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ECONOMIC COMMISSION FOR AFRICA – AFRICAN CENTRE FOR WOMEN

SOUTHERN AND EASTERN AFRICA SUB-REGIONAL FOLLOW-UP MEETING TO BEIJING PLATFORM FOR ACTION

WOMEN AND LAND: OVERVIEW AND STRATEGIES IN SOUTHERN AFRICA

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Lusaka, Zambia.

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Mahe, Seychelles

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ABBREVIATIONS AND ACRONYMS

APFA	-	African Platform for Action
BPFA	-	Beijing Plat for Action
CEDAW	-	Convention on the Elimination of All Forms of Discrimination Against Women
DRC	-	Democratic Republic of Congo
ECA	-	Economic Commission for Africa
FWCW	-	Fourth World Conference on Women
FHH	-	Female Headed Household
GAD	-	Gender and Development
IMF	-	International Monetary Fund
NFLS	-	Nairobi Forward Looking Strategies
NGO	-	Non-Governmental Organisation
SADC	-	Southern African Development Community
WB	-	World Bank

PART I

INTRODUCTION

1. BACKGROUND

At the threshold of the new millenium there is serious realisation that sustainable and real development of any society cannot take place without the equal and effective participation of both women and men in the development process. It goes without saying that such a development calls for the elimination of all forms of discrimination against women and the promotion of gender equality in all spheres, particularly in access to, control and utilisation of productive resources.

One of the most critical developments of the last half of this century has been the movement for gender equality as a human right issue and as a tool for real and sustainable development. Gender equality in access to, control and utilisation of productive resources and assets is a major component of this movement.

It has been realised that despite the progress made in many societies since the First World Conference on Women held in Mexico City in 1975¹, disparities persist and women and men continue to have unequal access, control and use of most resources and assets. In recent years there also has been a growing consensus that this gender inequality not only violates the human rights of women, but substantially contributes to the limited socio-economic development in most developing countries.

The Beijing Platform for Action (BPFA)² notes that "Women's poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources including credit, land ownership and inheritance, lack of access to education and support services and their minimal participation in the decision-making process.

In 1997, the SADC Heads of State and Government also expressed deep concern that "... Disparities between women and men still exist in the areas of legal rights, power sharing and decision-making, access to and control over productive resources, education and health among other."³

Yet despite the above realisation, women who constitute over fifty percent of the world's population; provide two thirds of the world's working hours and produce half of the world's food and have prime responsibility for rearing and nurturing the human resource among other things, continue to suffer all forms of gender inequality. These women earn only one tenth of the world's

¹ Conference held in Mexico in 1975 as part of International Women' Year. It recommended the declaration of the Women's Decade: Equality, Development and Peace, 1975-1985.

² Adopted by the Fourth World Conference on Women in Beijing in September 1995.

³ SADC Declaration on Gender and Development adopted in Blantyre, Malawi in September 1997.

income; own about one per cent of the world's property; are often the last to be hired and the first to be fired; predominate in the low paying informal sector; and account for two thirds of the world's illiterates.

It is not surprising then that the women bear the worst of the negative impact of macro-economic policies like globalisation, privatisation, structural adjustment, etc. As a result, seventy per cent (70%) of the 1.3 billion people living in poverty are women⁴. It is reported that in the last twenty years, the percentage of women living in absolute poverty in rural areas has increased by fifty per cent. In Southern Africa, 66% of the population still live in rural areas, and the majority of these are women.

There is a lot of literature confirming the close connection between growing poverty and the continuing gender inequality, especially with regard to access, control and use of resources and assets such as land, credit, information, technology, etc⁵. It has indeed been widely accepted that gender equality in economic resources, rights and opportunity is a major prerequisite for poverty reduction and sustainable development.

The countries of Southern Africa are not homogeneous, neither are the women of those countries homogeneous, but there are mainly commonalities. Dr Kaire Mbuende⁶ said "while individual members states have attempted to address gender and women's concerns in their development strategies, there is still a long way to go towards attaining the full empowerment of the women of SADC." Several developments in the economic, social, and political spheres have taken place in the sub-region and all of them have had an impact on the women. One of the major developments has been the emergence of a "desperate scramble for land" in the context of privatisation and a search for foreign investment. This development raises critical questions for women's access to and control of resources and their economic empowerment, given the relation of land and other resources to issues of poverty.

In their national plans to implement the African and Beijing Platforms for Action, the majority of the Southern African states have included poverty and/or economic empowerment which include issues of access to and control over resources among the priorities.

OBJECTIVE OF THE PAPER

The main focus of the paper is to analyse women's access to and control of productive resources and economic rights. How laws or lack of laws affect gender equality with regard to economic resources and opportunities is examined.

⁴ Opening remarks by Sheriff Omar Hassaan of the World Bank to the Gender and Law Conference, Addis Ababa, October 1997.

⁵ E.g. ECA, (1996) A Study of the Economic Empowerment of women and their role in the socio-economic development of Africa; SAFERE (1995), The Gendered Politics of Land; Country Reports to FWCW; (1994/5) World Bank paper on Gender, Poverty and Economic Growth in Sub-saharan Africa (1997).

⁶ Executive Secretary of the SADC

Specially, the paper analyses existing policy and institutional reforms in the areas of land and their impact on women; the types of land rights women have; the factors either facilitating or constraining gender equality with regard to access to, control, ownership and utilisation of land and other economic resources in the region.

