GENDER, LAND TENURE AND FINANCIAL INCLUSION

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In 2008, the World Bank published a Policy Research Report on Finance in which it too addressed access to financial services. It argued that whilst it has long been recognized that 'well-functioning financial services are essential for economic development . . . the access dimension of financial development has often been overlooked . . . .'[1] According to the report, these efforts need to be at the core of the development agenda. The finance report links access to financial services with poverty alleviation and economic development. It refers throughout to the need for 'financial inclusion', broadening access to credit for 'the poor' as well as the 'non-poor' in order to reduce income inequalities.[2]

This emphasis on encouraging financial sector development was also a feature of earlier policy statements from the World Bank. The most significant previous discussion of this topic appeared in its Policy Research Report on Land published in 2003.[3] The report strongly

1 World Bank, *Policy Research Report: Finance For All? Policies and Pitfalls in Expanding Access* (Washington: World Bank, 2008), ix.

2 'Having selected an income level of one dollar a day to define poverty, the World Bank coins the term "nonpoor" to describe individuals above this level of austerity. This arbitrary and indefensible dividing line between the poor and the "nonpoor" then plays a crucial strategic role in its analysis and policy prescriptions...', P. Cammack, 'Making Poverty Work' in L. Panitch and C. Leys (eds), *Socialist Register: A World of Contradictions* (London: Merlin Press, 2001) 193.

3 World Bank, *Policy Research Report: Land Policies for Growth and Poverty Reduction* (Oxford: Oxford University Press, 2003).

advocated formalization of tenure relations as an objective of land policy. According to the Bank, land does more than simply provide shelter and a means of livelihood. Access to land provides an incentive to make investments, and improves the ability of the poor to access financial markets. The Bank argued that policies that make it possible to use land as a means to access credit will transform such property from a 'dead asset' into an 'economically viable resource'.[4] As commentators have pointed out, secure formal property rights are today widely presented by international financial institutions as a pre-condition for economic growth[5] and poverty reduction[6] and as fundamental to establishing the rule of law in the developing world.[7]

The formalization of land title and access to credit are now intricately connected in development policy prescriptions. This paper will address the issue of land reforms and especially their consequences on the most vulnerable, especially women. Although these policies say little or nothing about gender, they will have serious consequences for women. Recent efforts to draft new land and mortgage laws in Tanzania and Uganda demonstrate that, faced with legal provisions specifically designed to ensure that women's interests in land were protected and promoted, commercial lenders responded by lobbying vigorously against what they perceived to be potential brakes on the smooth operation of mortgage markets. Their interests have been allowed to trump the achievement of gender equality. This situation is likely to worsen in coming years.

4 *ibid* 3.

5 K. Dam, *The Law-Growth Nexus: The Rule of Law and Economic Development* (Washington: The Brookings Institute Press, 2006).

6 H de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (London: Black Swan, 2000). De Soto's ideas on tenure formalisation have been highly influential and have spawned a vast academic literature considering his ideas. See, most recently, 'Special section: Legal Empowerment of the Poor' (2009) 1 *Hague Journal of the Rule of Law* 99. Also D. Benjamin Barros (ed), *Hernando De Soto and Property in a Market Economy* (London: Ashgate, 2009). De Soto is joint chair with Madeleine Albright of the Institute for the Legal Empowerment of the Poor http://www.undp.org/legalempowerment/ and founded the Institute for Liberty and Democracy http://www.ild.org.pe. He has initiated property formalisation projects in a number of countries, notably Tanzania where in 2006 the government invited him to begin a Property and Business Formalisation Program (MKURABITA) (*Mpango wa Kuasimisha Rasilimali na Biashara za Wanyonge* in Kiswahili). See http://www.mkurabita.go.tz/ (all last visited June 2010).

7 T. Carothers, 'The Rule of Law Revival' in T. Carothers (ed), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington: Carnegie Endowment for International Peace, 2006); and M. Trebilcock and K. Davis, 'Property Rights and Development: The Contingent Case for Formalization', University of Toronto Faculty of Law, Legal Studies Research Series No 08-10, 2009.

It is important to place contemporary strategies for financial inclusion in their broader political and economic context: the subprime crisis in the United States - which had its roots in the encouragement of individual debt as a means to access home ownership. The promotion of “financialisation” in international development which will encourage the poor to use their land as collateral will aggravate rather than ameliorate poverty, particularly amongst women. The experience of widespread foreclosures during the subprime crisis should serve as a warning of the risks entailed in creating individual debt burdens amongst the poor and vulnerable. There are two reasons why these parallels with the US subprime crisis are justified. First, as a number of commentators have pointed out, the home-ownership model at the heart of the American subprime crisis was itself motivated by ideas of social and financial inclusion which, as well as being pursued in the US context, is being vigorously promoted overseas. Strong parallels can be drawn between the vulnerable constituencies for which subprime lending was intended and those for whom international development practice is now being formulated. The financial inclusion strategies discussed here can thus best be described as subprime going global. Secondly, just as women and minorities suffered the worst effects of individual financial debt in the United States, the most affected people in the developing world will be the poorest and the most vulnerable, including women.

