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Protecting Future Rights for Future Citizens: Children's Property Rights in Complex Emergencies

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Abstract

The property rights of children is an understudied issue area which straddles the development/humanitarian divide. Access to assets is important to the livelihood choices and economic well-being of adults. Yet, adults' ability to claim property can be significantly impaired by humanitarian emergencies that occurred in their youth. This paper addresses the legal rights to property held by children and how rights to immovable assets can be undermined by complex emergencies that lead to displacement of families and the death of guardians. The paper suggests legal protections that can be put in place to protect children's assets during emergencies and actions that can be taken by humanitarian organizations engaged to identify and protect children's assets.

Keywords: children, war, humanitarianism, forced migration, property rights

Protecting Future Rights for Future Citizens: Children's Property Rights in Complex Emergencies

In February 2014, media attention focused on the plight of a four-year-old Syrian refugee boy, referred to as Marwan, who appeared in a photo to be crossing the Jordanian border on his own, carrying his few belongings in a plastic bag (Sherwood and Malik 2014). While it later became apparent that he was not alone - his family was several feet ahead of him, uncaptured in the photo frame - Marwan and other children after him became symbols of the Syrian conflict. While most children fleeing the war travel with their families, some older teenagers leave on their own.

In 2015, a Hollywood movie, *Woman in Gold*, told the story Maria Altmann, who did not find out until she was 82 years old, that her family's paintings had been stolen by the Nazi's. One of the paintings, Gustav Klimt's famous *Lady in Gold*, was a portrait of Altmann's aunt, Adele Bloch-Bauer. Altmann fought a protracted legal battle with the Austrian Government and was eventually awarded ownership of five of the six paintings stolen from her family.

Although on the surface, these are two unrelated cases of people touched by conflict, they are linked by the fact that Marwan and Maria Altmann were both children during war. Because of their minority, neither of them had a full understanding of their family's circumstances. In Maria Altmann's case, that meant that she was 82 years old before she found out about her family's property losses and started a legal case. For Marwan, the chances of property loss to his and other families from theft, illegal occupation and loss of documentation is high. Indeed, the average length of displacement due to violent conflict is now 17 years, almost a generation (CARE USA et al. 2016). The opportunity for asset loss increases with time, reducing livelihood choices and the ability of displaced people to provide for their own needs.

This article seeks to make two major contributions to the existing literature on children and conflict. The first is simply to draw attention to the problems of protecting children's property rights during and after complex emergencies. This issue has garnered little notice in the past. In contexts where guardianship is threatened and the likelihood of becoming orphaned increases - war, famine, epidemics and natural disasters - the protection of future rights is a problem that pales in significance to the immediate needs of survival: security, food, water, shelter and medical care. Even as conflicts abate, concerns about children will focus on intermediate issues such as access to education and job training. Indeed, the issue of children's property rights does not become apparent until long after a conflict or crisis has started. Yet, if efforts are not made

to protect records and memories in early days, there is a greater chance of them being lost permanently. The problem of children's property rights is thus one of competing temporalities during times of high stress. The second goal of this article is to suggest strategies for children's property protection. Property rights are a legal and an economic concern of states. However, their protection in times of violent conflict and displacement becomes part of the shared responsibility of humanitarian organizations. I will address both law and policy with the goal of encouraging the legal thinking of humanitarians and the humanitarian thinking of states.

After an introduction of the issue, the first part of the paper will discuss the property rights of children. The second section will review how these rights are protected in various legal systems. The third section of the paper will describe how emergencies threaten children's property rights and where there are gaps in the responses of states and humanitarian organizations. The paper concludes with suggestions for policy interventions that can advance the well-being of children through protection of their future property.

The Property Rights of Children

“The relationship between parents, children, and the state is arguably the most fundamental relationship in a society” (Mason 1994: 810). So it is with regard to children's economic interests, both when they are minors and later when they reach adulthood. Historically, children were both the property and responsibility of their parents. That fundamental principle persists, though our sensibilities with regard to children and our use of language to describe the relationship they have with their parents has changed.¹ This is a timely topic in many ways as the rights of children are a growing area of international law (Pobjoy 2015, Arts 2014, Carlson 2011, Lee 2013, Songca 2011) and property rights have been shown to have both direct and indirect effects on the well-being of children (Galiani and Schargrotsky 2010; Field 2007; Norton 2003). The term property right refers to control over assets. In order to make use of any sort of property it is necessary to know what belongs to whom and to have some recognition of ownership by others. Levels of recognition can be formal, such as government issued titles to land or other proofs of ownership. They can also be informal, if members of a community recognize the right of a person to use and control a particular asset.

