

## ↳ Getting started

It is important that all participants contribute actively in all the exercises with their minds, hearts and hands. At the end of the Module, they should understand that land and property rights evolve from basic human needs and that each person should feel empathy for other human beings. Everyone has a role to play in protecting the rights of those who suffer, particularly women and other vulnerable groups.

Because young people are powerfully influenced by the behaviour of adults in their lives, your attitude as facilitator is critical to the success of the exercises and the Module. One of the main messages that this Module aims to transmit is the current inequality in land and property rights between men and women. Every human being has prejudices. The exercises that deal with gender aspects will be useless if the facilitator habitually displays gender bias. For this reason, it is very important that you recognize, acknowledge and address your own prejudices and biases.

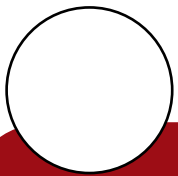
It is often helpful to use a starter, energiser or cultural activity to motivate the group, to engage the young people and draw their attention, to break tension or resistance, to gain their confidence and interest or simply to break the ice and have a bit of fun (see example in annex 1).<sup>2</sup>

Use an energiser when you feel that the group is losing attention or feels tired or when you want to raise or refocus the group's energy and facilitate the learning process. Use an ending session activity or a cultural activity at the end of a working session to summarize what has been said and to make the group think about what they have learned.

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<sup>2</sup> Adapted from Compasito and Salto-Youth Support Centre: [www.salto-youth.net](http://www.salto-youth.net)



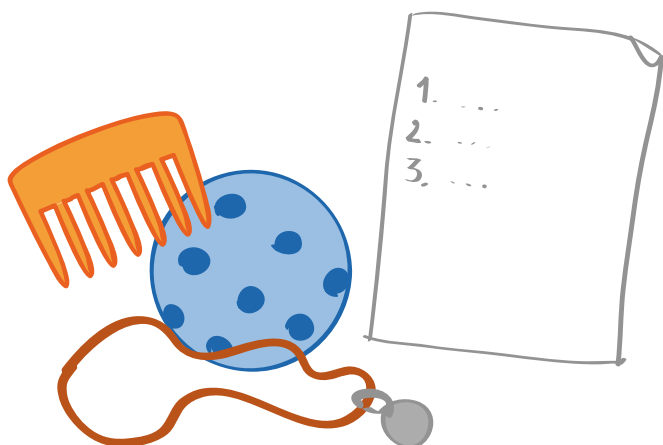


# Exercises

## 🔄 exercise 1

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### LISTING OUR PROPERTY \*

**OBJECTIVES:**

- To understand the concepts of property and property rights;
- To connect property rights to different owners and property rights holders.

People's assets (e.g. land, seeds, cloths, house, pans and shovels) are among the main sources of their livelihoods. In order for young people to build their futures, they must understand basic concepts about how households and communities (i.e. regions or societies) regulate the use and control of assets.

**TIME:**

1-2 hours

**PREPARATION:**

Understand the concepts of property rights and how to explain them in an easy way to children. Acquire basic knowledge of the statutory laws most relevant to property issues.

**MATERIALS:**

- Objects familiar to children
- Pencil and paper for each participant
- Flip chart and markers
- Sticks or pens

**INSTRUCTIONS:****Part A:**

1. Choose objects that are familiar to children (e.g. bicycle, toy, mobile phone or football).
2. Discuss how they get these objects, who owns them and who can and cannot use them. Take the objects and give them real-life scenarios (e.g. imagine that this is your phone and that you give it to another child to use for one week). Using this example, explain about group and individual ownership and the different property rights that can be associated to an object.
3. To illustrate the idea of the “bundle of sticks”, hold a pen or a stick for each property right that the students name for an object. When you have finished listing all the associated rights, show the sticks or pens that you hold with one hand and explain the concept of the “bundle of sticks” (see the Facilitators’ Notes).

**Part B:**

1. Divide the group into several smaller groups of four to five students.
2. Ask the students to divide a big sheet of paper into three columns. In the left column, ask them to draw a field/plot, a mobile phone and a bicycle. In the middle column, ask them to list the different property rights associated to the object (e.g. use, sell, give to somebody else). In the right column, ask them to draw a picture of the rights holder (e.g. a child, the mother, the father or the community).
3. Discuss how the students got these objects (e.g. they bought them, their parents/caregivers/ school facilitator gave them to them, they found them). Keep this information for other exercises.
4. Ask each small group to choose one representative to present its table. Summarize the main things identified. Discuss with the entire group how these various things are or can be used, and who can use them. Use the students’ examples to identify and repeat again the different property rights and forms of ownership.
5. Use the following questions for discussion:
  - Who can use the things they listed? Only one person, two or more, everyone?
  - How do you know whether you can use a given thing?
  - How do you know who else can use it?
  - Who decided that?
  - Can you take some of these things and sell them or give them to somebody else?
  - Are there differences between girls and boys when using land and other things within JFFLS? Which differences? Why?
  - Can you think of somebody who has nothing? How can s/he survive?

**Chart of participants’ main assets (including within the JFFLS), their uses and users:**

| Objects or assets          | Uses                                                                                        | Users |
|----------------------------|---------------------------------------------------------------------------------------------|-------|
| Drawing of a field or plot | <ul style="list-style-type: none"> <li>• rent</li> <li>• sell</li> <li>• destroy</li> </ul> |       |
| Drawing of a mobile phone  |                                                                                             |       |
| Drawing of a bicycle       |                                                                                             |       |

## 🔄 facilitators' notes 1

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### DEFINING PROPERTY AND PROPERTY RIGHTS

#### What is “property”?

The term “property” is often identified with a tangible thing that people have (e.g. a piece of land, a house, a watering can, a shovel). In legal terms, however, property is not an object; it is a *relationship* between a person and things. In other words, “property” refers to the interests or rights which a person can claim and exercise over certain things (i.e. “proper” to a person or group of people). It can be the interest or the right to use a thing, to dispose of it in different ways, to sell it or to give it away. “Property” is also the *relationship* between different people with respect to things; it refers to the interest or the right to exclude or to include others in the use or benefits of certain things. Note in this context that “property” does not necessarily mean “owning” (see below).

#### What are property rights?

Property rights refer to rules that specify who may do what with a particular place or thing, for how long and under what conditions (e.g. who may sell, rent or destroy an object).

Various interests or rights in land and other assets can be pictured as consisting of a bundle of sticks, each of which represents a different right (or interest) associated with land or a thing. For example, a bundle of rights existing on a piece of land can be disaggregated into:

- the right to derive benefit from the land (e.g. through cultivation or grazing, which is a use right);
- the right to decide how to use the land and to decide who shall be permitted to use it and under what conditions (management right);
- the right to derive income from the use of the land (income right);
- the right to transform it (capital right);
- the right to convey the land to others (e.g. through intra-community reallocations) or to heirs (i.e. by inheritance), to sell it or to give it away (transfer right); and
- the right to exclude others from using the land or otherwise interfering with it.

In this context, “property” refers to all these different rights and does not necessarily mean “owning”.

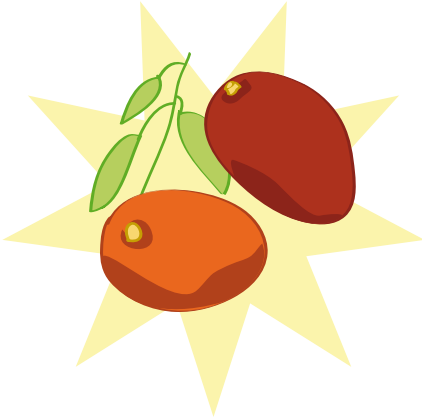
People can acquire land and other assets in many ways. These may include transfers from the state (e.g. land reform programmes, resettlement and redistribution schemes and anti-poverty programmes), occupation, purchases, gifts or inheritance.

In its most complete legal form – ownership – the property right over land or a thing grants its holder control of all the sticks in the bundle. In less complete forms – leasehold, rent, mortgage, use right – some sticks in the bundle are controlled by one right holder (e.g. the right to use, the right to derive benefit), while others are controlled or held by different parties (e.g. a landlord who owns the land, the state as the ultimate owner of all land or other individuals or a group of individuals such as a lineage, a Chief or a company). In practice, different kinds of rights often exist over the same asset at the same time.

Because many people may have different kinds of interests over the same asset at the same time, disputes are likely to occur, especially when resources are scarce. People may quarrel about who can take shovels, who can collect plants in the forest, who can walk across the land and for what reason, who should be allowed to cultivate a piece of the land or who can take the fruits from a particular tree or groups of trees. When property rights are clear, people can agree on various uses of assets and things, and disputes and conflicts can be avoided or more easily resolved (see Exercise 5 and Facilitators' Notes 5).

## ↻ exercise 2

# PLAYING A “MANGO” BATTLE



### OBJECTIVES:

- To raise awareness of the institutions in charge of dealing with conflicts about property;
- To encourage reflection about strategies to resolve conflicts.<sup>3</sup>

### TIME:

40–50 min

### PREPARATION:

You, as facilitator, should know which dispute resolution bodies exist in the community.

