



## Women's Economic Rights in Africa: *Examining the Challenges*

### Editorial

The global review of the implementation of the Beijing commitments (Beijing +10) showed that some progress towards gender equality has been made, albeit patchy and uneven in some areas. Since then, the discussion of gender issues has deepened and gender has become part of the political agenda of almost all countries. However, the biggest challenge that remains is how to go beyond the rhetoric and make commitments for action operational.

While the world recognizes and lauds the significant strides that have been made towards advancing gender equality, noticeable gaps persist, which include the gender gap in access to and control of economic resources, especially in Africa. This impedes equal access to economic activities for the majority of African women.

"Inequality in control over property and productive assets is the single most adverse form of persistent inequality between women and men. This impinges centrally on their status both as workers and as social and political actors"<sup>1</sup>. The case for eliminating gender biases in access to assets is self-evident and compelling, more so in Africa where poverty often has a woman's face and where most women across the continent are poorer than men".

It is in acknowledgement of the above that ECA's African Centre for Gender and Social Development (ACGS) has decided to focus on this particular topic in this issue of its newsletter.

We recognize the difficulty of exhaustively covering all aspects pertaining to this complex topic. In this publication, we have tried to take stock of gender issues in relation to access to and control of economic resources in Africa with reference to land, natural resources and capital.

<sup>1</sup> Bina Agarwal, Professor of Economic Growth, University of Delhi, India, Advisor to the International Labour Review



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## Editorial cont.

The newsletter starts off with an analysis of women's economic rights as depicted in the international human rights instruments. It then looks into the extent to which women's economic and social rights are reflected and respected in national level legislation and law. It further probes into the effectiveness of enforcement of laws affecting women's rights to land, giving some country examples.

The bulletin also highlights the issues that relate to gender biases in access to and control over productive resources and illustrates its various manifestations through some country examples. It further analyses the challenges to women's access to land that arise from the transition from traditional communal ownership of land and natural resources to the individual ownership-based systems land tenure.

We hope that *Gender Net* continues to serve as an effective instrument for sharing knowledge and discussion on all the topics that are featured. We welcome your comments and encourage your regular visits to our website: [www.uneca.org/acgd](http://www.uneca.org/acgd)

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# International Law and Women's Economic Rights in Africa

*To understand the persistent phenomenon of inequality that is characterizing gender relationships, it is important to underline the sharp divide between the idealistic principles stated in various international instruments as a result of the struggle of African women for gender equality, and the reality of their situation on the ground. For millions of women, equality is still a very vague and almost unattainable concept.*

*This article aims at providing the reader with insights into the major international and regional human rights instruments that reflect the consensus reached by the international community on the achievement of gender equality in specific relation to economic rights. It lays the perspective for the subsequent articles by outlining the broad parameters of these rights and echoing a broad concern about the gap between these rights as set out in these instruments and the reality of the situation of women. Using the African Gender and Development Index (AGDI) as a framework, it advocates for translating rhetoric into action through a broad range of interconnected measures in legal, policy, institutional and fiscal reforms in favour of women.*

## What are economic rights?

This question is not easy to answer without reference to social and cultural rights. This is underpinned by the fact that human rights are interrelated and interdependent. It is against this background that the United Nations passed the Covenant on Economic, Social and Cultural Rights (CESCR) in 1966 as a component of the International Bill of Rights. This was in addition to the existing Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966).

For purposes of this article, economic rights are defined as a broad set of opportunities and obligations directed towards empowering the individual to reinforcing other rights<sup>2</sup>. Reference can be made to the CESCR for concrete examples of what constitute economic rights. They include but are not limited to the right to work, training, receipt of fair and appropriate income or wages (article 7), join trade unions (article 8), social security (article 9), adequate standard of living, comprising food, clothing, housing and food security (article 11). With these examples, one appreciates the interconnection between economic rights and social rights, such as the right to education and health. Indeed, one may also add that social rights are also important for the fulfilment of economic rights, since,

without the right to health, the right to work, for instance, would be negated.

One may also glean from the CESCR the importance of other rights necessary for the progress and well being of the individual. They include the right to access and control over productive resources such as land and credit and by implication, equal rights to inherit. When taken in totality, we also immediately recognize an important link between international conventions that promote the economic rights of women and the Millennium Development Goals (MDGs) with particular reference to goals



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<sup>2</sup> This definition is in line with concept of the "economic bloc" derived under the African Gender and Development Index (AGDI). This bloc is alternatively referred to as "empowerment".

1 and 3 on eradicating poverty and hunger on the one hand, and eliminating gender inequality on the other.

## Translating economic rights in the African context

To strengthen the effective implementation of these rights with respect to women, additional international and regional treaties and protocols have been adopted by the United Nations, and by regional and sub regional organizations. One may make reference to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Conventions of the International Labour Organization, the Additional Protocol to the African Charter on Human and People's Rights on Women's Rights (the Protocol), the Solemn Declaration on Gender Equality of African Heads of States, and the Southern African Development Community (SADC) Declaration on Gender and Development. CEDAW contains elaborate provisions on the right of women to work on an equal basis with men (article 11). It mentions, for instance, that women are to be given:

- The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

- The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; and
- The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work as well as the right to paid leave and protection from discrimination on the grounds of marriage or maternity.

Article 13 further provides for the elimination of discrimination against women in distribution of family benefits, bank loans, mortgages and other forms of financial credit. CEDAW is also an instrumental advocate of the need to recognize women's work at all levels. Article 14 for instance, emphasizes the need for State Parties to take account of the economic contributions of women in "the non-monetized sectors of the economy"<sup>3</sup>. Additionally, the same article espouses the importance of ensuring that rural women are provided with avenues for participating in and benefiting from rural development. To this end, steps are to be taken to ensure that they have access to adequate social security, self-help groups and co-operatives, agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform, as well as in land resettlement schemes.

<sup>3</sup> A similar provision is adopted in the African Protocol. See Article 13 (h) which notes that States Parties are to "take the necessary measures to recognize the economic value of the work of women in the home".

### Box 3

#### Definition of discrimination in employment and occupation

*For the purpose of this Convention, the term "discrimination" includes:*

(a) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

Source: ILO Convention 111 (article 1).

The International Labour Organisation (ILO) has also contributed to the design of different sets of obligations and principles geared towards the protection and promotion of women's economic rights. ILO Convention 100 (1953) is, for instance, directed towards safeguarding "equal remuneration for men and women workers for work of equal value" (article 1 (b)). Reference may also be made to ILO Convention 111 (1960), which deals with discrimination in employment.

Lastly, we examine ILO Convention 183, which deals with maternity protection. Significantly, this Convention places maternity in historical context by reference to the Universal Declaration of Human Rights, CEDAW and the Beijing Declaration and Platform for Action among others (Preamble). It provides a broad framework for States Parties to follow in the area of maternity, emphasizing the need to ensure that women are not discriminated against on this account.

### In Africa ...

At continental level, the Protocol, best described as the Bill of Rights for African Women, covers a wide range of issues impinging on the economic rights of women. Article 13 dealing with Economic and Social Welfare Rights, elaborates the provisions on the right to work and fair remuneration as set out under the CESC. In addition to the rights already set out above, the Protocol makes it incumbent on States to ensure:

- Transparency in recruitment, promotion and dismissal of women;
- Combating and punishing sexual harassment in the workplace;
- Creation of conditions to promote and support the occupations and economic activities of women, especially within the informal sector;
- Establishment of a system of protection and social insurance for such women;
- Introduction of a minimum age for work and prohibiting the employment of children below that age, and punishing all forms of exploitation of children, especially the girl-child;
- Ensuring the equal application of taxation laws to women and men; and



- Taking effective legislative and administrative measures to prevent the exploitation and abuse of women in advertising and pornography.