The literature pertaining to children's property rights is sparse. Children and property are present in social science literature in three general categories: children as property (Cheung 1972; Myers 2007); medical

¹ Ali Watson argues that in spite of all the changes in technology, society, and the way we understand children “...the nature of children themselves has changed very little” (Watson 2009b:251).

discussions of children's rights over their own bodies and body parts (Dillard 2010; Lyons 2011) and general discussions of children and citizenship which indirectly address property rights (Cohen 2005; Mason 1994; Teitelbaum 1999; Watson 2009a). The absence of material on children's property rights is a result of the fact that children are not full economic actors in control of their own interests.

Children and (as) property

Children were not legally autonomous until the twentieth century when child welfare issues came to the fore and the idea of children having rights of their own became law. Legal autonomy is the state of holding rights separate from parents or guardians. In this section I will discuss common, civil and customary law understandings of children's rights in society and then move to a discussion of children's property rights.

In common law systems children are subject to the principle of equal respect under the law. Yet, equal respect is tempered by the recognition that children do not have the capacity for decision-making that adults have (Teitelbaum 1999).² Thus, while children have the same rights as adults in theory, they are not legally able to express many of those rights - such as the right to engage in legal contracts - until they reach their majority. In common law systems children live in a world of semi-citizenship with reduced economic and political rights. Just as women used to be unable to contract independently under coverture laws because of the view that their interests were subsumed under those of their husbands, so too, within the common law children's interests are folded into those of their parents (Cohen 2005). The rights and interests of children are confined to the private sphere and defined by their parents or legal guardians. Children are under the supervision of their parents until they reach an age when they can effectively contribute as full members to the society.

When a parent dies, the rights and interests of the child become of greater legal concern. In terms of inheritance, common law countries have followed different paths in their provision for children of adults who die intestate. In the USA, there has not been a specific national requirement for the division of the estate to provide for children. The general practice, captured in the Uniform Probate Code, is that the spouse will provide for his or her own needs and the needs of any children. So the spouse receives the estate and acts as a conduit to the children. In the UK, however, children as well as surviving spouses can

² Teitelbaum also recognizes that for older minors there is an expanded set of rights, for example the right to drive and to work, but notes that "With respect to these decisions and the reasons for them, older minors are subject not to rules of general applicability, but to the personal domination of their parents. However important and socially acceptable that domination may be in this setting, a regime in which authority may be exercised on the basis of the private values and beliefs of the person exercising authority cannot be reconciled with liberal rights theory" (Teitelbaum 1999: 810).

apply to the court for maintenance, even if that was not specifically provided for in the will of the deceased (Shapo 1993).

Roman or civil law, now most prevalent in continental Europe, has an ownership model of parental authority, which is similar to that of the common law. Children are under the control of their parents and all of a child's property, although held separately, is under the administration of the parents. In civil law systems the father, or head of household, has use rights to a child's property while the child is in the household (Mario Beltramo et al. 1969). Although children were once treated more explicitly *as* property in civil legal history, the practice of their use as property ended very early.³ In his commentary on the civil law codes, Scott notes,

“As a natural result of placing children in the same category with slaves and domestic animals, subject to sale, barter and the most cruel abuse, there was a time at which the child could be given up to the injured party by way of reparation for some unlawful act,.... It was not until about 370, during the reign of Valentinian and Valens, that measures were taken to place restrictions upon the irresponsible power of the head of the household: an example which was followed by many succeeding emperors. The sentiment expressed by Hadrian in condemning to exile a father who had killed his son, discloses the change of public opinion with which the excessive exercise of paternal authority was, even in that day, regarded. ‘*Patria postestas in pietate debet, non in atrocitate consistere.*’ This right, in a greatly modified form, and relating principally to the obligations of obedience and support, is explicitly recognized by the jurisprudence of Continental Europe” (Scott 2006: f65).