You might also want to make contact with a local judge who could observe the game and participate in a discussion afterwards. If this is possible, inform the judge in advance about the game and its objectives, and provide a copy of the exercise and the notes. Ask him/her to explain the role of a judge in a dispute, what the students can do when a conflict erupts, when people can and should consider going to court and what the different outcomes of a decision by the court can be. The judge should also promote discussion of the “interface” between customary and formal practices and conflict resolution. This is also a good way of showing the students that judges are also people, and that they are not just there to “put people in prison”!

Usually someone will take the fruit and how the groups then deal with the situation will be a surprise. Sometimes groups will try to negotiate to divide the fruit in half. At other times they will not negotiate at all. Sometimes the groups will communicate further and realize that they both need different parts of the fruit; someone from one of the groups will peel it, taking the part they need.

During the conflict, you should not try to influence the results, but emphasize to the participants that there should be no violence in order to get what they want.

### MATERIALS:

- A mango or any other available fruit or vegetable
- A ball of paper representing a fruit/vegetable, made by the students

<sup>3</sup> Adapted from Council of Europe, *Compasito Manual on Human Rights Education for Children*. Available at: <http://www.eycb.coe.int/compasito/contents.html>



**INSTRUCTIONS:**

1. Start the activity by explaining the game. Divide the participants into two groups. Ask Group A to go outside and wait for you. While they are outside, tell Group B that in this activity their goal is to get the mango because they have the right to use it in order to produce mango juice.
2. Go outside and tell Group A that their goal in this activity is to get the mango because they have the right to use its peel to make a cake.
3. Bring both groups together outside and ask each group to stand in a line facing each other. Tell the groups that they have five minutes to get what they need. Tell them that they are allowed to talk, but not to use violence to get what they want. Then place one mango between the two groups and say: “Go”. After five minutes, say “Stop”.
4. Repeat the same exercise again. This time you say that the groups have to negotiate and find an agreement within five minutes.
5. When the “fight” and “negotiation” are over, discuss the outcomes with the students. Explore their opinions about strategies for resolving conflicts and the importance of negotiation and rules to apply to resolve a dispute.
6. Use the following questions for the discussion:
  - What happened during the activity? How did you feel during the first and second time?
  - What was most frustrating?
  - If you played this activity again, would you act differently?
  - Would the negotiations go differently if there were a third party, an “arbitrator” (explain that an arbitrator or mediator is a neutral third party who is on neither side) present during the game?
  - Did the two groups achieve a just result after the first and second time? Was any right breached?
  - How would you prove your rights over the mango in such a case? Would you go to the community elder, a judge or somebody else?
  - Would you respect his or her decision? Why?
  - Would it be possible to complain to somebody else or some other institution about a decision with which you were not satisfied?
  - Which institution? A community institution or state institution, including a court?
7. Invite the participants to share their own experiences with conflicts. Work with them on different strategies for resolving conflicts, particularly communication, negotiation and mediation. Develop ideas about how to deal with conflict within the group. List these ideas on a chart and hang it somewhere in the room.
8. Use the following questions for the discussion:
  - Have you ever had a discussion or quarrel about to whom an object belongs? Or do you know of somebody who had such a conflict?
  - Did you discuss or negotiate to solve the problem over the object?
  - Was there another person present to help decide on the conflict? Who?
  - Was his or her decision respected? Why or why not?

You may invite a local council person or a representative of a state court to come and explain to your group what s/he does and how his or her institution functions.

**Modifications for the exercise:**

Play different variations of this game by changing the facts – e.g. by changing the property in question and introducing various property rights and different holders.

If your group is large, create four groups instead of two and have two “mango battles” take place at the same time. Start and stop the activity at the same time. It may be interesting to discuss the different processes and results in each battle.

## 🔄 facilitators' notes 2

# DISPUTE RESOLUTION MECHANISMS

### Suggestions for the development of a country-specific Module:

In some countries (e.g. Mozambique), the state constitution recognizes the legitimacy of all forms of conflict resolution – legal pluralism – providing that they do not contradict constitutional principles. Find out whether this is the case in your country and insert the relevant information.

Land is a major source of disputes and conflicts in rural societies around the world. The reasons are many and varied; one of the reasons is the “clash of rules” between statutory and customary laws which creates insecurity around existing land and property rights. Disputes are particularly acute when resources are limited – one use of an asset may preclude another. Growing economies attract private investors who might create jobs, but who also want to occupy local land (thus effectively reducing the land available for local people). Conflicts over land, houses and other assets are particularly delicate because they often involve strong emotional values.

Land and property rights disputes may be dealt with through a variety of methods. These include customary institutions, state judiciary and administrative authorities. People can use only one or a combination of different methods.

### Customary institutions

Generally speaking, customary dispute resolution involves a search for consensus aimed at re-establishing cohesiveness and unity within the community, and a binding decision at the end of the process. A conflict is not considered to be simply a matter between the involved individuals, but rather an affair of the entire community. The customary dispute resolution body (e.g. community chief, community elders or village councils) makes its decision on the basis of the customary rules and traditions. Such a decision is generally credited with high legitimacy by the community and has a good chance of being respected in practice. Costs are low, which makes the system easily accessible for everyone.

However, customary institutions and the rules they apply often do not comply with national and international standards of equality and non-discrimination because they treat parties differently according to their sex, age, status and position within the community;<sup>4</sup> in most customary systems, women, children, young people and outsiders are disadvantaged.

### Local authorities

State officials at the land administration may be involved in the informal settlement of disputes over land and property using different methods. These methods may range from facilitation to mediation (e.g. consultation or conciliation) and aim at reaching consensus between the parties in a dispute. The land administration officials also manage the records that detail different land rights and oversee the registration of existing rights and the issuance of new ones to non-community land claimants. Therefore, the first non-customary recourse for resolving a conflict is often the administrative body responsible for land issues.<sup>5</sup>

Conflict resolution at this level aims at resolving matters between the parties in a dispute, often through reference to some record or other administrative act or process which justifies the recommended decisions. In cases where neither side accepts the administrative decision, a specialized committee may be set up to deal with the issue. These “consensual approaches”, including arbitration, are

<sup>4</sup> Wehrmann, B., 2008, *Land conflicts. A practical guide to dealing with land disputes*, GTZ, Eschborn, Germany.

<sup>5</sup> Research by the Centre for Juridical and Judicial Training in Mozambique shows this clearly. See Baleira, S. and Tanner, C. 2004. *Relatório final da pesquisa sobre os conflitos de terra, ambiente, e florestas e fauna bravia*. FAO Project GCP/MOZ/069/NET.

also known as alternative dispute resolution because they are an alternative to litigation in the courts as well as to customary conflict resolution.<sup>6</sup>

### State judiciary

Adjudication is a formal litigation process before the state courts; the decision-maker is a judge at a regular court, a specialized land court or a tribunal. The process follows formal procedures and rules determined by state statutory law (although in some cases, law may refer to the applicable customary law). Both parties in the dispute, often represented by a lawyer, present evidence to the judge whose binding decision makes one party win and the other lose the case. The decision can be appealed through a higher court up to the Supreme Court if necessary.

In many countries, access to courts is limited. Courts may be far from rural areas, and people may not have sufficient knowledge about how to use lawyers and about the relevant legislation, procedures and the rights they have before the law. Formal systems may also lack legitimacy among the people, who see the judiciary as part of the state structure which is often blamed for the perceived injustices in the first place<sup>7</sup>. Also, fees may be high and judges may not always be willing to apply statutory norms that contradict traditions and customs in a country.

In many African countries, customary and local authorities continue to play a key role in dispute settlement. These customary and local systems focus mainly on local disputes that involve neighbours and others from within the local area who understand and abide by decisions taken according to local norms and practices.

Some steps have been taken, with assistance and support from various international organizations and NGOs, to improve dispute resolution mechanisms in African countries. These steps have included training a growing body of professional judges, making courts more accessible and involving local authorities and customary chiefs in alternative dispute resolutions approaches.

When land and property rights are clearly defined, dispute resolution is easier and conflicts may be avoided. This is because secure property rights give their holders the right to exclude or control the access of outsiders (including the state) to their land and property. People should begin using different norms of statutory and customary law to support their land and property claims and different dispute resolution mechanisms that exist in the country. These should, of course, act in full respect of the constitutional principle of gender equality.

### Suggestions for the development of a country-specific Module:

Many state constitutions today recognize the right of all citizens to present petitions, complaints and claims before the relevant administrative authorities to restore rights which have been violated or infringed. Many also recognize the right of recourse to the courts against any act which violates citizens' rights accorded by the constitution and the law.

