

**Expert Group Meeting on good practices and lessons learned in realizing  
women's rights to productive resources, with a focus on land**

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**BACKGROUND PAPER ON  
WOMEN'S HUMAN RIGHTS RELATED TO ACCESS, USE AND CONTROL OVER  
LAND AND OTHER PRODUCTIVE RESOURCES**

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## I. Introduction

1. Access to productive resources, in particular to land, is crucial to women's empowerment, ability to fully participate in all spheres of society and very often to their survival. Lack of access, use and control over land and other productive resources has a serious impact on the enjoyment of many of women's human rights such as the rights to life, housing, food, culture, freedom from torture, cruel, inhuman or degrading treatment, health, private and family life, work, self-determination and education.<sup>1</sup> On the other hand, the violation of certain human rights, such as the right to information, participation, freedom from torture and cruel, inhuman or degrading treatment or education prevents women from accessing land and other productive resources. As underscored by various international human rights bodies and mechanisms, States have the obligation to respect (refrain from interfering with the enjoyment of the rights), protect (prevent others from interfering with the enjoyment of the rights) and fulfil (adopt appropriate measures towards the full realization of the rights) human rights related to access, use and control over land and other productive resources. States are also required to ensure equal access to land, housing, property and other productive resources for both women and men.
2. This paper begins by reviewing the international and regional legal and policy instruments dealing with human rights related to access, use and control over land and other productive resources. Then, this paper presents the importance of adopting a human rights-based approach to laws, policies and programmes related to access, use and control over land and other productive resources in order to realize women's human rights. Human rights-based approach principles and standards are briefly examined as well as its relationship with gender mainstreaming.

## II. International legal and policy instruments

### International human rights instruments

3. Various human rights instruments guarantee rights related to access, use and control over land.<sup>2</sup>
4. The **Universal Declaration of Human Rights** (UDHR) in its Article 2 sets the principle of non-discrimination in the enjoyment of rights guaranteed in the Declaration. Among many others, the rights to property, food, housing, and education are recognized.
5. The **International Covenant on Civil and Political Rights** in its article 3 also guarantees equality between men and women. Among others, the Covenant recognizes

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<sup>1</sup> For a discussion of issues relating to human rights and land generally, see ESCR-Net, *Seeding Hope? Land in the International Human Rights Agenda, Challenges and Prospects*, Working Paper by Thea Gelbspan and Vijay K. Nagaraj, available at: [http://www.eskr-net.org/resources/resources\\_show.htm?doc\\_id=1634767](http://www.eskr-net.org/resources/resources_show.htm?doc_id=1634767).

<sup>2</sup> See Annex I for an extract of relevant articles.

the rights to life, private and family life, liberty and security of person, equality before the courts and tribunals, information, freedom of movement, association, assembly and expression, freedom from torture and cruel, inhuman or degrading treatment, equal protection of the law, participate in public affairs and remedies.

6. Article 3 of the **International Covenant on Economic, Social and Cultural Rights** similarly calls on States Parties to the Covenant to “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.” The Covenant recognizes the rights to food, housing, education, health, culture, work, and association (trade unions), among others.
7. The **Convention on the Elimination of All Forms of Discrimination against Women** calls on States Parties to end discrimination against women in laws, policies, practices and traditions, including through the adoption of temporary special measures. In its Article 14.2 the Convention States that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development [...]”. This includes among others the right to education, access to credit and loans, access to housing and right to participation. Importantly, it also includes guarantees of equal treatment in land and agrarian reform as well as in land resettlement schemes. The Convention also guarantees many other rights such as the right to health or work.
8. The **Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of Persons with Disabilities** and the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** also guarantee various rights related to access, use and control over land and other productive resources.
9. The international human rights treaty bodies which monitor the implementation of the international human rights treaties, including the Committee on the Elimination of Discrimination against Women<sup>3</sup> and the Committee on Economic, Social and Cultural Rights<sup>4</sup> frequently call on States parties to ensure women’s human rights related to access, use and control over land and other productive resources.<sup>5</sup>
10. In its General Comment No. 21 (1994) on equality in marriage and family relations, the Committee on the Elimination of Discrimination against Women underscored, “the right to own, manage, enjoy and dispose of property is central to a woman’s right to enjoy financial independence, and in many countries will be critical to her ability to earn a

