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**Improving Access to Land and strengthening Women's land rights in Africa.**

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## **Improving Access to Land and strengthening Women's land rights in Africa.**

By Millicent Odeny

### **Abstract**

The need to improve access to land and strengthen women's land rights in Africa has elicited a lot of discussion with women's rights activists arguing for increased access and control over land and other productive resources. The paper examines inter-relations between women's land rights and socio-economic development, peace and security and environmental sustainability in Africa. It goes on to highlight the impacts of the discrimination against women with regard to access, control and ownership of land and identifies promising practices related to strengthening women's land rights with possible benchmarks and indicators to track progress made in strengthening women's land rights in the context of the implementation of the AU Declaration on land. It concludes by providing concrete recommendations on how to further promote dialogue, advocacy, partnerships and capacity development in support of women's land rights in Africa.

This paper is as a result of a study commissioned by AU-ECA-AfDB Land Policy Initiative (LPI) which is implementing a 5- year Strategic Plan and Roadmap to assist member states in the implementation of the *AU Declaration on land issues and challenges in Africa*, in accordance with the *Framework and Guidelines on Land Policy in Africa* in order to achieve socio-economic development, peace and security, and environmental sustainability.

### **Key Words**

**Women, Access to land, security of land rights, gender equity, Africa**

### **INTRODUCTION**

The Land Policy Initiative (LPI) was established in 2006 as a joint programme of the tripartite consortium constituted by the African Union Commission (AUC), the United Nations Economic Commission for Africa (ECA) and the African Development Bank (AfDB). In its first phase (2006-2009) the LPI was successful in developing the *Framework and Guidelines on Land Policy in Africa (F&G)*, with a view to facilitating land policy development, implementation and monitoring.

The *F&G* was developed in collaboration with the Regional Economic Communities (RECs) through a highly consultative process and a rigorous roadmap of activities, including regional assessments and multi-stakeholder consultation workshops on land policy; it was reviewed and adopted by the African Ministers responsible for land, in Addis Ababa, Ethiopia, in April 2009 after which it was endorsed by the highest level of African governance, the AU Heads of State and Government, through a *Declaration on Land Issues and challenges in Africa*, during the 13th Assembly of the African Union in Sirte, Libya, in July 2009. The launching of the implementation of the AU Declaration on Land at the Conference of African Ministers of Agriculture in Lilongwe Malawi in October, 2010, marked the

beginning of the second phase of the LPI, dedicated to the implementation of the AU Declaration on land.

The Regional Assessment Studies on Land Policy conducted for Central, Eastern, North, Southern and West Africa by the LPI between 2007/2008 highlighted the issue of access to land and security of land rights for African Women as a key constraint to Africa's socio-economic development<sup>1</sup>. The Assessment identified some of the key issues relating to women's land rights as: Women and customary land rights regimes; Women's land rights in the context of statutory law; Women, land and Agriculture; Women's land rights in the context of rapid change; which are analyzed in this study.

The study on "Improving access to land and strengthening land rights of women's in Africa" was commissioned by the Land Policy Initiative as one important component of the implementation process of the AU Declaration on land. LPI has included this important issue in its strategic plan. In this regard, the LPI will aim to achieve the following in support of women's land rights:

- Promote knowledge generation, information sharing and networking at all levels in order to promote land policies that are sensitive to the specific needs of African women
- Facilitate dialogue on women's land rights issues with a view to raising awareness on the importance of addressing related challenges that hamper socio-economic development, peace and security and environmental sustainability
- Advocate for women's land rights in the context of land policy development and implementation, and indeed in the context of implementing programs in land based sectors of Africa's economies
- Coordinate and galvanize the efforts of partners towards effective synergies and partnerships for addressing women's land rights
- Facilitate capacity building at all levels in support of women's land rights in the context of land policy development and implementation in Africa
- Develop monitoring and evaluation tools in support of addressing women's land rights issues in land policy development and implementation
- Provide technical support and advisory services to RECs and members states who are in need of support to integrate/address women's land rights issues in land policy development and implementation
- Facilitate resource mobilization in support of efforts to address women's land rights in land policy related research, advocacy, capacity building, technical support and advisory services

The overarching objective of the study is to enhance knowledge (generation and dissemination), build evidence and raise awareness on the need to strengthen women's land rights for sustainable socio-economic development, improved livelihoods, environmental sustainability and enhanced governance of land and land-based natural resources.

The specific objectives of the study are:

- a) To clarify the inter-relations between women's land rights and socio-economic development, peace and security and environmental sustainability in Africa, highlighting the impacts of the discrimination against women with regard to access, control and ownership of land;
- b) To identify, document and disseminate promising practices related to strengthening women's land rights;
- c) To examine possible benchmarks and indicators to track progress being made in strengthening women's land rights in the context of the implementation of the AU Declaration on land.

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<sup>1</sup> AUC-ECA-AfDB Consortium (2010). Regional Assessment Studies on Land Policy in Central, Eastern, North, Southern and West Africa: Synthesis Report

- d) To provide concrete recommendations on how to further promote dialogue, advocacy, partnerships and capacity development in support of women's land rights in Africa.

## **1.1. METHODOLOGY**

The study was essentially done through desk reviews based on materials sourced from internet and documents provided by the LPI. The consultants conducted interviews with key informants working on land issues (mainly in their base countries) including gathering the information on what partners and key stakeholders have achieved in strengthening/improving land rights for women in Africa. In addition, they had expert interviews with selected resource persons with regard to what strategies/promising initiatives they have used in improving women's land rights.