In the process, the paper raises key issues and presents a series of recommendations relating to this very critical factor of production:

- Are the land reforms going on in some of the countries being gender responsive enough?
- Are they presenting a better paradigm of economic empowerment than the traditional usufruct rights?
- Are the reforms and the policies focusing on a transformative approach to gender relations in the economic and social field?
- How can law and the reform play a catalytic role in transforming gender relations so that many women can rely on it and use it in their lives? At the moment, this is not the case as stated by our Amoako the ECO Executive Secretary in the bar below:

Box 1 Women and Law

Many African women, particularly rural and urban poor women believe that their countries' legal systems are either irrelevant to their lives or constitute systems which reinforce constraints and inequalities. This is because, in many cases, they are not aware of nor do they understand the provisions most critical, even when the provisions are supposed to promote and protect women's rights, there is often a wide gap between de jure and de facto – between passage and implementation.

Dr K Y Amoako – Opening Remarks at Gender
And Law Conference, Addis Ababa. October 1997.

The paper is organised in five parts. Part I contains the introduction – covering the background and objectives, the regional perspective, socio-economic brief and gender profile of the sub-region, as well as the guiding principles and realities. Part II gives an overview of the situation of women in Southern Africa with regard to land, property, credit, etc. Part III presents some critical issues for gender responsive land law reform and systems. The conclusions and recommendations in Part V cover policy options, strategies and proposals for follow-up. Role of NGOs and other civil society as critical stakeholders in poverty eradication is raised.

2. GUIDING PRINCIPLES, REALITIES AND CONCEPTS

The study as well as the conclusion and recommendations are informed by several guiding principles and realities. These are:-

- Gender is core organising principle of human society and because women and men experience different realities, gender issues must be recognised as central, not peripheral, in any development programme, project or activity;
- Gender imbalances place a disproportionate burden of poverty on women at the household, community national and regional levels. Women constitute the majority among the region's 30% of the population who live in conditions of abject poverty,
- Among people living in poverty, especially in the rural areas, the gender disparities increase with women having little/no access to income, resources, factors of production, education, health care and decision-making.
- Access to income and other economic resources for women in the rural areas will go a long way in alleviating poverty and improving on household food security.
- Gender equality is not only a matter of good economics, but of social justice and human rights.
- Gender responsive macro and micro and micro-economic policies and programmes should be adopted for sustainable and equitable development.

CONCEPTS

Gender

Refers to both women and men and more specifically to the fact that social distinctions between women and men are constructed and allocated by society. Gender is distinguished from 'sex' which is biological determined and unchanging. Gender on the other hand, varies in time, place and context because it is constructed by society.

Gender Awareness

Refers to a state of awareness and knowledge about the difference in roles and responsibilities between women and men, and how these differences in power relations, access to and control over resources.

Gender Analysis

Is a systematic system of identifying the differences in the needs, roles, duties, rights, etc. of women and men, and examining how these differences affect women's rights and men's contributions to participation in and benefits from developments. It also involves an examination of how women, men, children and the aged etc. affect and/or are affected by development programmes, projects, ect.

Gender and Development/Gender in Development

It is a development concept that looks at the relationship, needs, roles and responsibilities of seeks changes in the relations. This is based on the realisation that the rights, duties, needs and responsibilities of women and them depend on their relationship.

Gender Issues

Are issues that are related when relationships between women and men, their roles, privileges, duties, etc. are identified and shown to exist between women and men purely on the basis of their being female or male.

Gender Sensitive

Refers to sensitivity to the problems and initiations arising these socially constructed differences between women and men. It also entails a motivation to act to limit/remove the imbalances.

Gender Perspective

Refers to an approach that take into account the different impact of development on women and men because of their gender roles, and seek to create equity and equality by remaining the imbalances.

Gender Responsive – Planning and Programming

Refers to a process in which programme and policy actions are designed to counteract the problems and limitations likely to arise because of socially constructed differences between women and men.

Gender Blindness/Neutrality

An approach that assumes that ignoring the difference between women and men will lead to equal access and opportunities. In actual fact this often reinforces and perpetuates the imbalances in the opportunities and access to women and men.

Empowerment

Is a process of 'conscience' which builds the analytical skills of an individual to gain self-confidence and take control of encl. life. Empowerment for women is an element for their advancement and equality, mean being able to overcome the causes of equality discrimination.

Practical Gender needs of Women

Refer to the needs arising from actual conditions women experience because of the roles assigned to them in society. These needs are related to women's roles as mothers, homemakers and providers of basic needs and are affected by the inadequacies in living and working conditions such as food, shelter, income, water provision and health care meeting the practical needs of women is more easily acceptable as it does not challenge the deeper lying causes for inequality, e.g. better access to water, food, firewood, etc.

Structural Gender Needs

The structural gender needs are those identified to overcome the subordinate position of women to men in society. They vary according to a particular socio, economic and political context. Usually, they relate to equality of access to productive assets such as training, gainful employment, land, credit and other equality issues such as prevention of harassment at work, domestic violence and freedom of choice over child bearing⁷.

Gender Roles

Are acquired through socialisation i.e. severely assigns certain roles to women and men. Gender roles in any given society are dynamic, changing and not static. There are critical differences between what society assigns to women and men in the productive, reproductive and community activities.

