

# **Women and Land Tenure Rights in Southern Africa: A human rights-based approach**

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## **Abstract**

Land is considered the most fundamental resource to women's living conditions, economic empowerment and, to some extent, their struggle for equity and equality. More than 60% percent of women in Southern Africa are dependent on land for their livelihoods. Despite the importance of land to women in the sub-region, their land rights are still largely discriminated against. A combination of statutory and customary laws favoring male ownership of property disadvantage women's rights to own land. The traditional exclusion of women from property and land ownership on gender grounds is the most damaging global human rights violation experienced in many developing countries. Without rights to land, women's economic and physical security is compromised. Using evidence from selected countries in Southern Africa, this paper uses a human rights approach to argue that women's equality and land rights are violated if their rights to land are not honored. The paper offers recommendations on strategies that can be adopted by countries to enable women to equitably access, own and control land.

## **1.0 Introduction**

Despite their central role in agricultural production, women in Southern Africa continue to face discrimination in accessing and owning land. Most women in the sub-region have access to farmland only through their husbands or fathers as they are only granted usufructuary rights as

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land title pass through the male line. It must be noted however that this characteristic is typical of customary land tenure system, which is existent and is the dominant land tenure system in many Southern African countries (see annex 1). The phenomenon of limited women's access to land is further compounded by the HIV/AIDS pandemic, which affects women and men differently; prevalence, impact and effects of HIV/AIDS are higher on women and children in particular (see annex 1 for details on the HIV prevalence rates). Widows and children of AIDS patients for instance, often do not have the right to inherit their late husband's/father's agricultural land, and are thus condemned to poverty and dependency. Yet access and ownership of land is fundamental to basic livelihood sustenance implying that discrimination of women from owning this basic good is violation of women's human rights. Limited rights of women to agricultural land is of primary concern in Southern Africa since justice in development requires that women's right to agricultural land be treated as a priority Human Right.

Southern African economies are highly dependent on agriculture. The agriculture sector is a major contributor to GDP. In Malawi and Mozambique, agriculture accounts for approximately 35 per cent of GDP, but less than 10 per cent in mineral-rich countries, such as Botswana and South Africa (see annex 1). Women play a crucial role in agriculture, providing 80 to 90 percent of the labour in subsistence production and over 70 percent in cash crop production. In this scenario therefore, discrimination related to women land ownership must be addressed because it has great bearing on food security and the contribution of agriculture to the economy. Equal rights to land for women and men are an essential and inherent component of progress on overall human rights and democratic development.

The main objective of this paper is to analyze Southern Africa's land tenure systems in as far as they constrain women's access to land ownership and suggest a set of policy

recommendations, as well as statutory and technical strategies to address land tenure issues within the context of human rights and sustainable development in the sub-region.

This paper is divided into six sections. Section 2 provides an overview of the conceptual framework, Section 3 describes the methodology that was used in the study, Section 4 outlines the findings of the study; section 5 discusses the findings, and section 6 presents conclusions and a list of recommendations.

## **2.0 Human rights-based approach to women and land rights: A conceptual framework**

Rights to use and control land is central to the lives of rural women in countries where the main sources of income and livelihood are derived from these natural resources. The lack of land rights by women and girls indicates that they are victims of discrimination since land is considered the most fundamental resource to women's living conditions, economic empowerment and, to some extent, their struggle for equity and equality within a patriarchal society. Without rights to land, women's economic and physical security is compromised. They are deprived with a reliable source of food and are further curtailed access to other inputs, especially credit, necessary for carrying out productive activities. In Southern Africa, women make up more than 60% of small farmers, and provide more than 70% of the workforce in agricultural production. Women's access to land therefore determines not only women's and households' level of living and livelihood, but also food security (ILO, 1996). The problem of lack of access to land is particularly critical for the increasing number of female heads of rural households, which is now evident in Southern Africa (Drimie, 2002).

The land rights of women can be seen as elements in the “social bases of self-respect,” which Rawls (1971, 2001) defines as perhaps the most important “primary rights”. Sen (2000)

argues that millions of people living in developing countries are not free. “Even if they are not technically slaves, they are denied elementary freedoms and remain imprisoned in one way or another by economic poverty, social deprivation, political tyranny or cultural authoritarianism” (Sen, 2000). Sen argues that it is important for governments through institutions like markets, political parties, legislatures, the judiciary and the media to contribute to development by enhancing individual freedom. The fundamental point is that there is need for countries and the international community to fulfill or protect the land rights of women, since they are so crucial for their sustained livelihood. The human rights argument emphasizes women’s right to equality, human dignity, non-discrimination, autonomy, and economic well being (Walker, 2002). A human rights approach requires an analysis of why women still experience discrimination in obtaining land rights and how the land rights of women can be observed and protected and an analysis of what steps the governments need to undertake to ensure that the land rights of women are acknowledged and protected.