The consultants have used a consultative approach in identifying inter-relations between women's land rights and socio-economic development, peace and security and environment sustainability in Africa. Based on the forgoing, this report is based largely on qualitative information. Nonetheless it brings together useful information needed to improve women's land rights in Africa

### **2.1 Women's Land Rights in the Development Context**

There is an increasing body of literature which has produced tangible evidence highlighting the insecure position of women's land rights. The existing gender inequality in access to and control over land and natural resources is an obstacle to the sustainable management of natural resources and socio-economic development. Land is one of the cornerstones of economic development on which farmers, pastoralists and other communities base their livelihoods. Land is also a significant component of business assets, which play significant role in business investment strategies. Thus, securing land rights can have a profound impact on economic development. Land in rural areas is both a means of agricultural production, livestock rearing and a place for gathering natural products that play an important role in local economies such as woodcutting, wild harvesting, grazing, fishing, hunting, etc. Furthermore, land is a source of identity and cultural heritage.

Land is an important source of security against poverty across the continent and developing world, unequal rights to land put women at a disadvantage, perpetuate poverty, and entrench gender inequality in Africa. Gender has become a critical issue in women's land rights due to the fact that there is direct relationship between accessing land resources, having secured land rights, achieving food security and overcoming poverty. Women produce more than 80% of the food in Africa, yet they own only 1% of the land (SOFA, 2011). Therefore, improving women's access to and control over land is crucial to socio-economic development of Africa.

Donor-funded development projects also tend to overlook women's land rights. For instance, when irrigation was introduced on a development project in the Gambia, 87 percent of the improved lands were registered in men's names, while only 10 percent were allocated to women, even though women were recognized to be the main rice producers on swamp lands (Guijt, 1992).

### **2.2 Legal and policy situation relating to Women's land rights in Africa**

Several countries in Africa have either formulated their land policies or are in the process of doing so. Reforms that seek to formalize land rights must intentionally consider the economic, social, and political dimensions of property rights to ensure that women are not left worse off by the process. At the same time to be effective in the long term, the reforms must consider the social as well as legal legitimacy of the change they seek.

While African countries have achieved different legal and policy strides in addressing the land issue, studies have shown that even where laws are equitable, women may not know their legal rights. In addition, implementation may still be gender-biased, and law enforcement may be grossly inadequate

or prejudiced against women. In Kenya for example, laws technically allow women to own land, yet nearly all land is registered in the names of male elders. This needs a concerted effort and the diligent implementation of the newly enacted land laws to benefit the women.

It is important to examine legislations in African countries that affect women's land tenure rights with a specific reference to the types of rights that exist and how those rights are held including whether women can hold property in their own names. Legal situation of women's land rights to be looked at beyond land laws, family laws, inheritance laws in particular are critical to the land rights of women. Some African countries have positive action oriented provisions in their legislation, however implementation remains a major challenge.

### **2.3 Programmes implementation related to Women's land rights**

The international community has increased funding towards skills building and strengthening of institutions that work in the arena of women's land and property rights<sup>2</sup>. There has also been investment in literacy campaigns to increase awareness on women's land rights. IFAD has developed the *Women's Land Rights Project* that raises awareness and capacity building/training for IFAD headquarters and field staff; mainstreaming the strengthening of women's land rights through policy dialogue at country level; participatory research and analysis at country/project level; piloting and documenting of appropriate methodologies which strengthen women's land rights; and, sharing of lessons learned at country, regional and international levels.

FAO, Action Aid and Oxfam GB also have a number of projects being carried out in many African countries with regards to advocacy and capacity building focusing on women's empowerment, women's land rights, agriculture and natural resource management in the aim of reducing poverty and ensuring food security.

Five case studies conducted in different countries, i.e. Niger, Burundi, El Salvador, Tanzania and Rwanda analysed aspects related to interventions that vary from legal support (Burundi), to technical assistance for leasing agreements (El Salvador); from trying out and analysing a methodology to support all the landowners, and providing a flexible mechanism for the acquisition of land certificates that is accessible to vulnerable farmers and is suitable for large-scale replication (Niger) and land registration processes (Rwanda) to village land use planning (Tanzania).<sup>3</sup>

A project in Rwanda implemented by RISD showed the effectiveness of the sensitization, awareness raising and information dissemination activities carried out by various actors at project and government level on women's land rights, the land laws, on the registration process and on the advantages that these could bring to women as well as men in their daily lives. Both men and women were informed of their rights and what the registration process could bring in terms of security of rights and potential benefits on their livelihood, e.g. facilitating their access to credit (Carpano, 2011).

### **2.4 Land administration and management and Women's land rights**

In order for land to play a key role in socio-economic growth and poverty alleviation, a functioning land administration system must support secure, easily transferable land rights and be capable of: (1) maintaining comprehensive, clear, accessible land records; (2) creating mechanisms for the efficient and effective transfer of land for a reasonable fee; and (3) providing accessible avenues for handling land disputes fairly, predictably, and in a timely fashion<sup>4</sup>. Securing the existing tenure rights in an accessible manner would be key to a functioning land administration system. Most African countries' systems do not currently support these elements of a functioning land administration system – either in design or in practice. The systems suffer from an incomplete design, incomplete (or non-existent)

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<sup>2</sup> UNIFEM, and the Canadian International Development Agency, launched a Fund for Women's Property and Inheritance Rights in the Context of HIV/AIDS. The Fund assists grassroots and community-based organizations or networks in sub-Saharan Africa working to improve women's access to property and inheritance rights within the context of HIV/AIDS.

