases that women experience and develop specific trainings and activities in response. Some examples could be creating support groups for widows to fend off neighbors or family who try to take their land, or support groups for daughters to plan and advocate for their inheritance rights.

Linking women and customary leaders: combine efforts of women and customary leaders. With the amount of control and influence that customary leaders have, it is both important and effective to work with them to support women's access to land. Empowering women to approach and build links with customary leaders can create positive change for women that overcomes major social obstacles. Evidence suggests that several customary leaders are seeking to improve women's access to land, and more involvement of women themselves in such initiatives can provide a substantial boost to these efforts; i.e., combining the efforts of chiefs and women to promote civil registration of marriage, facilitate a consistent process for women to obtain customary tenure documents. Additionally, outside international actors should help develop synergies between their programs with customary leaders and women to create forums where the two come together to discuss relevant issues, such as bringing women to meetings of customary leaders.

Facilitating return and access to land for displaced women. Projects that provided access to land for cultivation for women in displacement had noticeably positive effects, and should be continued and replicated.



A focus group convenes in Masisi Centre, Masisi Territory, North Kivu Province. Photo © UN-Habitat.

However, significant gaps were observed regarding assistance for displaced women who wanted to return home but were unable to do so, due to obstacles such as male relatives or members in the community claiming their lands, or a lack of knowledge about the status of the space they lived in before displacement. Actors like UN-Habitat and its partners in the Land Coalition Group span significant geographical ranges and can create networks and referral pathways to obtain and share information about different areas. Additionally, as the State begins implementing programs to facilitate access to land for displaced persons, either via return or resettlement, joint title or other recognition of legal co-ownership should be ensured, instead of only acknowledging a single head of household and assuming that benefits will be shared equitably within the family.

Providing direct assistance to obtain customary tenure protection. While there are some forms of customary tenure protection that are available to women, such as testaments or documents like an acte de cession, women interviewed during the study typically had low levels of awareness of these mechanisms, and even those that did know about them were not certain how to access them. Trainings can help raise awareness of their existence, but direct assistance in the form of lawyers, paralegals or other advisors familiar with these processes are also needed to overcome practical obstacles, like gaining access to chiefs. Other activities could include sessions that explain utility of a written testament, and working with families to ensure that in the case of oral testaments women are included as living witnesses to verify the wishes of the testator, or that parents show children the location and boundaries of land that they will inherit.

2. IMPROVE WOMEN'S ABILITY TO ACCESS STATUTORY PROTECTION

Continue awareness raising activities with more focused goals and targeting methods. Workshops, trainings and other awareness and sensitizing activities must continue, but need more emphasis on how those who have been trained can use that knowledge to help others. Combined groups of men, women and youth should be created to speak to all demographics, and to send the message that supporting women's land rights is not for the sole benefit of women, and that empowering women will benefit the communities and country as a whole. Care must be taken to ensure that these groups are trained to demonstrate how males and females can work together equally as partners. There is also great value in the flexibility of having the ability to send in all men, all women, or mixed groups, so as to send in a messaging team that is most appropriate for the audience. Trainings need to move beyond simply delivering information, and must better focus on what individuals can do by challenging participants to use what they learn. Some examples might include helping parents to write testaments and/or providing specific locations, fees and directions for registering marriages. Whatever the activity, workshop programs should provide step-by-step information on how people can carry out such tasks and identify actors who can provide assistance if needed.

Provide direct legal assistance to bridge the gap between passage of law and implementation. Just as direct assistance can help women access customary protection, so too can it help women make use of the statutory protections that are available.

While trainings can provide information on legal protections such as the marriage regimes and registration processes, and the land laws and availability of joint title, many women still need help in actually accessing the statutory system. Lawyers and paralegals can play

a crucial role in helping women obtain title (joint or sole), assisting with birth or marriage certification processes, and defending their rights in divorce or inheritance cases, particularly in towns or more urban areas, and can help overcome logistical barriers by filing paperwork in batches if their clients are unable to travel to government administrative centers.

Promote cooperation between formal and informal dispute resolution and other legal mechanisms.

Both men and women praised mediation for its low cost and non-adversarial nature, but the lack of enforcement power is one of the major weaknesses of the mechanism. One potential solution is for the judicial and mediation systems to work together – i.e., to have judges certify and enforce mediation compromises, or for the court to refer cases to mediation if that is a more appropriate venue. More research should be done to identify and pilot creative ways for the two systems to cooperate and support each other.