3. REGIONAL PERSPECTIVE

The African economies have fared very badly in the face of the world recession. Most of them have been marked by stagnation, negative growth and economic decline. This has had a devastating impact on the women of Africa who are more vulnerable to the crises because of their limited access to, control and ownership of land, credit, information, labour, technology and other factors of production.

Despite the limitations and constraints, the women of Africa still produce approximately 75% of the food⁸ in addition to carrying out their other productive, reproductive and community responsibilities.

The African Platform for Action⁹ identifies women's poverty, insufficient food security and lack of economic empowerment as the first of the eleven critical areas of concern. It also lists gender disparity in access to and control of productive resources and technology among the areas in which glaring gender gaps continue. Among the proposed actions to be taken is: -

“Enact and enforce laws that will remove barriers to the economic participation of women, particularly those which relate to property rights, asset holdings, inheritance laws, credit policies¹⁰

The African Platform also reaffirmed what was contained in the Nairobi Forward – Looking Strategies¹¹, the Abuja Declaration¹².

⁷ Gender issues in the World of Work: Briefing Kit, ILO, Turin 1994

⁸ ECA. 1995 Gender in Africa. The facts, The Issues (1995) published in collaboration with the World Bank; IFAD

⁹ Adopted at the Fifth African Regional Conference on Women held in Dakar, Senegal, November 1994.

¹⁰ E/ECA/ALW/RC.V/CM3 Paragraph 89 (b) page 24.

¹¹ Adopted at the end of the Third World Conference on Women held in Nairobi, Kenya, July 1985

¹² Adopted at the Regional Conference on women held in Abuja, Nigeria in 1989

The African Platform, like the Beijing Platform for Action (BPFA) has the issue of poverty as the number one critical area of concern. Similar strategies have been adopted for addressing the two critical areas of concern i.e. poverty and women in the economy.

Box 2 Feminisation of poverty

The Femminisation of poverty is a consequence of women's unequal access to economic opportunities.

Source: Sherif Omar Hassan in Opening Remarks
To gender and Law Conference, Addis Ababa,
October 1997

The above statement by Hassan of the WB summarises succinctly the complex but direct linkage between the two critical areas of concern: poverty and gender inequality in the economy.

4. SOCIO-ECONOMIC BRIEF ON SOUTHERN AFRICA AND GENDER PROFILE

Box 3 Toiling on Land they do not Own

There are differences in the various parts of our continent; but certainly in this region, the women in the rural areas work from before sunrise until long after sunset throughout the year. Their return for their labour is the food they grow, and the clothes and other things their husbands decide to give the. When she gets old, the most hard working and luckiest women of East Africa very rarely has any property of her own. The wealth – the house and any other durable goods, the permanent crops and the cattle, - which has been accumulated by their joint enterprise belongs by custom and usually by law to the husband alone. Let the couple divorce – the woman has nothing. If the husband dies, his relatives – that is, his male relatives – claim everything.

Mwalimu Julius Nyerere, Former President, Tanzania.

The above statement by former President of Tanzania, Mwalimu Julius Nyerere in 1984 when he was opening the African Region Preparatory

Conference in Arusha¹³ is as true today for millions of women in the sub-region as was then.

As the Beijing Platform Action¹⁴ states the number of women living in poverty, especially in the developing countries, has increased disproportionately in the last decade.

The majority of Southern Africa's approximately 80 million are farmers producing around 80% of the sub-region's food and contributing approximately 50% of the labour for cash crop production. Yet the majority of these same women who are the backbone of Africa's Agriculture:

- Have dependent and precarious rights to the land they toil on most of their lives because of patriarchy and discriminatory laws, customs and practices.
- Cannot inherit land or property either from husbands or fathers;
- Have limited ability to acquire land or property, as they constitute the bulk of the poor in their countries.
- Are heads of households, mostly in poorly serviced and under-developed rural areas; and
- Their high illiteracy rates (2/3 of the world's 900 million) limit their access to information, credit, technology, training, etc.

Women in Africa produce approximately 75% of the continent's food inspite of the fact that there are several legal, cultural, economic, political and social constraints to their access to, control, ownership and utilisation of productive resources such as land and credit.

It is obvious then that the removal of these constraints would not only empower the women as a human right issue, but would enable them maximise their potential productivity and substantially contribute to poverty eradication in their own lives and their societies. This makes the issue of land and other productive resources both a practical need as well as a strategic gender interest.

Agarwal (1994) says that "land is the single most important entry point for women's empowerment in South Asia....."¹⁵. The same can be said about women in Southern Africa. Women need secure and independent rights of access to, control, ownership and use of land and other productive resources and this will ensure their economic and social empowerment.

The connection between the level and growth of poverty and women's continued exclusion and inequality with regard to resources, has been highlighted by several

¹³ African Preparatory Conference held in Arusha, October 1984 to prepare for the Nairobi Third Women's World Conference to mark the end of the Women's Decade.

¹⁴ Unanimously adopted at the end of the FWCW in Beijing, China, September 1995.

¹⁵ Agarwal, B(1994). *A field of One's Own: Gender and Land Rights in South Asia*. Cambridge University Press.

studies, research reports, etc. Important social, economic, political and legal changes are taking place throughout Southern Africa. Some of the changes have centred around the issues of redistribution, management, ownership, access to and control of productive resources. The main impetus for these changes has been the need to boost economies that have either stagnated or declined in the last three decades.

