

**Land Reform in Southern and Eastern Africa:
Key issues for strengthening women's access to and
rights in land**

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March 2002

Report on a desktop study commissioned by the
Food and Agriculture Organization (FAO)
(FAO Sub-regional office for Southern and Eastern Africa,
Harare, Zimbabwe)

This paper was prepared under contract with the Food and Agriculture Organization of the United Nations (FAO). The positions and opinions presented are those of the author alone, and are not intended to represent the views of FAO.

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ABBREVIATIONS USED IN THE TEXT

CEDAW	Convention on Elimination of All Forms of Discrimination Against Women
COHRE	Centre on Housing Rights and Evictions
DLA	Department of Land Affairs (South Africa)
EASSI	East African Sub-Regional Support Initiative for the Advancement of Women
FAO	Food and Agricultural Organization
GDP	Gross Domestic Product
GNI	Gross National Income
GNP	Gross National Product
HDI	Human Development Index
HIVAN	HIV/AIDS Network
SADC	Southern African Development Community
SARPN	Southern African Regional Poverty Network
UN/DESA/DAW	United Nations Department of Economic and Social Affairs, Division for the Advancement of Women)
UNDP	United Nations Development Programme
WLSA	Women and Law in Southern Africa

ACKNOWLEDGEMENTS

I would like to thank Kaori Izumi of the Food and Agricultural Organization for the support she has given me in the form of encouragement, critical comment and suggestions about the literature and engagement with the debates.

I would also like to thank the FAO and EASSI for making it possible for me to attend the EASSI conference on Women and Land Rights in Kampala, Uganda, from October 28 - November 1 2001.

SECTION ONE: INTRODUCTION

1.1 THE PROJECT BRIEF

Background to the study

The Project Brief is to identify key issues in women's access to and rights in land in Southern and Eastern Africa, as a basis for formulating policies which will strengthen women's standing in relation to land and improve agricultural productivity and food security across the region.

The Terms of Reference describe the background to the study as, firstly, the 'radical transition' underway in many African societies in formal and informal land tenure systems, as a result of socio-economic and political changes, and, secondly, the introduction of new land policies and legislation in many countries in the region since the early 1990s. Given the importance of women as agricultural producers in sub-Saharan Africa, as well as the commitment to gender equality espoused by many governments, it is important to understand how women's rights in and access to land are being addressed, and 'the ways how institutional reforms have benefited or disadvantaged women.'

The broad context for the Project can thus be summarized as follows:

1. The poor development record of sub-Saharan Africa throughout the 1990s, which has heightened concerns about food security and fueled intense debate on the most appropriate mechanisms and policies to lift the region out of deepening poverty, and arrest the growing inequality between the relatively well off elite and the masses of poor.
2. The proliferation of land policy and land reform initiatives across the region in this time, against the backdrop of a re-evaluation within international and national debates of some of the orthodoxies that informed earlier policy prescriptions for social and economic development in the region (for instance, the emphasis placed on individual title to land in the 1970s and 1980s).
3. The deepening health, social and economic crisis spreading throughout the region as a result of the HIV/AIDS pandemic, which is at its most advanced in sub-Saharan Africa and is threatening to wipe out those social and economic gains that have been made. It is now widely recognized that all spheres of public policy, including land, have to be rethought in relation to the Aids crisis; given the disproportionate degree to which women are affected by the spread of the virus in sub-Saharan Africa, both in terms of infection rates and as primary caregivers to AIDS sufferers, the need for such policy interventions to be gendered is especially critical.
4. The increased legitimacy accorded the principle of gender equity as a broad developmental goal, alongside concern that despite the formal acknowledgement by many governments that gender equity is a socially desirable and necessary goal, as well as the widespread recognition that throughout sub-Saharan Africa women make a major contribution to agricultural production and household well being, women's rights and interests in land are not receiving proper attention in national policy development. A recent 'Synthesis Report' on research conducted under the auspices of EASSI, which looked specifically at women's access to land in five countries in Eastern Africa, assesses the prevailing situation in these words:

In these processes [land reform], several problems arise towards women's access to and ownership of land. Customary law often poses a problem Furthermore, the fact that male spouses are considered the head of the family promotes the exclusion of women from access to economic resources. In addition, economic restructuring and land distribution policies have often excluded women because bureaucrats are almost always gender insensitive. The land market still remains inaccessible to women for lack of financial resources. Worse still many in the countries are still unwilling to recognize women's rights to property as a basic individual right ... (Nzioki, 2001: 9).