3. EMPOWERMENT: SUPPORT WOMEN TO BE DRIVERS OF CHANGE

Increase support to women's committees and association. Giving women land alone does not guarantee that they will be able to keep that land in the future; they need tools and a support network to guard against the myriad threats they face. Women have started coming together throughout eastern DRC to speak out and demand better treatment. Current efforts to assist women must not treat them as passive beneficiaries, but rather consider how to help them challenge the restrictions they face. Women's committees and associations offer context specific advice, and can be very helpful in increasing their confidence and effectiveness; their numbers also lessen the likelihood of that any individual member can be substantially sanctioned by the community for speaking out. Because social, economic, health, and safety issues are all intertwined with women's access to

land, bringing together different groups with different focal areas can improve understanding of the links between all these issues and women's access to land. For example, UN Habitat could collaborate with other UN agencies and women's groups working on various issues (i.e., health, sexual violence, education, land) to forge new and stronger links among women.

Economic empowerment: Women's lack of economic control and financial independence remains a major impediment to exercising their land rights; women need to be able to claim their rights, knowing that they will not be "put out" if their husbands dislike what they are doing. Strengthening their financial position will also help improve their bargaining positions within the family, and studies show that, contrary to the family unit falling apart, as implied by so many men in interviews, women who are economically empowered gain higher levels of respect within their families and communities. More needs to be done to explore how to promote their financial autonomy; agricultural collectives where women control the productive resources and the economic benefits are showing early signs of success. Finally, it will be important to continue education activities for all members of communities to understand the value of giving women more economic control and independence.

Political empowerment. Political empowerment is a crucial component of supporting women. Around the world, women have been historically excluded from decision-making processes and institutions at all levels in both customary and statutory systems, resulting in decisions which have effectively ensured that men maintain control over property and productive resources, buttressing systems that protect male managerial power. Even current laws that may appear gender neutral often tend to reinforce customary stereotypes and discriminations, such as the presumption of a single title-holder. Efforts need to target greater participation of women in both customary and statutory decision-making bodies, but as this tends

to be a long-term goal, current steps should focus on leveraging existing relationships and bringing women and leaders – both customary and statutory – together. Some examples could include facilitating discussions between women and customary leaders already working with international actors, and bringing rural women to participate in national level discussions regarding the current land and family law reform agendas

4. MAINSTREAMING GENDER ISSUES IN PROGRAMMING

Listen to women and recognize gender biases.

Those seeking to provide assistance must strive to ensure that they understand the viewpoints of women, by speaking to the women themselves. All women are not the same, and it is necessary to talk with women of all education and awareness levels to understand different perspectives, needs, and fears. Women have been forced to cope with existing social and cultural conditions for a very long time, and their decisions to adhere to them should not necessarily be interpreted as for support for them. Many civil society organizations are still predominantly male, and while recognizing the value of institutional knowledge, we must also recognize that much of it was developed during times and in settings dominated by male thought.

Promote meaningful participation by women.

Women must be more involved in activities related to land and that are intended to promote access to land; their involvement cannot be measured by numbers alone, and must go beyond mere presence. During interviews, male civil society and customary leaders alike indicated that women had less interest in such activities, and did not have time for them. However, their statements failed to account for the reality that women have never really had a choice; they are expected to care for the home and the family, and advocacy activities as offered would be in addition to their already substantial workload – the men were not offering to help share in some of these tasks and duties.

We must make particular efforts to ask women if they want to be more involved in activities like advocacy and training (and many women interviewed indicated that they did), and find creative ways to overcome barriers to participation, perhaps by moving meeting location places or times to accommodate women's responsibilities at home.

Gender analyses of activities. There exists much data about the types of land conflicts and other land related issues in eastern DRC, and while some is collected at a gender specific level, much is not. Analyzing this information at a micro-level is necessary to better understand nuances; for example, gender disaggregated data about land conflicts registered for mediation can show trends like why women register complaints, why complaints are registered against them, whether mediations are conducted differently by female or male mediators, and whether there are particular triggers or challenges that are specific to a particular region. Mediators themselves should make it a practice to talk with women involved in any case separately from men, and talk with all parties involved about how the problems and outcomes impact both males and females, as they often experience things differently.

5. ADVOCATE FOR BETTER LAWS

Protect a broader spectrum of land rights. While the DRC has made admirable strides in passing legislation to help protect women's land rights, at the moment, it only accords formal protection for statutorily recognized ownership, which tends to concentrate power and control in land over a single head of household, who is generally a male figure. Laws should be modified to extend legal protection to more land use rights, including interests less than full ownership, such as customary use rights that women have in marital land as protected under Ugandan law, or to create a system that allows a customary user to incrementally gain statutory protection, potentially by recognizing

customary land rights as a basis for formal titling.