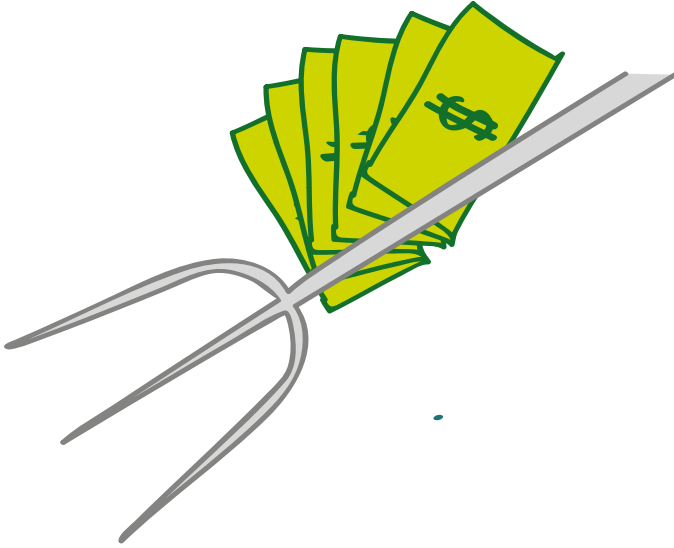
Find out whether the constitution of your country and the relevant legislation make these kinds of provisions.

<sup>6</sup> *Ibidem.*

<sup>7</sup> *Ibidem.*

## 🔄 exercise 3

### PLAYING “FARMERS AND INVESTORS”



#### OBJECTIVES:

- To understand different sources of rules that regulate property and property rights;
- To reflect about the coexistence of multiple legal systems (i.e. customary and statutory) and their differences;
- To learn about basic negotiation rules and unequal power relations;
- To learn what it means for a community to trade its rights.

The degrees of individual and community control over land have varied greatly historically, and societies often define different standards for land and property rights. Young people must understand how these different legal systems function and interrelate in order to be able to claim and protect their rights.

#### TIME:

50–60 min

This activity is a good opportunity to discuss with students the importance of people participating in the application of rules and in establishing, respecting and protecting their rights.

#### PREPARATION:

Understand customary rules about property in the community; have a basic knowledge about the most relevant statutory laws on property issues; and find out about consultation processes.

#### MATERIALS:

- Three big sheets of paper
- Pencils
- A tree, a log or any other solid object (e.g. a chair, a rock)

## INSTRUCTIONS:

1. Divide the participants into two equal groups: “farmers” and “investors”. Describe an investment situation typical of the area (e.g. a local investor is planning to start a coconut plantation on the village community land or a situation relating to eco-tourism or mining). Give everyone a card in the colour of their team.
2. Each “farmer” should think about one or two things that “investors” need to do before starting their commercial activity in the area (e.g. build a school, establish an irrigation system) and the reasons why the investors need to do these things. Each “investor” should think of one or two suggestions that could convince the farmers to come to an agreement and some proposals to come to a fair settlement. After each team discusses and agrees on its main points, the participants should write them on one big sheet of paper.
3. Ask each team to choose one person to represent it.
4. Each team’s representative should read the team’s main points out loud. The two representatives should discuss on behalf of the teams and try to come to an agreement. They should try to be fair to both the “farmers” and the “investors”. The points of agreement should be written down on the third big sheet of paper by someone who is appointed as secretary. Allow ten minutes for the discussion.
5. To facilitate the discussion, ask the students to refer to the chart they prepared to identify the characteristics of various forms of property rights that can exist over a piece of land to be used for investors’ commercial activity (e.g. community management, state ownership, individual ownership/leasehold/use right). You may also add other arguments such as the need to protect the environment, provide employment opportunities, improve infrastructures, provide social amenities or provide sources of food or income for the community. Discuss with the students why it is important to define rules about using land or things and to establish institutions to make them function.
6. You may make the following modifications to make the exercise more fun:
  - Blindfold two players and ask them to stand in the centre of the game area, near the tree or another solid object. Set a time limit for the game. At your signal, the players move up silently one by one and place their cards on the tree. If the blindfolded “representatives” hear somebody approaching, they point in the direction of the sound and call “Stop!” The caught player starts all over again.
  - The discussion between the farmers and investors can be very educational. It can be played to the community and followed by a discussion with the community members and an invited paralegal or NGO representative with expertise on land and property rights.
  - If the tradition in your area is to have a traditional ceremony as part of such discussions, include such a ceremony in the play. Ask the community elder to participate.
7. Use the following questions for discussion:
  - What rules do the farmers need to follow when they try to find an agreement?
  - Where can the rules regulating property rights over land be found?
  - Who is responsible for making sure that everyone follows the rules?
  - What would happen if someone breaches one of the rules?
  - What should be done to ensure that “farmers” do not lose their sources of livelihood in case the state issues a land-use right to the “investors”?
  - Why do the details of agreements matter so much? Why is it necessary to think also about time limits, maintenance and running costs?
  - Is it necessary to have consequences and sanctions for not following rules? Why?
8. End the session with a cultural activity. It can be a “property” dance like the one described above.

## 🔄 facilitators' notes 3

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### MANY SOURCES OF PROPERTY RIGHTS

#### Why are norms and rules necessary?

The norms and rules in any society serve to govern human behaviour and mediate social life and disputes. Without norms and rules, it would be impossible to achieve the level of cooperation necessary for everyday life. Most rules and norms have authority and legitimacy because they reflect social norms and values that are commonly accepted by most people in the society. Some, however, may be imposed from outside the social group or country, and may then be perceived as either legitimate or illegitimate by different groups of people. If people perceive the norms and rules as legitimate, there is less probability of conflict than if they perceive them to be illegitimate.

#### What are the two main ways to establish rules?

Rules regulating property or property rights can be established in two main ways: customarily and statutorily. It is also sometimes said that property rights are regulated through “customary regimes” or “statutory or state regimes”. When referring specifically to rules regulating access to, use and control of land, the terms “customary tenure” and “formal tenure” are also used.

#### How are these rules established, and what is the difference between customary and statutory rules?

#### Suggestion for facilitators:

Identify the main customary structures and institutions relevant for your area before doing this exercise.

In general terms, statutory systems of property rights are usually based on written laws and regulations adopted by the state, acts of government agencies and judicial decisions. A great variety of laws and policies pertaining to land and property rights exist in each country. In developing countries with a colonial history, many of the systems include concepts and rules rooted in the colonial country; therefore, the statutory systems may not necessarily be based on the norms and values of most of the people in the society. Of particular interest

are: land laws and regulations; rural codes; inheritance laws; family codes; marriage laws; land administration laws and civil codes.

The laws and rules are managed and administered by government officials; land and property rights are allocated and confirmed through the issuance of titles or other forms of registration of ownership. Put simply, the title or certificate of registration serves to prove the existence of a property right over a piece of land. In many cases, title to land is also required for membership to cooperatives and other rural organizations, which can enable a person to access credit, training and advice.

Customary systems are largely unwritten, derive from the norms and values of the society or its subcomponents (e.g. specific ethnic or cultural groups) and are duly regulated by an authority that is different from the state (e.g. a community or clan leadership). In most African countries, access to land for most people is largely determined by customary laws because state land administrations are often weak and not able to impose the statutory system over existing local practices which are widely regarded as more legitimate. Customary systems also govern personal status, communal resources and local organizations.

Customary systems may appear to be traditional and lacking in modern techniques and approaches, but in most countries, they include well-established and effective internal institutions and a system of administration. Unlike statutory systems, they tend to be flexible and continually evolve under the influence of various factors (e.g. cultural interactions, political changes and processes).

Customary rules are managed by a village chief, traditional ruler or council of elders; the system is flexible, negotiable and location-specific.<sup>8</sup>

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<sup>8</sup> L. Cotula, C. Toulmin, C. Hesse, 2004. *Land tenure and administration in Africa: Lessons of experience and emerging issues*, International Institute for Environment and Development, London, p.2.

**What is the relationship between customary and statutory law?**

Formally, the relationship between statutory and customary law is determined by the status of customary law within the legal system of the state. This varies across countries, ranging from official recognition to abrogation.

In practice in many countries, land and property rights are regulated by both state (statutory) law and customary (traditional) systems. This phenomenon is called “legal pluralism”. In some countries, different traditional systems have been legally recognized as legitimate ways of acquiring and managing land and resource rights.

**Suggestions  
for the development of the  
country-specific Module:**

Find out the status of customary law within the legal system of your state. Generally, this will be determined by the state constitution.

Also find out whether the relevant land legislation of your country recognizes existing customary or other traditional rights related to land and property.

Find out about the land and property rights of communities in your country.

## 🔄 exercise 4

# HOW DO PROPERTY RIGHTS CONTRIBUTE TO BETTER LAND USE AND IMPROVED LIVELIHOODS?



### OBJECTIVES:

- To stimulate reflection about the overexploitation of land because of fears about losing it in the future;
- To understand that secure, long-term property rights provide incentives to use land and resources sustainably and to preserve their value into the future, thus ensuring better livelihoods and prosperity for the community;
- To understand factors which determine the security of land and property-related rights.

This exercise is useful to explain the role of property rights in securing and improving livelihoods, by protecting and preserving our property. If we fear that someone will take our land, our animals or the fruits of our labour, we are not able to enjoy them or to think about, plan or invest in our future.