To protect women’s rights, the international community has created specific standards set in different legal foundations. These include the Universal Declaration of Human Rights, 1948, and the International Covenant on Economic, Social and Cultural Rights, 1966, and the Convention on the Elimination of all forms of discrimination against women. At the regional level, the African Charter on Human and Peoples’ Rights, 1981, and the Southern Africa Development Community Declaration on Gender and Development, 1997. Recent relevant world conferences, including Vienna Declaration and Program of Action of the 1993, Cairo Conference on Population and Development (ICPD) 1994, Beijing 4th World Conference on Women - Declaration and Platform for Action (1995), and Durban World Summit on Sustainable

Development, Johannesburg, 2002, have confirmed the strong link between the gendered nature of violations of human rights and the advancement of women's rights.

The Convention on the Elimination of all forms of discrimination against women (CEDAW) brings together all conventions and treaties that protected and promoted the rights of women in particularly vulnerable areas into a single instrument.<sup>2</sup> The United Nations General Assembly adopted the Convention on the Elimination of all forms of discrimination against women in 1979. The Convention, which entered into force on 3 September 1981, establishes women's right to non-discrimination on the basis of sex and affirms equality in international law. It is monitored by the Committee on the elimination of discrimination against women (CEDAW).

The CEDAW lays the basic principles on how women's land rights should be treated in a rights-based approach. Specifically Article 14 of the CEDAW obliges state parties to ensure equal treatment between men and women in land and agrarian reform. In order to achieve real equality, the CEDAW requires that marriage and inheritance laws with regard to land rights should be based on equality. Article 16 of the CEDAW also implies that land tenure reform must ensure women's property rights during marriage, at divorce and in the event of death of the husband. All countries in the sub-region with the exception of Swaziland have ratified the CEDAW (see annex 1). The question is; are all the countries that ratified the CEDAW doing what they agreed to do? By signing the CEDAW, these countries agreed to incorporate the

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<sup>2</sup> Convention on the Political Rights of Women (1952), Convention on the Nationality of Married Women, (1957), Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965).

principles of equality of men and women in their legal systems, to abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women.

This paper adopts this human rights approach to explore how the countries in the sub-region have treated the issue of women's land rights and suggests strategies that ensure that women are accorded full and equal rights to own land and other property.

### **3.0 Methodology**

The study methodology consisted of a combination of collection and synthesis of existing country level literature on land policies and land laws and key informant interviews with key government officials in relevant ministries (agriculture, lands, women's affairs) and with representatives of civil society groups (e.g. universities, NGOs). Six countries were selected for detailed study, these are: Lesotho, Zambia, Malawi, Botswana, Mozambique and South Africa. The countries were selected with a view to bring out as much diversity as possible in existing land tenure systems, and policies, geographical location, and differences in population and standards of living. Guiding questions for the interviews included: (1) What is the status of women's land rights in the customary and statutory land tenure systems? (2) What are the barriers to women acquiring land rights under customary and statutory land tenure systems?, and (3) What has Government and civil society done to improve the land rights of women in the customary and statutory land tenure systems?

## **4.0 Results**

### **4.1 Status of women's land rights**

In all countries, customary and statutory tenure co-exist. More than 70% of women in the six countries live in rural areas and derive their livelihood from agricultural production. In all the study countries women are still discriminated against in independent ownership and control of land in both customary and statutory land tenure systems.

### **Zambia**

Women's rights to land under customary tenure depend on the type of marriage. If the marriage is uxori-local (where the husband settles in the wife's village), land rights are vested wholly in the woman, but if the marriage is viri-local (where the wife settles in the husband's village), land rights are vested wholly in the man which he returns on dissolution of the marriage. Upon divorce or death of the husband, the woman loses rights to cultivate her field and has to return to her own village. Viri-local marriage is the most dominant type of marriage in the rural areas, implying that overall more women than men experience land tenure insecurity due to marriage custom. Key informants also indicated that women do not own land because traditional chiefs with patriarchal inclinations do not allocate land to women in their own right. Under statutory tenure, the law does not discriminate against women in terms of obtaining land rights. However in practice women do not have land rights because of socio-economic obstacles. Illiteracy and lack of capital limit women's ability to undergo the procedure of applying for title deeds. Land prices are also quite prohibitive.