Protect all unions. The vast majority of rural women in eastern DRC have either customary or religious marriages, and are thus denied the protection of the DRC's Family Code, which only applies to women who have civil marriages. The law should also recognize and protect the rights of these other women, as has been done in varying stages by South Africa, Liberia, and Mozambique. Other possibilities include legislation to protect women where polygamy is practiced by requiring that where the husband takes a second wife, all property belonging to the first marriage or consensual union would be partitioned, and the husband would only have his share to distribute to his new wife and any children, as done in South Africa.

Presumption of joint ownership. Currently, while joint ownership of marital property is possible, the prevailing practice is for title to reside in a single person, who is typically either the husband or most senior male in a family. The law should explicitly state a presumption of joint ownership and management of marital property, and should protect both civil and customary unions. For example, South Africa's Recognition of Customary Marriages Act automatically sees all people in customary marriages as married in community of property, and the Tanzanian Land Act of 1998 also presumes spousal co-ownership of family land.

Specifically prohibit discrimination against women in application of all law and practice. Legislation should explicitly clarify that there are no exemptions to the constitutional requirement of non-discrimination, including customary law and practice, as it must be clear that at all levels, discrimination against women in either customary or statutory law and practice is unacceptable and will not be tolerated. Any discriminatory law, custom, or practice should give rise to a legal cause of action, and judges and customary leaders should be trained to ensure they are aware of the law, and that customary law and practice is not exempt from the Constitutional requirement of non-discrimination.

ANNEXES



PART IV. ANNEXES

- Annex 1: List of Abbreviations
- Annex 2: List of Sites Visited, Interviews, and Focus Group Discussions
- Annex 3: Analysis of UN HABITAT Land Conflict Mediation Database
- Annex 4: List of Sources

ANNEX 1: LIST OF ABBREVIATIONS



AAP	Aide et Action Pour la Paix
CAF	Collective Associations des Femmes
CAFPDI	Collectif des Associations Feminines pour le Développement Intégré
CDM	Cadre de Dialogue et de Mediation
CEDAW	Convention on the Elimination of Discrimination Against Women
CERD	Convention on the Elimination of Racial Discrimination
CFI	Commission Foncière de l'Ituri
CLPC	Comites Locaux Permanents de Conciliation
DRC	Democratic Republic of Congo
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally displaced person
LOFEPACO	Ligue des organisations des femmes paysannes du Congo
NRC	Norwegian Refugee Council
SAFKA	Synergie des Associations Féminines de Kalehe
UDHR	Universal Declaration of Human Rights