### TIME:

50–60 min

### PREPARATION:

Make copies of the scenario for the participants and for yourself to read aloud.

### MATERIALS:

- Pencil and paper for each participant
- Flip chart and markers

### INSTRUCTIONS:

#### Part A. Working on a role play

1. Explain to the group that this activity is a role play. Divide the students into groups of four to five participants. Decide which group is going to play family A or B. If you have more than two groups, one group should play family A and two groups should play family B.
2. Tell the students to choose roles within Family A or Family B, and to work in groups to have the family discussion and determine a final decision and the reasons for the decision.
3. Allow 15 minutes to develop their story and to get into the roles and allow five minutes for the role play.
4. Write the following questions on a board for each group discussion:



## Two scenarios for the role play (use local names for each family member)

### Family A: Mother, father, daughter and son

Family A acquired the title over the land they have occupied for the last 15 years, on the basis of recently adopted legislation. The title gave confidence to the children that they will be able to continue to dispose of the land. Family A lives in a small house and has 30 acres of crop land and a small herd of goats. The son goes to school and the daughter stays at home to help the parents earn money for the family.

During the past few years, Mother was able to plant enough sweet potatoes and maize for her family and for sale in the local market.

One day after school, Son informs his family that a representative from the Green Network, an association of farmers, came to school and spoke about land productivity. The representative spoke about the advantages of fallow land: She said that in their natural state, many soils cannot be continuously cultivated without undergoing degradation. Such degradation is marked by a decrease in crop yields and a deterioration of soil structure, nutrient status and other physical, chemical and biological attributes. Under traditional low input farming systems, this deterioration is kept in check by alternating some years of cultivation with periods of fallow. Incorporating fallow into crop rotations enhances sustainability of production through maintenance of soil fertility.

Son therefore suggests to his family to allow a part of the land to lie fallow for a year, and thus improve its productivity. What will they decide?

### Family B: Mother, two daughters and two sons

Family B lives in a poor, remote area. After the death of her husband, the mother and her children lost their property and were given a piece of land with the use right for six years. Only the oldest daughter goes to school because the others are needed to help earn money to ensure the livelihood of the family.

One day after school, Daughter informs others in the family that a representative from the Green Network, an association of farmers, came to school and spoke about land productivity. The representative spoke about the advantages of fallow land: She said that in their natural state, many soils cannot be continuously cultivated without undergoing degradation. Such degradation is marked by a decrease in crop yields and a deterioration of soil structure, nutrient status and other physical, chemical and biological attributes. Under traditional low input farming systems, this deterioration is kept in check by alternating some years of cultivation with periods of fallow. Incorporating fallow into crop rotations enhances sustainability of production through maintenance of soil fertility. A representative from the Network also said that the Network has opened the applications for loans on very good conditions.

Daughter therefore suggests to her mother to allow a part of the land to lie fallow for a year, or to apply for a loan, which would enable them to start a microbusiness. The money obtained could enable them to improve their nutrition and livelihood, and possibly also to send the other children to school.

What will they decide?

#### Family A:

- Can the family follow the son's suggestion? Why?
- How could the family benefit from the land one year from now?
- Which decision will Family A take? State your arguments.

#### Family B:

- Can the family follow the suggestion by the daughter and apply for a loan? Why?
- Can the family count on the land they farm for the children's future? Why?
- Which decision will the family take? State your arguments.

5. Ask each group to set the scene and perform its role play. Set a time limit of five to ten minutes for each role play.

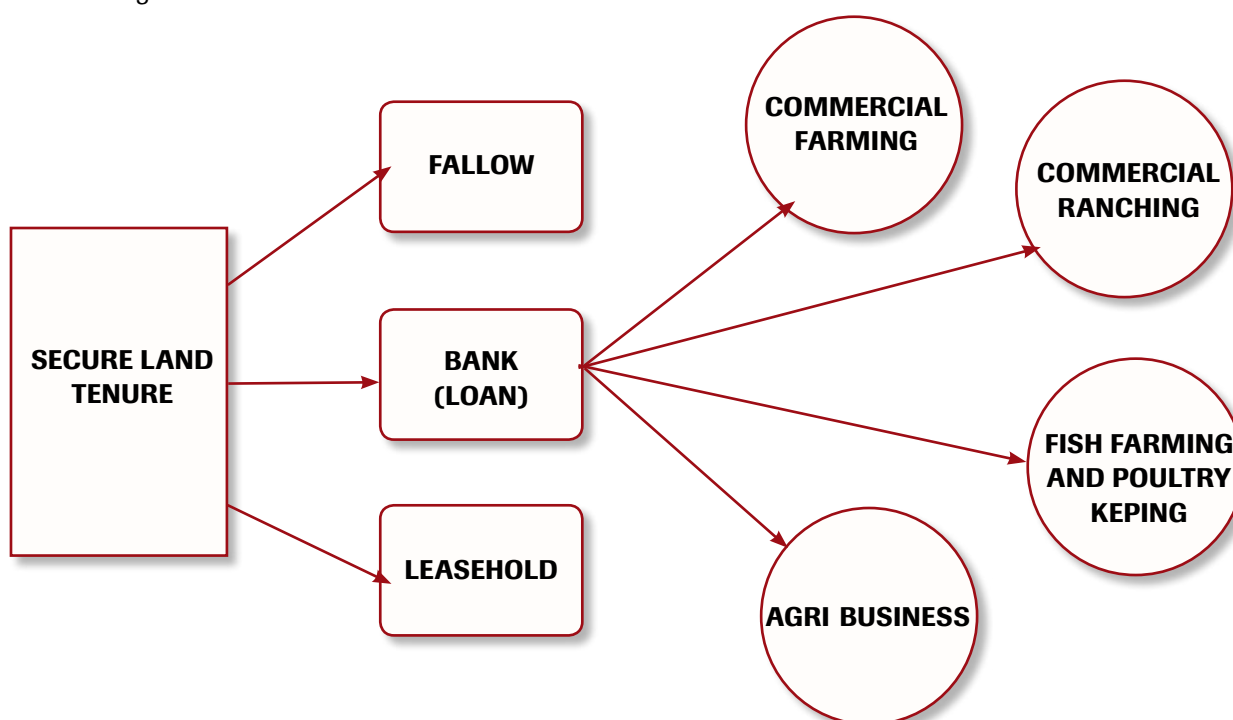
6. The following questions can be asked after the role play has been finished:

- Would Family B's decision be the same if they knew that they could keep the right to use that land for 50 years or longer?
- Would that decision be the same if the family had the right to use the land for 50 years or longer?

### **PART B. Effects cascade**

1. Introduce the effects cascade by explaining how one familiar situation can lead to a chain of events and consequences (e.g. if you go to school you can learn how to read and write; if you know how to read and write, you can more easily access information you may need; you can continue your education; you can find a job as a farmer to increase food production, improve your income and food security situation more easily; you can improve your livelihood).
2. Then invite the students to imagine a situation or to draw a diagram explaining what they would do in a situation “where they would have land and assets/property” and to consider possible effects and consequences on their lives that could arise from that situation (e.g. if I had a parcel of land.....; If I had 20 heads of cattle.....; If I could take a loan...). Link this exercise to other Modules on appropriate agricultural practices and investments for ensuring the fertility and productivity of the land.

Example: If I had a piece of land, I would ensure its security by starting a process to obtain the correct legal documents, and use the title as collateral at the bank to secure a loan to expand agricultural activities as shown below.



3. You may make the following modifications to make the exercise more fun:
  - Divide the students into same-sex groups and ask them to play “if I had...” suggesting the same situation (e.g. if I owned the land...). Then compare their different ideas and responses.
  - Present the role plays to the community and follow that with a discussion among the community members, stimulated by the questions provided in the exercise. If possible, invite a local lawyer, paralegal or NGO representative who can provide some expertise in answering the audience’s questions.

## 🔄 facilitators' notes 4

# PROPERTY RIGHTS, AGRICULTURAL PRODUCTION AND LIVELIHOODS

For agriculture to be successful, protection is crucial: the field and the soil must be protected, the plants and animals must be protected and sources of water must be protected as well. Protecting the field, soil and resources will contribute to “sustainability” of agriculture. In other words, individuals, households and communities will be able to enjoy the benefits of agricultural production without jeopardizing future use of the land and resources.

Sustainability also requires securing and protecting the rights that people have over the land they farm, the house in which they live and the animals which they keep.

If farmers cannot rely on their property rights and fear that they may lose their land and its produce, they will invest less and will try to extract the maximum value from the resource in a shorter period of time, not knowing how long they may hold the right. They will thus jeopardize the future productivity of the soil. In this way, insecurity of property rights directly affects the sustainability of the use of the resource, its productivity and eventually its value.

Insecurity about their land and property rights also makes people less inclined to lease land because they may fear the land will not be returned to them. This can result in limited access to land for tenants, leasers or purchasers, disrupt livelihoods and increase food insecurity.