Another significant continental development is the Solemn Declaration of Heads of States on Gender Equality in Africa, adopted in 2004. This instrument also builds on pre-existing human rights initiatives such as the Dakar Platform for Action (1994), the Beijing Platform for Action (1995), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW-1979), the African Plan of Action to Accelerate the Implementation of the Dakar and Beijing Platforms for Action for the Advancement of Women (1999), the Outcome Document of the Twenty-third Special Session of the United Nations General Assembly Special Session on the Implementation of the Beijing Platform for Action (2000), UN Resolution 1325 (2000) on Women, Peace and Security; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003). In recognition of the impact of the HIV/AIDS pandemic on the economic rights of women (among others), it commits African States to do the following, inter alia:

- Accelerate the implementation of gender specific economic, social, and legal measures aimed at combating the

- HIV/AIDS pandemic;
- Actively promote the implementation of legislation to guarantee women's land, property and inheritance rights including their rights to housing;
- Accept establishment of an African Trust Fund for Women for the purpose of building the capacity of African women; and
- Further request the African Union Commission (AUC) to work out the modalities for the operationalization of the Fund with special focus on women in both urban and rural areas;

## Box 4

**Preamble of the SADC Declaration on promoting the economic rights of women and a demonstration of their interrelationship with other rights**

*"While some SADC member States have made some progress towards gender equality and gender mainstreaming, disparities between women and men still exist in the areas of legal rights, power-sharing and decision-making, access to and control over productive resources, education and health among others".*

Currently, the SADC Declaration on Gender Equality (1997) serves as the best example of a sub regional framework on the advancement of women's rights.

The Declaration recognizes that women constitute the majority of the poor in their respective States and therefore calls for greater efforts to integrate gender considerations into SADC sectoral programmes and projects. It also places an obligation on member States of the sub region to promote women's full access to, and control over productive resources such as land, livestock, markets, credit, modern technology, formal employment, and a good quality of life in order to reduce the level of poverty among women.

## Moving from rhetoric to action: tackling de jure and de facto equality in Africa

As this issue of Gender Net demonstrates, ensuring that these rights are fulfilled by member States has been an incessant battle and a continuous challenge for the majority of African countries.

Ending discrimination against women can only be achieved through the adoption of the rights-based approach seen and advocated through the lens of AGDI. Under the AGDI framework, African countries are first of all required to ratify all global, regional and sub-regional instruments that affect the rights of women. Following this, steps have to be taken to domesticate these instruments through appropriate constitutional and legislative reforms (de jure equality). De facto equality is thereby fulfilled with the design of policies, plans (with set targets), institutional reforms (including allocation of qualified and sufficient human resources), realistic budgetary allocations monitoring and evaluation, research, dissemination of information and effective participation of civil society, especially women's groups.

In Africa, many national governments have manifested their tacit acceptance of global and regional norms by signing and ratifying international human rights treaties, but only a few have taken steps towards effective implementation. This issue of Gender Net presents articles covering a whole range of issues that affect the economic rights of women, with special regard to land and credit, the two most important factors of production.

# The Enforcement of Women's Economic Rights in Africa

## Special Reference to Laws Affecting Their Right to Land

This article, presents an overview of legal frameworks affecting land tenure in Africa and how these impact on the economic rights of women.

CEDAW and the Africa Women's Rights Protocol provide a comprehensive set of principles and substantive provisions that set the foundation for the protection of women's rights in Africa. At the outset, Article 1 of CEDAW provides the most authoritative definition of "discrimination," it notes:

*"For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (Article 1).*

For the effective elimination of discrimination and to ensure de jure equality, States parties are required to undertake legislative reform at all levels, including constitutional measures. Both CEDAW and the African Women's Rights Protocol provide for elimination of sex stereotyping, and denial of equal opportunity based on custom and tradition. Furthermore, both frameworks provide for measures of affirmative action to remedy past legacies of discrimination against women, particularly in the area of women's participation in decision-making, to influence government policies and thereby ensure gender justice

Article 13 of CEDAW specifically calls for the full participation of women in economic and social life, while article 14 advances the cause of rural women. This latter article in particular, calls on States to ensure "equal treatment of women in land and agrarian reform as well as in land resettlement schemes." On the other hand, the Protocol on Women's Rights deals with the issue of women's rights more firmly. Under

Article 19 entitled 'sustainable development', the protocol's sub-article (C) provides that African governments should promote women's access to and control over productive resources such as land and guarantee their right to property.

Additionally, Article 16 obliges States Parties to grant women's access to housing irrespective of their marital status. Article 21 of the protocol further affirms the equal rights of women to division of property upon divorce and the right of widows to continue living in the matrimonial house.



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## Country Experiences and Case Studies from a Regional Perspective

Country examples have been informed by reports of the 12 AGDI trial countries<sup>4</sup> in addition to State Reports to the CEDAW Committee and Concluding Remarks issued by the Committee following the submission and hearing of country reports. The subregional approach is adopted here, based on the experiences of countries clustered for convenience under Western and Central Africa, Eastern and Southern Africa and Northern Africa.

<sup>4</sup> These are Benin, Burkina Faso, Cameroon, Ethiopia, Egypt, Ghana, Madagascar, Mozambique, South Africa, Tanzania, Tunisia and Uganda.

By reason of their political, religious and social circumstances, most African countries share a similar legal system, legal experiences and legal traditions. For instance, the influence of a plural system of law governed by civil law, common law or Roman Dutch Law on the one hand, and one or more of either customary or religious law on the other, is common in most legal systems of Africa.<sup>5</sup>

The 1990s marked an important era in the constitutional history of many African countries, evidenced by a significant number of countries making amendments and revisions in line with international standards.<sup>6</sup> As to whether or not these reforms have realized the expected changes in the lives of women remains to be seen.

In this article, we review the situation from the perspectives of four sub regions, namely Western and Central Africa and Eastern and Southern Africa, respectively.<sup>7</sup>

### Box 3

#### General Recommendations of the CEDAW Committee on Property Rights of Women

##### *F*Marital Property

“There are countries that do not acknowledge the right of women to own an equal share of the property with the husband during a marriage or de facto relationship and when that marriage or relationship ends. Many countries recognize that right, but the practical ability of women to exercise it may be limited by legal

5 As an example of such a plural legal system, article 7 of the 1996 Constitution of Gambia provides that “[i]n addition to this Constitution, the laws of The Gambia consist of –

- (a) Acts of the National Assembly made under this Constitution and subsidiary legislation made under such acts;
- (b) Any Orders, Rules, Regulations or other subsidiary legislation made by a person or Authority under a power conferred by this Constitution or any other law;
- (c) The existing laws including all decrees passed by the Armed Forces Provisional Ruling Council;
- (d) The common law and principles of equity;
- (e) Customary law so far as it concerns members of the communities to which it applies;
- (f) The Shari’a as regards matters of marriage, divorce and inheritance among members of the communities to which it applies.”

6 This is affirmed by the country experiences to follow.

7 The choices are based on the availability of information.

precedent or custom. Even when these legal rights are vested in women, and the courts enforce them, property owned by a woman during marriage or on divorce may be managed by a man. In many States, including those where there is a community-property regime, there is no legal requirement that a woman be consulted when property owned by the parties during marriage or de facto relationship is sold or otherwise disposed of. This limits the woman’s ability to control disposition of the property or the income derived from it. In some countries, on division of marital property, greater emphasis is placed on financial contributions to property acquired during a marriage, and other contributions, such as raising children, caring for elderly relatives and discharging household duties are diminished. Often, such contributions of a non-financial nature by the wife enable the husband to earn an income and increase the assets. Financial and non-financial contributions should be accorded the same weight’.