<sup>3</sup>

<sup>4</sup> World Bank, 2003. Land Policies for Growth and Poverty Reduction (Washington DC: The World Bank), at 79-98. Strengthening Land Tenure and Property Rights Land Law and Policy. See Robin Nielsen, 2007. Background Report: Land Dispute Systems in Angola (on file with RDI).

data on land holdings, lack of records, cumbersome, time consuming, and imperfectly understood transaction processes, high transactions costs, lack of information and processes to determine land values, and lack of institutional capacity to create and maintain records to manage transfers.<sup>5</sup>

The informal systems of land administration and management operate in a void that makes women's participation or leadership in land administration and management particularly difficult. It is therefore imperative to assess whether principles of gender equity are broadly embraced, socially or legally accepted, and promoted at the institutional level (such as land registries, courts, conflict resolution institutions, and local land administration agencies); assess the gender balance within land administration agencies; and examine the rules, institutions, and players involved in customary, religious, and informal frameworks - particularly those regarding inheritance and divorce.

## **2.5 Women's participation in decision making over land matters**

While in some African countries women's land rights are enshrined in the constitution or land law, in reality this does not bring feasible outcomes with respect to equitable access and control over land due to poor implementation and enforcement of the laws. Women still lack decision-making power. Effective land administration requires women's participation at policy formulation and at level of implementation on an equal footing with men in order to ensure gender-equitable land tenure system. Participation of women in local land management and administration committees including in land dispute resolution/management committees is basic for women's empowerment as it enables them to take part in community level decision making processes.

Meaningful representation is an important step towards helping women gain access to established rights. It is not just a matter of placing women in positions to add to numbers, but to ensure that their voices are heard. Women must be an integral part of the implementation of land reform programmes. Training community members as paralegals, topographers and conflict mediators can help build community skills and increase the probability that women's concerns will be addressed. Women's organizations can be effective tools in promoting local participation, building consensus and raising consciousness at all levels, especially as women are generally not well represented in decision-making bodies, and they are often instrumental in pressuring for government programmes to include women as equal participants.

## **2.6 Women landlessness**

Throughout Africa, the vast majority of poor women (most of whom depend on land for their livelihood) are either landless or have limited and insecure rights to land. This reality has important consequences for sustainable socio-economic development of the continent.

Expropriation of land by colonial masters, introduction of tenure systems alien to Africa and concentrating African population to designated areas<sup>6</sup> significantly contributed to landlessness in Africa. The development of extractive industries such as mining, introduction of land markets, and large-scale agriculture, bio-fuel plantations and tourism are displacing people in large numbers. Many of these people are women and children and they have no hope of living dignified life again.

Women become landless in some countries under this assessment due to different reasons. Conflict is one of the reasons; for example, in Eritrea, women became landless when they returned home after civil conflict; in Sierra Leone and Sudan women IDPs face similar problem. Landlessness also became an issue in Libya after the conflict. The 2007-2008 Kenyan post-election violence rendered many families whose majority were women landless. Some of the people who were affected by the post-election violence have not yet been resettled five years down the line. In South Africa the

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<sup>5</sup> CARE- Angola, 2005

<sup>6</sup> These included Bantustans in South Africa, Native lands in Zambia and Zimbabwe

apartheid regime created Bantustans for black African communities; as a result, many people deprived of their land and source of livelihood. To-date the South African government is still grappling with restitution and land restoration. Customary and traditional practices also result in landlessness in cases where women are denied inheritance right to parent's land and are evicted from marital home after divorce or being widowed due to HIV/AIDs and other related deaths

Land redistribution and restitution programmes in South Africa have moved at a snail's pace that many doubt if they will ever achieve the intended purpose<sup>7</sup>. In Zimbabwe, the impact of land reform on women was marginal as only 18% of female applicants benefited from A1 model (communal farming) while another 12% benefited from A2 model (commercial farming) (Mgugu, 2008). The Lackluster implementation of countries' commitments is creating landlessness in some countries even where land is in abundance; and women are the most affected.

The emergence of Landless People Movements (LPMs) on the African continent should be a wake-up call to authorities to take decisive action to address the situation before it gets worse

## **2.7 Women and slum upgrading**

In most societies, women and men tend to have different roles, responsibilities, needs, priorities and perceptions. As a result, slum upgrading generally affects women and men differently. Experience has shown that making a conscious effort to incorporate the gender dimensions of slum upgrading results in a more successful initiative.

Women play a vital role in slum upgrading. Increasingly, more and more slum households are headed by women. Many are women with children whose husbands have left them behind to look for work elsewhere. In other cases, women have fled to the slums to escape domestic violence, discrimination in rural areas, or difficult situations created by divorce or marital disputes. The ever increasing number of single mothers demands an urgent and proactive response to the plight of such group of people in African slum areas for their lives to be worth living.

A key aspect of slum upgrading is community participation, and women are at the heart of the community, they are mostly the ones who save money, look after the children, and care for the sick or elderly. The skills they have used to run households can be applied on a community-wide scale to run a savings scheme, for example, or manage a community construction project.

Kibera in Nairobi is the largest informal settlement in Kenya, and the second largest in Africa. Kibera covers an area of 256 ha and is home to approximately 800 000 (Kaiganaine, 2009) people, a quarter of Nairobi's population. Kibera's land is officially government-owned and the residents are squatters. Insecure tenure means tenants and structure owners (like landlords but not land-owning) are in a vulnerable situation. The broader issue of gender, and the resulting vulnerability, is also a factor. While both men and women living in slums face hardships, women—especially widows, single and teenage mothers—are particularly vulnerable. They are more likely to be victims of violence or subject to cultural norms that do not give them the same legal rights or status as a man. In addition, women are more vulnerable to poverty because they often have limited access to land control and assets outside of marriage or within family ties.

These issues must be taken into consideration when planning or implementing slum upgrading programmes.