### **Lesotho**

Virtually all-agricultural land in Lesotho is under customary tenure. Women do not have the right to own and control land because of patriarchy and discriminatory legislative laws. Under customary law, women are treated as minors and therefore cannot be allocated land, inherit it or make decisions about its management and use. Daughters cannot inherit their father's

fields and where there are no sons such lands is reverted to the chieftainship for reallocation on the holder's death. The Lesotho Land Act of 1979, which is still the guiding legislature, is gender neutral but since married women are regarded as minors, incapable of contracting on their own, they are thus unable to acquire land unless consent of husbands is acquired. The Act states that land can be inherited through: (i) A will, (ii) Interstate where the guiding principle is customary law, and (iii) A widow can inherit land but on remarriage the property is not part of the matrimonial property. The Deeds Registry Act 1967 empowers the Registrar to refuse to register a deed in respect of immovable property in favor of a married woman whose rights are governed by Basotho law and custom. Thus the deed prohibits a married woman from registering land in her individual capacity. The Constitution of Lesotho provides for equality of all people in its section 19, but in its section 18(4) it deliberately exempts customary law, thus it still discriminates against women. Women are not treated as equal partners in marriage. Upon divorce, a woman is not entitled to any of her marital home's fixed property including land. She has to leave and go to her natal family.

## **Botswana**

Single women head about 50% of all households in Botswana, and some 50% of people living in these homes are below the poverty line (UNDP, 2002). Traditionally, every male head of a household in Botswana was entitled to three pieces of land-one each for his homestead, cultivation and grazing (Kalabamu, 1998). When a man died, his male children inherited his land. Women, regardless of their marital status, age or otherwise could never acquire land or landed property on their own. They had to live with their parents, husbands or sons. The Married Persons Property Act of 1971, allows wives to acquire property, but because of marital power, wives cannot get a loan to effectively utilize the land without the written consent of the husband.

Other factors constraining women from owning and controlling land include: (1) Application of customary law and patriarchal attitudes. Key informants indicated that some Land Boards were still asking married women who apply for land to produce written permission from their husbands. “Land Boards sometimes ask you to bring your husband, father or brother” (Woman key informant). (2) Unmarried women aged below 21 years have to obtain the consent of their parents in all property transactions. (3) Women who marry become minors unless they explicitly marry under out-of-community-of-property regime. (4) Women lack the means (assets, capital, labour) to productive use the land.

### **Mozambique**

More than 70% of women in Mozambique live in rural areas and derive their livelihood from agricultural production. The constitution of Mozambique has since 1975 upheld the principle of gender equality. The Constitution was revised in 1990 and it gives more explicit form to this principle through articles 6 and 67 where it is stated that: All citizens are equal before the law, enjoy the same rights and are subject to the same obligations, irrespective of colour, race, sex, ethnicity, place of birth, religion, level of education, social status, marital status of parents or profession (art. 6) Man and woman are equal before the law in all spheres of political, economic, social and cultural life (art. 67). However even though the constitution of Mozambique is non-discriminatory, before the New Land Law of 1997, women were largely discriminated against in land ownership and control mainly because of application of customary law in the patrilinear societies of the south and central provinces of Mozambique and widespread ignorance among women of their rights and lack of resources to effectively utilize land on their own.

## **South Africa**

In South Africa, rural women comprise 53% of the population, and 71% of these live under the 350 Rands/month poverty line, while 62% are unemployed (National Land Committee), 2003). Women's lack of independent land rights rules out one of the main fallback positions for women seeking sustainable livelihoods in the face of rising poverty. While there is enormous variation from one communal tenure system to another, women do not usually qualify to hold land independently from men. Rules of access and inheritance generally tend to favor men over women, and women with children over those without. However even though the constitution of South Africa is non-discriminatory, women are discriminated against within all tenure systems – customary and statutory (Mann, 2000, Cross et al, 2001). The factors that constrain women from acquiring land rights like in other countries include; (1) Application of customary law of patriarchy, which discriminates against women. (2) Lack of women representation on community land committees and participation in traditional community decision-making structures. Although in some communities, women are now allowed to attend and participatively speak at public meetings. However observations noted by an NGO working with rural women indicate that women bear the legacy of entrenched traditional values that make it difficult for them to speak freely in the presence of men (Hargreaves, 1999). And (3) widespread ignorance among women of their rights to land from the provisions of the constitution due to factors such as illiteracy, and lack of dissemination of the legislation to grassroots levels.