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<sup>3</sup> See, for example, CEDAW/C/CIV/CO/1-3(2011); CEDAW/C/NPL/CO/4-5(2011); (CEDAW/C/TCD/CO/1-4 (2011); (CEDAW/C/ZMB/CO/5-6 (2011); (CEDAW/C/ETH/CO/6-7 (2011).

<sup>4</sup> See, for example, E/C.12/BOL/CO/2 (2008); E/C.12/1/ADD.93 (2003); E/C.12/1/ADD.66 (2001).

<sup>5</sup> See articles 13, 14 (2), 15(2) and 16(1) of the Convention on the Elimination of All Forms of Discrimination against Women, and article 11 of the International Covenant on Economic, Social and Cultural Rights.

livelihood and to provide adequate housing and nutrition for herself and for her family”<sup>6</sup>. It also stated that in countries undergoing programmes of agrarian reform or redistribution of land “the right of women, regardless of marital status, to share such redistributed land on equal terms with men should be carefully observed”.<sup>7</sup> The Committee observed:

“There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished”.<sup>8</sup>

11. In its General Comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights stated that “women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so”.<sup>9</sup> The Human Rights Committee, in its General Comment No. 28 (2000) on equality of rights between men and women, has also stated that “the capacity of women to own property [...] may not be restricted on the basis of marital status or any other discriminatory ground” and that States parties must ensure that the “matrimonial regime contains equal rights and obligations for both spouses with regard to [...] the ownership or administration of property, whether common property or property in the sole ownership of either spouse.”<sup>10</sup>
12. The Committee on Economic, Social and Cultural Rights in its General Comment No. 7 (1994) on forced evictions highlights the disproportionate impact of evictions on women, stating that “women in all groups are especially vulnerable given the extent of statutory and other forms of discrimination which often apply in relation to property rights (including homeownership) or rights of access to property or accommodation, and their particular vulnerability to acts of violence and sexual abuse when they are rendered

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<sup>6</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 21 (1994) on equality in marriage and family relations, para 26.

<sup>7</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 21 (1994) on equality in marriage and family relations, para 27.

<sup>8</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 21 (1994) on equality in marriage and family relations, para 35; see also, paras. 7-8, 26-29, 30-34 as well as general recommendation No. 27 on older women and protection of their human rights, paras 26, 34, 47-48, 51-53.

<sup>9</sup> Committee on Economic, Social and Cultural Rights, general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights, para 28. See also, general comment No. 7 on the right to adequate housing: forced evictions, para 10.

<sup>10</sup> Human Rights Committee, general comment No. 28 (2000) on equality of rights between men and women, paras 19, 25.

homeless”. States parties are encouraged to implement specific measures in the context of forced evictions, such as consultation with affected persons, including women, availability of remedies and compensation, and a series of procedural requirements.

13. Also the Committee on Economic, Social and Cultural Rights in its General Comment No. 12 (1999) on the right to adequate food observed that availability in the context of right to food “refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well-functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.” This generic framework is equally applicable to women. The General Comment specifically refers that national strategies to implement the right to food “should give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology; [...]; maintaining registries on rights in land (including forests)”.<sup>11</sup>
14. In its General Comment 20 (2009) on Non-Discrimination on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights states that “eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or de facto discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.”<sup>12</sup>