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<sup>7</sup> African National Congress conference of 2007 noted the slow pace of land redistribution and identified 'Willing buyer, willing seller' concept as among the principal contributing factor and has since resolved to replace it with 'just and equitable principle' in the Constitution

### 3. THEMATIC ANALYSIS (INFORMED BY CASE STUDIES)

#### 3.1 Women's position under customary land tenure

The bulk of the land in Africa, about 75%, is under customary tenure<sup>8</sup>, administered by unwritten law based on tradition and cultural norms prevailing in an area for a particular tribe of people. Although there are many tribes in Africa, there are basically two types of land and property inheritance regimes: *Patrilineal* systems where male lineage holds power and inherits property and *matrilineal* systems where the female lineage has right to inheritance. These systems guide handling of family and resolution of land disputes at chiefdom's level. Male members of the family are allocated land whenever they need it. Female members are also allocated land but only through male members and such allocation is temporary because once married they are expected to live and access land at their spouses' home. In essence women are treated as people in transit from natal home to join their spouses.

#### 3.2 Factors affecting Women's land rights under customary tenure

Under customary law women's access to and ownership of land is impacted by a number of factors, among which are:

##### 3.2.1 Constitutional Bias

In recent times an increasing number of countries have recognized women's equal rights in their Constitutions, thus complying with international human rights standards and Obligations, for example UN Human Rights Charter, CEDAW. However, some Constitutions are neutral while others such as those of Zimbabwe, Zambia and Lesotho have discriminatory provision in customary and personal law matters such as inheritance. In some countries such as Uganda, South Africa and Mozambique there are Constitutional provisions that prohibit discrimination, including in customary law and practice (UN-Habitat, 2006). Clearly these are progressive Constitutional provisions but how they translate in practice is what, in part, this study is exploring.

##### 3.2.2 Stereotype

The patriarchal setting on the African continent whereby male dominate on matters concerning land makes it difficult if not impossible for women to access and own land in their own right. They are allocated land by male forks within their clan or through their male spouses. This state of mind-set has prevailed at all levels of society for time immemorial.

##### 3.2.3 Lack of awareness on legal provision

Although most countries in Africa have constitutions which ascribe to equality between male and female and land laws which are either gender-neutral or affirmative on women's land rights, generally the general public is not aware or conversant with such provisions. This is because once the land policies are adopted and land laws passed, there is no deliberate efforts made by the State to sensitize the general public on what these documents say about peoples' land rights in general and women land rights in particular.

##### 3.2.4 The gap between high-level commitments and implementation practice

Most African Governments have ratified the international Conventions on Elimination of All forms of Discrimination Against Women (CEDAW) and made commitments to the *Constitutive Act (Article 4 (I))* to gender equality and AU Protocol on the Rights of Women in Africa (2003) (ratified by 31 states to date). In addition, national Constitutions ascribe to equal rights between men and women. Implementation of these high-level commitments remains a challenge because "the principle is not prioritized as a policy objective, nor serious attention is paid to how to carry through these commitments in practice, outside of a small number of dedicated projects"(Walker, 2001b in Walker 2003)<sup>9</sup>. High level commitments are not popularized or domesticated in national laws.

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<sup>8</sup> Sage, C., (2005) 'Breaking Inequality Traps' in Sida Quick Guide to What and How: increasing women's access to land, Women's Economic Empowerment Series.

<sup>9</sup> Although statement was made on the basis of "Land Reform in Southern and Eastern Africa: Key issues for strengthening women's access to and rights in land" study, it can be extrapolated to cover much if not all of Africa.

#### 4. HIV AND WOMEN'S ACCESS TO LAND

The HIV pandemic is engendered. Women are disproportionately impacted. The vulnerability of women and girls to HIV remains particularly high in sub-Saharan Africa: about 76% of all HIV-positive women in the world live in this region. Further 59% of all people living with HIV in sub-Saharan Africa are women

With respect to accessing, owning and controlling land, women with HIV and AIDS are negatively affected because of a number of reasons among them are:

- Current land policies do not specifically consider the needs of HIV/AIDS women who are a majority of HIV-positive adult people in sub-Saharan Africa.
- They are usually thought to be the ones who brought the disease in the family.
- Misconception that once one is HIV-positive he/she will soon die.
- That a person with HIV and AIDS does not have energy or means to use land effectively.

Women's land rights are particularly affected in the negative because widows are often dispossessed of property of the deceased spouses. This happen even where inheritance laws protect women from such vices; but as already discussed, in rural areas, customary law rules supreme. As widows are deprived of the land, their source of livelihood is lost. Drimie (2002) observes that dispossession of AIDS-widows was 'increasingly becoming a problem in locations with patrilineal inheritance' systems.

#### 5. WOMEN'S LAND RIGHTS IN THE CONTEXT OF STATUTORY LAW

Women's land rights, in law and in practice is an essential step towards the empowerment of women. It is also critical in determining economic wellbeing and social status of women. Laws alone are not enough to secure women's access to and ownership of land. The effectiveness of laws depends on awareness about them, the abilities to invoke them the general governance environment, and to what extent cultural norms and traditions are practiced and followed instead of formal laws.

Just as important as laws, but often overlooked, are the regulations for implementing the laws. Beyond a normative declaration of women's and men's equal rights to land like those often contained in a general land law, rules, regulations, and procedures can have the biggest impact on women's land rights in practice.<sup>10</sup> Statutory law—if enforced—can support women's secure rights to land, but enforcing the law can be difficult because the justice system is often inaccessible and costly, and high land values provide an incentive for illegal land grabbing. Beyond general proclamation of equal rights to access and own land, certain legislations have specific positive action provisions. However main issue remains implementation.