## **Malawi**

Fifty one percent of Malawi's population of 10million is women, of which 85% live in rural areas and derive their livelihood from agricultural production. In terms of women and land ownership, women's rights to land under customary tenure depend on the type of marriage. If the marriage is patrilineal, which is common in the northern region of Malawi, land inheritance is through the male lineage and women can only access land through their husbands and sons. Upon divorce with the husband, the woman loses rights to cultivate her field and has to return to her own village. Upon death of the husband the woman as long as she is unmarried can use the land that her husband owned, as the sons grow old, she shares her land with the sons and maybe squeezed out of land (Shawa, 2002). The other marriage system is matrilineal, which is practiced in more than 50% of the country. However there are two types of matrilineal marriage, "chitengwa" or virilocal and the "chikamwini" or uxorilocal. If the husband dies in "chitengwa", the wife is chased away from the village of marriage and she loses her land rights, similarly if a wife dies in "chikamwini", the husband is chased away from the village of marriage and he loses his land rights (Shawa, 2002). This implies that women experience land insecurity under patrilineal and "chitengwa" marriage systems, whilst men experience land insecurity under "chikamwini" marriage system. Discussions with key informants revealed that while some women do have full ownership and control of land under "chikamwini" marriage, some women under the same marriage system do not have full rights over the land because men especially the uncles control the land owned by the women. Discussions with key informants also revealed that overall the dominant gender group that is vulnerable to land tenure insecurity due to the marriage customs in Malawi is the woman's.

Under statutory tenure, the law does not discriminate against women in terms of obtaining land rights. However in practice women do not have land rights because of socio-economic obstacles such as lack of education, and lack of resources to buy or lease land. Cultural practices also discourage women from participating in land allocation committees and decision-making meetings. Despite their being the major agricultural producers, women remain largely absent at all levels of policy-making, project formulation and management of land (Shawa, 2002).

#### **4.1 Summary of the barriers that prohibit women from acquiring land rights**

As noted in the foregoing passage, the major obstacles facing women in owning and controlling land include customary law, some legal clauses that do not allow joint ownership of land by married couples under statutory tenure and non-synchronization of the inheritance and marriage laws with the Land law. In situations where women can own and control land such as where one can buy the land from the land market, women are constrained by several socio-economic factors. These constraints include illiteracy, lack of capital and implements, lack of collateral, lack of farm management experience, training and advice. One disturbing comment which was repeatedly pointed out by key informants was that some women have invariably internalized their own discrimination to land ownership: "ironically, society has made women the custodians of the very cultural values that lead to their oppression". In that respect it is tempting to conclude that society has turned women into their own oppressors as they too tend to see men as better leaders than women. Table 1 presents a summary of the obstacles experienced by women in trying to own and control land in Southern Africa.

**Table 1 Overview of barriers to women acquiring land rights under customary and statutory land tenure systems**

<b>Barriers linked to the Socio-economic well being of women</b>	<b>Barriers linked to Custom/Traditional Law</b>	<b>Barriers related to statutory law</b>
<ul style="list-style-type: none"> <li>• High female illiteracy rates.</li> <li>• Ignorant of their land rights.</li> <li>• Lack of resources to claim their rights.</li> <li>• Internalized discrimination.</li> <li>• Limited participation of women in decision-making bodies on land tenure issues.</li> </ul>	<ul style="list-style-type: none"> <li>• Limited rights of women to own land due to patriarchy.</li> <li>• Land allocation administered by traditional leaders.</li> </ul>	<ul style="list-style-type: none"> <li>• Land law does not have a clause that promotes the land rights of women.</li> <li>• Land law is non-discriminatory but is not harmonized with other laws in the system (marriage laws, inheritance law)</li> <li>• Lack of capacity/ knowledge by implementers</li> </ul>

Source: Interviews with key informants

### **4.3 Initiatives being implemented to improve the land rights of women**

All the countries are undertaking reforms to amend the laws that discriminate against women.

#### **Lesotho**

In Lesotho a number of legislative changes are underway to change the situation as shown in table 2.

**Table 2. Legislative reforms under consideration in Lesotho**

<b>Legislative changes underway</b>	<b>Progress made</b>
Changes in the Deeds Registry Act 1967 so that it allows women to own land on merit and to register in their own names	Reform is underway
Section 18(4) (c) of the Constitution needs amending since it justifies the discrimination against women under the guise of customary law.	Reform is underway
Married persons equality Bill	Approved to be a Bill, but is not yet an Act
Gender development policy	Approved and adopted
Draft Land Bill will allow women to have the right to own land	Still in zero draft

## **Zambia**

In Zambia, the draft Land Policy has the clause that 30% of all statutory land would be reserved for women. This recommendation was picked up from the Gender Policy, which was accepted in 2000.