After the revolution in France, regionally based inheritance practices were eliminated by the codification of the French Civil Code in 1804, renamed the Napoleonic Code in 1807, which limited parental control over children's property and prevented parents from taking the income from children's property after the child turned eighteen (Desan 2004:294). Currently, when a parent dies intestate, civil law countries such as France and Germany require a specific distribution of the estate (compulsory shares) to provide for spouse and children. In France, the surviving spouse and children all receive equal shares of the property with the spouse receiving one-half of the accrued gains during the marriage. In Germany, the surviving spouse receives half the property and the children split the remainder.⁴ The view of children under the two

³ As opposed to common law systems in which it remained legal to indenture children, particularly in apprenticeships, up until the time of the Civil War in the US (Willenbacher 2003).

⁴ Although, if there is a will detailing the request, the spouse can be a provisional heir to the entire estate until their death when it would then be divided among the children (Willenbacher 2003), which then has the same effect of the common law practice of leaving the estate to the surviving spouse.

major legal systems is somewhat similar; their personal rights to contract and property are limited during the time of their minority. When they become adults they are entitled to administer their own property, yet they will not inherit family property until the death of a parent.

The third system of law considered here is customary law. Customary law is a body of rules governing personal status, communal resources and local organization in many parts of Africa and Central Asia. It has been defined by various ethnic groups for their internal organization and administration. Addressing customary law in Sub-Saharan Africa, Gordon Woodman notes that "A customary law may be defined as a normative order observed by a population, having been formed by regular social behavior and the development of an accompanying sense of obligation" (Woodman 2011: 10).

Unlike common and civil law, customary law is uncodified in most settings. That said, in Sub-Saharan Africa it is generally intended to promote the well-being of the community, including the welfare of children, and regulate access to resources. The emphasis is on group rights, rather than individual rights, and as members of the group or lineage, children have a claim to both protection and to the resources at the disposal of the group, typically access to land or other natural resources such as trees and water. "Under traditional customary law, the rule is that all children belonging to a family group are guaranteed support within the group and by all its members acting jointly (South African Law Commission 1998: 120)." Customary rights to property are distinctly different than those under civil and common law systems as they are not automatically assumed when a child reaches his or her legal majority, but may be contingent on marriage, availability and community standing. Young men do not inherit customary land on turning 18, but only when their elder male relatives and/or community leaders decide they should have it, typically after their marriage. The constraints of this approach are made evident below in this excerpt from a Ugandan court decision.

"The incapacity of children or sons to own land was articulately stated in *Bundanga V. Kagumeho* (Civil Appeal No. 117/67). The magistrate said that, under the relevant customary law a son could not sue his father for the land which belongs to the father. He could not even sue the father in respect of a piece of land which the son himself purchased. Under customary law, anything done by a young person (infants) is the property of the parents until the parents decide to hand it over to the son after marriage. Until this is done the trees and the land belong to the parents. The use of the word "Parent" has a strong social overtone. In the social sense one may loosely say that the land belongs to the parents. But in the strict legal sense, ownership is only vested in the man. Therefore, generally,

unmarried male infants and women cannot own land. They merely have the right to use the land.” (Obol-Ochola 1973: 136).

There are some clear differences between the property rights of children under customary law as opposed to civil and common law. First, under customary law, a child has a claim to family property prior to the death of their parent(s). Though achieving majority does not mean access to property it is not necessary to wait until a parent dies in order to receive a portion of family land to farm, or lineage property on which to build a home. In the most typical case, land for a home and cultivation would come at the time it was needed to set up an independent household – after marriage. Second, even marriage may not translate into the inheritance of land in situations where land is scarce.

In all of three of these legal systems, children’s property rights are invested in a parent or guardian to look after until the child reaches his or her majority, however that is defined. We can conceive of children holding two sorts of property rights: those that are concrete and specific in the time of their minority – such as a trust fund administered on their behalf until they reach a certain age; and those future rights to property, which will become theirs on the death or decision of their parents. Family property fits into this second category. Whether it be immovable property, money or paper, it is an anticipated future right, less concrete in form and value, varying based on stewardship and the number of inheritors. The distinction between present and future property rights is important, as future property rights are more easily subverted than actual rights.