Most of the policy, institutional and legislative activity has focussed on issues of state/private ownership and management of resources and assets; putting more land on the market to attract foreign investors and the redistribution to address unequal land holdings grounded in colonial and apartheid histories. It is only recently that there has been strong advocacy and lobbying for engendering the debate and process on access to resources. In most countries Gaidzanwa, (1995) says, "the issue of racial equity in land holding has tended to eclipse other considerations like gender, class, productivity"¹⁶.

In considering issues of access to land, land reform and gender issues in Southern Africa, the geo-political situation of these countries should be borne in mind. The land holding systems in some of them (South Africa, Zimbabwe, Namibia) was determined by the political and colonial system they had. In the former apartheid and racial discriminatory countries, women were denied access to land on several fronts – first as members of the dispossessed black race and as women in patriarchal systems.

Land reforms in these countries therefore take on the extra issue of ensuring that when land is being redistributed, the gender dynamics within the societies have to be seriously addressed. Otherwise, the landless majority that get the land will be invariably men. Women, especially the married ones, and the rural and urban poor ones will remain landless. This issue is only recently beginning to receive attention when it is being realised that land made available to the poor majority does not equitably reach the women because of the many gender constraints they face.

Most of the countries of the sub-region (except Botswana, Mauritius, Southern Africa) have instituted WB inspired structural adjustment programmes or economic recovery programmes. The conditionalities of these SAP include wage freezes in spite of inflation, devaluation, removal of subsidies on food and other essentials, privatisation of state firms, reduced public spending, retrenchments, greater access for foreign investors etc.

These austerity measures have in all countries created more problems for the already over burdened women especially the rural and urban poor. In fact most of these measures are built on the assumption that women's time, energy and labour are infinitely stretchable.

¹⁶ Gaidzanwa R (1995), Land and the Economic Empowerment of women in Southern Africa; Feminist Review, The Gendered Politics of Land, Vol. 1 No. 1, 1995

The sub-region has a mixture of economies with some countries registering growth or stabilising (Botswana, South Africa, Mauritius). Others have been least faced with political and economic instability that has pushed them into the group of the developed countries. Others still are in the group of the poorest countries. Efforts at rebuilding the economies collectively and severally have intensified since the end of the Apartheid Government in South Africa and the scaling down of hostilities in Angola and Mozambique. The SADC as an institution and framework for development and cooperation has been strengthened and refocused to spearhead the development of the sub-region.

One of the most important developments for gender equality in the sub-region is the unanimous adoption of the SADC Declaration on Gender and Development in September 1997. This was done by the Summit of the Heads of State and Government that met in Blantyre, Malawi.

This was a culmination of concerted efforts by Government and NGO representatives from the sub-region which started before Dakar¹⁷ and intensified after Beijing¹⁸.

In the Declaration, a critical sub-regional document for the advancement of women and their societies, the Heads of State and Government “Resolve that ‘As Leaders, we should spearhead the implementation of these undertakings and ensure the eradication of all gender inequalities in the region’.

Furthermore, the Heads of State and Government expressed deep concern that “.... Disparities between women and men still exist in the areas of legal rights, power sharing and decision making, access to and control over productive resources, education and health among others¹⁹.

Table 1 below shows that there are indeed disparities between women and men in major areas of development and these need to be addressed seriously for the sustainable development of the region. While women constitute more than 50% of the population, they have much higher illiteracy rates; they earn much less than the men; they own very little property and cattle; the unemployment rates are very high though the definition of employment is itself gender discriminatory; the number of poor female heads of households is growing in all the countries – in some it is as high as 40%.

¹⁷ Africa Regional Conference held in November 1994, Dakar, Senegal

¹⁸ Fourth World Conference on Women held in Beijing, China in September 1995

¹⁹ SADC Declaration on Gender and Development, 1997 para....

TABLE 1

Country	Literacy Rates % 1990		Cedaw Ratify	MPs %		Earned Income % shares		Head of Govt.		Land Ownership %		Unemployment Rates %	
	M	F		M	F	M	F	M	F	M	F	M	F
Angola			Yes	90.4	9.6	68.5	31.5	X					
Botswana	78	55	Yes	95.3	5	71.5	28.5	X		80	20		
DR Congo								X					
Lesotho	78	57	Yes	98.5	1.5	64.3	35.7	X				21.7	25.1
Malawi	69	37	Yes	94.3	5.7	66.7	33.3	X					
Mauritius	85	75	Yes	97	3	77.4	22.6	X					
Mozambique	52	19	Yes	84.3	15.7	60	40	X					
Namibia	-	-	Yes	93.1	6.9	81.1	18.9	X					
Seychelles								X					
S/Africa	80	79	Yes					X				25.7	35.2
Swaziland	74	71	No	91.6	8.4	66.6	33.4	X					
Tanzania	75	50	Yes					X					
Zambia	82	65	Yes	93.3	6.7	74.7	25.3	X					
Zimbabwe	88	77	Yes	88	12	72.6	27.4	X					

Sources: P. Made and Matambanadzo: Beyond Beijing (1996): SADC & Gender: Into the Future (1997);

Since in all the countries, the majority of the women are subject to customary laws and practices, they have no rights of inheritance to land and they all have usufruct rights to land through their husbands, fathers or sons. A few of the women have been able to take advantage of newer land laws that allow them to either buy or acquire non-traditional land. In all the countries of the SADC region, except Lesotho, there are more boys in schools at Secondary and tertiary levels than girls. The number of girls continues to drop in all institutions of learning the higher one goes up the educational ladder.

