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Protecting future rights for future citizens: children's property rights in fragile environments

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ABSTRACT

The property rights of children is an understudied area that 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. We typically do not think of children as economic actors because of their age; their property rights are future rights not yet realized. This paper addresses the future rights to property held by children and examines how fragile environments, characterized by conflict, displacement and disease, can undermine their ability to claim those rights when they become adults, thus depriving them of assets. We identify two types of responses that can begin to address this problem: (1) legal changes to protect children's assets when guardianship is lost; and (2) actions that can be taken by humanitarian organizations to identify children's assets and protect them through conflict and displacement. This is a particularly salient topic at the current time when the numbers of displaced people are higher than any time previously recorded, and half of the displaced are children.

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 & 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.

In 2015, a Hollywood movie, *Woman in Gold*, told the story of Maria Altmann, who did not find out until she was 82 years old, that her family's paintings had been stolen by the Nazis. 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 realized the extent of her family's property losses and

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started a legal case. For Marwan, the chances of property loss to his family from theft, illegal occupation or loss of documentation is high. The average length of displacement due to violent conflict is now 17 years, almost a generation (Care USA et al., 2016). If Marwan is displaced for a decade or more, he will be unlikely to remember his home and family property in Syria. The opportunity for asset loss increases with time, reducing livelihood choices and the ability of displaced people to provide for their own needs. This is a particularly true for children, who often are not fully aware of family assets and the potential claims that they might have.

This article seeks to make two major contributions to the existing literature. The first is simply to draw attention to the problems of protecting children's property rights during and after conflict, epidemic, displacement or other circumstances that threaten their ability to claim property that is rightfully theirs. Property rights in this context refer to control over immovable property, businesses, consumer durables and other personal property. In contexts where guardianship is threatened and the likelihood of becoming orphaned increases – war, famine, epidemics – the protection of future rights is a problem that pales in significance to the immediate needs of survival such as food, shelter and medical care. As conflicts abate, concerns about children will focus on intermediate issues such as access to education and job training. Indeed, the problem of children's property rights is often not apparent until long after a conflict or crisis has started. Yet, without efforts to protect records and memories, there is a greater chance of permanent asset loss as children grow older and reach maturity. 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. Here, I will address both law and policy as they relate to children's property rights with the goal of encouraging the legal thinking of humanitarians and the humanitarian thinking of states.

Throughout this paper, I use the terms 'fragile environments' and 'fragility'. This term has multiple definitions that all address the ability of the state to respond to crises. For example the OECD defines fragility as '... the combination of exposure to risk and insufficient coping capacity of the state, system and/or communities to manage, absorb and mitigate those risks' (OECD, 2016, p. 21). The USAID definition of fragility refers to states in which governments are 'unable or unwilling to adequately assure the provision of security and basic services to significant portions of their populations and where the legitimacy of the government is in question', as well as states

where the central government does not exert effective control over its own territory or is unable or unwilling to assure the provision of vital services to significant parts of its territory, where legitimacy of the government is weak or nonexistent, and where violent conflict is a reality or a great risk. (USAID, 2005)

Stewart and Brown provide more specificity in a threefold definition of fragile states that takes into consideration authority, service provision, and legitimacy (Stewart & Brown, 2009). Authority refers to the inclusiveness of a state as well as levels of violence and criminality. Service provision entails the ability of a state to provide basic services, such as healthcare and education, to all of its citizens. Legitimacy captures political issues such as democratization and media freedom. The Stewart and Brown and USAID definitions allow us to consider as fragile environments those in which a disease, such as Ebola or HIV/AIDS, has an impact on the guardianship and property interests of children. While most of the children currently under threat of asset loss are displaced or refugees, the lessons for how states and humanitarian organizations can best respond to these threats come from places that have experienced both conflict and disease.

The first part of this paper discusses the property and inheritance rights of children; reviewing how these rights are protected in various legal systems. The second section of the paper describes how fragile environments 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

Historically, children have been both the responsibility and property of their parents. That fundamental principle persists, though our sensibilities and use of language to describe the parental relationship has changed.¹ Although there is a large literature on inheritance practices, sources directly addressing children's property rights are sparse. Children and property are present in social science literature in three general categories: children as property (Cheung, 1972; Myers, 2007); medical 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.

The rights of children are a growing area of international law (Lee, 2013; Pobjoy, 2015; Songca, 2011). Yet, there are few international standards relating to the property rights of children. 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. In the 1924 Geneva Declaration, there is an emphasis on the child becoming an adult or future citizen, and the role of the international community in facilitating that process. Later, 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, p. 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. 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 criterion in Article 3, that 'the best interests of the child shall be a primary consideration.' This principle of 'best interests of the child' has guided 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 Parental Responsibility and Protection of Children (1996)² that, 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 acknowledgment of the present and future property rights of the child, although the language also harkens back to older understandings of children *as* property.