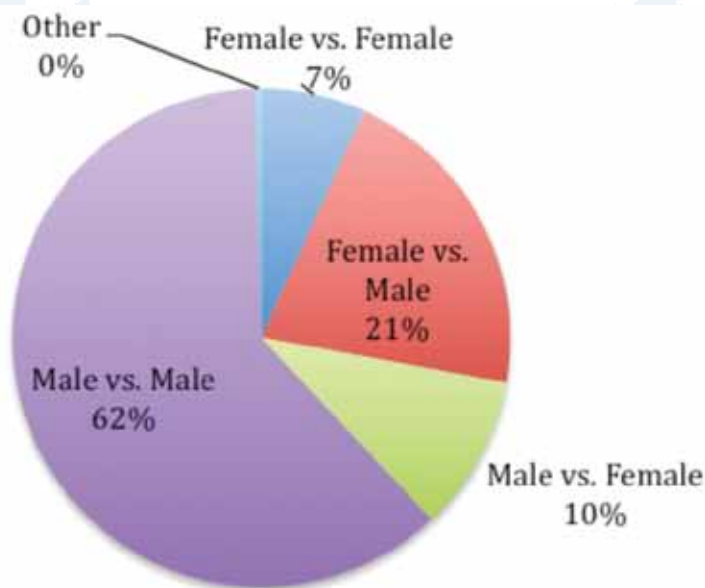
ANNEX 2: LIST OF SITES VISITED, INTERVIEWS AND FOCUS GROUP DISCUSSIONS

LOCATION	ACTIVITY
Kitchanga, North Kivu	FGD: IDP women living in Muhgote & Kahe Camps
	Customary leaders from Bashali Mokoto Groupement and Bishusha Groupement
	CAFPDI (Collective des Associations Feminine pour la Promotion Development Integre)
	UN-HABITAT local partners
	FGD: Local women
	FGD: Local men
Masisi Centre, North Kivu	Customary leaders from Biiri Groupement and Buabo Groupement
	CAF (Collective des Associations Feminines)
	Land administrator; Masisi Brigade Fonciere
	FGD: Local Female Youth
	FGD: IDP women living in Kalinga Camp
	FGD: Local women
	FGD: Local men
	FGD: Local Male Youth
	AAP (Aide et Action Pour la Paix)
Mineene Francois, Rural Development Service of Territory	
Mahagi, Ituri, Province Orientale	FGD: Women Activists
	FGD: Male and Female Youth representatives of Columbe to se Pela; Jeune de Mahagi et les Theatre (civil society organizations)
	Local male civil society youth leaders

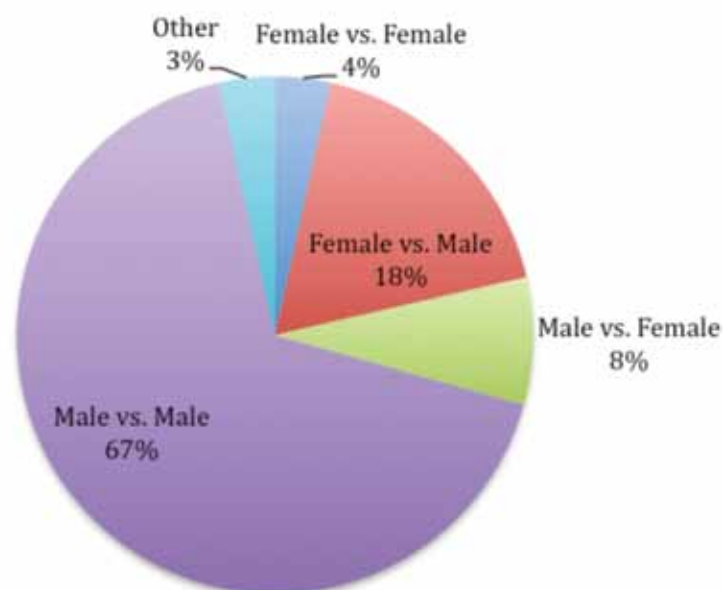
LOCATION	ACTIVITY
Anghal Village, Ituri, Province Orientale	Commission Foncières de l'Ituri
Nyalebeh Village, Ituri, Province Orientale	Local women
Goma, North Kivu	Provincial Land Minister
Minova, South Kivu	FGD: Local female youth
	FGD: Local male youth
	SAFKA (Synergie des Associations Feminine de Kalehe)
	FGD: IDP women living in Camp de la Poste
Mukwinja Village, South Kivu	FGD: Local women
	FGD: Local men
	CDM (Cadre de Dialogue et de Mediation)
	Customary leaders