## **Botswana**

The Deeds Registry Act was amended in 1996. The amendment removed the discriminatory provision, which stated that husbands only could deal with the Registrar where spouses were married in community of property and enabled women to acquire for their sole use and deal with immovable property bequeathed or donated to them even when they were married in community of property. The Tribal Land Act was amended in 1993 to allow all adult citizens rights to use and occupy tribal land anywhere in the country. Adult citizens of either sex are eligible to receive customary land grants and common law leases on tribal land. Overall the National Policy aims to promote gender equality and the empowerment of women. In the current National Development Plan the Government has committed itself to raising women's representation in Parliament and Councils to 30% for each by the end of 2008/9.

However, although the existing legal and policy reforms are progressive, they do not empower women fully when dealing with land and property. This is the case with marital power. Because of 'marital powers', under the *Married Persons Property Act*, women cannot apply for credit in their own right, they need the written consent of the husband for the wife to borrow money, and to mortgage or sell the property. Secure title theoretically enabling the holder to enjoy the highest of credit facilities can only be given by ensuring that married women can apply

for land and credit without the consent of the husband (Kalabamu, F. 1998). Thus to empower women in land and related matters, there is need to let women acquire credit on their own. According to discussions with key informants, this can only be done if the marital powers are reviewed or abolished.

## **Mozambique**

The government passed a new Land Law in 1997. The Bill clearly recognizes the right of the women to land by stating that both, men and women can be subject to the right of use and benefit of land and that women have the right to inherit land. Where the New Land Law campaigns have been successfully carried out, women now know their legal rights to land. The campaign message included messages oriented specifically to those women whose rights had already been violated, advising them to apply for an individual title deed or to unite with other women in identical situations in order to obtain a collective title deed. Efforts were particularly successful where Land bill dissemination was integrated into literacy programs and where the NGOs responsible for the Land Bill dissemination had been working in the area for a long time. Since establishment of the new law, the government department responsible for processing land application for statutory tenure has been handling an increased number of applications from women<sup>3</sup>. Early this year a new Family law, which improves the rights of women in marriage by allowing joint registration of property, was passed. Thus all major legislations relating to land (ie. Constitution, Land law of 1997, and the Family Law of 2003), are very supportive of women's land rights. The main challenge is to ensure full implementation of the legislation.

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<sup>3</sup> Interview with Mr. Samuel Joao Rovicene Dambiane, National Directorate of Geography and Cadastre, Ministry of Agriculture and Rural development.

## **South Africa**

The constitution of South Africa has since 1996 upheld the principle of gender equality. The Bill of Rights of the Constitution states that everyone is equal before the law and has the right to equal protection and benefit of the law. South Africa has since 1995, been a signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). In 1998, the government passed the Customary Marriages Act. The Act states that: A wife in a customary marriage has, on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity, including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have under customary law (Mann, 2000). Thus a woman entering into customary marriage subsequent to the enactment of this legislation has property rights upon dissolution of the marriage.

The government also passed the Promotion of equality and Prevention of Unfair Discrimination Act in 2000. The objectives of the Act are to prevent, prohibit and eliminate unfair discrimination as contemplated in the Constitution and to promote equality (Mann, 2000). Section 8 of the Act States: “All forms of gender discrimination, including the following are prohibited: (1) The system of preventing women from inheriting family property; (2) Any practice, including traditional, customary or religious practice, which unfairly violates the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child; (3) Any policy that unfairly or unreasonably limits access of women to land, finance and other resources.”

However there is still no independent law that provides for women's independent access to land in South Africa. A woman's access and security of tenure depends on whether or not she is able to persuade the traditional authorities of her need. Even the Draft Communal Land Bill does not give a clear direct provision that ensures that women are not discriminated against. Key informants indicated that there is need for the Draft Communal Land Bill to categorically include a clause that states that women can own land in their own right- that way women will not have to search far to look for a law that protects their land rights.