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, separate from parents or guardians, became law. This section addresses common, civil and customary law understandings of children's economic rights, moving to a more specific analysis of children's property rights and inheritance practices. This is an important place to begin, because the vulnerability of children's asset loss in fragile environments originates in the view of children's property rights as bundled with those of their parents.

In common law systems, children are subject to the principle of equal respect under the law, tempered by the recognition that children do not have the same capacity for decision-making as adults (Teitelbaum, 1999).³ 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. Just as women used to be unable to contract independently under coverture laws in common law systems because of the view that their interests were subsumed under those of their husbands (Deere & Doss, 2006), so too, within the common law children's interests are folded into those of their parents (Cohen, 2005).

Roman or civil law, 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, even if 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 (Beltramo, Longo, & Merryman, 1969). The critical difference between common and civil law systems when it comes to inheritance for children is that in civil law countries such as France and Germany, whether there is a will or not, children receive 'compulsory shares' of the estate of each parent. In common law systems, children do not inherit automatically from their parents unless the parent dies intestate. The view of children under contemporary civil and common law 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 or decision of a parent.

The third system of law considered here is customary law. Customary law is a body of rules and practices governing personal status, communal resources and local organization in many parts of Africa, Asia, and Australia. Addressing customary law in Sub-Saharan Africa, where I will focus attention, 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, p. 10). Unlike common and civil law, customary law is uncoded in most settings. It is '... embodied, existing in specific and active enactment by individuals rather than in a recorded, written form that aspires to be universally applied' (Joireman & Meitzner Yoder, 2016, p. 566). That said, in Sub-Saharan Africa generally, it is intended to promote the well-being of the community, children included, and to regulate access to resources. The emphasis is on group 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 South African Law Commission, 1998, p. 120)'.

Customary rights to property are distinctly different from those under contemporary civil and common law systems, as they are not automatically assumed when a child reaches legal majority or at the death of a parent, but may be contingent on marriage, gender, availability and community standing.⁴ Young men typically inherit customary land when their elder male relatives and/or community leaders decide they should – usually after their marriage. Young women often do not inherit customary or lineage land at all, even in states which legally require gender equal inheritance (Wanyeki, 2003). Customary law, though different across Sub-Saharan Africa, rarely accords women autonomous rights to immoveable property (Joireman, 2008). An excerpt from a Ugandan court decision articulates a historic perspective on customary law regarding both age and gender.

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, p. 136)

There are some clear differences between the property rights of children under customary law as opposed to contemporary civil and common law. First, under many forms of customary law in Africa, 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 in most cases 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.⁵ Chauveau, Colin, Jacob, Delville, and Le Meur (2006) talk about this issue as 'overlapping' intergenerational rights

to land. 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. Secondly, even marriage may not translate into the inheritance of land in situations where land is scarce. Thirdly, customary law favors inheritance of land by males. Under many forms of customary law, women have only use rights to land as they are not considered a member of the lineage they marry into (Hakansson, 1994). Children, however, have a claim to be part of the lineage, particularly if they are male children.⁶

In all of three of these legal systems, children's property rights vest in a parent or guardian to look after until the child reaches their majority, however that is defined. Parents and guardians then decide when adult children receive the remainder of family assets – at the death of the parent or before. We can therefore, 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. It is an anticipated future right, less concrete in form and value, varying based on stewardship and the number of inheritors. The distinction I am making between present and future property rights is important, as future property rights are more easily subverted than present rights.

Threats to children's property rights

Narratives around children in fragile environments appropriately address their vulnerability.⁷ Children are particularly susceptible to asset losses because their property rights are future rights, not yet realized. Unlike an adult who might lose property during a conflict, children may not be aware of their property losses and therefore at a disadvantage in making any claim to restitution. We can conceptualize threats to children's property rights in three overlapping categories: guardianship; time and memory; and, documentation. For each of these categories I will describe the specific threat to children, identify the types of fragile environments that give rise to this particular problem, and give an example of the problem.

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 a parent dies or children are separated from their parents. The loss of a parent or the displacement from 'family' property severs ties that assure children of future property access. Children are more vulnerable than adults to property losses because they do not have the knowledge of their assets or their rights, nor do they have the ability to advocate for their rights against more powerful competitors. Situations in which a loss of guardianship can lead to asset loss for children are those in which there is conflict and displacement or disease, particularly diseases like HIV/AIDS or Ebola, which cluster in families. While disease outbreaks are intermittent in nature and varied in their severity, the numbers of people displaced by conflict is currently at the highest recorded level of 65.6 million; half of these are children (Edwards, 2017).