In his account of the roots of the financial crisis, Blackburn has shown how the practice of subprime lending can be traced to policies for financial inclusion in the United States.[8] He has argued that the Bush administration had a vision of an ‘ownership society’ which led to the promotion of housing debt amongst the poor even whilst the US property bubble was developing. In the subprime market, ‘originators’ borrowed millions of dollars in order to fund their mortgage lending. These subprime originators owned the loans for short periods of time before they were bundled and sold on, a process known as securitization. Their primary concern was speed: they looked to finalize mortgages, collect their originators’ fees and sell

8 R. Blackburn, 'The Subprime Crisis' in (2008) 50 *New Left Review* 63, 73.

these on the secondary market in a matter of a few days. The promotion of subprime lending to encourage home ownership ‘avoided the real problem, which is the true extent of poverty in the United States and the folly of imagining that it can be banished by waving the magic wand of debt creation.’[9]

The policy documents discussed above demonstrate how international financial institutions such as the World Bank, and major aid donors such as Britain, are similarly attracted by the ‘magic wand of debt creation’. Faced with widespread and enduring third world poverty, policy makers have adopted the language of opportunity and entrepreneurship to argue that it is the ‘innate ability’[10] of the poor that will lift them out of poverty. The World Bank refers in its finance report to the ‘talented poor’[11] and in doing so echoes the language used by Hernando de Soto, the influential economist who has promoted the idea of tenure formalization.[12]

There is a growing recognition that despite its manifest failures, the model of home ownership promoted in the United States is being enthusiastically promoted abroad. In a critical review of the impact of the practice of subprime lending, Dyal-Chand has argued that despite evidence that property formalization did not lead to better welfare outcomes for the poor in America, efforts are underway to ‘export’ the ownership society model.[13] Similarly, in a report presented to the United Nations Human Rights Council in 2009, the Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, studied the impact of the world economic crisis from a human rights perspective and showed how the right to adequate housing has been negatively affected by international economic, financial and housing policies. She was particularly critical of the international promotion of policies that have

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9 *ibid*.
10 n 1 above, 39.
11 n 1 above, 39.
12 P. McAuslan, 'Personal Reflections on Drafting Laws to Improve Women's Access to Land: Is There a Magic Wand?' in E. Daley and B. Englert (eds), Securing Women's Land Rights Special Issue (2010) 4 *Journal of Eastern African Studies* 114.
13 R. Dyal-Chand, 'Exporting the Ownership Society: A Case Study on the Economic Impact of Property Rights', *Northeastern University School of Law Research Paper* No. 15, 2007.

‘contributed to strengthening the perception of housing as a mere commodity and a financial asset, neglecting other dimensions of the right to adequate housing . . .’[14]

Considering the impact of the subprime crisis on women in the United States, Young has argued that financial policies that promote individual debt may have different distributional impacts for men and women. She draws attention to what she describes as ‘the gendered nature of how women and minorities were ideologically integrated into the subprime market via private debt.’[15] Her evidence demonstrates that although the number of women heads of households who became homeowners had increased from 48 percent to 53 percent since the 1980s, women and minorities are more vulnerable than men in a similar economic position to unfair lending practices. For the subprime sector of homeowners who were unable to meet the required approval standards of prime lenders, higher fees were charged for processing loans and the interest rates associated with loans were higher to reflect the increased risk borne by the lender. As a result, borrowers of subprime loans directed a greater proportion of their monthly mortgage bill to the repayment of interest and fees rather than equity.[16] Young shows how, despite the fact that women often had higher credit ratings than men, women at every income level were more likely to be involved in borrowing in the subprime loan sector. According to young, although women made up 29 per cent of borrowers, they were 32 per cent more likely than men to receive sub-prime mortgages.[17] In addition, studies show that when the crisis began, it was women and minorities who suffered the worst rates of foreclosure in the subprime sector.[18]

There are a number of ways in which women are likely to be disproportionately affected by the project to promote individual debt in the developing world. These can be categorized as

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14 United Nations Human Rights Council, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in this Context* (New York: UN General Assembly, 2009). The Special Rapporteur undertook a controversial visit to the United States to meet with campaigners on behalf of those who had suffered foreclosure during the subprime crisis. See 'UN Meets HomelessVictims of American Property Dream', *The Guardian* 12 November 2009. http://www.guardian.co.uk/world/2009/nov/12/united-nations-us-property-fallout (last visited June 2010).

15 B. Young, 'When “Credit Becomes Debt” in the Subprime Crisis: Is there a Gender Dimension?' *New Political Economy* (forthcoming).

16 *ibid*.

17 *ibid*.

18 *ibid*.

micro level and macro level effects. At the micro level, a household's indebtedness is likely to place a greater burden on women. Women's reproductive labour as caregivers and their productive labour in agriculture have often been invisible to international financial institutions in their formulation of policy.[19] There has been an assumption that women's labour is abundant and that it is freely and willingly given.[20] The result of the policies of "financialisation" discussed in this paper will be to place this labour under greater strain as women seek to stretch a household's meager resources still further. Evidence from microcredit schemes has already suggested that for households which have borrowed money, the repayment of debt is prioritized over the purchase of food, medical care and education.[21] Households which have secured loans against their land and which therefore risk the loss of an important and often sole productive asset will face even greater pressure.