## **Malawi**

Malawi's Constitution of 1995 has a bill of rights in its Chapter 24, which promotes gender equality and provides for the protection of both men and women. The Malawi Gender Policy developed for implementation between 2000 and 2005, promotes non-discriminatory cultural practices against women's property rights including land. The Malawi National Land Policy of 2002 promotes registration of individual and family title to customary land and takes care of the land tenure insecurity associated with the matrilineal or patrilineal marriages, household land by registering family land in the names of all members of the nuclear family (husband, wife, and children). In the event of death of a husband or wife, the spouse inherits the land – customary rules will cease to apply. However, while proposed joint registration is seen as a way of ensuring land tenure security of the surviving spouse, key informants indicated that if the surviving spouse remarries on the land they inherited from the spouse this might create social tension with the in-laws and could also lead to the children losing land. Key informants suggest that the children's first instead of the surviving spouse should inherit the land.

## 5.0 Discussion

From the foregoing analysis, some elements of discrimination against women in land ownership and control in virtually all the six countries is still evident. The main sources of discrimination are the customary law and discriminatory statutory laws such as in Lesotho and where statutory laws are non discriminatory such as in Zambia, women are not able to own and control land because of lack of knowledge of their rights, socio-economic constraints such as lack of capital and illiteracy. In some countries such as Botswana, there is no harmonization of the non-discriminatory land laws with marriage and inheritance laws.

The most important element of a human rights-approach is analyzing whether countries are addressing all sources of discrimination against women in land ownership. Such an analysis shows that although the initiatives being undertaken by countries are very progressive, they still fall short of addressing all the major sources of discrimination as summarized in table 3. Some countries may have made progress in one area, but inaction in other areas can slow down progress in promoting women's land rights. This section discusses the initiatives that the countries are undertaking as presented in the previous section specifically highlighting areas where progress has been made and areas that still need to be addressed.

**Table 3. Initiatives required improving the position of women in owning and controlling land**

<b>Initiatives to improve the Socio-economic well being of women</b>	<b>Initiatives to address barriers linked to Custom/Traditional Law</b>	<b>Initiatives to address barriers related to statutory law</b>
<ul style="list-style-type: none"><li>• Education / literacy campaigns</li><li>• Legal education to women</li></ul>	<ul style="list-style-type: none"><li>• Limited rights of women to own land due to patriarchy.</li></ul>	<ul style="list-style-type: none"><li>• Ensure land law has a clause that promotes the land rights of women.</li></ul>

<ul style="list-style-type: none"> <li>• Economic empowerment of women through provision of credit, market access</li> <li>• Affirmative action (waive fees for land registration, land quotas for women)</li> <li>• Improved participation of women in decision-making bodies on land tenure issues.</li> </ul>	<ul style="list-style-type: none"> <li>• Disseminate new land laws and build capacity/ knowledge of traditional leaders not to discriminate against women.</li> <li>• Educate all members of society on women’s land rights</li> </ul>	<ul style="list-style-type: none"> <li>• Harmonize land laws with other laws in the system (marriage laws, inheritance law)</li> <li>• Disseminate new land laws and build capacity/ knowledge of implementers</li> <li>• Translate laws into effective prompts for implementation</li> </ul>
<ul style="list-style-type: none"> <li>• Monitoring and evaluation of progress made on women’s land rights – at regional, national and local levels</li> <li>• Develop Indicators to monitor the progress.</li> </ul>		

Law reform to give legal recognition to women's rights to land is often the first step necessary to promote gender parity in land and property rights. The study countries are already making progress in implementing changes under their legal framework to ensure that the land rights of women are honored. All study countries with the exception of South Africa have or are going to have a land law that has a clause that recognizes the independent land rights of women. Legal rights can be positive for women, since it changes their bargaining position within their natal and conjugal households. Related to the changes in the law, some governments have gone ahead and harmonized other laws that affect women’s land rights (marriage and inheritance laws) with their land law to ensure that women can fully utilize the provision of owning land provided by the land law. Mozambique stands out as a good case where the land law and other laws have been harmonized to improve land rights of women. On the other hand, Botswana and Lesotho still need to work on making the marriage laws be harmonized with the proposed land laws to promote the rights of women.

Law as an instrument of social change needs to be supported by an efficient law enforcement system and by legal rights awareness campaigns to promote a change of attitudes among both women and men and to enable beneficiaries to pursue land claims. Again Mozambique stands out as a good example, where a massive land campaign to disseminate the new land law were made. However even though a massive campaign was undertaken, given the geographical size of Mozambique not all communities were reached by the campaigns to sensitize them about the new law and the land rights of women. Thus there is a continuous need to educate the public about the new land law in countries that have just passed land laws that are supportive of women's land rights. In countries that are currently engaged in drawing up the land laws, such as Botswana, Lesotho, Zambia, and Malawi, there is need to simultaneously develop a dissemination strategy to be implemented when the legislation is passed.