The Terms of Reference for this Report recognize that 'women' do not form a homogeneous group - there are significant differences in terms of income levels, education, and access to resources, while marital status and age are also important variables in determining land access and social power. Nevertheless, the Project also recognizes that gender plays a crucial role in shaping, differently and differentially, how men and women are constituted as social groups, the opportunities available to them, their access to resources, including land, and the ways in which they experience and construct the world around them.

Objectives of the study

The specific objectives of the Project are:

- To review the literature on land and gender in eastern and southern Africa;
- To identify areas where further research is required on women's access to, rights in, and control over land in the region, and
- To make recommendations for policy intervention that will strengthen women's access to, rights in, and control over land.

The Terms of Reference highlight the key issues that are considered relevant for the study as follows:

- Land policies and legislation
- Efforts to formalize indigenous land tenure systems
- The changing role of traditional institutions
- The impact of HIV/Aids
- Agricultural production and food security.

This study is thus intended to provide an overview of developments in land policy in the region in relation to the position of women, drawing out major points of comparison and contrast among the different countries, with a view to informing more gender-sensitive policy development. It is a desktop study, based on available primary and secondary literature. It is not based on field work, nor does it claim to comprise an exhaustive study of all the relevant literature, much of which is not readily accessible outside of specialist collections in the various countries. It is envisaged as an exploratory study, that points to further areas for follow-up work.

What also needs to be stressed is that while it is possible to identify a common context and common challenges across the region, land reform and land policy debates in each country take place within a particular historical context, with a specific set of crosscutting social, economic

and political conditions, all of which shape and constrain policy options. The potential weakness of any overview study is that the specificity of the policy environment within each country gets underplayed, in the reach for generalizations and in the absence of in-depth country-by-country analyses, with detailed micro studies. At the end of the day, any general research and policy recommendations that emerge will have to be tuned to the particular circumstances of each country, if they are to be of any value.

Geographic scope of the study

In the time available and within the context of a desktop study, it has not been possible to look at all the countries that fall within eastern and southern Africa, nor at all of those that have been selected in equal depth. The study is constructed around a general overview of developments across the region, supplemented by country-specific accounts of gender-related issues in land policy in Kenya, South Africa, Uganda and Zimbabwe. Appendix One contains a synopsis of major land reform developments for all the countries in the study, for reference in relation to the general commentary in the main body of the Report.

The countries included in the general survey are grouped loosely as follows:

In Southern Africa: (1) Those countries where, amongst many land issues, land redistribution is the major political priority: Namibia, South Africa, Zimbabwe;

(2) those countries where tenure security and agrarian reform, rather than redistribution *per se*, are priorities: Botswana, Lesotho, Malawi, Mozambique, Swaziland and Zambia;

In Eastern Africa: Kenya, Tanzania, Uganda.

1.2 STRUCTURE OF THE REPORT

The Report is structured as follows:

SECTION TWO provides background on the changing land dispensation and the socio-economic context for land reform – the historical legacy of colonialism; economic and human development indicators, and the impact of HIV/AIDS and the policy challenges this poses.

SECTION THREE provides an overview of land policies in the region - the different types of land reform, different policy objectives, debates on customary law institutions, including traditional leadership, and gender equity as a policy goal.

SECTION FOUR provides more detailed accounts of how women's interests have been addressed by land reform initiatives in Kenya, South Africa, Uganda and Zimbabwe.

SECTION FIVE, the conclusion, summarises key findings in relation to the Terms of Reference and identifies issues for further research and for policy follow-up.

SECTION TWO: THE CONTEXT FOR LAND REFORM

The development of more gender-sensitive land reform research and policy agendas cannot proceed in isolation from an understanding of the current situation with regard to land tenure, as well as the demographic, economic and social realities of the region and the individual countries within it. These contextual issues are discussed here under the following headings:

- The changing land dispensation
- The socio-economic context
- HIV/AIDS and land reform.