### **International policy instruments, principles, guidelines and recommendations**

15. The Beijing Platform for Action, adopted by the Fourth World Conference on Women in 1995, calls on Governments to enable women to obtain affordable housing and access to land and to undertake legislative and administrative reforms to give women equal access to economic resources, including the right to inheritance and ownership of land and other property.<sup>13</sup> The Istanbul Declaration and the Habitat Agenda, adopted at the second United Nations Conference on Human Settlements in 1996, commits Governments to providing legal security of tenure and equal access to land to all people, including women and those living in poverty, and undertaking legislative and administrative reforms to

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<sup>11</sup> General Comment No. 12 (1999) on the right to adequate food, Committee on Economic, Social and Cultural Rights, para. 26

<sup>12</sup> General Comment No. 20 (2009) on Non-Discrimination on Economic, Social and Cultural Rights. Committee on Economic, Social and Cultural Rights, para. 8

<sup>13</sup> Paras 58(m), 61(b), (165(e)).

give women full and equal access to economic resources, including the right to inheritance and to ownership of land and other property. States are also called upon to support community projects, policies and programmes that aim to remove all barriers to women's access to affordable housing and property ownership; promote awareness campaigns, education and enabling practices regarding legal rights with respect to tenure, land ownership and inheritance for women; and to promote mechanisms for the protection of women who risk losing their homes upon the death of their husbands.<sup>14</sup> The Plan of Action of the World Food Summit adopted in 1996<sup>15</sup> in its Objective 1.3(b) calls upon governments to “promote women's full and equal participation in the economy, and for this purpose introduce and enforce gender-sensitive legislation providing women with secure and equal access to and control over productive resources including credit, land and water.”<sup>16</sup>

16. Resolutions adopted by the General Assembly and other intergovernmental bodies urge Member States to accord women full and equal rights to land and other property.<sup>17</sup> The

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<sup>14</sup> Paras 40 (b), 78 (b)(e) (g).

<sup>15</sup> Plan of Action of the World Food Summit, 1996, [http://www.fao.org/wfs/index\\_en.htm](http://www.fao.org/wfs/index_en.htm).

<sup>16</sup> In addition Objective 1.4 (b) states that “governments, in partnership with all actors of civil society, will as appropriate: (...) (b) Enact or strengthen policies to combat discrimination against members of socially vulnerable and disadvantaged groups, and persons belonging to minorities, with particular attention to their rights to land and other property, and to their access to credit, education and training, commercial markets and food security programmes;” Also the Objective 2.1 of the Plan of Action aims:

“To pursue poverty eradication, among both urban and rural poor, and sustainable food security for all as a policy priority and to promote, through sound national policies, secure and gainful employment and equitable and equal access to productive resources such as land, water and credit, so as to maximize the incomes of the poor.

To this end, governments, in partnership with all actors of civil society, as appropriate, will:

(d) Pursue sound economic, agriculture, fisheries, forestry and land reform policies that will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources including in marginal areas;

(e) Improve equal access, by men and women, to land and other natural and productive resources, in particular, where necessary, through the effective implementation of land reform and the promotion of efficient utilization of natural and agricultural resources and resettlement on new lands, where feasible;

(d) Pursue sound economic, agriculture, fisheries, forestry and land reform policies that will permit farmers, fishers, foresters and other food producers, particularly women, to earn a fair return from their labour, capital and management, and encourage conservation and sustainable management of natural resources including in marginal areas;

(e) Improve equal access, by men and women, to land and other natural and productive resources, in particular, where necessary, through the effective implementation of land reform and the promotion of efficient utilization of natural and agricultural resources and resettlement on new lands, where feasible;”

<sup>17</sup> See, for example, General Assembly resolutions A/RES/66/216, A/RES/52/93 and Commission on the Status of Women resolutions 42/1, 49/8. See also Commission on Human Rights resolutions on women's equal ownership of, access to, and control over land, and the equal rights to own property and to adequate housing (E/CN.4/RES/2000/13; E/CN.4/RES/2001/34; E/CN.4/RES/2003/22; E/CN.4/RES/2004/21 and E/CN.4/RES/2005/25); Sub-Commission on the Promotion and Protection of Human Rights resolutions (E/CN.4/SUB.2/RES/1997/19 and E/CN.4/SUB.2/RES/1998/15 on ‘Women and the right to land, property and adequate housing’ and E/CN.4/SUB.2/RES/1999/15 on ‘Women and the right to development’); and report of the Secretary General on Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing (E/CN.4/2002/53); and documents available at:

<http://www.ohchr.org/EN/Issues/Housing/Pages/WomenAndHousing.aspx>.

special procedures of the Human Rights Council, in particular the Special Rapporteurs on adequate housing,<sup>18</sup> right to food<sup>19</sup>, violence against women<sup>20</sup> and internally displaced people<sup>21</sup>, have highlighted the issues and difficulties faced by women in accessing and controlling land and made recommendations to address those issues.

17. The Basic Principles and Guidelines on Development-Based Evictions and Displacement,<sup>22</sup> developed by the former Special Rapporteur on adequate housing, Miloon Kothari, address the human rights implications of development-linked evictions and related displacement in urban and rural areas. The Guidelines also include specific references to women's human rights and gender equality requirements. Among others, under these Guidelines States are encouraged to "adopt and implement special measures to protect women from forced eviction" as well as to take into account the differential impacts of forced evictions on women when conducting an impact assessment.
18. The former Special Rapporteur on adequate housing also highlighted "the gap between *de jure* and *de facto* protection of women's right to adequate housing. In many countries, women's rights are legally protected, but in practice, women are socially and economically disadvantaged and face *de facto* discrimination in the areas of housing, land and inheritance rights."<sup>23</sup> In particular, he has noted that "gender-neutral laws were interpreted and implemented in ways that discriminate and disadvantage women."<sup>24</sup>
19. The Special Rapporteur on the right to food, Olivier De Schutter, articulated States obligations to respect, protect and fulfil in the context of the right to food and land as "the right to food requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil)."<sup>25</sup> This generic framework is also applicable to women. In the Minimum Human Rights Principles Applicable to Large-Scale Land Acquisitions or Leases (2009) proposed by the Special Rapporteur, he advised to include sex-disaggregated data in undertaking impact assessments.<sup>26</sup> In 2010, the Special Rapporteur also observed that "there remain laws and social customs such as those ensuring that the land of a deceased husband belongs to his sons, not to his widow,

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<sup>18</sup> See, for example, A/HRC/19/53, E/CN.4/2006/118, E/CN.4/2005/43, E/CN.4/2003/55, E/CN.4/2002/59.

<sup>19</sup> See, for example, A/66/262, A/65/281, A/63/278, A/HRC/9/23.

<sup>20</sup> See, for example, A/HRC/17/26, A/HRC/14/22, A/HRC/11/6, A/HRC/4/34, E/CN.4/2005/72.

<sup>21</sup> See, for example, A/HRC/13/21/Add.4.

<sup>22</sup> A/HRC/4/18, ANNEX I

<sup>23</sup> Report of the Special Rapporteur on adequate housing, E/CN.4/2006/118, (2006), paragraph 9.

<sup>24</sup> *Ibid.*, paragraph 9

<sup>25</sup> Report of the Special Rapporteur on the right to food, A/65/281, (2010), paragraph 2.

<sup>26</sup> Report of the Special Rapporteur on the right to food, A/HRC/13/33/Add.2, (2000), Annex.

despite the flagrant violation of women's rights to which this leads" and "[a]s a result, women still represent a significant minority of the total number of titleholders [...]"<sup>27</sup>

20. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, adopted by the Food and Agriculture Organization (FAO) Council in 2004, also provides an explicit reference to land in the context of the right to food. In particular, Guideline 8 (Access to resources and assets) encourages States to "respect and protect the rights of individuals with respect to resources such as land, [...] without discrimination", and where necessary and appropriate, to "carry out land reforms and other policy reforms consistent with their human rights obligations and in accordance with the rule of law in order to secure efficient and equitable access to land [...]". It also provides that "States should take measures to promote and protect the security of land tenure, especially with respect to women, and poor and disadvantaged segments of society, through legislation that protects the full and equal right to own land and other property, including the right to inherit."
21. FAO Member States adopted the Voluntary Guidelines on the Responsible Governance of Tenure of Lands, Fisheries and Forests in the Context of National Food Security, under the auspices of the Committee on World Food Security, in May 2012. These Guidelines are the first international level guidance on the governance of land, negotiated by States. The Guidelines recognize the principle of gender equality calling upon States to "ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status." and provide guidance on various aspects on the governance of tenure with reference to the principle of gender equality.
22. The Guiding Principles on Internal Displacement (1998), adopted by the United Nations General Assembly, which address the specific needs of internally displaced persons also include specific provisions on women's rights related to land and productive resources. Among others, the Guiding Principles provide that "the authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation".
23. The 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (The Pinheiro Principles), endorsed by the Sub-Commission on the Promotion and Protection of Human Rights, designed to protect the rights of refugees and displaced persons also recognize the principle of gender equality.<sup>28</sup> Among others, States are encouraged to "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."

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<sup>27</sup> Report of the Special Rapporteur on the right to food, A/65/281, (2010), paragraph 31.

<sup>28</sup> Article 4



### III. Regional legal and policy frameworks

24. At the regional level, the Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa addresses women’s land and property rights within many of its provisions. States parties are required to ensure that in case of separation, divorce or annulment of marriage, women and men shall have the right to an equitable sharing of the joint property deriving from the marriage; grant to women, whatever their marital status, access to adequate housing; and promote women’s access to and control over productive resources such as land and guarantee their right to property.<sup>29</sup> The Protocol also provides that a widow has the right to an equitable share in the inheritance of the property of her husband, and that woman and men have the right to inherit, in equitable shares, their parents’ properties.<sup>30</sup> In addition, the Protocol requires that State Parties “take appropriate measures to: a) provide women with access to clean drinking water, sources of domestic fuel, land, and the means of producing nutritious food” in the context of women’s right to food security”.<sup>31</sup> The Framework and Guidelines for Land Policy in Africa, adopted by the African Union in 2009, contains a specific section 3.1.4 on strengthening the land rights of women.
25. The Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights also recognize the principle of gender equality and women’s equal rights to property and land. Among other provisions, the Principles and Guidelines state that the African States are obliged to “ensure equitable and non-discriminatory access, acquisition, ownership, inheritance and control of land and housing, especially by women. This includes the obligation to take measures to modify or prohibit harmful social, cultural or other practices that prevent women and other members of vulnerable and disadvantaged groups from enjoying their right to property, particularly in relation to housing and land”.<sup>32</sup>
26. In Europe, the Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing of 30 June 2009 states that “Equal access to credit and finance, equal rights in respect of inheritance of land and property and the elimination of gender-biased customs and traditions that hinder women’s enjoyment of housing rights are critical issues. Laws and policies must be articulated and implemented in ways that recognise the specific constraints and vulnerabilities of women in relation to the right to housing”.<sup>33</sup> The Recommendation also calls upon States “to ensure that domestic violence laws include provisions to protect women’s right to housing, including the right to privacy and security”.

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<sup>29</sup> Articles 7, 16, 19.

<sup>30</sup> Article 21.

<sup>31</sup> Article 15.

<sup>32</sup> Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights, Article 55. viii).

<sup>33</sup> CommDH(2009)5, Article 4.3.6.