A critical determinant factor determining whether women get independent land rights is whether or not women are equipped with the economic and social resources to be able to own and meaningfully benefit from land ownership. Land for agriculture requires fertilizer, some level of mechanization in the form of efficient equipment, paid labour, and access to markets. While women are reputed as efficient in paying loans, ironically they have the hardest time in securing loans without collaterals, male consent, security against the loan, etc (Fortmann, 2001). In Botswana, key informants indicated that because of their relative poverty, most women opt for land under customary grant of rights, and many fail to utilize the allocated land because of lack of resources. Because these rights are not registrable, most women cannot mortgage their rights to obtain loans from financial institutions which means that they are unable to access financial loans to improve their houses and, therefore, remain poor. It is important to empower women

socially and economically through education, training, health services and credit so that they can productively utilize the land. It is important that NGOs working with women undertake training that build their capacity and improve their land rights knowledge so women are able to advocate for them.

The HIV/AIDS epidemic is having a damaging impact on the land tenure security of women. HIV/AIDS prevalence rates are alarmingly high in some countries in Southern Africa, averaging more than 20% in Botswana, Zambia, Zimbabwe, Namibia, South Africa and Swaziland. Very little work has been done on the impact of HIV/AIDS on tenure systems in the sub-region as a whole. In countries where the impacts of HIV/AIDS on land tenure systems have been studied (these include Lesotho, South Africa and Malawi), one major impact of the epidemic was identified to be the increase in the vulnerability of women, children and poor households to dispossession by patrilineal kin on the death of male household heads. As HIV/AIDS incapacitate families from making the most productive use of their landholdings, these families risk losing their unutilized/underutilized land to landless families that are able to make more productive use of such land. Land codes in a number of countries (e.g. Lesotho and Mozambique) specify that land not used for a specified number of years in succession will revert to the allocating authority. In South Africa and Lesotho the studies showed traditional authorities playing a role in helping to protect the land rights of widows and orphans but not always being effective in enforcing their decisions when relatives usurped land (Drimie, 2002). The main recommendation emerging from these studies is the need to draw up legislation that can protect the land rights of women.

Given the widespread acceptability of patriarchy in customary tenure, the removal of legal clauses that discriminate against women will not change cultural and social behavior. The result is that not much will change on the ground, because women will still be discriminated against in customary land tenure. This calls for the need to actively engage in sensitization and education campaigns to influence traditional norms, values and laws to change to allow women to own and control land. This is a process that will take a long time. It is thus important that local leaders in particular be conscientised for the recognition of women's rights of control of land under the new laws. Gender training should be provided to men in order to decrease their resistance on women's land rights.

Another critical determinant factor in Southern Africa is whether or not women are able to participate in local decision-making structures on land issues in their communities. Due to entrenched traditional values, women do not actively participate. It is important to encourage equal representation of men and women in municipal councils, tribal authorities and all decision-making structures related to land.

While policies, constitutions and legal frameworks might be put in place, the extent to which they can facilitate women's land ownership and control would very much depend on whether these policies are explicitly translated into action; and whether mechanisms are put in place to enforce the policy. It is therefore important that given the importance of this issue in as far as it restricts the livelihood of women and their human rights, it is important that there be an organ to monitor the implementation of the legal framework on the ground. It is important to have one at the national level and the other at the regional level. It would appear that The Ministry or Department of Gender in the study countries are the institutions that are supposed to

be mandated to monitor the situation. However given the fact that these institutions usually have a larger mandate than women's land rights, alternatively, a National Task Force can be formed comprising of Government Departments, NGOs, women activists and Women and Land Lobby Groups which can be mandated to closely monitor the progress of addressing women's land rights in the country. At the sub-regional level, a sub-regional platform can monitor progress made on women's land rights and implement programmes required at the sub-regional level. Such an organization has been recently formed in the sub-region (ie. The Platform on Women's Land Rights in Southern Africa). It is important this platform is supported to achieve its objectives.

Related to the issue of monitoring and evaluation, there is need to develop national and local level indicators that would measure progress towards equity for women in land rights. Such indicators can include the following: (1) Women achieve independent control over land through joint titling with issuing of separate share certificates for right-holders, (2) Women acquiring rights over land in their own names. (2) Women are represented on community and landholding structures. (3) Women are well informed about the options and opportunities open to them with regard to land access and resource utilization and start pressing for greater autonomy and interest.