2.1 THE CHANGING LAND DISPENSATION

The historical legacy of colonialism

No consideration of land issues in the region can ignore the historical legacy of colonialism and the profound and complex changes which that introduced within indigenous societies. Previously small-scale, pre-capitalist farming communities and polities were drawn into new, capitalist relations of production, on terms that were heavily skewed in favour of the metropolitan powers and European settlers, with hugely disruptive impacts on pre-existing social organisation. Marriage, family, land, wealth, tradition – even where the outer form of these institutions and categories appeared to display remarkable continuity with the pre-colonial era over time, the old underpinnings were fundamentally reshaped, even removed.

Four historical processes that are especially pertinent for the study of land reform and gender today are, firstly, the transformation of the social and economic foundations of production and reproduction across the region; secondly, and linked to that, the commoditisation of land in the form of private property, especially in the south; thirdly, the entrenchment of predominantly male rural/urban migrant labour systems, particularly in the south and center of the region, and, fourthly, the associated development of dual legal and administrative systems across the region, the one based on the legal systems of the colonial powers and the other on various reconstructed and adapted versions of indigenous systems in the form of colonial 'customary' law.

Under the pre-capitalist economies of the region, land had a very different meaning from what it has today. While access to land (for growing crops, running stock, hunting, access to water, gathering wild foods, fuel, building materials, medicinal herbs etc.) was the basis of life, land was not a commodity that was 'owned' in the way that the European powers understood it, nor was it a repository of value as it was to become under capitalist relations of production. Generally land was abundant; the constraints on human well-being lay not in a shortage of land but in the amount of labour and the technology to work it, as well as in the vagaries of environment and weather. Building on the idea that in these societies the accumulation of people rather than of things was the basis of wealth and of power, Jeff Guy (1990) has argued that in the patrilineal societies of southern Africa, at least, the control of women - the reproducers of children and a source of agricultural and domestic labour - was fundamental to social organization; marriage 'set up the productive unit upon which the society was based,' that of the homestead (1990: 36).¹

¹ It seems a similar argument could be made for matrilineal societies, where women's fertility and women's labour were crucial to the survival of the matriline (see Richards, 1950), although I have not investigated the literature on this in any depth.

Within this system, Guy argues, women had a significant degree of economic independence and social status - so long as they were obedient to the terms of the marriage contract - so that to analyse women's subordinate status in terms of contemporary notions of oppression and rights is extremely misleading.

On marriage [women] were given access to productive land, which they worked themselves. They were in control of the process of agricultural production and retained for their own use a substantial proportion of the product of that land and of their labour. Work was heavy but it took place within a community which provided substantial security. The value attached to fertility gave the possessors of that fertility social standing and social integrity (Guy, 1990: 46).

However, as these societies became transformed into market-dominated economies, so land began to acquire new meanings, and the social relationships that had mediated men and women's access to that land and their relationships to each other, within the homestead and the larger group, were subjected to multiple pressures and far-reaching processes of change. Following Guy, the accumulation of things rather than of people became the primary motor driving the economy. Homesteads were now drawn inexorably into a monetary economy in which cash, to buy goods and pay taxes, became critical for survival. One consequence, in relation to customary tenure systems and traditional institutions, is that the complex pattern of rights and responsibilities that had informed marriage and household relations of production was disassembled and rearranged, and the rights that men continued to claim – to land, to women's labour, to authority - were exercised in increasingly individualised contexts. This is a crucial point to keep in mind when considering the role of customary systems of law, tenure and traditional institutions within land reform – their continued value and contribution needs to be measured in relation to current conditions and needs, rather than some ideal (which is usually static) of social relations in the past.