##### *I*nheritance

“Reports of States parties should include comment on the legal or customary provisions relating to inheritance laws as they affect the status of women as provided in the Convention and in Economic and Social Council resolution 884 D (XXXIV), in which the Council recommended that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession. That provision has not been generally implemented. There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband’s or father’s property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased’s property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished”

Source: *General Recommendation No. 21 of CEDAW (13th Session, 1994)*.

## Experiences from Western and Central Africa

The Western and Central African subregions have experienced a massive array of constitutional reforms. The 1990 constitution of Benin endorsed the African Charter on Human and Peoples' Rights adopted in 1981 by the Organization of African Unity (OAU). The Charter was ratified by Benin and domesticated as an integral part of the Constitution and of Beninese law (article 7). The Constitution guarantees the property rights of all citizens (article 22) and further calls for the promotion and popularization of human rights principles among the citizenry (article 40).

The 1992 Constitution of Ghana is also founded on the principles of non-discrimination and equality before the law. Provisions are made for affirmative action to correct gender, ethnic and other imbalances in the political, social, cultural and economic spheres (article 17). Women's rights are provided for in article 27<sup>8</sup>. Under article 22, Parliament is also given the mandate to work towards a regime of spousal property rights in and outside of marriage.

While some constitutions contain elaborate non-discrimination clauses, they are rendered weak by other provisions which allow discrimination in matters of family law and property rights. For example, article 27 (4) (d) of the 1991 Constitution of Sierra Leone, permits differential treatment in matters of "adoption, marriage, divorce, burial and devolution of property". Similarly, under

<sup>8</sup> Albeit, this is inadequate considering that it focuses more on the reproductive roles of women.

the Constitution of Gambia, while section 23 provides for non-discrimination and equality before the law, this is not to apply in the following cases:

- (a) Adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; [and]
- (b) Application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law (article 33(5)).

The lack of serious enforcement of laws in many countries, however, tends to mask whatever differences there are in terms of strong or weak constitutional provisions. The law tends to be one thing, while its operation tends to be another.

Prior to enactment of a Family Code (2004), succession in Benin for instance, was founded upon the patriarchal system, which formed the basis of the customary laws of Dahomey. These laws granted many privileges to sons and denied all succession or inheritance rights to daughters. Based essentially on the principles of equality and non-discrimination, the Code sought to remove whatever discrepancies existed in property rights. By its provisions intestate property devolves on an equal basis (article 619) and a surviving spouse has the right of inheritance regardless of the origin or nature of the estate (article 630). Despite this legislative move, however, customary and religious laws continue to prevail in practice, thereby continuing the cycle of discrimination.

### Box 3

#### The de facto situation in Togo

*In virtually all customary systems of landholding, women are barred from owning land. A woman is allowed only to work the land, with her husband's permission or the permission of her original family. Marriage is a means of obtaining access to land, but a somewhat precarious one, since the break up of the marriage may deny access at any time. The system increases the risk of*

*nutritional deficiency, given the predominant role played by women in food crop production, and it also means that women are usually unable to improve the land in order to make it more productive, thereby earning more income and joining the cash economy.*

Source: Togo. 18/03/2004. CEDAW/C/TGO/1-5 (State Report)

Operating under a plural system of law, Sierra Leone operates a dual land tenure system: communal land ownership and customary land ownership. In the communal land holdings, land belongs purely to the community/government; with respect to customary land, ownership is vested in families. Land use requires permission from the town/village authorities. Experience has shown that women have limited plots because they must be represented by their husbands. The Law Reform Commission is yet to release the proposed land reform that would guarantee the rights of women to own land.

In 1985, the Government of Ghana passed the Intestate Succession Law (Provisional National Defence Law 111), with a view to providing adequate protection to the nuclear family in matters of intestate succession. The law ensures that spouses and children receive at least 75% of the estate of a deceased spouse and parent. However, after several years of enactment, the law is yet to become fully operational due to various obstacles, including lack of awareness of the law and access to justice by the general populace.

## Experiences from Eastern and Southern Africa

### Box 3

#### Situation in Namibia

“Although the Namibian Constitution enshrines gender equality, the face of poverty is increasingly more female. Society’s attitude through traditional and cultural behaviours still results in the belief that women must play secondary roles. Much work has been done in the efforts to promote equality between women and men. However, resistance to change is still visible despite the intensification of gender sensitization programmes and the enactment of some legislation aimed at bringing about gender equality...”

Source: Former Director-General of Women Affairs, now Minister of Women Affairs and Child Welfare of Namibia, Honourable Netumbo Nandi-Ndaitwah<sup>1</sup>. (Netumbo Nditwa is now Namibia’s Minister of Finance.

<sup>1</sup> See Namibia. 02/09/2005. CEDAW/C/NAM/2-3. (State Party Report), page 24.

Article 21 of the Constitution of Angola (1992) gives central place to human rights treaties ratified by the country. The constitution provides that such frameworks should be taken into account when interpreting the provisions on fundamental human rights. As such constitutional and legal norms related to fundamental rights are to be interpreted and applied in keeping with The Universal Declaration on Human Rights, the African Charter on Human and Peoples Rights and other international instruments acceded to by Angola, the judiciary is also required to take such frameworks into account in the settlement of disputes affecting human rights.

However, these constitutional guarantees are weakened by the absence of a comprehensive definition of discrimination in line with CEDAW. In addition, other legislative provisions such as the Civil Code discriminate against women. There is also the strong persistence of patriarchal attitudes and deep-rooted stereotypes regarding the role and responsibilities of women and men in society, which are discriminatory against women. These are very evident in the customary practices that affect land distribution and which favour men.

Ethiopia and Malawi possess progressive constitutional provisions on women’s rights in contrast to other countries in this subregion and the rest of Africa. Under article 35 of the former, which deals with “democratic rights”, the constitution makes the following express commitment to affirmative action:

*“The historical legacy of inequality and discrimination suffered by women in Ethiopia taken into account, women, in order to remedy this legacy, are entitled to affirmative measures. The purpose of such measures shall be to provide special attention to women so as to enable them to compete and participate on the basis of equality with men in political, social and economic life as well as in public and private institutions” (article 35(3)).*

Significantly, women also have a constitutional right to acquire, administer and control land on an equal basis with men. However, Ethiopian women face the same challenge as the rest of African women with regards to enforcement of laws. Despite the constitutional guarantee, women still face a multitude of challenges.

Although not officially sanctioned, custom and tradition play crucial roles, particularly in rural areas where over 85% of the countries population live. In most cases, tradition and custom work against women's property rights. The challenge is severe in matters of divorce since during marriage, women work jointly with their husbands and are entitled to share in the proceeds of income acquired as a result of working on the land. Women lack the awareness and the resources to demand equal rights to land use. One promising measure that is currently under consideration is the joint certification of land holdings. This is expected to secure women's equal rights to the family holding both during marriage and upon its dissolution.

The provisions of the Constitution of Malawi (1994, as amended), also provide for the right of women to full and equal protection under the law, and protection from non-discrimination on the basis of their gender or marital status. This includes the right to be accorded the same rights as men in civil law, including equal capacity to enter into contracts; to acquire and maintain rights in property, independently or in association with others, on the dissolution of marriage, to a fair disposition of property that is held jointly with a husband. Any law that discriminates against women on the basis of gender or marital status is to be rendered invalid and legislation is to be passed to eliminate customs and practices that discriminate against them in areas such as property rights.