27. In Consensus documents adopted at the Regional Conferences on Women in Latin America and the Caribbean, States agreed to formulate and implement public policies to broaden sustainable access for women to land ownership and access to water, other natural and productive resources, services, and financing and technologies;<sup>34</sup> ensure women's access to productive assets, including land and natural resources, and access to productive credit, in both urban and rural areas;<sup>35</sup> and adopt an approach of gender, race and ethnic equality and the corresponding measures in relation to economic, fiscal and tax policy, agrarian reform, and access to ownership of land, housing and other productive assets, in order to ensure the equitable distribution of wealth.<sup>36</sup> In a 2011 report of the Inter-American Commission on Human Rights on the Work, Education and Resources of Women: The Road to Equality in Guaranteeing Economic, Social and Cultural Rights, the Commission sets out a number of priority measures that States should take to ensure women's equal access to and control over economic and financial resources, including land, property and housing, such as adopting legislative measures and creating the conditions that will enable women to have full access to and control over their economic resources, unencumbered by any form of discrimination; reviewing any laws and policies that might have a discriminatory impact on women in terms of their access to and control over economic resources –both within and outside of marriage; and guaranteeing adequate and effective judicial remedies to enable women to report violations of their right of access to and control over economic resources.<sup>37</sup>

#### **IV. Human Rights-Based Approach to laws, policies and programmes relevant to women's access to land and other productive resources**

28. A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights.<sup>38</sup>
29. Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law. This approach should also be applied to laws and regulations related to development issues. Such approach helps to promote the sustainability of development work, empowering people, especially the most vulnerable and marginalized, to participate in policy formulation and hold accountable those who have a duty to act. People are thus

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<sup>34</sup> ECLAC, X Session of the Regional Conference on Women in Latin America and the Caribbean, *Quito Consensus*, August 9, 2007.

<sup>35</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010.

<sup>36</sup> ECLAC, XI Session of the Regional Conference on Women in Latin America and the Caribbean, *Brasilia Consensus*, June 16, 2010.

<sup>37</sup> OEA/Ser.L/V/II.143, para 331.

<sup>38</sup> The general information on the human rights-based approach concept and some of the principles contained in this paper are based on the following documents: Frequently asked questions on a human rights-based approach to development cooperation, OHCHR, 2006, <http://www.ohchr.org/Documents/Publications/FAQen.pdf>.

recognized as key actors in their own development, rather than passive recipients of commodities and services.

30. This approach helps to identify rights-holders and their entitlements and corresponding duty-bearers and their obligations. It promotes strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations. Under such an approach to development, the main objective while developing laws, policies and programmes should be the fulfilment of human rights. Legislation, policies and programmes should also address practices and traditions that discriminates against individuals, in particular women.
31. Principles and standards derived from international human rights instruments should guide the legislation and policy processes as well as the programming in all sectors, including land and other productive resources, and in all phases of the programming process: assessment and analysis, programme planning and design (including setting of goals, objectives and strategies), implementation, monitoring (including the use of indicators) and evaluation.
32. Some of the human rights principles and standards relevant to women's access, use and control over land and other productive resources are:<sup>39</sup> universality and inalienability; indivisibility; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; accountability and rule of law; transparency; empowerment, sustainability, international cooperation and due diligence. The Treaty Bodies, Special Rapporteurs and other United Nations bodies and experts have clarified the importance of many of these human rights principles and standards.<sup>40</sup>

### **Universality and Inalienability:**

33. Human rights, including those related to access, use and control over land, are universal and inalienable. As stated in article 1 of the Universal Declaration of Human Rights, "All human beings are born free and equal in dignity and rights". All people everywhere in the world are entitled to them. The human person to whom they belong cannot voluntarily give them up. Nor can others take them away from him or her.

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<sup>39</sup> The following principles have been included in the "Statement of Common Understanding" on human rights based approach to development (United Nations Agencies, May 2003): universality and inalienability; indivisibility; interdependence and interrelatedness; equality and non-discrimination; participation and inclusion; accountability and rule of law.

<sup>40</sup> See above parts of this paper.

**Indivisibility:**

34. Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked in a hierarchical order. This applies also to women's human rights related to access, use and control over land.