Land and property rights give their holders:

- security regarding benefits resulting from their assets and labour;
- guarantees that the rights to those benefits are secure and cannot be taken away arbitrarily;
- a resource base from which the household can draw to cover costs (e.g. HIV- and AIDS-related costs, including the costs of medical treatment, care and services related to deaths and funerals.<sup>9</sup>

The set of rights held by an individual enables that individual to make management decisions on how land or other assets will be used for his or her immediate needs and long-term sustainable investment. If a given property right is clear and secure, the person will be encouraged to invest in and improve the resource; land can be used as collateral for credit, which can increase the productivity and efficiency of its use, and can contribute to economic growth. Access to other productive resources – such as water, irrigation systems and forest products – is tied to land rights as well.

Security of property rights is especially important to women, given their lower socio-economic status and limited access to productive resources and services.

Secure property and inheritance rights are crucial to children because they give children a better chance of fighting property usurpations when they occur and better opportunities for education, development and a future.

The box below gives some ideas for arguments that can be developed with regard to this exercise and the proposed scenarios of Families A and B.

<sup>9</sup> **R.S. Strickland**, 2004. *To have and to hold: Women's property and inheritance rights in the context of HIV/AIDS in sub-Saharan Africa*, Working Paper, ICRW and the Global Coalition on Women and AIDS, p. 13.

**Family A**

Having the title to land, Family A may decide to let ten acres of the land lie fallow for one year to improve its productivity. That part of the land could, for example, be rented to Family X next year. The income obtained could be used to pay school fees for their daughter.

**Family B**

Since Family B has the right to use the land for a limited period of time (six years), they may decide not to accept the suggestion. On the contrary, they may wish to maximize the value of the land in the time they can use it. Since they do not own the land and fear that the land could be taken from them, there is no incentive to care about the quality of the land at the end of the six-year time period. If they let any land lie fallow during these six years, they will only reduce the amount of food they can produce. The insecurity of property rights over the land and the risk of losing their source of income may also prevent the family from applying for a loan.

If Family B had the right to use the land for 50 years or longer, they might have decided otherwise because they would have been able to rely on their right to exclude others from taking the land; they also would have been able to rely on the fact that the investment in the land would benefit the family and children.

**What makes property rights secure?**

While it remains the most complete form of property rights, private ownership is not the only important type of land and property rights. Other types of property rights, such as leasehold or use rights, can grant their holders significant guarantees, provided they are secure.

Three main factors contribute to the relative degree of security created by a given property right – be it statutory or customary – whether in respect of land or other asset:

- **Clarity in duration and content of rights:** Duration of the right is a factor that gives it strength. Very limited rights, such as the right to collect fuelwood or the right to graze animals, can be secure and strong if they are clear in content and endure over time. Various use rights may be given in perpetuity or for a long period of time.
- **Certainty about the right holders and independent control of rights:** It is essential to know: the boundaries of the land; the quantity and characteristics of assets and things to which the rights apply; and who is entitled to those rights. The holder of the right should have the capacity to dispose of a right as s/he likes, such as using it for cultivation or for other uses, transferring it to others or using it as collateral for credit in times of crises or to invest in an income-generating activity.
- **Guarantee of enforcement against interferences by other actors:** The key factors that influence the realization of rights are the availability and accessibility of mechanisms that allow people to complain in case of a dispute. The holders of property rights should be able to exclude or control the access of outsiders to their land and property, including the state itself. This means that there should be accessible, affordable and fair procedures and mechanisms allowing people to seek protection of their property rights, to solve disputes and to appeal decisions made by government officials.

There may be circumstances that justify actions by the state which can limit people's land and property rights. However, rights holders should be certain that the rights will not be taken away or changed unilaterally. Government should not be able to arbitrarily assign conflicting rights to others over the same land or assets (e.g. assigning logging concessions in a community land or transferring property of a deceased person to others rather than to his or her family members). When the existing rights are limited or taken away, this should be done in accordance with established conditions and procedures and with appropriate compensation. The compensation need not necessarily be monetary but can be given in the form of an alternative land and shelter.

## 🔊 exercise 5

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### THIS IS OUR LAND!



#### OBJECTIVES:

- To understand the differences between customary and statutory law;
- To initiate reflection about gender inequality in holding property rights, and its consequences on people's livelihoods.

A real-life situation can be presented as a puppet show, role play or drama to help students understand why women's and children's property and inheritance needs to be secured and protected by law.

#### TIME:

90 min

#### PREPARATION:

Understand customary law of the community and relevant statutory law.

#### MATERIALS:

1. Materials for making puppets and a "puppet stage" (e.g. old socks, cloth, paper, sticks, tape or glue, markers and pencils)

**INSTRUCTIONS:**

Tell the students that they are going to listen to the beginning of a story with the following characters:

- Fernanda, a 15-year old girl;
- Maria, Fernanda's mother;
- Fernanda's extended family.

(Use local and familiar names instead of these names so that the students can relate to them better.)

2. Ask everyone to sit down, close their eyes and try to imagine what you are saying. Read out loud the following script:

**The story (*substitute the names used here with typical local names*):**

This is a story of Fernanda, a 15-year old girl. Fernanda lived with her parents in a house her father owned and was going to the local school. They had 20 acres of land on which they grew a variety of crops and kept 53 head of cattle.

When Fernanda was 12, her father fell sick with HIV/AIDS. After three years, he died in the local hospital. During his illness, Maria and Fernanda took care of him. Maria told her in-laws several times about Pedro's illness, but they only came after he had died. They accused her of having infected Pedro, her husband, and thus having caused his death. Fernanda's uncles and other relatives from her paternal family had collected a death certificate which indicated that Maria was widowed and had taken farm equipment, livestock, cooking pans, bank records, blankets and clothes.

The practice in Fernanda's community allows male relatives to take away land, animals and other belongings from widows and orphans, especially when there are no male descendants in the household.

Desperate, with no money to buy food, clothes or other necessities, Maria and Fernanda went home to Fernanda's grandparents for assistance.

Maria told them that her husband wanted her and Fernanda to keep the land, animals and other belongings for their food and survival, but his wishes had not been respected by the rest of the community.

3. Divide the students into smaller groups. Each group should discuss the story and come up with a possible ending for the puppet show. You, as facilitator, can help them discuss the story and introduce ideas, but you should not challenge the views offered, nor should participants challenge one another.
4. Ask the students to make the puppets and an improvised stage and rehearse their roles. If you lack materials for making puppets, the participants can draw faces on fingers and use their hands as puppets.

5. Invite the group to present the puppet show. When they are finished, invite them to analyse the show.

**Young people may be very touched by this story. You, as facilitator, should encourage them to show their emotions and discuss with them possible strategies to deal with this situation. Encourage them to think what they will do when they are grown up and married, and how could they ensure that land and other assets and belongings remain within the family.**

6. Use the following questions to facilitate discussion:

- What is the case about?
- Do you think that Maria and Fernanda were treated badly by their relatives?
- Do you agree with the custom that allows male relatives to take away land, animals and other belongings from widows and orphans?
- How did this custom develop? Do you think it is just?
- Do extended families still take care of orphans and widows like they used to in the past?
- What can the future be for Maria and Fernanda?
- What chances do Maria and Fernanda have to get their land and other property back?
- What are the main differences between statutory law and customary rules?
- Would the situation be different if Maria's husband had left a written will in which he indicated that his wife and daughter should inherit his land and other assets? How?
- What do you think about the principle of equality between men and women? Do you think that this principle is violated?
- What can Maria and Fernanda do to resolve their situation and ensure their livelihoods?

7. This exercise is a good opportunity to inform the group about relevant statutory norms in the country which they can use to protect themselves and their rights. After discussion, invite the students to prepare a scheme of the conflict-resolution procedure based on the work and discussion in Exercise 4 (e.g. appeal to the community elders/chief, negotiate with the husband's family, appeal to the administrative officer, up to the State Court). This could be then showed to the community chief/council and discussed.

8. Play the puppet show or drama for children, youth and adults from the community who are not enrolled in the JFFLS. It is essential also to involve community elders in this exercise.

9. Invite a paralegal or representative of an NGO or other association who is active in the field of children's and women's rights. Ask this person to discuss how s/he works with the community and to explain the right to non-discrimination and relevant inheritance rules.

10. To make the exercise more fun, the story can be played as a drama to the community or can be told simply to initiate a discussion with the help of a paralegal and/or NGO representative who is an expert on land and property rights issues and also knows about family and inheritance laws.