Despite these elaborate provisions, gender disparities in property rights continue to exist in Malawi due to the influence of customary law and cultural practices. There is also evidence to show that some modern laws have contributed to this state of affairs. The Wills and Inheritance Act<sup>9</sup> provides that a woman who is married patrilocally is entitled to three fifths to share with the other dependants of a deceased husband who dies intestate. In contrast, a woman married matrilocally is entitled to half of the intestate estate to share with other dependants. Women, who are not Malawians, in further contrast, are guaranteed at least the first K10, 000.00 of the estate.

In Kenya, women experience the highest forms of discrimination in the area of personal law. The

<sup>9</sup> Act No. 25 of 1987 (Chapter 10:01, Laws of Malawi), sections 14-18.

### Box 3

#### **CEDAW Committee on women's ownership and inheritance of land in Malawi**

"The [CEDAW] Committee also urges the State party to take appropriate measures to eliminate all forms of discrimination against women with respect to ownership and inheritance of land. The Committee invites the State party to place emphasis on women's human rights in all development cooperation programmes with international organizations and bilateral donors, so as to address the socio-economic causes of discrimination against women, including those impacting women in rural areas, through all available sources of support".

Source: Concluding Comments: Malawi. 03/02/2006. CEDAW/C/MWI/CO/5, Concluding Observations, Para. 34.

Law of Succession Act (Cap. 160, Laws of Kenya) has sought to redress these imbalances by calling for equal rights in succession. However, the law is weakened by some limitations: it does not apply to agricultural property in areas gazetted by the Minister. Specifically, communally owned land for example in pastoral areas, and persons professing the Muslim faith are exempted from the Succession Act and widows do not enjoy the same rights as widowers.

Based on the same pattern found in Uganda upon presenting its State Report in 2000, the CEDAW Committee had the following observations to make:

*"The Committee is concerned that, despite the adoption of its gender-sensitive Constitution in 1995, legislative provisions that discriminate against women continue to exist. It is also concerned that, although progress has been made towards the preparation of legislation to eliminate discrimination, much of this has not been enacted. It is particularly concerned at the slow progress in removing de jure discrimination and preventing and eliminating de facto discrimination against women. Noting the State party's efforts in this context, the Committee is concerned at the persistence of patriarchal patterns of behaviour in the State party and at the existence of stereotypes relating to the role of women in the home and society, and expectations of women's subordination to men".<sup>10</sup>*

<sup>10</sup> Concluding Observations of the Committee on



### Box 3

#### Kenya Appeal Reports

In *Kivuitu v Kivuitu* (1992), Kenya Appeal Reports: 241, the Court of Appeal set out the categories of contribution that a woman claiming property registered in the name of the husband could be shown to have made. Recognized forms of contribution include: financial contribution that can be in direct or indirect forms as well as non-financial contribution which can take such forms as taking care of the family on the home front or tilling rural agricultural land as the husband acquires property in the urban centres (this is a common pattern in Kenya).

In *Muthembwa v Muthembwa*,<sup>1</sup> the Kenyan Court of Appeal took the issue of determination of matrimonial properties to another level by providing that a wife would be entitled to a share of gifted and or inherited property if she contributed towards developing it. The principles established in these cases have been further expounded on in recent cases reported

<sup>1</sup> Civil Appeal No. 74 of 2001.

under Articles 15 and 16, paragraphs 168 – 210 below. In a landmark decision, the Court of Appeal sitting in Eldoret, cited Article 1 of the Convention on the Elimination of All Forms of Discrimination against Women, in a decision to justify awarding daughters of a polygamous man (married under customary law) who had died intestate equal shares in his property. This decision *Mary Rono v Jane Rono & William Rono* [Civil Appeal No. 66 of 2002], has broken new ground for women's rights in Kenya in an area which has been extremely contentious. Citing Article 1 of the Convention as well as Article 18 of the African Charter of Human and People's Rights, the court stated that: ... [As] a member of the international community, Kenya subscribes to international customary laws and has ratified various international covenants and treaties.... In 1984, it also ratified, without reservations, the Convention on the Elimination of All Forms of Discrimination against Women, in short, 'CEDAW'.

Source: Kenya. 16/10/2006. CEDAW/C/KEN/6. State Party Report. Paras. 12-16.

The response of the Committee demonstrates the need to bridge the gap between law and practice in relation to the property rights of women in the country.

South Africa and Zimbabwe<sup>11</sup> serve as examples of countries with historical circumstances associated with apartheid. In these countries, issues of land, gender and the law have been critical. They also serve as examples of States with formidable constitutional frameworks. The Constitution of South Africa (1996), for example, contains a comprehensive Bill of Rights. Article 9 (3) in particular notes that:

*"The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual*

the Elimination of Discrimination against Women, Uganda, UN. Doc. A/57/38, paras. 113–162 (2002).

<sup>11</sup> And, indeed, Namibia cited above.

*orientation, age, disability, religion, conscience, belief, culture, language and birth"*.

The South African provisions on non-discrimination are among the most elaborate on the Continent. But, in spite of this, the CEDAW Committee sought the opportunity to make a series of recommendations with respect to South Africa's performance in eliminating gender discrimination. It noted for example, that the definition of discrimination was not fully reflective of article 1 of CEDAW and therefore could be of limited assistance to the judiciary in matters of interpretation of gender issues<sup>12</sup>. It made the following other pertinent observations:

*"The Committee expresses concern that, in spite of the legal measures put in place, de facto implementation of such laws and policies have yet to be achieved in many areas. It also notes with*

<sup>12</sup> CEDAW/C/SR 1998. Para. 116.



concern the continuing recognition of customary and religious laws and their adverse effects on the inheritance and land rights of women and women's rights in family relations. The Committee notes the absence of a definition of gender discrimination in the constitution".<sup>13</sup>

Reflecting the ambiguities inherent in the constitutions of some Western and Central African countries (for example, Gambia and Sierra Leone), Zimbabwe is also noted for giving women "with one hand, and taking with the other" in matters of family law and property rights. Section 23 of its constitution (2000) provides in part as follows:

2) For the purposes of subsection (1), a law shall be regarded as making a provision that is discriminatory and a person shall be regarded as having been treated in a discriminatory manner if, as a result of that law or treatment, persons of a particular description by race, tribe, place of origin, political opinions, colour, creed or gender are prejudiced:

- (a) By being subjected to a condition, restriction or disability to which other persons of another such description are not made subject; or
- (b) By the according to persons of another such description of a privilege or advantage which is not accorded to persons of the first-mentioned description; and the imposition of that condition, restriction or disability or the according of that privilege or advantage is wholly or mainly attributable to the description by race, tribe, place of origin, political opinions, colour, creed or gender of the persons concerned.

(3) Nothing contained in any law shall be held to be in contravention of subsection (1) (a) to the extent that the law in question relates to any of the following matters:

- (a) Adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law; and

- (b) The application of African customary law in any case involving Africans or an African and one or more persons who are not Africans where such persons have consented to the application of African customary law in that case.

## Conclusions and the way forward

This article provides only a snapshot of the situation prevailing in some African countries in matters of land, law and gender. From the country case studies provided, we can conclude that while provisions for non-discrimination as found in constitutions of various African States are laudable in content, they have been rendered weak by other clauses which have the effect of negating their effectiveness. Ineffective or outmoded laws have also diluted others. More important has been the overarching influence of tradition and custom, particularly in matters affecting the property rights of women.

With the dominant force of patriarchal customs and practices, women's rights continue to be subsumed under those of their male counterparts. However with the recent adoption of the African Women's Protocol, and AGDI, opportunities are now presented for addressing and redressing the continued occurrence of discrimination against women. The foregoing is a wake-up call to all African countries to "walk the talk".

<sup>13</sup> Id.