Current land distribution and ownership

For contemporary land reform purposes, the states of the sub-region can be divided into three broad groupings on the basis of this history:

1. Those countries in the south where, historically, much of the land was alienated under colonialism to white settlers and where land redistribution and the deracialisation of the land dispensation top the land reform agenda today – Namibia, South Africa and Zimbabwe. In Zimbabwe land redistribution is the most burning political issue of the day. In these countries much of the agricultural land is in private (white) ownership, with large-scale commercial production systems of farming economically predominant; so-called communal tenure systems are confined to those areas historically constituted as 'native reserves'. There are, however, notable differences among these countries in terms of the inequalities in the land dispensation and the overall economic significance of agricultural land - in both Namibia and South Africa, agriculture, while not unimportant, is not predominant economically.
2. Those countries in the south which developed historically from the late nineteenth century as labour-exporting reserves for the mining and industrial centers of Southern Africa (which were located mainly in South Africa) – Botswana, Lesotho, Malawi, Mozambique, Swaziland and Zambia. Here considerably less land was alienated from the local people, who continued to maintain access to land through various communal tenure systems which were, however,

subordinated to the authority of the colonial state and inexorably transformed by the processes described above. Today the land policy debates center primarily on the role of tenure reform (variously understood) in promoting the more efficient and productive use of the land, in the context of the continued economic dependence of most of these countries on South Africa. However, despite the commonalities these countries share as a result of their colonial past, there are also marked differences among them in terms of the economic strategies pursued since independence, current levels of urbanisation, population pressure on the land, and the importance of land to people's livelihood strategies. Botswana and Zambia, for instance, both show relatively high levels of urbanisation while agriculture now constitutes a markedly small component of the Botswanan national economy.

3. The three former British colonies in Eastern Africa - Kenya, Tanzania and Uganda - where small-scale peasant farming (both market and subsistence) predominates and tenure reform, in the context of growing pressure on the land, is also the major focus of attention. While the experience of British colonialism² imposed a certain uniformity in legal and administrative systems sub-regionally, and efforts to promote greater levels of economic and political co-operation continue to link the three countries together, it is also important to acknowledge the differences between the countries in terms of their particular histories of colonialism, the natural resource environment, and current political dynamics and economic strategies. In Kenya, settler colonialism, although never on the scale of the settler colonies of the south, played an important part in shaping the land dispensation of the twentieth century.³ In post-colonial Tanzania a radical villagisation programme was introduced in 1975 which substantially reordered settlement patterns and social relations around land.

Dual legal and land tenure systems

The discussion of colonialism leads to the question of the dual legal systems that operate in relation to both property and family law across the region. In all the countries covered by this report, the legal systems of the colonizing powers became the basic law of the land, supplanting indigenous principles and systems. In most countries in southern Africa – South Africa, Botswana, Lesotho, Swaziland and Zimbabwe - the prevailing law is Roman-Dutch, derived via South Africa. Mozambican law is based on Portuguese law, while English law prevails as the 'received' law in Zambia, Malawi, Kenya, Tanzania and Uganda. At the same time, the colonial powers also retained aspects of customary law in those areas set aside for African occupation, whether as reserves or 'protectorates', albeit in modified form.⁴

Under colonialism full ownership of all the land, in the European sense, was vested in the Crown, which then proceeded to make grants (freehold or leasehold) to settlers and companies, and to 'reserve' areas not seen as prime land for occupation by the indigenous people, under a reconstructed and subordinated version of customary law. This notion of ownership vesting in the central authority has persisted in all the post-independence states with the exception of Uganda after 1995, where the Constitution now vests ownership directly in the citizens of Uganda and accords equal status in law to customary tenure and freehold or leasehold tenure (McAuslan,

² Tanzania was originally colonized by Germany but became a British colony in terms of a League of Nations mandate after the First World War. One of the conditions of the mandate was that no further land could be transferred from the indigenous people to settlers (Okoth-Ogendo, 2000: 124).

³ In Kenya a little over 7% of the total area was secured for white settlers in the mid 1930s, in the fertile highlands, according to figures given in Hallett (1974: 587).

⁴ There is a large literature on the subject of the colonization of traditional and indigenous legal systems. Much of the debate is captured in various contributions to Toulmin and Quan (ed) (2000).