ANNEX 3: ANALYSIS OF UN HABITAT LAND CONFLICT MEDIATION DATABASE

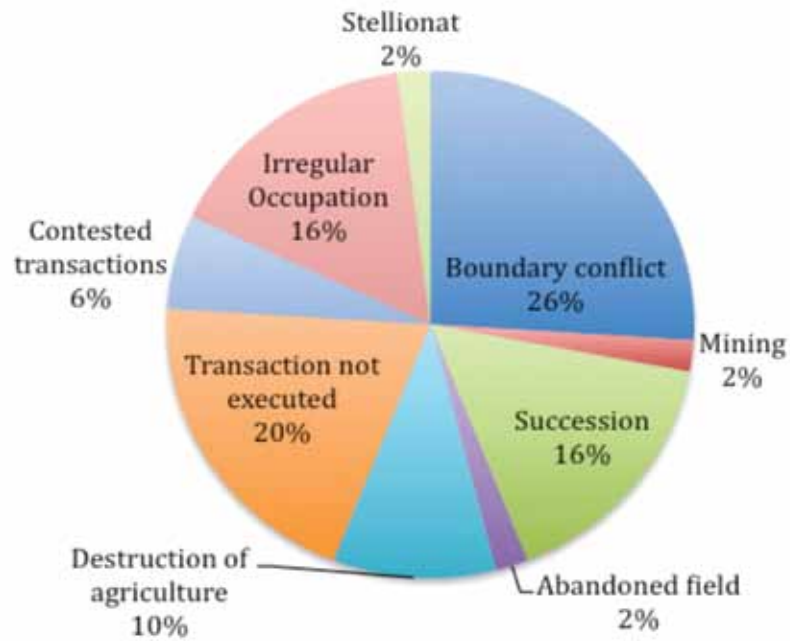
SOUTH KIVU CASES: BREAKDOWN BY GENDER OF PARTIES



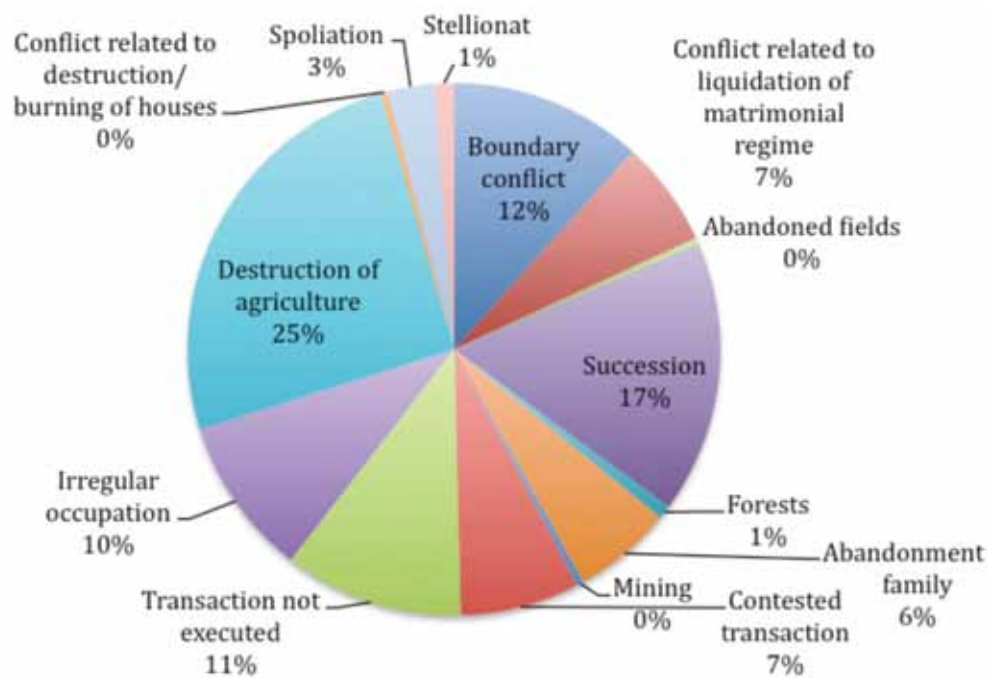
NORTH KIVU CASES: BREAKDOWN BY GENDER OF PARTIES



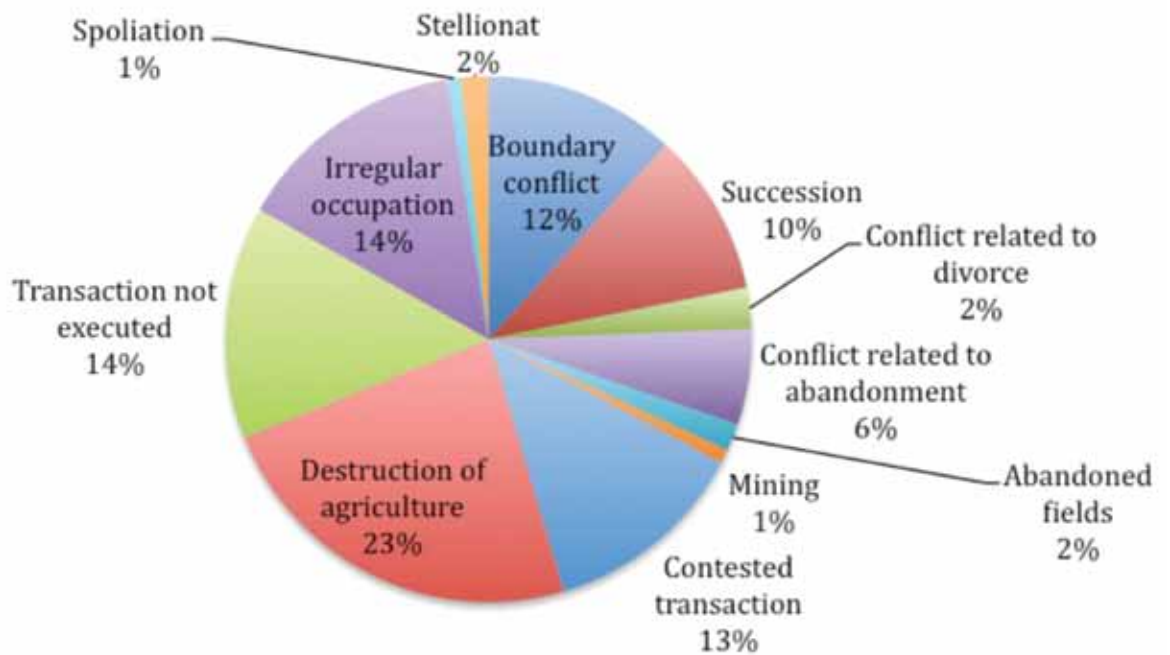
SOUTH KIVU CASE TYPE: FEMALE VS. FEMALE



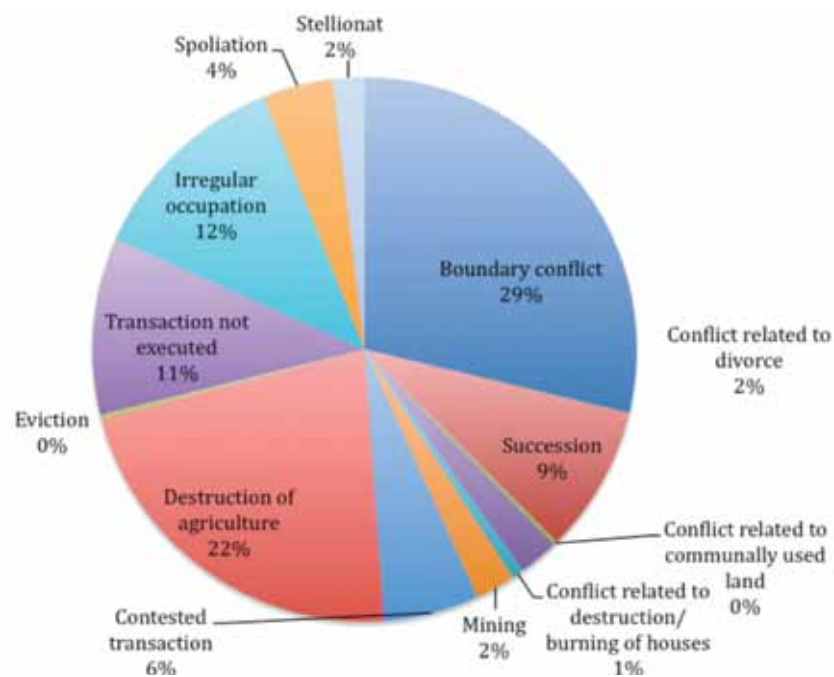
CASE TYPE: FEMALE VS. MALE



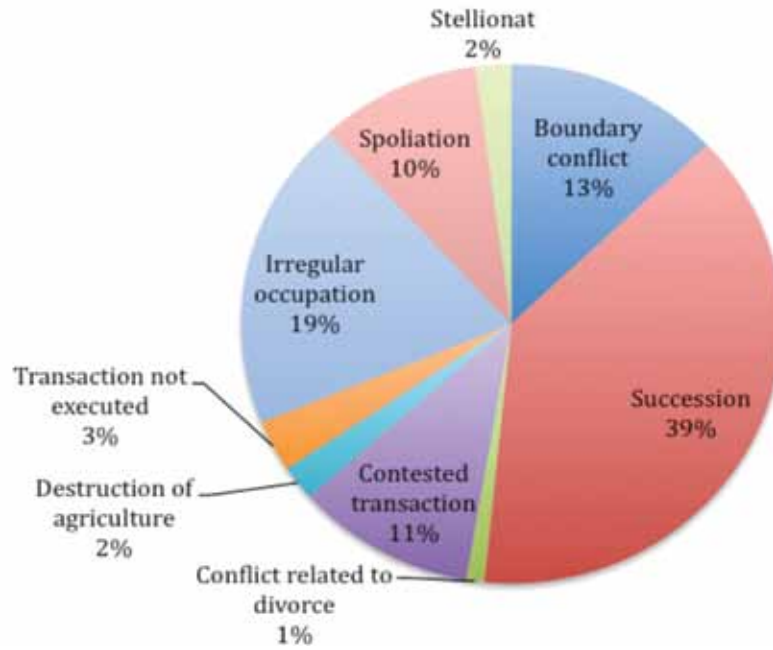
SOUTH KIVU CASES: MALE VS. FEMALE



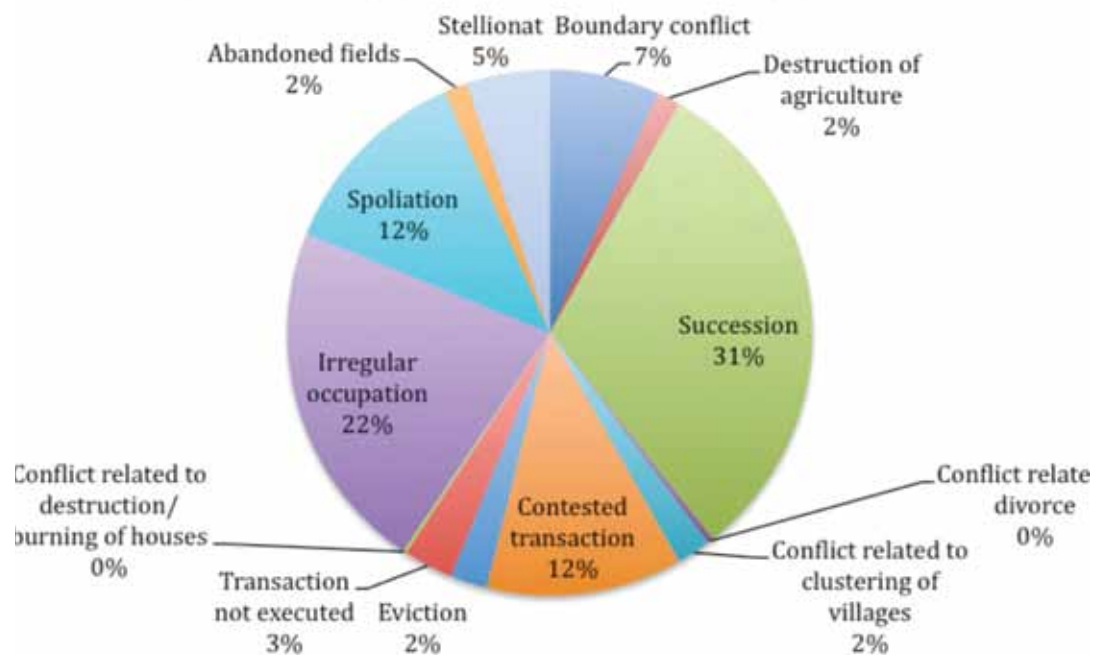
SOUTH KIVU CASES: MALE VS. MALE



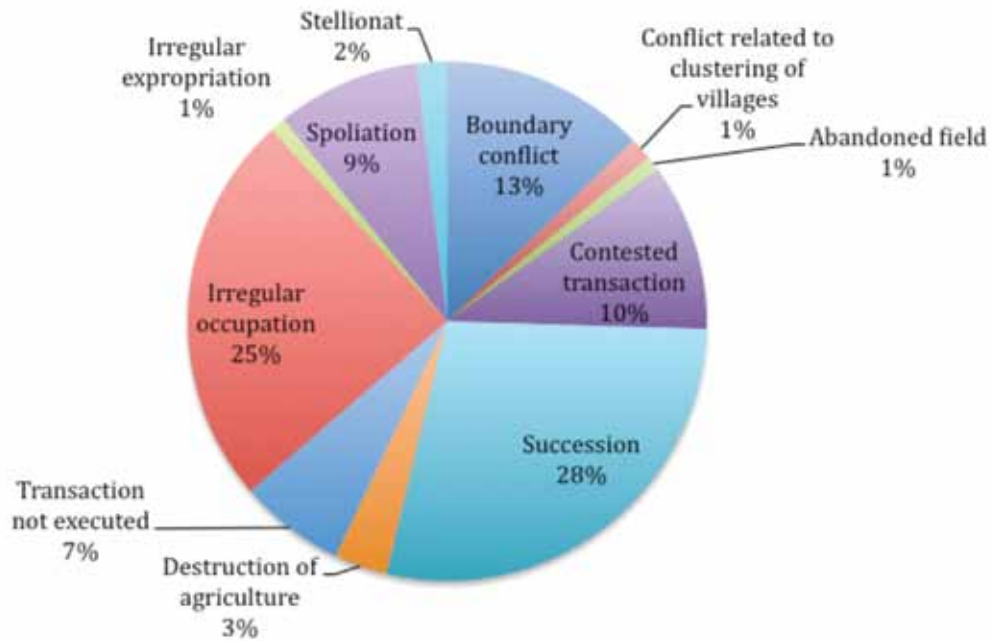
NORTH KIVU CASES: FEMALE VS. FEMALE



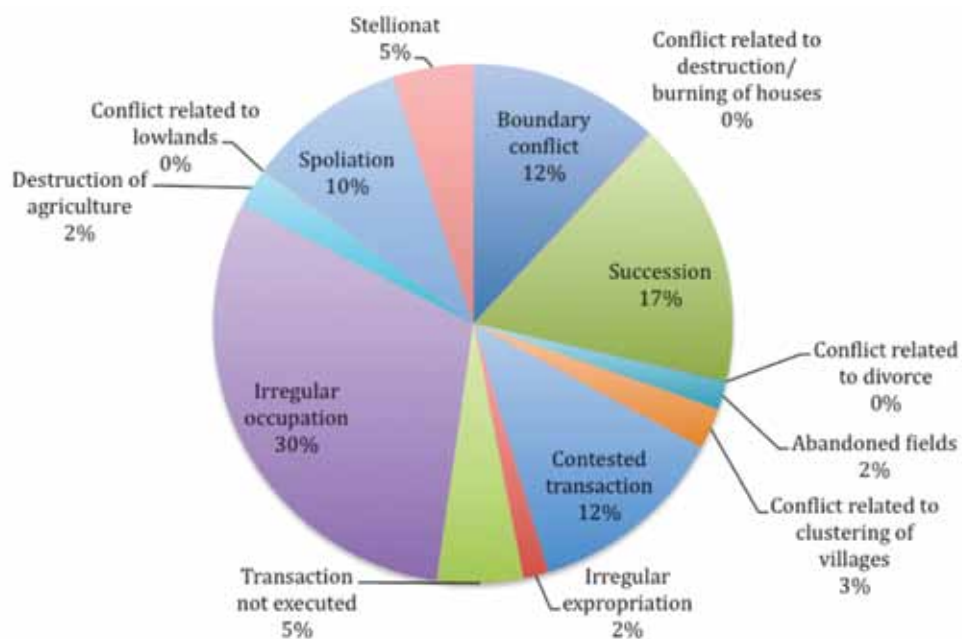
NORTH KIVU CASES: FEMALE VS. MALE



NORTH KIVU CASES: MALE VS. FEMALE



NORTH KIVU CASES: MALE VS. MALE



ANNEX 4: LIST OF SOURCES

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ABOUT GLTN

THE GLOBAL LAND TOOL NETWORK