## 🔄 facilitators' notes 5

### CUSTOMARY AND STATUTORY RULES

The story of Fernanda and Maria underlines the vulnerability of widows and orphans, especially daughters, to losing the sources of their livelihood, which are most often taken by their relatives and sometimes also by the wider community. One of the main reasons for this situation is the insecurity of women's and orphans' rights over property and inheritance. As mentioned in Facilitators' Notes 3, women are generally not allowed to inherit in customary property systems – neither as daughters from their parents nor as widows from their husbands. This practice has its roots in the common assumption that daughters will get married, move away from their natal homes and live in their husbands' homes. This implies that a woman will not be able to look after the land and family, and in case of the death of the husband, the inherited goods would no longer belong to the family of the deceased man. As a spouse, a woman cannot inherit the land and property from her deceased husband because she was an “outsider” and did not bring land from her natal home. The practice of *lobolo/lovolo* (a bride price) transferred from the bridegroom's to the bride's family, which is present in several African countries, reinforces these customs.<sup>10</sup>

Today, however, extended family systems have been gradually weakened by social and economic changes and, in particular, by the spread of HIV and AIDS. People are afraid of infection, social stigma and discrimination associated with contact with AIDS-affected households. Also, social practices designed to take care of older women when their husbands die of other causes at a later age (which mainly revolve around male children inheriting and in some way caring for their mothers) do not come into force when the widow is young with small children. In other words, many societies are not prepared culturally for the impact of HIV and AIDS, and so there are few cultural norms to protect those caught up in the pandemic.

The story of Maria and Fernanda shows that a woman's ability to use the land declines with the loss of her husband. The story also shows that close relatives of widows and orphans may refuse to help or care for the widow or orphans and may harm their interests and livelihoods by taking their land, other assets and sometimes even personal belongings. Such property “grabbing” from widows and orphans clearly breaks the tradition of solidarity within the extended family.

The story therefore points out the need to secure the land and property rights of women, including by recourse to statutory or “formal” laws and constitutional principles. Without legal protection of their rights, women and orphans risk food insecurity, poverty and exclusion.

The modern statutory law in many countries seeks to respond to this situation by recognizing and legally protecting the right of women and children to hold and inherit land and property.

**These changes are largely the result of developments at the international level.**

<sup>10</sup> **Ikdahl, I., Hellum, A., Kaarhus, R., Benjaminsen, T.A.**, 2005. *Human rights, formalization and women's land rights in southern and eastern Africa*, Noragric Report No. 26, Noragric. Norwegian University of Life Sciences, p. 53; **R.S. Strickland**, 2004. *To have and to hold: Women's property and inheritance rights in the context of HIV/AIDS in sub-Saharan Africa*, Working Paper, ICRW and the Global Coalition on Women and AIDS, p.17. See also **Izumi, K.** (ed), 2006. *The land and property rights of women and orphans in the context of HIV and AIDS. Case studies from Zimbabwe*, FAO & The Global Coalition on Women and AIDS, HSRC Press, Cape Town, South Africa.



## 🔄 exercise 6

# IDENTIFYING PROPERTY WITHIN THE COMMUNITY



### OBJECTIVES:

- To understand who in the community has the overall decision-making power over land, resources and other assets;
- To understand which factors influence and affect the rights and status of a person within a community;
- To understand existing differences in land and property rights between men and women.

This exercise will make students understand that different people in the community can have different (land and property) rights, and will stimulate discussion about the reasons for this situation.

### TIME:

- 50–60 min for the drawing exercise (Part A)
- From 1–3 hours for the participants to interview selected members of the community (Part B); this can be organized as an extracurricular activity
- 60–90 min for discussion (Part C)

### PREPARATION:

Arrange for a small group of two to six students to interview several members of the community. The interviews should be organized with community leaders and a number of men and women. The community members should be informed in advance about the intended purpose of the students' interviews to encourage the elders/traditional leaders to be open and give appropriate information to the students.

You, as facilitator, should know the relevant customary rules regarding property rights within the community. You should also draw your own map of how you see the community – where its land and resources are located, the uses of the land and resources and who owns or controls what. This will be used later.

### MATERIALS:

- Pencil and paper for each participant
- Flip chart and markers

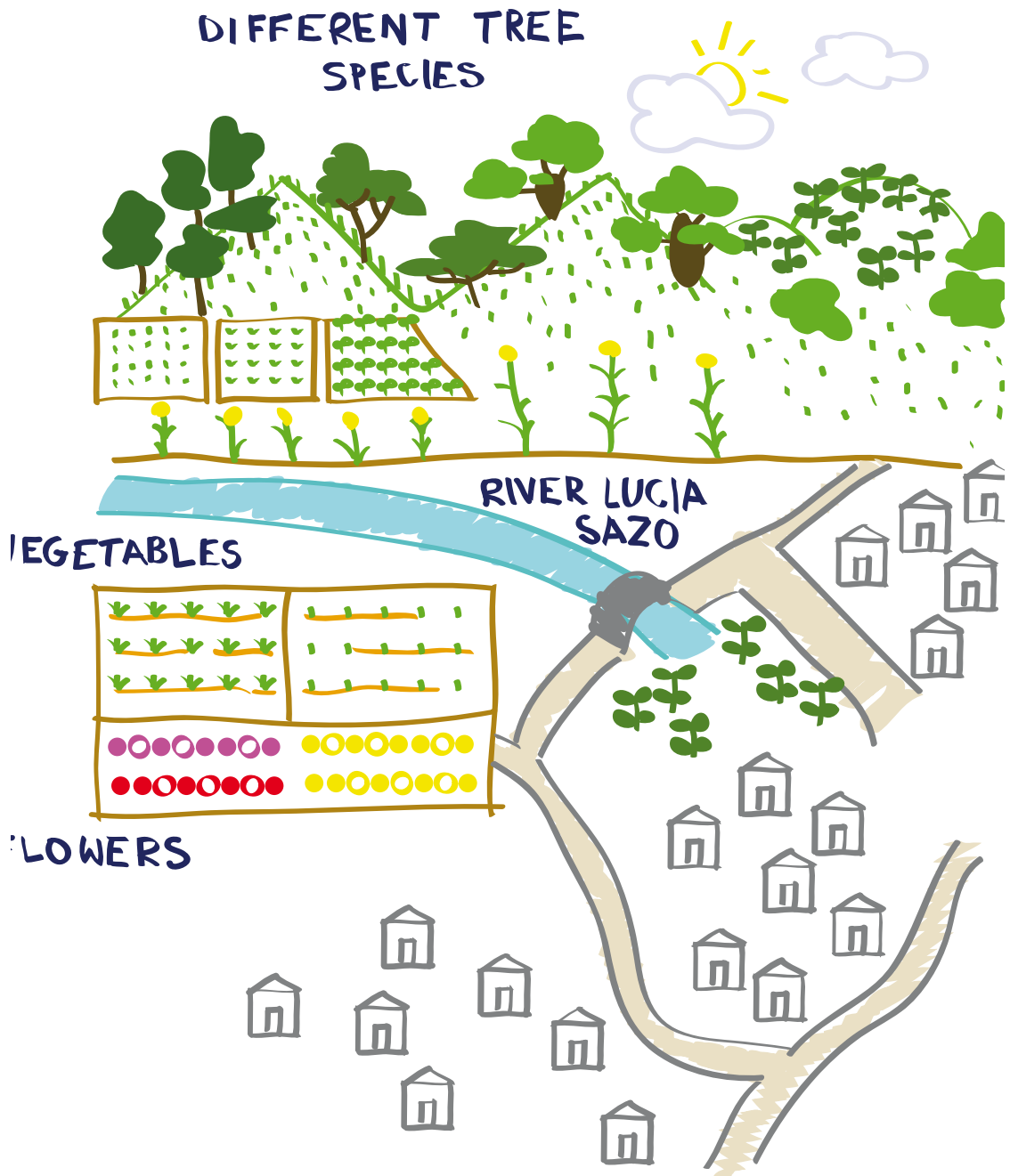
**INSTRUCTIONS:**

To start this exercise, propose a simple drawing activity to help students learn about the community resource base. It will also be useful when going to the community, to understand how different resources and assets are distributed among the community members.

**Part A.****Creating a map of land, assets and things in the community**

Divide the students into groups of four to six participants. Ask each group to draw a map of its community; if the students are not going to interview their own community members, they should draw a map of the relevant community and identify the most important assets, such as forests, cultivated land, pastures and houses. You may also wish to ask them to draw a map of the assets within their households, such as land, crops, trees, animals and shovels. Ask them to brainstorm and to prepare one map per group.