2000: 82). In the words of McAuslan: 'The notion that the received land law as a superior law permits and justifies the unrestricted acquisition of land held under customary law dies hard' (ibid: 81). In support of this claim he cites examples in Tanzania, where in 1994 the government attempted (unsuccessfully) to argue in Court that it did not need to pay compensation to people who had previously lost their land under its villagisation policy, as well as in Namibia, where in 1995 consultants working on the draft Communal Land Tenure Bill expressed the view that customary tenure rights were premised on the permission of the government. Claassens (2000: 13) describes a similar situation in the communal areas of South Africa where 'some government departments have assumed that since the land is state-owned, they can dispose of it or make it available to foreign investors'

Arising out of this history, the land ownership and tenure systems that are in operation across the region can be divided into three broad categories:⁵

- Historically state-owned land that is today either held by the state on behalf of the occupiers or by the people themselves under various adaptations of customary tenure;
- Privately owned land;
- State-owned land reserved for various public purposes.

State-owned 'trust' or customary tenure land

Those areas deriving out of colonial 'native reserve' policies make up the bulk of these lands, which are today referred to variously as trust lands (e.g. Zimbabwe), tribal lands (e.g. Botswana), traditional or communal areas (e.g. South Africa) or customary tenure lands. Here ownership either still vests in the state, which holds the land in trust for/on behalf of those who are living on it, or has been transferred to the people living on the land under various systems of land and tenure reform, most of them dating to the 1990s. Land is generally allocated to households in terms of customary laws and norms, although leasehold systems may be brought into operation as well, as in Botswana. Within these areas village or community land is generally divided between household land (residential sites, gardens and cropping fields) and commonage lands that are for the use of all the members of the community, such as grazing lands, forests and wetlands. However, the amount of commonage land that is available varies enormously, depending on population density, terrain and the type of farming practiced. Thus in Kenya, Uganda and Malawi there are many districts where it is today difficult to identify any commonage land, with most village land allocated to individual households. In parts of Zambia, in contrast, rural population densities are far lower and commonage is not a problem. In Lesotho, population pressure on the land is considerable but because of the importance of stock, the mountainous rangeland has remained a very important, albeit constrained, resource.

Within these areas more or less formal processes of individualization and privatization of land holdings may be taking place. Kenya has led the way since the 1960s with an official land titling process involving adjudication and registration of land holdings in individual names; however, customary forms of inheritance and land access as well as informal transfers of land continue to be practiced in relation to these lands. Other states have also adopted various forms of demarcation and registration of 'customary' rights (e.g. Zambia, Uganda, Mozambique, Tanzania) or are considering this (e.g. Malawi and South Africa). In Namibia a process of unlawful

⁵ While these categories would apply to the urban areas, tenure systems in urban areas have not been investigated for this report.

privatization of the rangeland is taking place in some areas through the erection of fencing, generally by wealthier individuals but in at least one case by a community (Twyman *et al*, 2001).

A variant of this category of state-owned land held on behalf of the occupiers is the land acquired from white farmers by the state in Zimbabwe, for redistribution purposes, on which resettlement communities have been established under a form of permit-based tenure that has been dubbed 'resettlement tenure'.

Privately owned land

These areas are referred to variously as freehold, private, estate or commercial land; here ownership to clearly defined and registered pieces of land vests in individuals or various types of corporate legal entities.

State-owned land reserved for various public purposes

This category encompasses land that has been set aside as national parks, game and other conservation reserves, military bases, etc.

The current distribution of land across these categories within each of the countries in this study, as far as it has been possible to ascertain this, is summarized in Table 1 below. It should be noted that the classification of land is not strictly consistent and therefore comparable across the different countries, while the quality and availability of information varies as well. The Table should, therefore, be regarded as a guide to how the different countries compare with each other in regard to the distribution of land tenure types.