Legal Protections of Children’s Property Rights

In the following section, I review children’s property rights in international law, which are critical in informing policy decisions regarding child protection in times of conflict. Overall, there is little law relating to the property rights of children, although international law addresses other rights important to their nurture and development. International law pertaining to children’s rights began in 1924 with the Geneva Declaration on the Rights of the Child by the League of Nations. This was a spare document noting that children should be fed, protected and not exploited, but giving few further details. In the 1924 Geneva declaration, there is an emphasis on the child as becoming an adult or future citizen and the role of the international community in facilitating that process. There is no clear identification of autonomous rights for children. The Geneva Declaration was a platform on which further legislation was built. The 1959 Declaration on the Rights of the Child and the 1989 UN Convention on the Rights of the Child (CRC) went into more detail regarding the rights that children have and included important details such as the right to

education and the need for special legal protections for children. The UN CRC, which is ‘...the most widely accepted piece of human rights legislation in history’ (Watson 2009a: 247), guarantees children the right to a name, education, culture, religious freedom and even encourages the publication of children’s books; but it does not specifically mention the property rights of children. Indeed, it only mentions property insofar as children are not to be discriminated against because of their ownership or lack of ownership of property. That said, the ratification of the CRC was a pivotal moment in the recognition of the rights of children in law and in the establishment of an important criteria in Article 3, that ‘the best interests of the child shall be a primary consideration.’ This principle of “best interests of the child” has been used by the United Nations Refugee Agency in its child protection work around the globe (UNHCR 2008, 2011).

The first major international convention to recognize the property rights of children, both present and future, is the Hague Convention on Jurisdiction, etc., for the Protection of Children (1996) which in Article 1 specifically calls for states to “protect the person or property of the child.” The frequent use of the phrase ‘person or property of the child’ indicates an acknowledgement of the present and future property rights of the child, although the language also harkens back to older understandings of children as property. International law is not unusual in its relatively late recognition of the rights of children. In both common and civil law the legal rights of children have been understood as subsumed under the rights of their parents or guardians who have both a legal obligation and a natural inclination to protect the interests of children (Maillard 2010). A growing recognition the 1970s and 1980s in the sociological literature that children “...are more than pre-adult becomings” (Freeman 2010: 16), is reflected in more recent international law and court decisions.

Threats to Children's Property Rights

Narratives around children in humanitarian crises appropriately address their vulnerability.⁵ Children are exposed *inter alia* to violence, exploitation, disease, and malnutrition. Their future livelihoods are also threatened should they lose their ties to family and their communities of origin. We can conceptualize threats to children's property rights in four overlapping categories: guardianship; time; memory; and documentation.

Guardianship

The nature of children's property, as a future right protected by the guardianship of a parent, means that children's property rights are under the greatest threat when the life of the parent is in danger or parents are separated from their children. The loss of a parent or the displacement from 'family' property severs ties that assure children of future property access. No better example of this problem exists than the experience of Jewish children in World War II, so many of whom were dispossessed of their family property and never able to reclaim it (Kaplan 1998). Indeed, the extreme measures that were taken both to protect and exploit Jewish children meant that some of those children lost their identity and knowledge of origins as well as their property (Zahra 2011). Even now, there are instances of the descendants of Holocaust survivors trying to identify and reclaim family property that was lost or misappropriated after the war. Other situations, such as epidemics, which leave children orphaned or without a guardian also threaten their future property rights.

When complex emergencies happen in settings with customary law, orphaned children stand to lose both the presently held property of the parents as well as future access rights to lineage land. Studying children orphaned by AIDS in East and Southern Africa, Scott Drimie observed that

“A major contributor to this threat is the lack of direct land rights for children. As minors they cannot be signatories or custodians of property. Their parents are their security, and with their demise, insecurity overshadows their entire existence. This situation affected orphans whose parents lived on ancestral land, and had no title deeds in their names at the time of their deaths. Although there are laws protecting property for minors, they depend on the next of kin ensuring that the orphans' property is declared to the local administration.

⁵ There are some excellent exceptions, but many of these center around the problem of child soldiers. For a recent and nuanced discussion of the literature on children in conflict, see *Children and Global Conflict*, ed. K. Huynh, B. D'Costa and K. Lee-Koo. New York: Cambridge University Press, 2015.

If this does not happen, orphans have to wait until they come of age and have the resources to fight for their rights in court” (Drimie 2002: 15).

In Rwanda, after the 1994 genocide, Laurel Rose collected evidence of land grabbers taking children's land, selling it and pocketing the proceeds (2005). Without their parents or a sympathetic guardian to assert their rights to customary land, children lost it.

Time

The passage of time weakens the ability of people to remember the specifics of what they have lost. Even more so if they were children when those losses occurred and the assets were family rather than personal property. Family members who may remember more accurately could be gone and the particulars of history and property gone with them. The lengthy time of many instances of forced migration has two dimensions of interest to us here. The first, noted above is that people forget critical facts over time, such as the location of boundary lines. The second issue is that over time children become adults and full economic actors with rights to resources and family property that they did not have at the time of their displacement.