Example of a community map



**Part B.****A study-visit to the community and/or community members visit the JFFLS**

1. Divide the students into groups of four to six participants. Tell each group to interview different community members in order to understand who owns what in the community and who can decide what to do with these things. Tell them to focus on three or four main things (e.g. land plot, bicycle, mobile phone and/or a typical instrument for farming that the community uses and that ideally belongs to more than one person). There are different ways of organizing the interviewing. Take the local circumstances into consideration to decide which one best suits your JFFLS:
  - The students can conduct the interviews individually or in subgroups of two or three students. Ask the groups to organize the interview work and interview the community leaders, farmers (men and women) and other children about various land and property rights and their holders (e.g. individual people, families, the community). This will give the students the chance, for example, to interview several different women (e.g. widows, first or second wives, single women, women of different ages). You can also ask the students to interview members of their households.
  - Another way to organize the interviewing would be to invite groups of community men, women and community elders to the JFFLS. These groups could be interviewed separately by the whole JFFLS class.
2. If the students feel shy about interviewing the community elder, the facilitator could start this part of the exercise by inviting the community elder to the school to interview him with the students.
3. Give the students the following questions as examples of what to ask in the interviews:
  - Who can access land? collect plants from the forest? graze animals? One person, two people or more? Family, community, clan, men, women? Who can allow or forbid others to access the land and collect plants or graze or harvest? Why? Are there any conditions?
  - Who decides about which crops to cultivate or which animals to buy?
  - Who can sell the produce of the land? Who can decide about the income obtained?
  - Can land be sold to others? Who can decide about it?
  - Who can decide about the use of the land?
  - How do people know all these rules?
  - Can they sell or give an object to somebody else? How?
  - Which resources have more value? Who owns them?
4. Ask the participants to take notes and to summarize their findings by preparing a chart with three columns, as follows

| <b>Assets and resources<br/>(Use drawings for the<br/>assets)</b> | <b>What can they do with the<br/>assets?<br/>(Rights)</b> | <b>Who has the right?<br/>(Rightholders)</b>       |
|-------------------------------------------------------------------|-----------------------------------------------------------|----------------------------------------------------|
| Land<br>House<br>Cattle<br>Pasture<br>Other assets (describe)     | Use / Own / Lease / Other                                 | Men / Women / Men and<br>Women / Community / State |

**If appropriate for your group....**

Ask the participants to list the property rights they have (or should have). Children may find it difficult to think of property rights that they have and so you may wish to give some examples (e.g. I can enjoy what my parents/caregivers/relatives have, a part of that property will at one time be mine, I will get a part when I get married).

**Part C.****A discussion about property rights holders within the community and the household**

1. Ask the subgroups to compare their lists and discuss their results. They should prepare an overview of their findings using the chart shown above.
2. Use the following questions to stimulate the discussion:
  - What kinds of rights exist within the community?
  - Are there differences between men and women in who can hold these rights?
  - Why is this so?
  - Do you think it is fair or unfair that some people cannot hold property rights or decide? Why do you think so?
  - Why do you think that customary law considers that women cannot own, manage or inherit land and property?
  - Do you think that customs have changed today? Why have they changed? (Explain that the socio-economic and cultural context has changed.)
  - What about children? Do they hold any property rights?
  - Do you agree with this situation?
  - How do you feel about this?
  - How do you see this situation with respect to the situation in the JFFLS where boys and girls have same rights regarding the land they cultivate and the things they use?
  - If you could, would you change something about this situation? In the JFFLS or in the community? What? Why?
3. Ask the students to think about some examples of how the land and resources in their communities/ household could be shared in a more equitable way between men and women.
4. To close this activity and help the participants reflect on what they have learned during this exercise, suggest that they play the “Questions and Answers” activity in the “Cultural Activities” section above.

## 🔄 facilitators' notes 6

### WHO HOLDS LAND AND PROPERTY RIGHTS?

In general terms, holders of land and property rights can be individuals, groups of individuals (including married couples), communities, corporal bodies or a state.

In most African countries, especially in rural areas, customary laws generally continue to regulate who can access, use and control land and property. They can specify certain conditions (e.g. use for a limited period, use to only plant annual crops, but not trees) and they can determine which bodies or who resolves conflicts.

Suggestions for the development of a country-specific Module and for facilitators:

Check whether the customary rules and practices in your area correspond to this explanation. If not, adapt accordingly.

Generally speaking, the underlying “management right” over a large area of land is held by a community, lineage or clan. Some resources are used communally, such as forests, grazing land and water sources. Others are held on a more individual basis, or by lower-level collective groups such as households. Many of these more individualized rights have the appearance of being “property” in the sense of “ownership”, and can be passed down from generation to generation. Many land areas may seem abandoned or they may be left for trees to regrow or for soil to recover. However, the regulatory authority of the local customary structure with its own institutions stands over these areas.

Each household within a group requires access to and control over different types of land and resources over the course of a year. Even though land is held by the community (or lineage, clan or family), families and individuals usually have greater control and are responsible for the day-to-day management of the resource. While the lineage or other community hierarchy may have the power to approve or disapprove of land alienation, the families or individuals may negotiate many types of land transactions on their holdings. These rights include leasing, borrowing, lending and transmitting land by inheritance. Landholders may also sell certain rights of use but not the land itself.<sup>11</sup>

As the students will notice during their visit to the community, the various rights on land, houses, cattle and other assets and belongings within the community area (e.g. the right to use, to benefit, to decide about the use, to transfer, to transmit by inheritance) are divided among members of the community on the basis of gender, age or other intra-community characteristics such as lineage, ethnicity, status or marital situation. The division of rights might also reflect the economic power of a given group or household where, for example, there are more people able to work and therefore able to use more land.

With statutory law, the situation may be different. Most constitutions in African countries recognize the principle of equality between men and women and prohibit discrimination on the basis of sex, among other reasons.

#### **Communities as holders of land and property rights**

In some countries, such as Mozambique or Tanzania, local communities or villages can hold rights over land and to obtain title to land. This enables the communities and villages to have and exercise legal rights over areas used in common.

#### **Suggestions for the development of a country-specific Module:**

Insert the relevant article of the constitution of your state. Find out whether your constitution contains articles regarding land.

Insert also the relevant information from the national land legislation, i.e. how can land be acquired? Who can apply to obtain a title to land or to register land? What is the relevant procedure? Which institutions are in charge?

Prepare an overview of the responsible institutions in a chart.

<sup>11</sup> Tanner, C., 2002, *Law-making in an African context: The 1997 Mozambican Land Law*, FAO legal papers online No. 26, FAO, Rome.

### Suggestions for the development of a country-specific Module:

Find out whether this is the case in your country.

### Women as holders of land and property rights under customary systems

Within a household, men and women are allocated different land parcels and use them in different ways (e.g. for different crops and for gathering on land). In case of a death in the family, different members of the family have different inheritance rights.

Under most customary or traditional systems in Africa and Asia, women are not entitled to hold or inherit land and property in their own names.

Women usually have access to land and other assets through male members of their families (as wives, sisters, daughters and nieces). In some cases, they can obtain access to land and rights to use it through marriage and investments of labour in cultivating land where the married couple settles – traditionally on the husband's family or lineage land.

Women's rights related to land, houses and other assets are limited and insecure. They are limited because women cannot control the land they cultivate and the produce of that land; this implies that they cannot use it as collateral for loans and credits or other agricultural services. A woman's economic dependence on her male relatives also makes her more vulnerable regarding her health because she is more exposed to various forms of violence and diseases including HIV and AIDS.

Such rights are also insecure because they do not give women the protection against arbitrary interference by others. This means that the land they use or the houses in which they live can be taken away from them. Women often lose access to and use of land when traditional family structures dissolve (which is often the case when HIV and AIDS appear). The household head's absence, whether temporary or permanent, leaves women struggling to deal with family affairs without the necessary authority over the land and assets under their care.

### Women's inheritance rights

Because they are not allowed to own property in their own names, women's and girls' inheritance, in case of the death of their husbands or fathers, is severely limited in both patrilineal and matrilineal systems. Because property is traditionally passed on along the male line, the sons of the deceased are the first to inherit. Widows only have the right to inheritance if there are no male members in the family or if all of them refuse to accept the inheritance. Daughters' rights come only after widows' rights.<sup>12</sup>

### Suggestions for the development of a country-specific Module:

Find out whether the relevant legislation (e.g. Land Law, Inheritance Law; Family Code; Marriage Law; Land Administration Law; Civil Code) recognizes the right of women to own, manage or inherit land. Insert the relevant information, including with regard to the procedures and competent authorities.

As a result, women lose their land, house or shelter and other belongings, and thus also the main source of their livelihoods and welfare, when they become widowed or separated. This makes them more vulnerable to various forms of violence and mistreatment, including forced labour and prostitution, which also raises their risk of contracting HIV and AIDS.

### Women as holders of land and property rights in statutory law

In many countries, the relevant statutory law recognizes women as holders of land and property rights.

<sup>12</sup> R. S. Meinzen-Dick & R. Pradhan, 2002, *Legal pluralism and dynamic property rights*. CAPRI Working Paper No. 22, IFPRI (International Food Policy Research Institute), available at: <http://www.capri.cgiar.org/pdf/CAPRIWP22.pdf> ; L.L. Rose, 2006. *Children's property and inheritance rights and their livelihoods: The context of HIV and AIDS in Southern and East Africa*, FAO, LSP Working Paper 39, p. 1

## Children as holders of property and inheritance rights

In most legal systems, children enjoy their property rights independently when they reach adulthood; until then, their parents, guardians or caregivers do that on their behalf.

Traditionally, in most African countries, customary norms recognize children's right to inherit from their parents. However, the sons of the deceased often are the direct heirs, with the implicit duty to provide for their female siblings until they marry. Children will only directly own and decide over the property left to them by their deceased parents when they reach adulthood. Until this time, the extended family members have a duty to care for the children and manage their assets.