The women of the sub-region are responsible for food production (up to 80%) as well as contribute over 50% of the labour for cash crops. This is in addition to the fact that they are solely responsible for child rearing and largely responsible for fetching water, wood fuel and the processing and cooking of food.

The plural legal systems that are a legacy of the colonial history of the sub-region creates a lot of problems for the women who mostly do not know the legal provisions or the rules of choosing which system of law to use.

The women have also borne the brunt of wars of liberation and the other armed conflicts to which they have sacrificed sons, husbands, brothers, daughters, homes, limbs and even own lives. Yet, they are seriously under represented in decision-making in all economic, political and social spheres.

Today, many agricultural land areas remain inaccessible to farmers due to land mines. Many women have been either maimed or killed by land mines on their way to or from fields. Many have stopped utilising even the little land they have access to.

A number of positive changes have taken place propelled by the international and national movement for gender equality, but a lot still needs to be done.

5. SCOPE AND METHODOLOGY OF THE STUDY

The policy paper is covering the fourteen countries of Southern Africa, i.e. Angola, Botswana, DR Congo Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe. There is not enough material on all of them especially as regards access to issues of land and other productive resources.

The paper is based on a desk study from secondary sources. The main source has been documents that have been produced for meetings in preparation for the Dakar African Preparatory Conference, the Beijing World Conference on Women and a few national reports to CEDAW.

The reports produced by WILSA on the legal situation of women in Southern African and on inheritance and maintenance in the six countries, members of WILSA have produced useful information.

Reports by various genders or women's studies groups in some of the countries have also been a source of information on some countries. As a result of the difficult sources and the different objections or focus of the studies there is more detailed information on some countries than on others.

PART II

OVERVIEW OF LAND REFORMS IN SOUTHERN AFRICA AND THEIR IMPACT ON WOMEN

BACKGROUND

“Throughout the region the pattern is that women do have less access to the means of production. Policies and programmes continue to overlook the central

role of women in the economy and reinforce inequality in women's access to both the productive resource, e.g. land, and to support services such as credit"²⁰.

Although there are some variations in terms of extent and degree of inequality, the above statements summarises the situation of women in Southern Africa very clearly. Over the last two decades, there have been a number of policy and legislature reforms in some of the countries. To date, however, in none of the countries of the region is there real gender equality in access to and control of economic resources and factors of production such as land, credit, labour, technology and information.

In some of the countries, the reforms have gone a long way to provide rights to acquire land property and other resources²¹ but even in these countries, there is still a wide gap between **de-jure and de-facto equality**. In others, the increased land rights relate only to a small percentage of the country resources²². Furthermore, the reformed rights and opportunities can only be used by a very small percentage of educated and/or well-paid female employees or businesswomen in the urban areas. For the majority of the rural and urban poor women, the rights and opportunities are still attainable. This is because the absence of legal prohibitions does not automatically mean equal rights, responsibilities and opportunities, if the equally debilitating socio-economic, cultural and other constraints are not removed.

In fact a number of countries, in their reports on national plans of action to implement the Beijing Platform for Action, have admitted that providing equal access to and control of productive resources was proving more difficult in their countries than other reforms²³. The constraints to gender equality for access to rights and opportunities related to statutory laws and administrative regulations and practices, are exacerbated by the continuing customs and customary laws. Under these customary and often communal land tenure systems most women have no secure and independent rights to land and property. They often have secondary access through husbands, fathers, brothers or sons. The usufruct rights are not secure, and for married women can come to an abrupt end on divorce or widowhood.

In most of the countries of the region women cannot inherit land or property. There have been some bold moves to change this (e.g. Zimbabwe 1996 giving equal rights of inheritance to sons and daughters) in some countries. However, the practical benefit of this is yet to be seen in view of the slow changing attitudes and the lack of effective enforcement mechanisms.

A further complication in this issue is the fact that the Constitutions of some of the countries allow for discrimination in these matters if done in the name of custom and religion which are patriarchal. These Constitutions prohibit discrimination on the

²⁰ Into the Future: Gender and SADC page 15

²¹ e.g. Laws Acts in Zimbabwe; Botswana ; South Africa; Angola

²² The bulk of the land falls under customary land tenure to which the new laws do not apply, e.g Zambia, Zimbabwe, Tanzania

²³ WEDO, Mapping Report (1998)

grounds of race, sex, colour, creed, political affiliation, etc. However, the same Constitutions go on to expressly permit discrimination with respect to personal law matters such as marriage, divorce, devolution of property etc as long as they relate to the application of customary law²⁴.

The plurality of legal systems also creates a lot of problems for most women whose illiterate rates are very high and who may not understand provisions and issues of choice of law. For example, few have grasped the implications of choosing to marry in or out of community of property in the countries where this is applicable²⁵. It is still a very small percentage of women who can make an informed choice or make good clear pre-nuptial agreements. The majority of women do not clearly understand issues of ownership of land, registration of titles, how to contest land rights, etc.

SPECIFIC POLICY AND LEGISTRATION REFORMS

The need for restructuring, reconstructing, rebuilding or reviving the economies of most of the countries in the region has given impetus to some policy and legislative reforms. The fact that most of the countries have instituted economic reforms, programmes demanded by the international financial institutions has also precipitated certain reforms.