##### 5.1 Constitutional provisions on women's land rights

In Kenya, the new Constitution (2010) addresses women's plight to land ownership and creates the necessary legal and institutional framework to ensure full realization of women's right to land and other related resources. The Land Acts<sup>11</sup> which were enacted in 2012 also have promising provisions (spousal consent in land transactions, equal recognition of men and women, and co-ownership) which if implemented can strengthen women's land rights. It is important to note that good land laws often remain unapplied because of the lack of secondary legislation and regulations and procedures for their implementation. It is therefore essential to improve land law enforcement and develop gender-equitable regulations, procedures and strategies for implementation (FAO, 2008a: 12).

The Kenyan Constitution and the National land policy (2009) have adopted the African Union - Framework and Guidelines on land Policy by recognizing women's rights as well as ensuring equitable access to land by the landless, women, youth, displaced persons and other vulnerable groups. However, the implementation of these provisions are yet to be put to test to see how effective they can be in enhancing and strengthening women's land rights.

<sup>10</sup> UNWOMEN :Women's land rights in the context of land tenure reform: legal considerations

<sup>11</sup> Land Registration Act, Land Act and Land Commission Act 2012

Effective land rights are highly dependent on measures broadening access to justice and rule of law to women who to a large extent have been excluded. Case law in South Africa, Kenya, Tanzania and Zimbabwe shows how individual women with the assistance of civil society have been able to use litigation as a means of improving the protection of women's property rights.

A study on the impact of statutory land policies and land reform in Uganda's Kapchorwa and Luwero districts showed that women have limited knowledge of their property rights under the legal system and that gaps in the legal system prevent inheritance and co-ownership of property acquired in marriage (WLLA 2010). This calls for legal empowerment to enable them claim their rights.

For example in Uganda, studies reflect that a gap exists between written law and practice. This lack of implementation is caused by many factors; socio-cultural and traditional norms being the major ones; this was the main reason for lack of implementation of the Land Act "consent clause" (Uganda 1998). In Ethiopia and Eritrea the policy implementation bodies are structured in the government system and are entrenched from higher to lower administrative levels.

In general, legislations provided in line with the principle of gender equality in order to protect women's rights to access and control over land fail to meet its objectives due to lack of appropriate implementation.

In Tanzania the current legislation guarantees equal rights for both women and men to buy, own, use and transact in land. However, customary norms in rural areas are still biased against women – as wives, widows, sisters, daughters, divorced and separated women – limiting their ownership of and control over land.

The 1999 land laws (Tanzania) push for equal treatment between men and women and aim at safeguarding women's land rights by ensuring female representation in land administration bodies. This is done through direct elections, appointing special seats, or affirmative action. However, this raises new questions regarding women's empowerment, gender equality and political accountability. What is the background of the women who are elected, how are they elected, and to whom do they see themselves as accountable? This suggests that positive steps should be taken to ensure that poor and often illiterate women have a voice in these institutions.

The Land Use Act (1978) of Nigeria was enacted to deal with the problem of uncontrolled speculations in urban lands, make land easily accessible to every Nigerian irrespective of gender, unify tenure system in the country ensure equity and justice in land allocation and distribution and, amongst others, prevent fragmentation of rural lands arising from the application of the traditional principle of inheritance.

In practice however, women in most communities in Nigeria are denied rights to land and the provisions of the Constitution on the Land Use Act (1978) do not guarantee equal access of men and

***Tanzania: The Land Act and the Village Land Act of 1999.***

The Village Land Act designates Village Councils to administer village land. The Land Act specifically declares that women have the same rights as men to acquire, own, and use land. It also provides that where land is held in the name of one spouse, the other spouse has a presumed right of occupancy and that the disposal of land requires consent by both spouses (Walker 2002). The Village Act authorizes the Village Council to allocate land and specifies that at least one third of its total of 25 members should be women, and that a quorum of four members must have at least two women. It also establishes Village Adjudication Committees to deal with disputes and provides that the interests of women, absentees and the disabled should be safeguarded (Walker 2002).

women to land as was envisaged. It does not guarantee adequate compensation for land compulsorily acquired; rather it reinforces discriminatory customary and cultural practices that deny women access to land, an important means of production. The Act vested the ownership of land rights in the state to ensure equal access to land but this has not helped much. (Mabogunje, 1992: 20).

In Ghana, Article 35(1) of the 1992 Constitution enjoins the state to promote the integration of all peoples and prohibit discrimination and prejudice on grounds of origin, circumstances of birth, ethnicity, gender and other beliefs. The Constitution also requires the state to guarantee the ownership of property and the rights of inheritance of all, Article 36(7). However, the land tenure and administration system in Ghana faces serious problems which undermine these Constitutional guarantees. The Ghana National Land Policy (1999) has identified a number of difficulties relating to land tenure and administration, e.g. insecurity of tenure of certain groups. The interests and the impact of land administration and land tenure of women has not been mentioned. This creates a problem which needs to be addressed.

South Sudan, the newest nation in the world who attained her independence on 9th July 2011, has one of the most progressive Constitutions and a Land Act which recognizes equal rights of access of men and women to land. The Constitution, the Land Act and the newly adopted Land policy assert that women can own land, while customary law does not recognize women's property ownership. However, neither customary nor formal institutions enforce women's land ownership.

Women's access to land and property has not been an issue in the past in South Sudan as it was considered that their access was guaranteed through marriage and family. However, as a result of the two decade conflict between the North and South Sudan during which a huge percentage of males died, 45-50 percent of the returnee households became female headed. (Odhiambo, M: 2009)

With the commencement of repatriation, resettlement and restitution programmes, the issue of women's access to land and property rights has become a contentious one and needs to be addressed in the context of the prevailing customary practices in South Sudan. The major challenge is the implementation of these progressive provisions in the Constitution and in the Land Act 2009 to benefit women.