**Interdependence and interrelatedness:**

35. The realization of one right often depends, wholly or in part, upon the realization of others. For instance, women's rights related to access to, control over and use of land, including rights to food, housing and property, are integrally related to women's rights to full equality under the law which requires that women have legal capacity to own, administer and manage property.

**Equality and non-discrimination:**

36. All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights relevant to access, use and control over land without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.
37. States must adopt all appropriate measures to eliminate discrimination against women in the field of access, use and control over land and other productive resources; this includes also the adoption of temporary special measures.<sup>41</sup> Both formal (de jure) and substantive (de facto) discrimination should be eliminated. Eliminating formal discrimination requires ensuring that a State's constitution, laws and policy documents do not discriminate on prohibited grounds. For example, laws should protect women's equal rights to own, inherit and administer property and land. Eliminating discrimination in practice requires more than a law stating that women have equal rights to own, inherit and administer property. Practices, customs and traditions that discriminate against women should also be eliminated. States have also to properly tackle the issue of double or multiple discrimination suffered by many women -for example elderly women, women with disabilities or women belonging to minority communities.

**Participation and inclusion:**

38. Every person is entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development for the realization of human rights.

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<sup>41</sup> Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women.

39. The principles of participation and inclusion have to be considered in all phases of the legislation, policy and programming processes: assessment and analysis, programme planning and design (including setting of goals, objectives and strategies), implementation, monitoring and evaluation. Access to information, as well as meaningful consultation and participation in decision making instances relevant to access, use and control over land should be equally guaranteed for both men and women.

**Accountability and rule of law:**

40. States and other duty-bearers are answerable for the observance of women's human rights related to access, use and control over land and other productive resources. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders should be able to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.
41. States should established appropriate monitoring mechanisms and provide effective remedies as a matter of priority to properly comply with their obligations of respecting and protecting human rights relevant to access, use and control over land.

**Transparency:**

42. States are obliged to implement decision making processes in a transparent manner. Transparency means that information is freely available and directly accessible to those who will be affected by such decisions and their enforcement.<sup>42</sup> It also means that enough information is provided and that it is provided in easily understandable forms.
43. Transparency in the formulation and implementation of public policies empowers the public to access social services and demand protection of their rights.<sup>43</sup> Facilitating women's access to information is a powerful strategy in protecting their human rights related to access, use and control over land and other productive resources.

**Empowerment:**

44. A human rights-based approach is premised upon empowering men and women to claim their rights. States are obliged to undertaken all necessary measures to empower women so their human rights relevant to access, use and control over land and other productive resources are realized on an equal basis with men. Access to education, information and decision making processes are key to women's empowerment.

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<sup>42</sup> What is good governance?, United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp> (11/06/1012).

<sup>43</sup> Good governance practices for the protection of human rights, OHCHR, 2007, page 5.

### **Sustainability:**

45. States should design laws, policies and programmes relevant to access, use and control over land that sustainably ensure the equal enjoyment of human rights by women. Sustainability implies that infrastructure and mechanisms critical to the realization of human rights are resourced and maintained. With respect to land, sustainability is also integrally related to environmental protection.

### **International cooperation:**

46. States are obliged to use maximum available resources for the progressive realization of rights relevant to the access, use and control over land and other productive resources. This includes the use of resources coming from international cooperation. Development assistance should also contribute to the realization of human rights.

### **Due diligence standard:**

47. States' obligation to protect human rights means that they should prevent others from interfering with the enjoyment of the right. States should protect both women and men against interference by non-governmental actors -in particular land companies (including transnational companies), armed groups, traditional leaders, family, communities, etc-with human rights relevant to access, use and control over land. States should undertake all measures with due diligence to prevent human rights violations, protect the victims as well as prosecute and punish the perpetrators of those violations.