One of the main components of these economic reforms is making resources and assets like land more open to foreign investment. The land reforms taken in some of the countries have put a value to land and made it a high profile issue. There emerged a number of opposing and competing interests in the land. The main lines were drawn between the interests of the majority, covered by various communal land tenure systems, and the business/commercial investors interested in individualisation of title in the hitherto protected communal lands. The interests and positions of women who are, after all the majority and main tillers of the land were almost never on the agenda. It is encouraging though to note that although the Land Commissions set up were not gender balanced (e.g. Zimbabwe and Tanzania). Some reference to the unequal position of women in relation to land. However, more serious and concerted gender sensitive attention is needed.

The Tanzania Draft Land Bill which is being widely debated in the country has a very positive provision equating women's and men's access to land. It declares any practice contrary to equality as per Article 24 of the Constitution null and void.

“Further, it preserves the property rights of women as already provided in the Law of Marriage Act, 1971 including separate property rights between husband and wife, and granting to each spouse the right to acquire, hold and dispose the property of contract, sue or be sued; and the protection of the right of spousal

²⁴ E.g. Constitutions of Zambia, Zimbabwe, Lesotho, Namibia, etc.

²⁵ Lesotho, Swaziland, Zimbabwe, South Africa, Namibia

interest in the matrimonial home; including the obligation to consent on its disposal".²⁶

While the draft contains provisions on critical gender issues, and has been welcomed by many women and women's groups as a very progressive draft, some other related issues remain. The Government and a number of NGOs have come together to form a group that is working on improvement to ensure that the final bill that goes to Parliament in October 1998 will provide for true and effective gender equality.²⁷ One of the major outstanding issues is to provide for consequential changes in the related laws of inheritance, marriage, and land holding under customary law, etc.

In Namibia, the enactment of the Married Persons Equality Act No. 1 of 1996 provides for equal responsibility and rights between husband and wife in the family. This means that a wife can deal in, own, acquire and administer property, including land in the same way that a husband can. It has put an end to the age old marital authority of the husband to deal with family property alone without even consulting the wife. What remains now is to ensure that the law is known by all, change attitudes and practical so that the new rights become a reality for the majority of women in Namibia. The Women's National Machinery and NGOs need a lot of support to carry out the above tasks.

The fact that the Law Reform Commission of Namibia has a Women's Rights Committee with specific terms of reference to bring about gender equality through legal reform and development, is a positive institutional arrangement. The WRC will hopefully ensure the harmonisation of all related laws, so rights conferred by some laws are not negated by another.

In Swaziland, married women do not have the right to acquire property, land or credit without the permission of the husband. A new Constitution is being drafted which will hopefully address gender equality under both customary and statutory laws.

Customary marriages account for 80% of all marriages in Swaziland. Since under customary law women are virtual minors, "control in terms of property, credit, inheritance, etc are in the hand of male family members.she must get the consent of a male member of her family to get credit, purchase land or acquire documents for foreign travel."²⁸

The entrenchment of customary law and practice and Swaziland as well as the discriminatory aspects of the Roman Dutch laws probably explain why Swaziland is the only country in Southern Africa that is yet to ratify CEDAW. Issues of gender equality and the experiences of other countries in relation to women's equal access to economic resources should be included in the work of the Constitutional commission.

²⁶ From Ringo Tenga, "Processing A Land Policy: The case of Mainland Tanzania", paper for Partnership Africa meeting, Sweden, June 1997.

²⁷ Tanzania Country paper to Gender and Law Conference in Addis Ababa, October 1997 presents a very good analysis.

²⁸ Southern Africa Awareness Project; Information Brief on Swaziland (1995)

Angola has a strong legal foundation for improving women's status as women, through the Organisation of Angolan Women (OMA) has actively participated in the drafting of legislation. The Constitution and several laws prohibit discrimination on the basis of sex. The progressive Family Law, drafted by a group of women lawyers, provides for gender equality within marriage and in all family matters.

However, because there is not enough gender awareness and sensitivity, policy planning and programming in several areas is not gender responsive. As a result, there is a gap between de-jure and de facto equality. Issues of illiteracy, knowledge of laws, costs of legal assistance and change of attitude and customary practices are yet to be fully addressed.

Botswana, one of the very few countries in the region registering economic growth and stability had a late start in seriously addressing issues of gender equality.

However, attention to the issues in recent years has led to a number of strides as result of activism by women and their organisations as well as international and regional developments. The NGO coalition in Botswana was charged with spearheading the work with SADC on institutionalising gender within SADC programmes. With regard to land reform, the condition that land can only be allocated by the Land Board if one can cultivate it is being examined as it limits women's access to land. This and other socio-economic and cultural constraints need to be addressed in the reforms that are going on. Women's secure and equal access to land and other economic resources is being treated as a critical issue e.g. by the Women's Manifesto.

Lesotho offers a very unique situation in which due to male migration to the mines in South Africa, the women have a lot of de facto independence but the de jure situation denies them any equality. The law has to change to match with the reality of women, who are more highly educated than the men, head households, own business, etc.

The Lesotho Land Act Number 12 of 1979 and Lesotho Deeds Registry Act of 1967 discriminate against women. This combined with the customary inequality makes the women's ownership of businesses and other assets very insecure. A proposed land bill, which would provide for gender equality has been so controversial that it has not been presented to Parliament after more than five years.²⁹

Zimbabwe has undertaken significant legal reforms since independence to improve the status of women. These related particularly to the legal age of majority³⁰, marriage, divorce, inheritance and maintenance. The Legal Age of Majority Act of 1982 which gave both men and women majority status at the age of 18 gave women a lot of rights

²⁹ For more detailed discussion on this see Kuena "Women's Access, Control and Tenure of Land, Property and Settlement" in the Report of the International Workshop organised by National Land Survey and Habitat Sweden (1995); Women and Law in Southern Africa (WILSA) book on Legal Status of Women in Southern Africa.