The Liberian Constitution currently deals with property ownership under sections 22, 23 and 24. More particularly, sections 22 and 23 guarantee that "every person shall have the right to own property alone as well as in association with others;..." On the face of it, this should guarantee women and men equal rights in property ownership and one can assume that opportunities and spaces for women to acquire and own property are the same as men but the reality may be far from this.

A snapshot on some countries constitutions shows that governments have on paper constitutional provisions which uphold equal rights and does not discriminate against women. This is commendable. However, while law has the potential of addressing social injustices, there are limitations to the role that laws can play in addressing women's land rights. This is clearly evident from the literature gathered in this study. There is a huge gap between laws, policies and legal proclamations and the implementation of the same. This

#### Snapshot of some countries constitution on equal rights.

**Angola:** Angola's Constitutional establishes a right of nondiscrimination on the basis of sex (Article 18) and provides for the equality of men and women within the family. (Article 29).

**Botswana:** The Botswana constitution Section 15 of the Constitution states that there shall be no discrimination on the basis of sex.

**Lesotho:** The Constitution provides for fundamental human rights to all people regardless of sex or status

**Malawi:** Article 24. (1) of the Constitution accords women the right to full and equal protection by the law, and have the right not to be discriminated against on the basis of their gender or marital status. Article 24 (2) states that any law that discriminates against women on the basis of gender or marital status shall be invalid and legislation shall be passed to eliminate customs and practices that discriminate against women

**Mozambique:** Article 67 of the Constitution recognises equality between men and women. The Family Law of 2003 provides for joint registration of property for married people.

**Namibia:** Article 10(1) stipulates that all persons are equal before the law. Article 14(1) explicitly recognises women's equal rights before, during and upon dissolution of marriage.

**South Africa:** 1996 Constitution of South Africa upholds 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.

**Swaziland:** The 2005 Constitution states that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

**Zambia:** Article 11(1) recognizes and declares every person in Zambia to be entitled to the fundamental rights and freedoms of the individual, whatever "his sex".

**Zimbabwe:** The Constitution amended in 1996 prohibits discrimination based on gender

is apparent in countries like Uganda which have progressive laws and policies but they remain just paper work due to challenges with implementation on the part of the government. Lessons from other East African countries demonstrate that without clear plans and allocated resources for implementation and awareness raising of the policies, they do little for the empowerment of women and other marginalized groups.

While African countries have different statutory laws, constitutional rights and national land policy reforms, women face similar types of struggles in accessing, controlling and benefiting from land – although they succeed or fail in these struggles depending on the strategies that they employ. One way to address the inequities is to take into account the contribution that women make in terms of household, child-rearing, agricultural and income generating work as contributions towards the ownership of property (Kameri-Mbote, 2006). It might also be worth taking into account Kameri-Mbote's suggestion that there are limits of law in engendering social transformation and that we must engage in other types of strategies to bridge the gap between laws and practice (2006:1).

### **6.1 Women, agricultural and land**

Agriculture and rural life remain the backbone of African societies. Majority of the African population live in rural areas and rely on agricultural production both for domestic food consumption and as a source of income; agricultural products are a basis for export economies for most African countries

Women mostly do not have direct access to agricultural land in countries under this assessment; women get access to family holding or clan holding through marriage and farm on it, resulting in precarious use rights. Widows exceptionally get direct access to land, although customary and traditional practices affect them in some countries. In Egypt and Libya women's agricultural land is managed by male relatives. In Somalia land belongs to sons and mothers farm on their son's land. Land tenure systems that support gender equity can serve to increase women's power in agricultural production enhances economic empowerment and foster better status in social relationships

### **6.2 Women and Natural Resources**

Rights to natural resources are extremely important for rural women. This is because women's livelihoods crucially depend upon these resources. Natural resource rights vary from country to country based on the land tenure system. Legislations concerning natural resources other than land usually do not explicitly address gender issues, although there are few exceptions.

Natural resources such as water and forests are productive resources that are basic to security of rural women's livelihoods. It is widely acknowledged that despite women's relationship with natural resources, they tend to remain outside the associated decision-making processes. For instance, although women are most affected by access to potable water, they often remain on the periphery of local water management institutions, such as water users' associations.

Studies have shown that local people, particularly women, have specialized knowledge, traditions, and self-interest that make them the most efficient managers of the resources they use (Colchester, 1993; Panayotou, 1993).

## **7. WOMEN LAND RIGHTS AND LARGE-SCALE LAND BASED INVESTMENTS**

Investors occupy large areas for their use without consideration of legal and customary logic and the sources of African law that is fundamentally community-based. Women have fragile access to land and most investors who acquire land for large scale investment sometimes disregard women's interests who work on the land to provide food for a large part of the families. To properly grasp this phenomenon of large scale land investment and its impact on women in Africa, it is appropriate to pay attention to the related discourse and observe field practices, everyday life, and rights. It is therefore easy to notice that the acquisition of large scale

of land in Africa is not a fate. In fact, the analysis shows that large-scale land transactions are a development opportunity for African law and the effectiveness of development law.

Women as well as pastoralists are particularly exposed in the context of large scale land transactions as their rights are not recognised within the community. Among the requirement should be open forum consultation between the would-be investor with community members to be affected, including women. In addition, it is absolutely necessary that people be informed throughout the negotiation process, benefit which will accrue to the communities should the transaction succeed.