### **Relationship between a human rights-based approach and gender mainstreaming**

48. Gender mainstreaming is the “process of assessing the implications for women and men of any planned action, including legislation, policies and programmes, in all areas and at all levels. It is a strategy for making women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated. The ultimate goal is to achieve gender equality”.<sup>44</sup>
49. A human rights-based approach to development and gender mainstreaming are complementary and mutually reinforcing,<sup>45</sup> and can be undertaken without conflict or duplication. They have much in common:

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<sup>44</sup> Report of the Economic and Social Council for 2007, A/52/3/Rev.1.

<sup>45</sup> Frequently asked questions on a human rights-based approach to development cooperation, OHCHR, 2006, <http://www.ohchr.org/Documents/Publications/FAQen.pdf>, page 18.

- They rely on an analytical framework that be applied to all development activities.
- They call attention to the impact of activities on the welfare of specific groups, as well as to the importance of empowerment and participation in decision-making.
- They apply to all stages of activity (design, implementation, monitoring and evaluation) and to all types of action (legislation, policies and programmes).

50. Laws, policies and programmes relevant to access to land and other productive resources should always include a gender perspective. In particular, they should look at the particular challenges faced by women when it comes to access, use and control over land; the multiple discrimination women can face and be careful about laws and policies that seem a priori gender neutral, but in practice may negatively impact women's rights.

51. It is also important to integrate a gender perspective in all legislative, policy and programming initiatives related to access to land and other productive resources that specifically target women. Taking into consideration the implications for both men and women of any activity is crucial to their successful implementation and sustainability.

## **ANNEX I: International legal instruments related to access, use and control over land and other productive resources.**

All international instruments included below guarantee a variety of rights related to access, use and control over land and other productive resources. This list is not exhaustive.

According to the Article 2 of the **Universal Declaration of Human Rights**(UDHR), everyone “is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 17 of the UDHR provides that everyone “has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property” while Article 25 states that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing ...”.

Article 3 of the **International Covenant on Civil and Political Rights** provides that the States Parties to the Covenant “undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

Article 17 states that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home ...” and that “everyone has the right to the protection of the law against such interference or attacks.”

Article 3 of the **International Covenant on Economic, Social and Cultural Rights** also provides that the States Parties to the Covenant “undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”

According to the Article 11 of the Covenant the States Parties “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.”

The **Convention on the Elimination of All Forms of Discrimination against Women** calls upon the States “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women”.

In its Article 14.2 the Conventions states that “States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right....:

- (a) To participate in the elaboration and implementation of development planning at all levels;...



(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;

(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment; ....

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The Article 15.2 of the Convention calls upon States to “accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.”

Article 16.1 provides that “States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: (...) (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”

The **Convention on the Rights of the Child** provides in its article 16.1 that “no child shall be subjected to arbitrary or unlawful interference with his or her privacy, family ....”

The Article 27 of the Convention states that “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development..... States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.”

According to Article 5.e.iii of the **International Convention on the Elimination of All Forms of Racial Discrimination** “States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of ....the right to housing.”

Article 6 of the **Convention on the Rights of Persons with Disabilities** calls upon the States Parties to “recognize that women and girls with disabilities are subject to multiple discrimination, and in this regard shall take measures to ensure the full and equal enjoyment by them of all human rights and fundamental freedoms. States Parties shall take all appropriate measures to ensure the full development, advancement and empowerment of women, for the purpose of guaranteeing them the exercise and enjoyment of the human rights and fundamental freedoms set out in the present Convention.”

Article 9.1 states that “to enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment...and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia: (a) buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces”.

Article 19 provides that “States Parties ... recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: (a) persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; (b) persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community “

According to Article 28 of the Convention “States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing.... States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures: [...] (d) to ensure access by persons with disabilities to public housing programmes.”

Finally the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** in its Article 7 states that “States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.”

Article 31.1 provides that “migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to [...] (d) access to housing, including social housing schemes, and protection against exploitation in respect of rents.”