³⁰ Legal Age of Majority Act, 1982

they had never had under either customary or statutory law. The right to enter into any contract enabled them to purchase land and property.

The issue of ability to acquire land especially in the rural areas where most of the land is held under customary tenure was not addressed. So despite the LAMA, women still had very limited access to, control and ownership of land in all categories of land in the country. Other socio-economic constraints led to very few women purchasing residential and other property even in the urban areas.

The Commission on Land Tenure systems set up by the President had only one woman commissioner and submissions have been made to provide for gender equality in access to and control of land in all types of land resettlement areas, communal areas, small-side and large scale commercial farming areas.

The inheritance law has also been amended to give sons and daughters equal rights to inheritance. The issue of double discrimination for the majority black women on grounds of race and gender still has to be addressed fully.

MOZAMBIQUE has also adopted several reforms to promote gender equality in many areas. In the field of land, though women and men can get title, the procedures are costly and time consuming, so few women are getting title. Other socio-economic constraints need to be addressed. Inheritance laws however, discriminate against women.

MALAWI has also pursued a policy of registering individuals titles in the desire to promote investment. The issue of land here is even more critical because there is a serious shortage of land for the growing population. The land holdings are getting smaller and are registered in the names of male family representatives.

Malawi has provided for gender equality and non-discrimination very clearly in its new Constitution (1993), but discrimination in personal laws is still allowed.

In the process of revising all laws to remove discrimination against women, it is hoped that issues of access to and control of land and other resources will be addressed in a gender responsive manner.

The legacy of apartheid in South Africa under which access to, control and use of resources were determined by one's race and within that one's gender will take time to overcome.

However, the new Government has adopted one of the most progressive Constitutions and several other policies and laws for promoting gender equality. Because of the deeply entrenched and highly institutionalised inequalities, the gap between de facto and de jure equality is still very wide.

The laws have changed, but the realities of people's lives have yet to change. The issue of land is both sensitive and complex. The Reconstruction and Development Programme aims at, among other things,

“strengthening property rights on land owned by blacks and giving vacant state land to the landless”.

The gender neutral/blind aim was not going to address the gender differential access and control among the men and the women. The institutions³¹ that have been set up to ensure the mainstreaming of gender and the promotion of gender equality have included the issues of women's access to resources on their agenda. The issue of land has been singled out as fundamental to the empowerment of women.

It is not clear yet whether in the resettlement of families that had been removed everything is being done on the basis of customary law. The majority of women fall under customary law under which women are virtual minors.

Marriage, inheritance and divorce laws need to be revised to strengthen women's position with regard to law.

PART III

CRITICAL ISSUES IN GENDER RESPONSE LAND REFORM

1. One of the major gender issues that needs to be tackled carefully and seriously is whether a move towards individual title holding (which is the essence of most land reforms) will provide women and men a secure and equitable at acquiring and controlling land and property. Is this better or only alternative to the current traditional systems under which they have usufruct or indirect access through husbands, sons, fathers, etc.

There is evidence from several countries that this approach of individualisation of title threatens to eliminate even the limited access that they have. This is because the women themselves are not in a position to get individual title (Mozambique, Kenya, Malawi, Zambia, etc). In many cases, the patriarchal systems have disempowered the women who move from their home to those of their husbands from even thinking of applying for title to the land they work on. Many women do not even get to know about the process and of those who do, many have no resources of time and money to follow the registration and titling process through.

³¹ E.g. Commission on Gender Equality and Commission on the status of Women

2. The dearth of gender sensitive research on land and other economic resources makes it difficult to do gender responsive planning programming and legislating. A number of policies, plans are based on the assumption that what is meant for “the majority/the people/the poor” will benefit or affect both men and women.
3. Illiteracy rates are still too high among women in most countries of the region. This means many women will not know about the provisions that might be in the laws. The region has some of the highest gaps in the literacy rates between women and men. The number of women with tertiary education are also extremely low in most countries.
4. The language and style of drafting laws is difficult for many people to follow and understand. The complexity of the language, documents and procedures put off many women.
5. The people involved in the land reforms have not been trained in gender responsive programming and drafting. The staff in the institutions often do not understand how to put gender equality provisions into practice.
6. A number of Constitutions in the region allow gender discrimination in areas of personal law. This covers issues of marriage, inheritance, devolution of property, etc. As long as such provisions in the Constitution, which is the supreme, gender inequality in land reform cannot be challenged.
7. The new land laws that provide equal rights to men and women affect only a small percentage of the women populations. For land reform to be effective in promoting gender equality, customary laws must be addressed too. The approach used in Zimbabwe of making new provisions on divorce applicable to “all marriages whether contracted under customary or statutory law” should be considered.
8. There are not enough women in decision-making positions in all areas for the gender concerns, issues and prospectus to be adequately addressed. The 30% target set by the SADC Head of State and Government should be aimed for.