## **8. WOMEN, LAND AND CONFLICTS**

Conflicts are most often considered to be the main cause of inter-family or inter-ethnic confrontations opposing the families or ethnic groups. In the Great Lakes Region and in South Sudan, land conflicts result in serious disputes, sometimes leading to quarrels in the form of pitched battles, poisonings, imprisonments,... or even deaths in extreme cases. Moreover, these conflicts lead to a socialization of the exclusion of women from land in terms of access, control and management of conflicts.

The women who are the primary victims of land conflicts are absent from the management of land conflicts. "They are excluded from public decision-making, including in the area of the management of conflicts related to natural resources for cultural reasons of division of labour between the sexes, as well as for the masculine character that accompanies land resources and their control. Women are rarely members of committees for the management of peace in Mali" and they are inactive members of basic land commissions in Niger as a result of the fact that the choice fell on those who no longer farm owing to their advanced age and who are not even called to meetings, they are inactive members (concerning the only widows of the *bashingantahe*) of the assemblies of the *bashingantahe* in Burundi, etc.

## **9. CAPACITY DEVELOPMENT INITIATIVES TO ENHANCE WOMEN'S LAND RIGHTS IN AFRICA**

Many African governments have Constitutional provisions for equal rights between men and women, and have also developed land policies which uphold women's land rights. However, implementation remains a challenge for a number of reasons among which are:

- Lack of or inadequate capacity by government institutions charged with responsibility of implementing such provisions and land policy;
- Ignorance by women thereby negating their ability to claim their land rights;
- Conflict between constitution and/or statutory laws on one hand, and customary practices on the ground on the other.

In recent years, international bodies have recognized the threats posed by the limited access to land for women in sub-Saharan Africa. Various NGOs are now active in the region on the question of women's land rights. Programmes focusing on land policy formulation and implementation are being supported by development partners and women's land rights issue is central in these programmes. The World Bank, FAO, UNDP, UN WOMEN, Oxfam GB, CIDA Canada, Sida Sweden, CARE International, Action Aid International, USAID, EU, DFID, etc could be cited as examples of development partners operating in different countries under this assessment. These partners are actively supporting land and agriculture related programmes and projects in different countries; for example FAO and UNDP are assisting Somalia, whereas Ethiopia is supported by World Bank, USAID, DIFD, etc.

Local NGOs such as the Uganda Land Alliance (Uganda), Zambia Land Alliance (Zambia), LandNet (Malawi), Ethiopian Women Lawyers Association (Ethiopia), Federation of Women Lawyers in

Kenya, the Legal Assistance Centre in Namibia, Malawi's Women's Voice, and the Women's Legal Aid Centre in Tanzania are also influential in pushing forward the women's land rights agendas in their respective countries. Women's organizations at grassroots level also have sound contributions in many countries (for example Sierra Leone), and are also weak or non-existent in some countries (for example Libya). Existence of strong grassroots women's organizations is crucial particularly to narrow the gap between policy and implementation.

## **10. NOTABLE PRACTICES AIMED AT ENHANCING WOMEN'S LAND RIGHTS**

Some countries in Africa have taken bold steps to enhance women's land rights. Some of the steps are:

### **10.1 Affirmative policy by government**

In some countries like Botswana, Malawi, Tanzania, Burkina Faso and others governments have set numbers or percentages of women to sit on land boards, land tribunals or land committees at various levels.

In Malawi a recently implemented resettlement project had set 30% of beneficiary households to be women headed.

In Zambia the government adopted affirmative policy through the National Gender Policy of 2000 in which it set aside 30% of all available land for distribution to be allocated to women while the remaining 70% is allocate to men and women fairly.

### **10.2 Decentralized and democratized customary land administration**

Decentralization and democratization of customary land administration where committees and not only royalties should administer customary land. This is the case in Botswana, Namibia, Uganda, Tanzania, Malawi (on paper as system is not operational pending enactment of a new land law) and other countries. This should enhance protective attributes to women accessing land based on customary tenure.

### **10.3 Traditional leaders become drivers for women's land rights**

A women's land rights project which was implemented in twelve chiefdoms in Zambia brought on board traditional leaders as champions in advocacy for women land rights. The project also instituted direct consultative forum between chiefs and women where they could discuss the plight of women in terms of their land rights. Any qualified person including women can register customary grants. This is happening in some countries, like Botswana, Ethiopia etc.

### **10.4 Land registration and certification in Ethiopia**

Land registration and certification in Ethiopia is a step forward in women's land rights. The whole process is transparent and is owned by communities. The situation has created awareness in areas of women's land rights among various stakeholders including women themselves. The 2<sup>nd</sup> level certification has shown progress in ensuring rural women's land rights.

### **10.5 Women's movement in Uganda**

Women activists have confronted repressive customary land practices; women have been at the forefront through organizations such as the Uganda Land Alliance (ULA) and Uganda Women's Network (UWONET) in the struggle for approval of the co-ownership clause by the legislative body. The ULA coordinated efforts of lobbying legislators and campaigned for co-ownership, by producing information, education and communication (IEC) materials, used to raise awareness of the general public on the need for such a clause. The Uganda Association of Women Lawyers Action for Development, conducted legal education in collaboration with the Uganda Land Alliance, and female journalists used the media to present the case.

## 10.6 The role of civil Society

In Cameroon the network for the defense of women's rights and gender equality (RDFES) a group of women's NGOs has issued a memorandum denouncing customary law. In addition the local partner Abri International, CONGEH (Coalition des Organisations Non Gouvernementales (*ONG*) et des Organisations Communautaires de Base (*OCB*) du Cameroun Œuvrant dans le Domaine des Établissements Humains), a coalition of more than 30 community organizations is particularly concerned with equal access to land and housing for women and reach out for the effectiveness of the right of family members' who suffer from AIDS. With the advent of consultation clinics that are organized, useful information is circulated and interests are protected. This task is carried out with the help of "Abri international » through the international coalition for shelter – Women's network and shelter ("[Coalition internationale pour l'habitat – Réseau femmes et habitat](#), CIH RFH) in Francophone Africa.