At the international level, the CEDAW was set up to monitor and encourage compliance with the Women's convention. Treaty bodies are very important mechanisms for making states comply with international obligations. All the countries that have ratified to the Convention on the Elimination of All Forms of Discrimination against Women are legally bound to put its

provisions into practice. To fulfill their reporting obligations within Article 18 of the Convention, State parties to the Convention have to submit to the UN Secretary-General an initial report on the legislative, judicial, administrative or other measures that they have adopted to implement the Convention within a year after its entry into force and a periodic up-date at least every four years thereafter. However some countries (Botswana and Lesotho) have fallen behind in their reporting as shown in annex 1. It is important for the United Nations and civil society to help individual countries to promote women's rights in compliance with the convention and fulfill their reporting requirements.

## **6.0 Conclusions and Recommendations**

Women's land rights are human rights. Addressing inequalities and disadvantages women face in land ownership is essential to the realization of the fundamental human right to equality and basic well-being of women. When women own and control land, there will be more food in each household and more crops for export since they do most farm work. They will also be protected from eviction when they are widowed or divorced. The current system discriminates against women, which violates the equality provisions of CEDAW and the gender equality framework set by Beijing declaration, and the SADC Gender declaration. The study countries are making some progress towards improving the land rights of women. However, there are still outstanding gaps and actions that need strengthening.

Based on the findings in this paper, the following recommendations to help reverse the pattern of discrimination against women in land ownership and control are put forward:

1. The review and repeal of all personal, family and customary law, including provisions on inheritance, which discriminate against women, as well as the review and repeal of any other legislation that prevents women from owning land or entering into contracts in their own right.
2. Once supportive new laws have been formulated, there is need to disseminate new laws that promote the rights of women to land so that they are widely known among Government officials, NGOs, media, traditional leaders, land allocation committees, and the development community working in rural areas.
3. Support the training of legal personnel (including those who administer customary law) on women's land rights issues.
4. Statutory provision for joint registration of customary and statutory household land rights for spouses.
5. There is need to form body at the national level, that will closely monitor the implementation of the legal framework on the ground to ensure that some progress is made in achieving land rights of women. If such institutions are already in existence, there is need to strengthen them to achieve their goals.
6. There is need to develop national and local level indicators (gender disaggregated) that would measure progress towards equity for women in land rights.
7. Equal representation of men and women in municipal councils, tribal authorities and all decision-making structures related to land.
8. Active sensitization and education campaigns to change the patriarchal attitudes. Establishing new laws alone is not enough; existing gendered social relations and cultural

norms may quickly shape these laws. There is need for measures to counter preexisting social forces through education and training of both men and women.

9. Empower women socially and economically. This may involve legal literacy campaigns, provision of credit, waive transaction costs for land registration, and provide market access.
10. Draw up legislation that can protect the land rights of women and orphans in the context of the HIV/AIDS epidemic.
11. It is important for the United Nations and civil society to help individual countries to promote women's rights in compliance with the convention and fulfill their reporting requirements.

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### Annex 1. Gender-related Socio-economic indicators for countries in Southern Africa

Indicator	Angola	Botswana	Lesotho	Malawi	Mauritius	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
Land area (000 sq km)	1,246.7	566.7	30.3	94.1	2.0	784.1	823.3	1,221.0	17.2	743.4	386.8
Customary land tenure (% of national land area)	n.a.	70	95	70	n.a.	80	43	14	60	81	42
GDP/capita million US\$	9,471	5,196	797	1,749	4,500	3,607	3,100	113,274	1,255	3,639	9,057
% GDP from Agriculture	8	2	16	34	6	22	11	3	17	22	18
Adult FEMALE Illiteracy rate	na	19	6	52	18	70	18	15	21	27	15
Total adult illiteracy rate	..	22	16	39	15	55	17	14	20	21	11
Total Population (millions)	13.5	1.7	2.1	10.5	1.2	18.1	1.8	43.2	1.1	10.3	12.8
% Total population Rural	65	51	71	85	58	67	69	42	73	60	64
HIV Prevalence rate (% of adult population) 2002	5.5	38.8	18.0	15.0	0.1	13.0	22.5	20.1	33.4	21.5	33.7
% Women in Parliament (2000)	15.45	18	10.7	8.29	7.58	28.4	14.1	28	4.2	10.13	14
Year of ratification of CEDAW	1986	1996	1995	1987	1984	1997	1992	1995	*	1985	1991
Plan of action submitted to CEDAW	Yes	No	No	Yes	Yes	Yes	Yes	Yes	*	Yes	Yes

Source: World Bank, 2003, UNDP, 2002, CEDAW, 2003, UNAIDS, 2002.

\* Not part of CEDAW