## Gender issues in Land Policy Development

### Addressing concerns relating to customary tenure

Most land in Africa is governed under customary systems of tenure, which are administered by traditional authority headed by a chief, for example, on behalf of and in trust for a clan or family. In most parts of Africa, chieftaincy authority follows a patriarchal lineage, so, major decisions are mostly made by men.<sup>14</sup> Women do not generally participate in decision-making on land matters, directly. In terms of land rights, women mainly acquire land rights through a male relative, with most of them having no primary rights to the land. This means that women are not charged with making decisions relating to accessing, owning and controlling land and land resources.

Even their secondary rights are insecure in the sense that these rights have no guaranteed duration, are not well defined, and are subject to change, mainly depending on the maintenance of good relations between them and the primary rights holders. These relations are usually governed by institutions relating to marriage, divorce and inheritance institutions that are themselves usually governed by customary law, grounded in perceptions of what the role of women in society ought to be.

### What are the implications of this scenario for policy, legislative and administrative reforms?

The recent recognition being accorded to customary tenure as a viable system within which rights can be secured has led to a shift in the policy development paradigm and, to a lesser extent, administrative reforms. In particular, new policies aim to provide provisions that allow registration of customarily held rights. Yet, this wave of reforms has been accompanied by

<sup>14</sup> Ntsebeza, L (1999). South Africa's Land Tenure Reform Programme in the former Bantustans: Example of the Eastern Cape Province. Paper represented at the DFID Workshop on Land Rights and Sustainable Development in sub-Saharan Africa: Lessons and Ways Forward in Land Tenure Policy, Sunningdale, UK.



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concerns over the risk of exacerbating women's insecure rights to land if gender concerns are not properly addressed. Of particular concern is the likelihood that the secondary rights that women tend to hold will not be recognized and, therefore, registered in systems that only give provisions to the registration of primary rights, particularly ownership.

The assumption by these policies is that providing a provision, for example, for joint registration of ownership, will automatically lead to an increase in land ownership by women. This is obviously a simplistic assumption, given the underlying complexity of custom-based relations with respect to gender and land tenure. **A lot more than land policy and legislative reforms are needed to ensure harmony in the new land laws/provisions and related laws relating to marriage, divorce and inheritance.**

Beyond that, a complementary 'cultural evolution' needs to be guided; one that sees women accorded equal rights as men in issues relating to property ownership and decision-making status, given their acknowledged high levels of contribution to socio-economic development and environmental management.

## Addressing gender issues in the constitution or land law

Country	How women's rights are addressed in policy
Uganda	Commitment to gender equality and affirmative action in land policy
South Africa	Constitution provides for gender equality
Niger	Rural code provides for equal rights of access to national resource without discrimination
Mali	Provision for women to register land independently from men
Mozambique	Land Act provides rights for both men and women to use and benefit from land
Tanzania	Land policy provides women's rights to land

Source: Toulmin and Quan (2000).

## Securing women's land rights within statutory law

New developments in statutory law now recognize that implementation of most policies relating to land owned under customary law, including land titling, registration as well as resettlement programmes, occurs within the realm of statutory laws and institutions. As we have seen above, when land is being registered/titled, secondary rights holders, including women, run the risk of being excluded, mainly due to the simplification of registers that only document 'ownership rights.' In this way, other rights such as access rights to land and land resources (e.g. rights to the tiller, and to firewood, fruit and herb collection), within which most women's land rights fall, are unrecognized.

This bias in favour of individual ownership rights and titling is still rampant in many policies and reform programmes on the continent, partly due to the complexity involved in registering multiple rights.<sup>15</sup>

Unless new forms of registration recognize multiple as well as overlapping claims to land, the process is doing no more than reinforcing/institutionalizing a system of male-dominated control over land. It is critical that new forms of titling/registration programmes take into account the much-needed social transformation in favour of empowering women's land rights.<sup>16</sup>

While ensuring gender-responsive land policies, improving women's land rights requires that property rights be provided for within the

Constitutions governing African countries. This means removing any reference to women as minors, inferior to men<sup>17</sup> and entrenching gender equality in the constitutions.

In addition to addressing women's land rights in land policy and the constitution, marriage, divorce and inheritance, laws also require reform to ensure harmony in all laws touching on women's property rights. Reform in statutory law alone is not adequate and may not lead to implementation if customary/social practice is conflicting with statutory law. In many cases, social-cultural biases relating to the role of women in society may prevent women from acquiring land rights.

## Critical lessons in addressing women's issues in land policies and administrative reforms

Evidence suggests the need for systematic inclusion of women and interest groups representing women issues in the process of policy formulation and implementation. Although it is time-consuming<sup>18</sup>, it is advisable that commissions of inquiry and other such institutions be set up to spearhead land reform consultations with women separately, to ensure that their voices are heard in a non-threatening environment.

Tanzania's case points to the importance of awareness-raising campaigns among those involved in land policy development and administration, critical to a gender-aware land policy and implementation environment. As a

<sup>15</sup> Platteau, J.P. (1996). The Evolutionary Theory of Land Rights as Applied to sub-Saharan Africa: A Critical Assessment. *Development and Change*, 27(1)

<sup>16</sup> Toulmin, C. and Julian Quan (2000). *Evolving Land Rights and Tenure in Africa*. DFID/IIED/NRI, London.

<sup>17</sup> Ov Odida, I (1999). Land Law Reform: Challenges and Opportunities for Securing Women's Land Rights in Uganda. Paper represented at the DFID workshop on land rights and sustainable development in sub-Saharan Africa: lessons and ways forward in land tenure policy, Sunningdale, UK. onji-

<sup>18</sup> Toulmin and Quan (2000).

result, the country has a policy that requires spousal consent prior to the disposal of matrimonial land by their husbands and also increased numbers of women in National Land Advisory Councils and on village-level committees, due to affirmation action.<sup>19</sup>

Even when policies and laws provide provisions relating to women's rights, it is often the women who do not seek these rights, mainly due to lack of awareness. Given that most women are poor, pro-poor mechanisms to raise awareness and empower women in this regard include:

- Training and capacity building on land policies;
- Laws and land administration processes;
- Translating laws into local languages;
- Paralegal support for women seeking legal redress on land issues; and
- Decentralized systems of administration to reduce travel and other related transaction costs.

In addition to raising awareness among women, increasing dialogue with traditional authorities is critical to bridging the gap between modern and the traditional institutions of land governance that remain legitimate in many societies.

### Advancing Land Policy: The AU-ECA-AfDB Synergy

The three pan-African institutions, the African Union (AU), the Economic Commission for Africa (ECA) and the African Development Bank (AfDB), started working together in 2005 on building synergies related to land and adding value to what is already being done by various stakeholders to advance land policy formulation, implementation and administrative reform in Africa.

In particular, it was felt that a tripartite partnership of these institutions could help to extend the dialogue and raise the profile of land issues at the highest level of political governance in Africa, and indeed globally. This, in turn, would help to garner the political will of African countries, vital to the implementation of land-related reforms. Also, given that various development partners exert much effort in these areas, it was envisaged that the three institutions could forge partnerships

19 Longway, M (1999). Tanzania: legal land reforms against gender discrimination. Paper presented at the DFID Workshop on Land Rights and Sustainable Development in sub-Saharan Africa: Lessons and Ways Forward in Land Tenure Policy, Sunningdale, UK.

and bring the various actors involved together, in order to build synergies among them.

The Land Policy Initiative aims to develop a framework and guidelines for land policy and administrative reforms in Africa, and develop benchmarks, targets and indicators to assess the performance of African governments in this regard. Following a continental consultative workshop, subsequent regional assessment studies and follow-up consultation workshops, the framework and guidelines will be drafted and submitted to a Meeting of African Experts, then to a Meeting of African Ministers responsible for land.