There are a growing number of double orphans as a result of the HIV and AIDS pandemic combined with growing weakening of extended family support systems in Africa as a consequence of larger social, economic and political changes.<sup>13</sup> Children may lose both their parents, often within a short space of time, and are not old enough for customary inheritance mechanisms to come into play and safeguard their rights.

These children increasingly face difficulties in accessing and enjoying the land and property left by their parents which they should inherit. The members of the deceased's extended family (i.e. uncles and cousins and other male relatives on the paternal side) divide the items belonging to the household among themselves, including the house and the land (this is the phenomenon known as "property grabbing"). Orphaned girls who do not have male siblings risk losing all of their parent's property because of gender discrimination in the division of assets.

Not being able to access and manage property left by their parents makes orphans more vulnerable; in addition to experiencing trauma from the loss of parents (or one of them), they are more likely to suffer from malnutrition, disease, discrimination and exploitation. They may not receive the agricultural education and knowledge that they need to build their livelihoods and secure their future food security.

## Suggestions for the development of a country-specific Module:

Insert the information about children's rights to inherit property, as provided for by the relevant statutory law of your country (e.g. Civil Code, Family Law, Child Act).

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<sup>13</sup> Based on L.L. Rose, 2006. *Children's property and inheritance rights and their livelihoods: The context of HIV and AIDS in Southern and East Africa*, FAO, LSP Working Paper 39.

## 🔄 exercise 7

# HUMAN BEINGS = HUMAN RIGHTS



### OBJECTIVES:

- To initiate understanding of human rights, their interdependency and universality;
- To raise awareness about violations of human rights.

This exercise is very important for students to understand that every individual has human rights and that government and all members of society have a responsibility to respect, protect and promote these rights.

### TIME:

50–60 min

### PREPARATION:

Develop a basic understanding about human rights in general and about international human rights instruments in particular, such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (CESCR), the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) (see Appendix 1). If you feel that this topic is too vast and that there is not enough time to prepare it, contact a human rights NGO to conduct this exercise with your help.

### MATERIALS:

- Work sheet, pencil and paper for each pair of participants
- Glue
- Big sheet of paper on which you can draw a tree of human size
- Flip charts of different colours (see example below)

### INSTRUCTIONS:

1. Begin this activity by asking participants to brainstorm about the meaning of “human”.<sup>14</sup> Ask them to think about what qualities define a human being and to write them on the cards (e.g. intelligence, sympathy, generosity). Explain that what is special about us is our humanity, our being human. As humans, we can think and articulate thoughts; we also have a sense of right and wrong, which is our conscience.

<sup>14</sup> Adapted from: Amnesty International USA, 1998. Human rights educators’ network, Human Rights Resource Center, First Edition, 1998 (available at: <http://www1.umn.edu/humanrts/edumat/hreduseries/hereandnow/Part-3/Activity2.htm> ) and Margot Brown, Our world, our rights, 23–26.)



2. Then ask them to write on a separate set of cards what they think is needed in order to protect, enhance and fully develop these qualities of a human being (e.g. food, water, shelter or house, education, friendship, loving family, relatives).
3. Draw a tree with many branches and a large trunk. Draw an outline of a human being in a circle within the trunk of the tree. Based on the cards prepared by the participants, write the main qualities of “human” within the outline of the human being, and write the things that they need to develop in the circle outside.
4. Explain that everything inside the outline of a human being relates to human dignity, the wholeness of being human. Everything written around the outline represents what is necessary to human dignity. Human rights are based on these necessities. Recall the chart that you prepared in Exercise 1, and the discussion about property “rights”. Discuss with the participants about the meaning of “human rights” and try to identify their main characteristics.
5. Write different human rights in the branches of the tree, and connect each branch of the tree with the thing necessary for a human being to live in dignity (e.g. right to food, right to housing, right to property, right to education, right to freedom of expression, right not to be discriminated against, right to health). Ask the participants to identify which rights are of particular concern to them and their community.
6. Use these questions to stimulate the discussion:
  - What happens when a third party or government attempts to deprive someone of something that is necessary to his or her human dignity (e.g. access to land or property, access to health services)?
  - When one right is violated (e.g. right not to be discriminated against, right to property), how does that affect other rights (e.g. right to food, right to health) and people’s lives and livelihoods?
  - When one right is protected and promoted, how does that affect other rights and people’s lives and livelihoods?
  - Who is responsible for respecting and protecting people’s human rights and for redressing their violations?
  - What can be done to help protect human rights?
7. Explain that just as any other plant, a “human dignity tree” needs strong roots, good soil and care to grow and flourish. Give these to the tree and label them with the things that make human rights grow and flourish (e.g. respect of rules and norms, equal opportunities and equal treatment, education, participation, markets and economy, democratic institutions).

### What are human rights?

Human rights are understood as being those rights which people have simply because they are human beings. They are based on the international normative system of rights and obligations to which most states have committed, which gives them legitimacy and objectivity.



## 🔄 facilitators' notes 7

# LAND, PROPERTY AND HUMAN RIGHTS

### What are human rights?

Human rights are the rights people are entitled to simply for being human, irrespective of their citizenship, nationality, race, ethnicity, age, language, sex, abilities, etc.

Gradually, over the last decades of the twentieth century, most countries in the world have agreed that all people – men, women, girls and boys – are equal and have the same human rights simply because they are human beings. No condition of any kind (i.e. race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status) must be linked to a person's ability to exercise his or her human rights. The principles of equality and non-discrimination apply in all aspects of life – political, economic and social – and thus also to a woman's right to own, hold, use and manage land and other assets, and to inherit land and property left by her husband or her parents.

Strong land and property rights are relevant for allowing people to live in dignity, access resources and credits they need to ensure their livelihoods, develop their capabilities and make choices necessary for the enjoyment of an adequate standard of living and other fundamental human rights. The main legal sources of human rights are international human rights treaties; they are legally binding for states which have ratified them. By the act of ratification, states agree to be bound by the provisions of the given treaty. Most states have also incorporated human rights in their constitutions and legislation.

All human rights are interdependent, interrelated<sup>15</sup> and mutually reinforcing: better nutrition, health and education will lead to improvements in civil and political freedoms and the rule of law. Similarly, freedom of expression and association can ensure that the best decisions are taken to protect rights to food, health and education. While there is no specific individual right to land in international human rights law, there are a number of other human rights that are relevant to land and property rights.

### Suggestions for the development of a country-specific Module:

Check whether your country is a contracting party to the relevant international human rights treaties and complete the chart with the relevant information.

The box below gives a few examples of the provisions of international human rights instruments that are relevant for women's and children's property rights. All states that have ratified the main international agreements covering the rights of women and children are obliged to put into effect and guarantee the rights established by these treaties to every person under their jurisdiction.

<sup>15</sup> Vienna Declaration of the World Conference on Human Rights, 1993.

The **Universal Declaration of Human Rights**, adopted by the United Nations General Assembly in 1948 declares that *“All human beings are born free and equal in dignity and rights”* (Article 1).

*“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 2).

“Equal” does not mean that we are all the same. Each of us is different in our own special way. But we also have the common qualities that make us all humans. Each of us should be treated with respect and dignity and treat others in the same way.

The Declaration also expressly recognizes the human right to property: *“Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property”* (Article 17).

The **Convention on Elimination of All Forms of Discrimination against Women (CEDAW)** was adopted to ensure and reinforce the human rights of women. The CEDAW establishes the right of women to *“...equal treatment in land and agrarian reform as well as in land resettlement schemes”* (Article 14.2g).

State parties to CEDAW are required to *“give women equal rights to conclude contracts and to administer property and to treat them equally in all stages of procedure in courts and tribunals”* (Article 15, paragraph 2). Also, states must ensure the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property (Article 16.1h).

The **African Charter on Human and Peoples’ Rights (ACHPR)** guarantees the right of everyone to property (Article 14). It also expressly states that *“Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”* (Article 2).

The **Protocol to the ACHPR on the Rights of Women in Africa**<sup>1</sup> requires states parties to promote women’s access to and control over productive resources such as land and guarantee their right to property (Article 19c). More specifically, states are required to *ensure that men and women are regarded as equal partners in marriage, including by adopting appropriate legislative measures to guarantee a woman’s right to acquire her own property during marriage, and to administer and manage it freely* (Article 6 j). In case of separation, divorce or annulment of marriage, women shall also have the *right to an equitable sharing of joint property* deriving from the marriage (Article 7 d). The Protocol also expressly recognizes a *woman’s right to an equitable share in the inheritance of the property of her husband, and those of her parents* (Article 21).

The **Convention on the Rights of the Child (CRC)** and the **African Charter on the Rights and Welfare of the Child** recognize children as being able to hold rights in their own names. While neither instrument specifically recognizes children’s right to inherit property, the CRC establishes the *right of children to a standard of living* that is good enough to meet their physical and mental needs (Article 27), and the African Charter requires states to protect children who are deprived of family care (Article 20) and to protect children who experience violence, neglect, or exploitation on the part of a parent, guardian or other caregiver (Article 19).