The immediate needs of children to security, food, shelter and medical care cannot be postponed, or ignored in favor of their future rights. The press of these concerns is, in the short term, more important than establishing property claims that children might have, after all, if they do not survive concern about their future livelihood is moot. However, if an effort is not made to record children’s family ties, complete with records of where their parents lived and what they owned, then the stress of trauma, the exigencies of displacement and war, or simply the theft of household goods, may mean the loss of claims in the future and may have a significant impact on both their livelihood and identity. Collecting information from unaccompanied minors is challenging and potentially traumatic if not handled carefully. Yet, information captured early in displacement can be extremely valuable in the long term, before neighbors, boundaries and documentation are lost or forgotten.

Memory

Overlapping the issue of time is that of memory. It is deserving of special attention given the heightened role it plays in customary tenure systems where land holdings are undocumented. The same challenges identified above exist as children many not know the family assets or may not remember where the location and boundaries of family property. Memory becomes particularly important in settings of customary tenure as those traditionally empowered with the ability to allocate land, customary leaders and family elders, may

die or not return home after long displacements. The case of northern Uganda illustrates the way in which customary tenure creates specific vulnerabilities for children.

One of the problems in the reconstruction of communities in northern Uganda after the conflict ended in 2006 has been the loss of the knowledge of traditional leaders. “As people return to their villages, they are confronted with the realization that over a period of 20 years, clan leaders, heads of households and the elderly who would have knowledge of the previous set-up in the villages are no more...” (IRIN 2011). Older relatives, particularly uncles, could assist with this problem if they chose to do so, but all did not. The absence of a guardian with knowledge of the rightful claims of young people and willing to defend their interests, combined with the death of some customary leaders in the camps, caused difficulty for orphans in accessing lineage land to farm (NGO Official 2015). One chief who was interviewed noted that this was personally his experience; he could not properly remember the land boundaries and no longer had a parent to assist him (Ong’ara and Lubeja 2015).

Customary tenure systems are dependent on the role and knowledge of customary leaders. When displacement due to violence is extended for any significant length of time, those leaders can change and/or die and the knowledge they carried with them disappears (Joireman and Meitzner Yoder 2016). Severing of these important social ties magnifies the possibility for adult exploitation of the property rights of minors. In northern Uganda, the restoration of property rights was dependent on the recollection of family members and traditional leaders, and this can be self-interested.

Documentation

The means that people would typically use to prove ownership of property and other assets are often lost in conflict and emergencies. Deeds, tax records, titles, birth and marriage certificates can all be misplaced or destroyed. Sometimes parties to the conflict intentionally destroy, damage or steal property registers of the state. This occurred recently in both Bosnia and Kosovo leading to an absence of necessary documentation for reconstructing a property register. Problems of documentation are augmented by illegal occupation of property and by bad faith transactions designed to take advantage of the uncertainty of a conflict environment. Violent conflicts are often extended in time and inconsistently experienced across space. People can be displaced and resettled multiple times during a conflict. They can leave the country, then repatriate without returning to their home communities (Joireman and Meitzner Yoder 2016). Additionally, property expropriation may be used as a tool of rebel groups, the government or other factions to ‘ethnically cleanse’ an area, thus precluding any reclamation of records. In some conflicts, members of minority

groups have also been forced to legally sell their property, with the documentation for property changing hands under duress (van Houtte et al. 2008: 65).

Recreating the legal basis for property ownership after a conflict often involves assessing whether property is abandoned, where ownership lies, which claims to property might be coerced and which are good faith transactions (Pantuliano 2009). In the case of abandoned property or issues of adverse possession, if adults with the property claim have died and it is only the heirs that are currently living, finding them and awarding title to the assets can be a huge challenge.

Lack of guardianship, time, memory and loss of documentation threaten children's future asset claims in complex emergencies. These factors array differently depending on the type of legal system. The weakest, and therefore most-vulnerable, property rights for children exist under systems of customary law. In Africa, where customary law is most prevalent, 1 out of every 60 people is displaced (Connor 2016). One country that has grappled with the problem has been South Africa, which has had to cope with a large number of orphaned children due to HIV/AIDS. Efforts of the South African state to deal with threats to children's future property rights are discussed in the next section.