## BENCHMARKS AND INDICATORS FOR TRACKING PROGRESS MADE IN STRENGTHENING WOMEN'S LAND RIGHTS

### 11.1 Monitoring Progress on Achieving Women's land Rights

As many African states have constitutions which uphold equal rights and non-discriminatory principles, the need to monitor implementation of the same as they relate to women's land rights becomes imperative. This should be coordinated an existing national institution within government. All institutions promoting women's land rights should collect disaggregated data by gender and submit it to the national-level coordinating institution. The data collected should cover the following areas:

- People accessing and owning land;
- number of women holding positions in land governance structures at all level – national-, district- and community levels;
- degree of landlessness among women segregated by single women and widows;

A report based on the data collected should be published and disseminated periodically and contacts should be established with women who own land for provision of technical and support services. Civil society organizations should use such information to engage duty bearers in order to address any shortfalls which may be observed.

### 12.2 Benchmarks

The Nairobi Action Plan on Large Scale Land-Based Investments in Africa provides for the establishment of a "monitoring and reporting mechanism for tracking large-scale land based investments with a view to ensuring that these ventures are beneficial to national economic development and local communities, including women....". The other benchmarks that can be used to monitor progress made in tracking progress in strengthening women's land rights can include the following:

- Number of women in influential land administration structures
- Number of women owning land in their own right
- Number of women accessing land in their own right
- Number of widows remaining on family land upon death of their spouses.
- Number and type of conflicts related to land involving women at village level – indicating who is involved.
- Number of certificates – out of the total number – entitled to women.
- Number of the co-titling land titles.

- Effective composition of village and District organs by sex.
- Number of literacy courses, with participants disaggregated by sex and age.
- Number of training to government officers at district and village level and number of participants disaggregated by sex and by position.

### **13. CONCLUSION AND RECOMMENDATIONS FOR STRENGTHENING WOMEN'S LAND RIGHTS IN AFRICA.**

It is evident that land is a key resource for all because of the close link between land and livelihoods. This study revealed that despite legal protections, women are largely disadvantaged in terms of accessing or acquiring land in Africa. A variety of factors affecting access to land, including socio-economic status, insecurity (both historic and modern), and government policies and practices, have aggravated vulnerability among already disenfranchised groups.

The study further points out the existence of gender disparity in access to and control over land in all the countries under this assessment. Issues related to land policy range from absence of land policy in some countries to gaps in implementation in others. These issues need to be addressed effectively to ensure women's access to and control over land in these countries.

The assessment also revealed that the customary land tenure system, which remains relevant even within the statutory system, has affected women disproportionately in terms of limiting their access, control, and ownership of land by virtue of their gender.

Therefore strengthening women's land rights can be achieved by formulating land policies in countries where such policies are non-existent, reviewing policies that are inconsistent with international and regional women's rights instruments, mainstreaming gender in land policy and land administration system, carrying out advocacy and awareness creation activities on women's land rights, establishing strong women's movement and networks, and carrying out further research

### **14. RECOMMENDATIONS**

The following recommendations are suggested based on the findings of the study:

- Commitments entered by African countries to implement the AU Declaration on Land Policy and the Framework and Guidelines developed by LPI should be made practical;
- Countries should make sure that international laws and conventions guaranteeing women's access to and control over land and natural resources are integrated in their national legislations and consistently implemented;
- End land rights discrimination through legal reform and effective implementation and enforcement mechanisms.
- Governments should establish gender responsive land administration systems that enhance women's participation at all levels and mainstream gender in land administration system;
- Working on building capacity of rural women's organizations at local level, facilitating establishment of forums and networks on women's land rights at national and regional levels would help to move forward the women's land rights agenda;
- Institute community management of common property resources and ensure women's participation and include women in land titling and registration programmes
- Improve women's access to credit, access to education and health services
- National and Regional initiatives should be undertaken to address socio-economic issues related to women's equal access to and control over land through advocacy and awareness creation programmes.

- Region wide research should be conducted on women's land rights to find out country specific issues and to design workable strategies to overcome those issues.
- monitor and evaluate the progress made in enhancing women's land rights and put a system to control the impact of large-scale land transactions on African men and women.

Both national governments and donor agencies have a role to play in adopting and implementing the types of policy recommendations suggested here. Government leadership is required for initiating legislative changes and ensuring enforcement of women's rights while donor support is needed for the greater investments required in the areas outlined above. Donor financial support is particularly important at this time because developing-country budgets, especially in Sub-Saharan Africa, are severely strained by debt repayment requirements and economic recession. In the current context of declining foreign assistance budgets, the objective of strengthening women's land rights should have wide appeal because it simultaneously addresses poverty, environmental protection, demographic objectives, and women's health and social status. Additional resources directed toward each of these areas and the social sectors in general would both benefit women and promote sustainable development.

On the whole the transformation of women's land rights in various cultural contexts does not yet require a concern for harmonizing practices, but all initiatives should be oriented towards the same principle of aiming at reducing the dichotomy between rights/traditions. Programs which work towards strengthening women's land rights should be based on the general orientation of laws and texts that are favorable to women's empowerment in order to support the evolution of traditions that are already changing and to develop new standards of land tenure that are more equitable and more just, because a general evolution is inevitably needed that consists of an "individualization of land tenure and the absolute nature of the rights acquired" (Séverin Mugangu Matabaro, March 2008).

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