All this will be in preparation for an AU Heads of State and Government Summit, where the framework and guidelines will be adopted with clear guidelines for implementation. Subsequent activities will focus on building capacity for land policy formulation and implementation through effective partnerships with African governments, regional communities and institutions, and development partners, among others.

A successful continental consultative workshop was held in March 2006, which saw a consensus reached on the key land issues and elements that form the basis for the framework and guidelines, and the main activities needed to develop the framework and guidelines.<sup>20</sup> Addressing gender-related issues in land policy and land governance was one of the key issues identified as essential to successful policies that secure land rights, increase productivity and environmental management and maintain peace and security.<sup>21</sup>

Regional assessments document the key land-related issues in the five sub regions of Africa, and subsequent consultative workshops continue to emphasize the importance of addressing gender inequality in land-related rights as critical to socio-economic development. So far, assessments and consultations have been completed in Southern Africa and others are underway in the other sub regions. The regional processes will help to highlight the specificities of each sub region and provide lessons in addressing gender and other related policy formulation and implementation issues.

20 AU/ECA/AfDB (2006). Key Messages and Recommendations of the Consultative Workshop on Land Policy in Africa.

21 AU/ECA/AfDB (2006). Land Policy in Africa: A Framework to Strengthen Land Rights, Enhance Productivity and Secure Livelihoods.

# The Daunting Challenge of Addressing Gender Biases in Access to Productive Assets

*In Africa, women constitute a significant force in the economic development of their respective countries. Forming the majority of the population<sup>1</sup> in most cases, they are the backbone and the hub around which most informal economic activities thrive. Given the role of the informal sector in Africa's development, this observation must be viewed with a high degree of seriousness. Women are dominant pillars in the agricultural sector, where they are most visible in subsistence and to a large extent, provide seasonal labour to commercial agriculture. They form the important linkages in the food chain from the farm to the market and ultimately, the household.*

*Women's role in the distribution of food and other goods and services is also well known. For them to be effective participants and beneficiaries of economic development, therefore, it is imperative that women are provided access to and control over productive resources. Within the context of Africa, land, credit and technology are some of the key assets required for effective participation in productive activities. This article provides a snapshot of some of the daunting challenges affecting women in their quest to access such resources. To place the discussion in context, the article also provides an overview of the meaning of gender and it ends with some suggestions on the way forward.*

<sup>1</sup> For example, in Ghana they constitute 51% of the population. See Ghana's State Party Reports to CEDAW; CEDAW/C/GHA/3-5.18/04/2005.

## How does gender relate to access to and control over productive assets?

The concept of gender relates to the perceived and expected behaviours of males and females in relation to each other as defined by society. Gender roles and expectations are often rooted in existing power relations and in most African countries, gender relations are largely informed by a patriarchal orientation, which subjugates the rights and status of women in relation to those of men. One such notion is that men, as the only assumed breadwinners and decision-makers, must control the means of production. In this regard, women face discrimination in access to both movable and immovable assets in general. In the following sections, we review how this plays out in relation to land and credit.

## Gender bias demonstrated in relation to women's access to land

In the context of land tenure, women are discriminated against, as a result of persistent discriminatory customs, beliefs and practices, which place men at the helm of affairs relating to land distribution. This is manifest in the varied patterns of inheritance and rules regarding access to and control over land and its transfer. In the majority of African countries, women can only gain access to land as family or community members through men, who are regarded as the customary owners of land. Customary land tenure systems are particularly adverse to women because they do not confer full land

ownership rights to women. On the contrary, women are required to negotiate for access to land as secondary beneficiaries through male relatives - fathers, brothers, husbands or sons. Some studies have found that the majority of women obtain access to land primarily through their husbands<sup>22</sup>. This practice is deeply rooted in patriarchal notions, which place women in a subordinate position to men in the economic, social, cultural and political spheres.



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<sup>22</sup> For example, see B. Duncan (2004); Women in Agriculture in Ghana. Friedrich Erbert Foundation and Federation of International Women Lawyers.

**“ Women of Africa toil all their lives on land that they do not own, to produce what they do not control, and at the end of their marriage, through divorce or death, they can be sent away empty handed”.**

- President Julius Nyerere,  
Third World Conference on Women, 1985

Within the customary environment of many countries, women are perceived to be under the guardianship of their fathers before marriage. This guardianship is transferred to their husbands after marriage. Women are generally barred from inheriting property because they are generally perceived to be property themselves. In the event of widowhood, they are required to be transferred to other male members of the family of the deceased husband's family, without the right to inherit their matrimonial homes. In some situations, the first son of the family inherits the properties, while the mother is given nominal access to land, without control or decision-making power over its use or its disposal.

The general reluctance across Africa to change such customary systems in favour of women stems from fear that, girls, once married, would transfer the ownership of the family wealth to another clan. On this basis, land management concerns are placed under the control of men who are regarded as the custodians of family or clan property.

Several African countries have taken steps to remove this de facto discrimination against women (Article 2 of CEDAW) through the inclusion of non-discriminatory clauses in

their respective constitutions. However, in most cases, entrenched and discriminatory customary and religious practices override constitutional provisions.

Constitutional provisions must, however, be followed up with legislation to give full effect to the property rights of women. Many African countries are currently undertaking such law reform initiatives. For instance, the Village Land Act of Tanzania (2001) clearly articulates women's equal access to property and creates proportional representation for women on local land boards<sup>23</sup>. This has been complemented by the new National Land Policy, which is an attempt to provide a national framework for the implementation of international commitments. However, the example of Tanzania also demonstrates the challenges associated with implementing law and policy in an environment which is pervasively influenced by culture. This is demonstrated by the following observation made in the policy:

**“[t]o enhance and guarantee women's access to land and security, women will be entitled to acquire land in their own right not only through purchase but also through allocation. However, inheritance of clan family land will continue to be governed by custom and tradition ... Ownership of land between husband and wife shall not be the subject of legislation”.**<sup>24</sup>

23 Mwangi, supra note 32 at 136 in Rachel Rebouché. Op cit. 2006.

24 Government of Tanzania 1995: NLP Policy Statement 4.2.6 in Zenebeborke Tadesse Marcos. Op cit.

## Box 1

### Examples of constitutional provisions from Ethiopia and Malawi

Ethiopia:

Women have the right to acquire, administer, control, use and transfer property. In particular, they have equal rights with men with respect to use, transfer, administration and control of land. They shall also enjoy equal treatment in the inheritance of property- **Article 35(7) of the 1994 Constitution of Ethiopia.**

Malawi:

Women have 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 which includes the right – a) to be accorded the same rights as men in civil law, including equal capacity (i) to enter into contracts; and (ii) to acquire and maintain rights in property, independently or in association with others, regardless of their marital status. **Article 24(1) (a) (i) (ii) of the 2004 Constitution of Malawi.**

Although it is expected that constitutions should provide full protection to women, in some cases, they tend to bend in favour of customary law. For example, while the constitution of Lesotho prohibits discrimination on the basis of sex, race and religion, it condones discrimination under “personal and customary laws”. This is so despite the fact that Lesotho has ratified the African Women’s Protocol without reservation and recently passed a ‘Gender Equality Bill’ that has been pending in parliament for about four years.<sup>25</sup>

In addition, where effective laws on inheritance and property rights exist, women tend to be ignorant of their rights and therefore do not claim them. Furthermore, the existing legal, social and administrative mechanisms may not be adequate or effective for the purpose of law enforcement in relation to women’s claims for non-discrimination in land allocation and inheritance of immovable property.

These are just a few examples of the gender bias that prohibits women from gaining control over land as a productive resource. In the final analysis, the quote by President Julius Nyerere cited above is enacted over and over in many countries of Africa.