Addressing Children's Property in Customary and Statute Law

The South African Constitution recognizes the authority of customary law and puts it on the same level as common law. Since the legal rights of children under the two systems are not similar, this has created a dilemma regarding the protection of children's property rights, which the government has tried to address. South Africa's efforts are salient because of the pressing concerns of children's rights in a context where AIDS has orphaned so many children. Estimates from 2015 are that 2,100,000 South African children between 0 and 17 are AIDS orphans (South Africa 2016). Rather than being cared for and incorporated into their extended families - as customary law would dictate - orphans are increasingly becoming the responsibility of the state, which has an interest in making certain children have access to housing and land that should be their own.

When South Africa began the extensive process of consultation leading to the reform of the Children's Act of 2005 the problems of protecting children's property rights under customary law were raised. According to South African customary law, children belong to the community and the responsibility for them lies with the extended family (Songca 2011: 352). In the extensive consultation process that led up to the revised Children's Act, several questions were asked about property protections for children under customary law, including, questions 93 and 94 which were "To what extent does the minor's lack of property rights under customary law violate his or her basic human rights?" and "Does the customary rule of proprietary

incapacity go against the child's best interests and, if so, would a child's interests be better served by enabling him or her to own property in his or her own right or rather by making better provision for the administration of family estates (South African Law Commission 1998: 119)?” There was considerable feedback from different regional law societies regarding these questions - all of it in favor of instituting further legal protections of children’s property rights (South African Law Commission 2002).⁶ The end result was the inclusion of a clause in Chapter 3 of the Law specifically noting “A parent or other person who acts as guardian of the child must: administer and safeguard the child’s property and property interests.” Children’s Act 38 of 2005, Chapter 3, 18(3)a. This single clause represents a legal solution which integrated customary and common law. The 2005 Children’s Act explicitly guaranteed both the present and future rights of the child in law. While law itself is just a beginning in terms of social protection, it is a necessary step and for the future enforcement of legal claims and more specific protections of children’s property.

⁶ For example, “The Natal Society of Advocates answered the question in the affirmative, stating that customary proprietary incapacity goes against the best interests of the child and children's interests would be better served by legislation bringing customary law into line with other current legislation relating to the ability of minors to own property. “ and “The Cape Law Society, supported by the Durban Committee, suggested that the property of a minor should be afforded the same protection, whether it is governed by customary or common law. The child's property should be regarded as distinct from the so-called family property and should not be administrated as part thereof. The child as an individual, it was submitted, should be entitled to the full protection of the law as is afforded to children in terms of the common law” (South African Law Commission 2002:23).

How to Protect the Future Property Rights of Children?

In the introduction, I noted that the protection of children's property rights was both a legal and a humanitarian challenge. The recommendations below appropriately pertain to both areas, beginning with the legal. Where property protections for minors are weak, as in many customary tenure systems, they need to be protected in statute law. South African's actions model how to do this. Other states, identifying similar needs for legal change are taking the necessary steps to ensure that legal guardianship protects the property rights of minor children. For example, in Uganda, initial attempts to provide legal recognition of children's property rights under statute law proved to be unworkable as they undermined alienability of land and prevented people from getting mortgages (McAuslan 2005). But the Ugandan government has not stopped their efforts and the Ugandan National Land Policy of 2013 calls for a renewed attempt to protect the future property rights of minors (Ministry of Lands 2013: 24). The Ugandan government recognizes children's property issues as pertinent to the well-being of children as Uganda experienced both the worst of the AIDS crisis as well as violent conflict and displacement (Joireman 2017).

Legal recognition of children's property and robust protections of the assets of orphaned children are important steps for states to take in order to promote the long-term well-being of children. These actions allow for better protection of rights in complex emergencies. The following recommendations are targeted at humanitarian actors who interact with refugees and displaced people and look after the interests of minors. Where the state is not strong or when it is under threat from violent conflict, it is often unable to fulfill the full extent of its responsibilities with regard to civilian, and specifically child, protection. Complex emergencies sever the ties that assure children of future property access. In forming a set of recommendations for humanitarian actors around children's property issues it is important to hold in mind the problems that have led to the obscuring of them in the past. The times in which it is important to record and protect children's future property rights are generally humanitarian crises.