No better example of this problem exists than the experience of Jewish children in World War II, many of whom were dispossessed of their family property and never able to reclaim it (Kaplan, 1998). 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. Studying children orphaned by HIV/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. 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, p. 15)

It is paradoxical that women have weaker potential rights under customary law than do children, yet the presence of a mother is necessary in some cases for the children to claim those potential rights. Children need a guardian or a trustee who knows the extent of their rights and can appropriately advocate for them. In Rwanda, after the 1994 genocide, Laurel Rose collected evidence of land grabbers taking orphan's land, selling it, and pocketing the proceeds (Rose, 2005). Without their parents or a sympathetic guardian to assert their rights to customary land, children lost it.

The impact of a loss of guardianship will vary based on the age of a child. A child of 16 or 17 will have some memory of family assets and may know what they are entitled to inherit, providing a basis for reclaiming those assets at a later date. For a child of five or six, the knowledge of both assets and processes will not be present. This leads into the second category of threat.

Time and memory

The passage of time weakens the ability of people to remember the specifics of what they owned. Even more so if they were small 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 details of history and property gone with them. Time is a particular threat to asset loss in situations of forced migration. The length of many instances of forced migration – an average of 17 years – has three dimensions of interest. The first is that people forget critical facts, such as what family assets might be. 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. Their future property rights become present claims to assets. The third dimension is that over time political context and sovereignty might change, impacting the ability of specific groups of people to reclaim their property. For example, Kosovo had a formal property system before its conflict in 1998–1999. Compensation for property losses after the war were handled by the Kosovo Property Agency (KPA), which ran a mass claims process to adjudicate ownership. It was decided that ethnic Serbs, who held political power before the war, but lost it to the Albanian majority of Kosovo when the country became independent, should receive compensation for lost 'socially-owned' apartments (Ministry of Justice, 2016, p. 33). However, there was no available money for that compensation until 2017, when the Government of Kosovo allocated 300,000 Euros from their budget for these claims. This small amount will do little to compensate for the asset losses. Few international funders are interested in providing the money for compensation for lost property at this point, so now almost 20 years after the conflict, those who were supposed to receive compensation – and their heirs – have effectively lost their assets. In this case, the asset loss occurred for adults and children alike.

Memory becomes particularly important in settings of customary tenure where there are no land records and where 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 was 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 not all did. 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. One chief noted that this was his own experience; he could not properly remember the land boundaries, even though he was a young adult when he was displaced, his parents died during the long displacement and could not assist him (Joireman, 2018).

Documentation

While memory is the critical issue in terms of property claims in most customary systems, its parallel in formalized systems is documentation. The means that people use to prove ownership of property and other assets in formal tenure systems are often lost in conflict and displacement. 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. Illegal occupation of property and bad faith transactions are additional problems in times of conflict. Violence can be extended in time and inconsistently experienced across space; people can be displaced and resettled multiple times. They can leave the country, then repatriate without returning to their home communities (Joireman & 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, precluding any reclamation of records. In some conflicts, members of minority groups have been forced to sell their property legally, with the documentation changing hands under duress (van Houtte, Delmartino, & Yi, 2008, p. 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). This is of particular importance for children in the case of abandoned property or adverse possession. If adults with the property claim have died, finding their rightful heirs, who may be living in a different country or location, and awarding title or compensation for the assets can be a huge challenge.

Lack of guardianship, time, memory and loss of documentation threaten children’s future asset claims in fragile environments. These factors array differently depending on the type of legal system, length and type of emergency. The weakest 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 guardianship issues is South Africa, which in the early part of this century, had to cope with a large number of orphaned children due to HIV/AIDS. Efforts taken by South Africa to tackle threats to children’s future property rights are a model for the necessary legal changes and 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. South Africa’s efforts to address this problem are instructive because of the pressing threat to children’s property in a context where customary law is prevalent, and where HIV/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 have increasingly become the responsibility of the state, creating its interest in assuring that children have access to housing and land.

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, p. 352). In the extensive legal consultation process that led up to the revised Children’s Act, questions were asked about property

protections for children under customary law. Specifically, it was questioned: ‘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, p. 119)

There was considerable feedback from 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).⁸ The 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, 2005, Chapter 3, 18(3)a). This single clause represents a legal solution integrating customary and common law. It is a stronger legal protection than any present in international human rights instruments like the CRC, but consistent with the CRC’s intent to protect the ‘best interests of the child’. Law is a necessary step for the future enforcement of legal claims and protections of children’s property.

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, which is the purview of states. *Where property protections for minors and orphans are weak, as in many customary tenure systems, they need to be protected in statute law.* South Africa’s actions model how to do this. Other states have identified similar needs for children’s property protections in customary systems. 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). Nevertheless, the Ugandan National Land Policy of 2013 calls for a renewed attempt to protect the future property rights of minors (Ministry of Lands, 2013, p. 24). The Ugandan government recognizes children’s property issues as vital to the well-being of children as Uganda has experienced both the worst of the HIV/AIDS crisis, as well as violent conflict and displacement in the north. 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.