The main objective of the Global Land Tool Network (GLTN) is to contribute to poverty alleviation and the Millennium Development Goals through land reform, improved land management and security of tenure.

The Network has developed a global land partnership. Its members include international civil society organizations, international finance institutions, international research and training institutions, donors and professional bodies. It aims to take a more holistic approach to land issues and improve global land coordination in various ways. These include the establishment of a continuum of land rights, rather than a narrow focus on individual land titling, the improvement and development of pro-poor land management, as well as land tenure tools. The new approach also entails unblocking existing initiatives, helping strengthen existing land networks, assisting in the development of affordable gendered land tools useful to poverty stricken communities, and spreading knowledge on how to improve security of tenure.

The GLTN partners, in their quest to attain the goals of poverty alleviation, better land management and security of tenure through land reform, have identified and agreed on 18 key land tools to deal with poverty and land issues at the country level across all regions. The Network partners argue that the existing lack of these tools, as well as land governance problems, are the main cause of failed implementation at scale of land policies world wide.

The GLTN is a demand driven network where many individuals and groups have come together to address this global problem. For further information, and registration, visit the GLTN web site at www.glttn.net.

ABOUT THIS PUBLICATION

Managing Urban Land Information draws lessons from various experiences in post-conflict and developing countries. It is intended for land experts, government officials, donors and others involved in land information projects to avoid the costly development of an urban land information system that is too complicated, cannot be sustained or fails to support urban land management.

In this publication, you will find useful case studies that emerge from UN-Habitat's operational experiences in a number of post-conflict and developing countries as well as other well-known cases.

This publication demonstrates that developing land databases at scale that directly support land management activities, such as urban planning, property taxation and increasing land tenure security, requires a long-term process and should be anchored in stable land institutions. One of the key lessons learnt outlined in this publication is that in the absence of a stable institutional and political environment only ad-hoc land information projects make sense, but that stand-alone projects of limited duration can also contribute to reaching the goal of sustained urban land information.

Ultimately, it is clear that land information is very helpful to undertake sustainable urban development, especially in post-conflict and other countries with underdeveloped land institutions.

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