Experience from the United States also suggests that as borrowers, women are also likely to suffer disproportionately from unfair and even predatory lending practices.[22] Women in the developing world might be similarly unfairly categorized as risky borrowers because of their lack of credit histories or their predominance in the informal sectors of the economy. Consequently, even if they were able to access loans, they would do so on unfavorable terms. Finally, even with adequate consent provisions designed to protect them, are discussed above women may experience intolerable levels of coercion to provide their consent for mortgage transactions.

It should also be noted that in developing countries, governments are unlikely to step in on behalf of homeowners or landowners where there is evidence of unfair practice or in the event of a crisis. In the United States, there has been a history of regulation of the mortgage market to protect mortgagors and since the subprime crisis began both Congress and the

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19 A. Manji, 'Remortgaging Women's Lives: The World Bank's Land Agenda in Africa' (2003) 11 FLS 2003, 139.

20 M. A. Fineman, 'Cracking the Foundational Myths: Independence, Autonomy and Self-Sufficiency' in M. A. Fineman and T. Doherty (eds), *Feminism Confronts Homo Economicus: Gender, Law and Society* (Cornell: Cornell University Press, 2005); D. Williams, 'Constructing Economic Space: The World Bank and the Making of Homo Economicus' (1999) 28 *Millennium: Journal of International Studies* 179.

21 K. N. Rankin, 'Governing Development: Neoliberalism, Microcredit, and Rational Economic Woman' (2001) 30 *Economy and Society* 18; K. N. Rankin, 'Social Capital, Microfinance and the Politics of Development' in J. L. Fernando (ed), *Microfinance: Perils and Prospects* (london: Routledge, 2006).

22 n 13 above.

states have attempted to ensure that mortgage laws protect consumers. The same response cannot be expected in developing countries.[23] There are a number of possible explanations for this. The history of land law reform in Eastern Africa has shown that the demands of rural constituents are easily ignored.[24] The small landholders who are the most likely to get into trouble through mortgage debt have little political power, as appropriations of land by the state have often demonstrated.[25] Commercial lenders can be expected to lobby against any attempt to protect vulnerable consumers, and international aid donors will look unfavorably on any effort by governments or the courts to intervene to protect defaulting mortgagors.[26] Contrasting the political response to the credit crunch in the United States with the United Kingdom's weaker administrative response, Patrick McAuslan has argued that in the former both Congress and the states have in fact sought to protect mortgagors.[27] Efforts by the World Bank to transplant the US homeownership model in the developing world simply neglect the extent of mortgage regulation protecting US consumers when it asserts that an untrammelled mortgage market built on strong foreclosure laws is fundamental to economic development.[28] For McAuslan, 'those arguing for the imposition of the mythical free market of US mortgage law on developing and transitional states' should acknowledge this.[29] At the macro level, meanwhile, mortgage debt will tie the poor ever more closely to unstable financial markets. Plans for financial inclusion will link the poor inexorably with the world financial system, creating debt for them to repay and for financial traders to securitize.

Recent policy documents on access to finance and on land tenure have shown how the growth of credit markets and the formalization of property rights are conjoined in thinking

23 I am grateful to Patrick McAuslan for pointing this out.
24 A. Manji, 'Gender and the Politics of Land Reform in Tanzania' (1998) 36 *Journal of Modern African Studies* 645.
25 Y. Ghai and J. Cottrell (eds), *Marginalized Communities and Access to Justice* (Abingdon: Routledge, 2010).
26 As evidenced in L. Chiquier and M. Lea, *Housing Finance Policy in Emerging Markets* (Washington: World Bank, 2009)
27 P. McAuslan 'The Credit Crunch and the Regulation of Mortgages: US and English Law, Practice and Ideology Compared' Paper presented to the Modern Studies in Property Law Workshop, Faculty of Law, University of Oxford, 2010.
28 n 26 above.
29 n 27 above.

about international development. I have argued that there are important implications for women of the apparently gender-neutral projects of formalization and “financialisation”. Important changes can be expected in pursuit of a vibrant finance sector. Barriers to access such as lack of suitable documentation will be addressed through the issuing of title deeds and identity documents; lack of collateral will be tackled by encouraging the use of land titles as security; and micro-finance initiatives will come to be used as sifting mechanisms: a means to sort and identify lower risk borrowers to be ‘graduated’ to the formal banking sector.

Despite saying nothing about gendered nature of risk, plans to broaden access to financial services will strengthen the position of commercial lenders, enabling them further to resist gender progressive change and to continue to ignore obligations to protect women’s already fragile access to land. As asset-backed lending develops and mortgages secured on family land are encouraged, it will be difficult to reconcile the promotion of financial inclusion with the professed aim of international development to end poverty.

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