Where the state is not strong, or when it is under threat from violent conflict, it is often unable to fulfill its responsibilities with regard to civilian protection and these responsibilities fall to humanitarian organizations. The following recommendations target humanitarian actors tasked with the protection of minors in fragile environments. These recommendations are not specific to states with customary law, but apply across all fragile environments that threaten children’s future access to property.

Every effort should be made to record the assets of displaced people. The first and most pertinent action is to record and archive the property documents of families such as deeds, or tax records. Data on assets captured early in displacement can be extremely valuable in the long term, before neighbors, boundaries and documentation are lost or forgotten. Recording of family assets and the preservation of existing records provides critical data for any future mass claims designed to restore the property rights of the displaced or compensate them for lost property (van Houtte et al., 2008). This type of formal documentation is less likely to be available where people have been forcibly 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 of evidence are often reduced in comparison to individual court proceedings (van Haersolte-van Hof, 2006). Jon Unruh has argued for a more detailed survey of housing, land, and property rights to be given to displaced people 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.

Every effort should be made to identify children's property rights or future assets when they are displaced, orphaned, or separated from their guardians. The goal is twofold: identification of the family connections of children, particularly those who are without guardians, and recording the property assets of the displaced. 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. To 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.

Store documentation gathered from children and their families in a form that can travel with the child/family as they move through their displacement. Displaced people 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 & 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). This method is being piloted with Syrian refugees. New digital storage methods such as blockchain technology hold out the prospect of storing this portfolio of data for children, while protecting their identities. Blockchain technology, also referred to as a distributed ledger, is a secure, online data system that stores information across a distributed network of computers in a way that is permanent and unchangeable. Blockchain technology has been used in land registries in Honduras, the Republic of Georgia and, most recently, Sweden. It is particularly useful in any sort of record keeping that involves the need for privacy and protection of data integrity (Shrier, Wu, & Pentland, 2016). Since these are both critical issues in the storing of property data for minors, blockchain technology should be evaluated as a possible documentation option.

Conclusion

Children's future property rights are of urgent concern when children are displaced and/or lose their legal guardian(s). Events that displace families and create orphans are situations so catastrophic that something as remote as a child's future right to property is unlikely to gain much attention. Child protection is an important human rights issue, yet the recognition of children's rights in international and domestic law is recent and their property rights are 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. In fragile environments, if no efforts are taken to protect children's future property rights, they will never be realized. This has become particularly obvious in customary systems where property 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 rightful assets.

Asset losses for children are by no means limited to contexts with customary law, however. Any situation in which records are destroyed and minors lose guardianship, threatens their access to future property rights. Syria is in the midst of a civil war in which people, including children like Marwan, have been displaced multiple times, both within the country and into other states. These displacements and the ongoing war threaten children's future asset claims. In conflict settings and in circumstances such as natural disaster and pandemic illness, attention must be given to children's property rights

in order to safeguard their future assets. This can be done through recording existing data regarding property and putting that data in a form that can travel with a child and their family through the entirety of their displacement. More research in this area is needed to determine the most effective timeline for interventions, field test ways of documenting property rights and portability techniques, and identify other legal and humanitarian strategies for asset protection.

The property rights of children is an understudied issue that 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 conflicts, disasters or epidemics played out in their youth. Addressing the future property rights of children in fragile environments will facilitate their livelihood choices and well-being when they become adults.

Notes

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, p. 251).
2. Officially known as Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.
3. 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, p. 810)

4. Customary law, while diverse across geographic settings, does have these similarities articulated in both Uganda and South Africa, the cases I am addressing. I would argue that it is also similar in this regard across Sub-Saharan Africa, but that opinion is not essential to my argument. Conversations regarding the diversity of customary law across settings tend to de-emphasize its similarities, particularly in the treatment of the property rights of women and children, usually because customary law is changeable and negotiated. Because of this, Gordon Woodman likes to discuss the uses of customary law in Africa rather than African Customary Law (Woodman, 2011). Rather than engage in a debate about the variations in customary law, I would simply like to argue that children *can be* under particular threat of asset loss in customary settings and therefore merit special attention in law and policy.
5. Again, while this is generally true, it can be different across contexts particularly where land is scarce.
6. In South Africa, the Bhe case broke legal ground by establishing the right of female children to land under customary tenure systems (Africa, 2004).
7. There are some excellent exceptions, many of which focus on child soldiers. For a nuanced discussion of the literature on children in conflict, see D'Costa, Huynh, and Lee-Koo (2015).
8. 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 (South African Law Reform Commission, 2002, p. 1005). Furthermore,

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 administered 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 Reform Commission, 2002, p. 1005)

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