Aid workers are appropriately trained to respond to immediate needs. The necessities of ensuring children security, food, shelter and medical care cannot be postponed. That said, everything should be done to identify children's property rights or future assets when they are orphaned or separated from their guardians. Depending on their age, even unaccompanied minors may be able to remember simple information such as their address, the names of relatives and where they lived. For those in customary tenure systems, information such as who the family neighbors were, proximity to town or major landmarks might be helpful in future efforts to reclaim property. This recommendation echoes those coming from other scholars looking at the property rights of forced migrants more generally. Long displacements within countries, in

refugee camps and other places of refuge are increasingly common. Desirable are any strategies that will give people choices in terms of funding their own durable solutions. Information should be gathered from families regarding their assets as soon as possible after they are received into refugee camps. The first and most pertinent action would be to record the property documents of families such as deeds, tax records. This type of formal documentation is less likely to be available where people have been displaced, where there have been political attempts to erase the property rights of particular groups, or where children are separated from their legal guardians. In this case testimony, photos, and more informal evidence might be necessary and also accepted in cases of mass claims where the standards for evidence are often reduced in comparison to individual court proceedings (van Haersolte-van Hof 2006). The goal here is twofold: identification of the family connections and identity of children, particularly those who are without guardians; and recording the property assets of a displaced family. Jon Unruh has argued for a more detailed survey of housing, land, and property rights to be given to them in order to create a data set for later restitutions efforts (Unruh 2014). This same sort of information can protect the future property rights of children, equipping them with capital to make a variety of livelihood choices.

The second, related, recommendation is to store any documentation gathered from children and their families in a form that can travel with the child/family as they move through their displacement. Displaced move frequently in search of refuge and can often reside in multiple locations prior to returning home or settling in a place of refuge (Joireman and Meitzner Yoder 2016). The importance of creating a portable portfolio of documentation is essential. Digital portfolios of oral testimony, cell phone photos, satellite photos and documentation of the activities of the conflict collected in the media and by the government can create an 'alternative' cadaster and facilitate claims to property at some point in the future (Unruh 2016). Documentation allows for the recording of family assets and the preservation of existing records - critical data for any future mass claims designed to restore the property rights of the displaced (van Houtte et al. 2008). New digital storage methods such as blockchain technology hold out the prospect of storing this portfolio of data for children, attached to their specific identities. Blockchain technology has already been used in land registries in Honduras, the Republic of Georgia and most recently, Sweden. It has further potential use in record keeping that involves identity and property (Shrier et al. 2016).

In order to effectively protect the future property rights of children it is essential that humanitarian workers view children as future citizens with full economic agency. Children become adults quickly; their future rights become present claims when they do.

Conclusion

Children's future property rights are of urgent concern when children are displaced and/or lose their legal guardian(s), those most likely to know the fullness of the child's property claims and the manner in which they can best be asserted. Emergencies that displace families and create orphans are situations in which something as esoteric as a child's future right to property is unlikely to gain much attention. Immediate needs, such as security, education and basic needs are far more important. Lack of attention to the future rights of children combined with loss of guardianship leaves children with an absence of knowledge regarding their claims to property.

Child protection is an important human rights issue. Yet, children's rights have only recently been recognized in international and domestic law. Even as more international legal instruments address the rights of children, property is rarely considered. I argue here that the absence of consideration of children's property under law is due to the fact that it is almost always a future right not yet realized. Yet, if no efforts are taken to acknowledge and protect children's future property rights, they will never be realized. This has become particularly obvious under customary legal systems where property in land is undocumented and children hold a right to it through their membership in a group. In customary systems, it is easy for other members of the lineage to block a child's future rights. In a few of the countries in which this has been a serious problem, new legal protections have been put in place to try and guarantee children's future rights to property in customary land. While these actions are heartening, they are incomplete and serve to focus attention on the larger problem. It is still remarkably common to see orphans deprived of their patrimony.

In post-conflict settings and in circumstances such as natural disaster and pandemic illness, attention must be given to children's property claims in order to safeguard their future rights to property. This can be done through recording any existing data regarding property claims and putting that data in a form that can travel with a child and their family through the entirety of their displacement.

The property rights of children is an understudied issue area which straddles the development/humanitarian divide. The economic well-being of adults and their livelihood choices are determined by their access to assets. Yet, an adult's ability to claim property can be significantly impaired by humanitarian emergencies played out in their youth. Addressing the future property rights of children in complex emergencies will facilitate their livelihood choices and well-being when they become adults.

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