## Gender bias demonstrated in relation to women’s access to credit

Over the past few years, women’s access to credit has shown improvement at a more accelerated pace than access to other productive resources (such as land). This has been as a result of intensive work being carried out by both government and civil society organizations in the area of creating special credit schemes and programmes targeting women.



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### Box 2

#### Limited Access to Justice Inhibits Women’s Ability to Assert Their Rights: case study from Uganda

Even where the law protects their right to land, women are often unaware that such protection exists or are unable to assert their legal rights. A Ugandan woman can assert her rights to assets on the death of her husband under the Succession Act through various paths. The Uganda Law Reform Commission has proposed making justice more accessible by establishing a District Administrator General in every district. The reality, however, is that the time, cost, and knowledge required to seek justice make the system inaccessible to many women. As far as more general disputes over land are concerned, men bring four times as many cases to land tribunals than women (Mukasa and others 2004). Constraints that

inhibit the ability of women to access these tribunals include inability to afford the fees, time poverty, and the perception that the tribunals are biased against women. Land matters are dealt with by Local Council Courts in the first instance. There is a requirement that women be represented on Local Council Courts, but the requirement is not always met. A training manual has recently been drawn up for Local Council Courts that sets out guidelines on the principles of equality of treatment, including the importance of not applying customs and cultural values against women and of not discriminating on the basis of marital status. In 2005, Local Council Courts received training on these guidelines.

Source: Gender & Economic Growth in Uganda: Unleashing the Power of Women A. Ellis, C. Manuel, and M. Blackden, the World Bank 2005

25 Amollo, Thabane, Hanzi. Human Rights and Democratization in Africa. University of Pretoria, 2006.

However, women’s access to formal credit

sources such as bank loans remains extremely low compared to men's due to many factors, such as lack of regular income, inability to guarantee the loans with appropriate collateral (especially land) and limited access to information. While Community-based organizations (CBOs) and NGOs are doing valuable work in improving women's access to micro credit, this cannot be sustained unless governments take action to ensure women's access to credit in the formal sector:

Women's access to credit serves as a source of financial security for their productive activities, but will serve little or no purpose unless they are also guaranteed access to and control over other productive assets such as land and technology. Various organizations have testified to the satisfactory results in their credit schemes for women with tangible improvements in their quality of life in addition to that of their families.

While the gains have been formidable, women face many difficulties when seeking finance for their business and this can be explained by a number of factors, namely:

- Traditional financial institutions operate within gender discriminatory regulatory frameworks as evidenced by the demand for a husband's co-signature when a bank account is being opened by a woman;
- The usual requirement for land as collateral operates as an absolute block to many businesses headed by women, because land is not readily accessible to or put under the control of women, due to land allocation practices that tend to favour men;
- Women have limited knowledge about the criteria and information required to obtain finance from formal institutions;
- Micro finance institutions perceive women as risks, even though there is evidence that their repayment rates are generally higher.

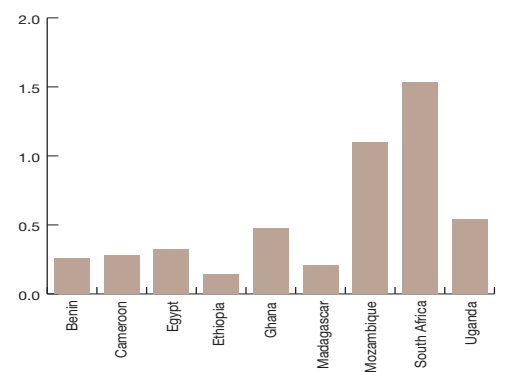
### The African Gender and Development Index (AGDI): A tool for monitoring access to productive assets from a gender perspective

The African Gender and Development Index (AGDI) developed by ECA and piloted in

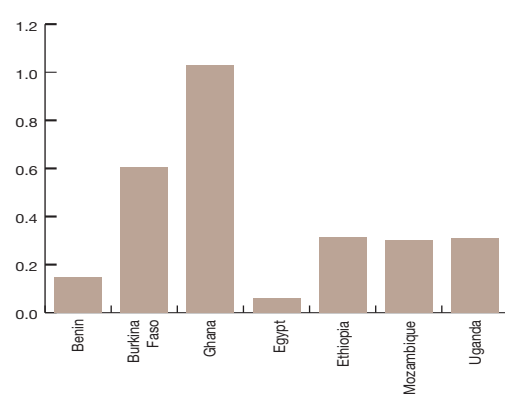
12 African countries (Benin, Burkina Faso, Cameroon, Egypt, Ethiopia, Ghana, Madagascar, Mozambique, South Africa, Tanzania, Tunisia and Uganda) aims at indicating the gender equality status in terms of access to assets and economic resources. It is also a tool for measuring women's ability to decide on the use of their own income.

The two graphs below are derived from some of the countries where AGDI was piloted, which show women's access to land and credit. Despite the legal reforms that have taken place across many of the trial countries, the AGDI trial outcomes indicate poor performance in securing women's access to and control over economic resources. Their access to land and credit on average tends to be less than half of men's. AGDI pilot studies also reveal the challenge of regular collection of gender-disaggregated data at the national level for purposes of measuring and monitoring progress.

**Figure 1: Trial country performances in women's access to credit**



**Figure 2: Trial country performances in women's access to land**



Of the twelve pilot countries, only seven provided gender-disaggregated data on land ownership and nine countries provided data

on women's access to credit. The studies further revealed that only a few countries were collecting data on both formal and informal sources of credit. Figures 1 and 2 provide a comparative overview of gender equality in relation to access to credit and land respectively. In the first instance, two countries (Mozambique and South Africa) are seen to perform creditably with indicators above 1.0, demonstrating a capacity to bridge the gender gap in access to credit over the medium to long term.

Ghana is the highest scorer in relation to access to land. However, given that land tends to be a common collateral requirement for accessing credit, questions would have to be asked in connection with its relatively poor performance in this latter area. When viewed as whole, one can conclude that countries must monitor issues of access to land and credit in a more concerted way to ensure that both land and credit complement women's efforts in seeking productive resources.

### Case studies showing the achievements and challenges in accessing land and credit in some pilot countries

Under AGDI, women's access to land and credit is measured under the Gender Status Index, which provides a quantitative indication of progress being made by African States with respect to implementation of their national, regional and international obligations affecting women's rights. Access to credit is measured under the "economic block" which deals with opportunities presented to women in relation to men in their participation in the economy. The African Women's Progress Scoreboard provides qualitative perspectives from which progress in land access can be measured. In this regard, the passage of enabling legislation, policy commitment, the development of a plan, targets, institutional mechanisms, budgetary allocations, human resources, research, involvement of civil society, information dissemination and monitoring and evaluation measure a country's progress.

In Ghana, significant progress has been achieved compared to other countries.

Women's land ownership still remains lower than men's, but their chances to own or rent a house are equal. In some towns/regions, they are even higher than men, especially in urban areas. Women's access to credit remains lower than that of men, but Ghana's performance nevertheless remains higher than other trial countries on average. Credits are channeled through The Credit Unit Association (CUA), which has 11 regional branches in the country.

In Uganda, there is no systemized data collection on access to land or credit, according to the AGDI report. Therefore, the indicator for access to land and housing was based on the raw data processed by the AGDI research group. Women represent over half of the number of the loans and credits accessed and there are indications that their access has improved enormously over the previous few years. Indeed, in 2000, only 35 per cent of the women had access to some form of credit, but in 2002/2003, women represented 55 per cent of all the loan and credit clientele in both formal and informal credit institutions. However, distribution of loans remains a geographical challenge, as most of the micro finance institutions are located in urban areas, while most of the women who need micro credit live in rural areas.