PART IV

CONCLUSIONS AND RECOMMENDATIONS

1. CONCLUSIONS

- 1.1 It is clear from the foregoing that while some efforts have been made, the current debates and processes for land reform are not gender responsive enough. There are many critical gender issues

That are not being adequately addressed. Unless the whole debate, process and institutions are engendered, there might be even more gender inequality in access to control of and utilisation of this very critical resource.

- 1.2 This will not augur well for the socio-development of the sub-region. As stated in the SADC Declaration on Gender and Development, “the integration and mainstreaming of gender issues into the SADC Programme of Action and Community Building Initiatives is key to the sustainable development of the SADC region.”
- 1.3 Women in all the countries need secure access and tenure in their own right – single women, married women, divorcees, and widows. Gender equality in economic rights and resources is a critical element in the empowerment of women and in the economic recovery and development of the region.
- 1.4 Enough commitments for promoting gender equality in all spheres have been made at all levels. What is needed now is the political will to translate those commitments into concrete policies, laws, programmes, etc and to implement them.
- 1.5 The Tanzania paper to the Gender and Law Conference argued that:

“Women form the largest single group of willing investors the country has, and they should be encouraged by removing unproductive legal and other regulatory constraints.”

The above is true in all the countries of the region and the following recommendations are grounded on this reality.

- 1.6 The role of law in providing a conducive framework for equitable development and for providing and guaranteeing gender equality has become much clearer in the last few years. Unfortunately, the law can and has indeed been used as a tool of oppression and discrimination. New approaches mean that the law must take a lead in bringing about change, i.e. it must be transformative.
- 1.7 While law and custom can clearly draw the dynamics of gender, law and development, key constraints to sustainable development are also found within economic, political and social systems. So effective legal reforms must form part of a broader development strategy, which takes these other systems into account.

2. RECOMMENDATIONS

- 2.1 The first step must be for governments in the region to unequivocally resolve to implement the commitments that they have freely made at the international, regional, sub-regional and indeed national levels, to end gender discrimination and inequality. They must implement the commitments to: -
- Ensure women's access to economic resources, including loan, credit, science and technology, and markets, as a means to further the advancement and empowerment of women and girls, including through the enhancement of their capabilities to enjoy the benefits of equal access to three resources (BPFA, pg. 10 Para. 35).
 - "Promoting women's full access to and control over productive resources such as land, livestock, markets, credit, modern technology, in order to reduce the level of poverty among women;" (SADC Declaration H.3).
 - Repeal and reform all laws, amending constitutions and changing social practices which still subject women to discrimination, and enacting empowering, gender sensitive laws. (SADC Declaration Para. H.4)
 - Take appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of women and men and shall ensure to such women the right: -
 - a)
 - b) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reforms” (CEDAW Act 14.2(g)).
- Other commitments under the DPFA, the ACHPR and the various national constitutions and laws.
- 2.2 A social consensus has to be built so that any laws can be just, equitable and acceptable. So all stakeholders must be involved in a dialogue and consultation through the whole process. Women must be specifically targeted among the stakeholders.
- 2.3 All land reforms should have specific gender goals, objectives, outcomes, etc.
- 2.4 To ensure a broadbased participation and that gender issues and concerns are firmly on the agenda, there should be affirmative action/quota system

for participation on land bodies and institutions like Land Commissions, Land Tribunals, Village Councils, Town/City/Rural Councils, etc. For example, the Tanzanian Local Government set amendment provided for a quota of the members of the “vitongozi” to be women.

- 2.5 There is need to ensure availability and adequate incomes, capital and/or credit otherwise the equal access to land will be meaningless. The amounts and speed of current loan/credit institutions for women do not enable them to acquire land or property.
- 2.6 Decentralise and simplify land registration system and process. Simplify and..... All document.
- 2.7 The Government should consider providing for preferential treatment for women applicants in the allocation of land titles. This should apply to rural, urban as well as commercial and industrial land. It can be done under Article 4 of CEDAW which provide for temporary special measures to redress past imbalances. It can also fall under Article 14 of CEDAW which provides for assistance to rural women. The preferential treatment should be provided especially for female heads of households, women with disabilities and elderly women.
- 2.8 To address special problems faced by married women and assure them equal access to land and other agricultural resources, administrative arrangements should be made to have title to land issued in the names of both husband and wife.
- 2.9 Provide gender sensitivity and programme training to all officials involved in the issue of land reform, land management, registration, mapping, etc. The advertisements application forms and procedures must be gender sensitive. The documents, officials, officers, etc must be over friendly so that the women, especially the not so literate are not intimidated.
- 2.10 Involve and work with NGOs, civil society organisations, Groups, land all...../coalitions, etc.
- 2.11 There should be action oriented and continuous research into customary laws and customs to identify the ones that provide more equality to women and upon support them. The customary provisions and practices that promote and maintains gender inequality must be exposed for elimination.
- 2.12 Conduct public educative campaigns to empower the citizenry, especially the poor men and women who are threatened with landlessness. They need information and power as they cannot claim or use rights they do not know they have.

- 2.13 Promote research on gender aspects of poverty, develop conceptual tools and practical methodologies to conduct gender impact analysis of all policies, programmes, proposed laws, etc.
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APPENDICES

APENDIX 3

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: -
 - a) To participate in the elaboration and implementation of development planning at all levels.
 - b) To have access to adequate health care facilities, including information, counselling and services in family planning.
 - c) To benefit directly from social security programmes.
 - d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency.
 - e) To organise self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self-employment.
 - f) To participate in all community activities.
 - g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes.

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

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