In Mozambique, gender-disaggregated data on land ownership are not available at all according to the AGDI report. Therefore, it was not possible to gather a full picture of land tenure relationships in this country. Though it is mandatory by law to register houses in the names of the married couples, men in Maputo tend to register more houses in their own names, excluding the women's, due to the reduced number of civil marriages. The indicator for women's access to credit in Mozambique is reported to be high and is based on data from the formal sector and from banking services in the informal sector. In the formal sector, the size of loans taken by women tends to be significantly lower than those granted to men. Women tend to access loans predominantly from informal sources such as moneylenders, NGOs and CBOs.

In Egypt, the indicator on women's access to land was also alarmingly low. The AGDI report



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provided information on access to credit only from the formal sector. However, given that women in the informal sector are usually the ones most in need of credit, data collected only in the formal sector does not provide sufficient basis for a comprehensive analysis on women's access to financial services. Women's access to credit is more limited in the regions where agriculture provides most of the income

and where women own more land relative to men. Data provided by the Principal Bank for Development and Agricultural Credit covers only 6 out of 26 governorates, and women are reported to have access to less credit both in terms of number of credits and in terms of amounts distributed.

## Conclusions and the way forward

This article has advanced some of the underlying reasons for the "feminization of poverty" in Africa. The causes are deeply rooted in the economic, social and political structures of African societies as they relate to the distribution (or non-distribution) of the basic factors of production: land and capital. As an integral part of this analysis, we also learn that gender forms a critical component of any attempt to analyse and resolve the dynamics of poverty, and in the design of effective strategies to alleviate it.

The consensus is now very strong that governments must seriously address the structural inequalities in the distribution of assets, particularly land and credit, with a view to empowering women in their productive lives. This is the only sure way of tackling poverty on the continent.

# Questionnaire for Gender Net

ACGS/ECA is continuously making efforts to develop its services.

Your opinion is valuable and we would greatly appreciate if you would spare 5 minutes to complete this feedback form.

1. General opinion on Gender Net: How interesting was the issue?

-----  
 1      2      3      4      5      6      7      8      9      10  
 Not interesting at all                      somewhat interesting                      very interesting

2. General opinion on the appearance: How attractive was the layout?

-----  
 1      2      3      4      5      6      7      8      9      10  
 Not attractive at all                      somewhat attractive                      very attractive

3. How useful and informative did you find "International Law and Women's Economic Rights in Africa?"

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 1      2      3      4      5      6      7      8      9      10  
 Not useful at all                      somewhat useful                      very useful

4. How useful and informative did you find "The Enforcement of Women's Economic Rights in Africa?"

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 1      2      3      4      5      6      7      8      9      10  
 Not useful at all                      somewhat useful                      very useful

5. How useful and informative did you find "Gender issues in Land Policy Development?"

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 1      2      3      4      5      6      7      8      9      10  
 Not useful at all                      somewhat useful                      very useful

6. How useful and informative did you find "The Daunting Challenge of Addressing Gender Biases in Access to Productive Assets"

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 1      2      3      4      5      6      7      8      9      10  
 Not useful at all                      somewhat useful                      very useful

7. How useful and informative did you find Gender Net?

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 1      2      3      4      5      6      7      8      9      10  
 Not useful at all                      somewhat useful                      very useful

8. Which areas would you like future Gender Net to focus on? (Please use the empty space)

For any additional comments, please use the backside of the paper. You can return this form to ACGS/ECA, Addis Ababa or via email: [acgd@uneca.org](mailto:acgd@uneca.org)

## ECA's work on Gender and Macroeconomics presented in Istanbul

*ACGS has represented ECA at the International Conference on Engendering Macroeconomics and International Economics organized in Istanbul by The International Working Group on Gender, Macroeconomics and International Economics (GEM-IWG), in collaboration with the Levy Economics Institute and the University of Utah. (July 20-26, 2007)*

(GEM-IWG) is an international network of economists that was formed in 1994 to promote research, teaching, policy making and advocacy on gender-equitable approaches to macroeconomics, international economics and globalization. The 8th International Conference organized this year in Istanbul has gathered world economists who recognize the importance of promoting gender-equitable approaches to macroeconomics, international economics and globalization. The Conference was followed by a stocktaking workshop, which intended to present and enhance the activities of Regional and Thematic groups of the GEM-IWG network, in order to strengthen collaboration with other capacity building and knowledge-sharing groups.

The Conference provided ECA with a good opportunity to expound its experience in mainstreaming gender in macroeconomics and producing data on unpaid work through Time Use surveys. In this regard, the main findings of a comparative analysis of concepts and methodologies used in Africa and Europe for Time Use surveys were presented and discussed during the Conference.

## ECA/ACGD actively involved in Engendering NEPAD

Promoting Gender mainstreaming in NEPAD's activities was the major agenda item of a high-level meeting between ECA and NEPAD Secretariat (March 2007 in South Africa). The meeting reviewed the activities that ECA was entrusted with in this regard, namely: i) undertaking an evaluation of the implementation of the NEPAD Action Plan initiated in 2003 to implement the three-year Comprehensive Strategic Plan; ii) preparing a concept note on how to mainstream gender in the UN cluster system supporting NEPAD; and iii) supporting gender-mainstreaming work through NEPAD Gender Task Force; iv) engaging UN Agencies and gender experts in the development of a conceptual and institutional framework to concretely and effectively integrate gender perspective in the UN cluster system supporting NEPAD.

The meeting attended by representatives from ECA's African Centre for Gender and Social Development and NEPAD Gender and Civil Society Organizations Unit ((CSOs) examined and discussed two draft papers submitted by ECA, one on the joint assessment of progress achieved in the implementation of NEPAD with a gender perspective; and the second one on mainstreaming gender in the UN Cluster system that supports NEPAD.

The first document detailed the background, the objectives, the methodology and the expected outputs of the assessment process. The specific objectives of the assessment exercise are:

- To evaluate the capacity and performance of all NEPAD divisions in mainstreaming gender in their structures, processes, and programmes;
- To identify opportunities in each division and programme of NEPAD where gender could be better incorporated; and;
- To propose ways so to better mainstream gender within NEPAD structures, processes, and programmes.

Upon discussion, the meeting recommended that:

- The gender sensitive assessment should be part of the framework for the overall NEPAD assessment and should focus on the implementation of the three-year Comprehensive Strategic Plan;
- This assessment should be based mainly on desk and Literature review and should explore ECA's support upport to NEPAD's Gender Programme through a multi-year programme, which can cover two areas: assistance to facilitate the activities of the Gender Task Force, and the identifications of needs related to the priority sectors involving professional, programmatic and research activities.

The second paper on mainstreaming gender in the UN Cluster system to support NEPAD, presented the overall purpose of the UN cluster system and the regional consultative meetings. This cluster system comprises nine UN thematic clusters around key priority areas identified in NEPAD Action Plan<sup>1</sup> and provides the entry point for the UN system to support NEPAD in the elaboration and implementation of programmes in a coordinated and coherent manner:

The meeting also discussed the idea of convening an ad-hoc working group meeting that will gather UN Agencies and gender experts to develop a conceptual and institutional framework for the effective integration of gender perspective in the UN cluster system supporting NEPAD.

For more information: please email [ecainfo@uneca.org](mailto:ecainfo@uneca.org)

<sup>1</sup> The 9 clusters are:

- Infrastructure development: water and sanitation, energy, transport and ICTs convened by ECA
- Governance convened by UNDP
- Peace and Security convened by DPA
- Environment, Population and Urbanization convened by UN-Habitat
- Human Resources Development, Employment and HIV/AIDS convened by UNICEF
- Agriculture, Food Security and Rural Development convened by FAO
- Industry, Trade and Market Access convened by UNIDO

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