Table 1. Percentage of land that is state-owned 'trust', privately owned or state-owned public-purpose land in each country

	State-owned 'trust' and/or customary tenure	Privately owned rural land	State-owned public purpose & urban land	Notes
Namibia	43%	39%	18%	
South Africa	14%	67,5%	18,5% (8,5% urban)	The figure frequently cited as in private ownership or under commercial agriculture, 87%, is actually the balance of land not allocated to the communal areas, and hence includes public purpose & urban land as well as farm land.
Zimbabwe	51% (trust 42% resettlement 9%)	30%	19%	'Resettlement' land refers to redistributed land, which has passed into state ownership though allocated to beneficiaries.
Botswana	71%	6%	23%	
Lesotho	95%*	5%	*	*The figure includes urban & public purpose land.
Malawi	67%	11%	22% (3% urban)	'Estate' land is included under privately owned land.
Mozambique	100%*	-	*	The figure includes urban and public purpose land. There has been considerable alienation of communal land in the form of concessions to entrepreneurs, mainly foreign.
Swaziland	+ 56%	25% (approx.)	19% (approx.)	These figures derive from Europa Publications (2001) for Swazi Nation Land (SNL) and Mndzebele (2001) for freehold. Sources for SNL are not fully consistent.
Zambia	Predominant			In 1975 all land was vested in the President, freehold land rights extinguished & converted to 100-year leaseholds. Provision for freehold rights have been reintroduced.
Kenya	75%	25% (10% game reserves 15% state, large-scale commercial & urban)		The 'communal' land is divided into family/individual small holdings made up of both unregistered customary tenure land and titled land. It is difficult to allocate this between customary and privately owned land.
Tanzania	Predominant	-	national parks	All land vests in the state.
Uganda	Predominant	Limited (15% 'registered freehold')	national parks	The 1995 Constitution vests ownership directly in the citizens of Uganda, not the state. Customary tenure areas involve both individual registered land and communal lands. A colonial form of tenure, known as <i>Mailo</i> tenure, has been reinstated in the former kingdom of the Buganda; this is a form of freehold land vested in traditional notables, on which tenants reside.

Sources: Derived from a wide range of sources; see Appendix One for country references.

Redistributive land reform in Namibia, South Africa and Zimbabwe

Because redistributive land reform in southern Africa is so controversial, particularly in the light of the ever-deepening crisis in Zimbabwe, it is worth looking at the racial distribution of land in these countries in a little more depth in this overview of the changing land dispensation in the region. As Table 1 above shows, in many ways the situation in these three countries is exceptional. Here the grossly skewed land distribution between white and black is the dominant issue in land reform. As Table 2 below makes clear, the concentration of privately owned agricultural land in white ownership is very large: 85% of privately-owned commercial farmland in Namibia, 78% in Zimbabwe and an estimated 98% in South Africa.

Table 2. Approximate distribution of land and population in Namibia, South Africa, Zimbabwe).⁶

	TOTAL AREA (hectares)	PRIVATE, COMMERCIAL FARM LAND		HISTORIC 'RESERVES' (state-owned, in trust for people)			OTHER STATE & URBAN LAND
		% of total area of country	% under black ownership	% total area of country	% total population	Male: female ratio	% of total area of country
Namibia	82 000 000	39% (32 million ha)	15%	43%	C51%		18%
South Africa	121 909 000	67,5% (82 209 571 ha)	2% estimate	14%	30%	45:55	18,5%
Zimbabwe	39 058 000	30-32%	22% includes small-scale	42%	88%		26-28% includes 9% resettlement

Sources: National Geographic (1999); Europa Publications (2001); Izumi (2000); Walker (2001); Adams (2001).

Very limited progress in deracialising land ownership through redistributive land reform in these countries in the 1990s means that this issue continues to be politically volatile - in the case of Zimbabwe, explosive. Zimbabwe is an example of how the political dimensions of land reform can overrun broad economic objectives. However, it is interesting to note that Zimbabwe, the country where the policy crisis around land reform is currently so acute, has the best record of delivery for its initial phase, as illustrated by Table 3.

Table 3. Redistributive land reform in Namibia, South Africa and Zimbabwe

	YEARS	HECTARES	% COMMERCIAL FARM LAND	HOUSEHOLDS
Namibia	1990 - 2001	568 821	1,8%	6 661 'families'
South Africa	1994 - 2000	c 1 100 000	1,3%	74 349 households
Zimbabwe	1980 - 1989	3 300 000	29% as of 1997	54 000 households
	1990 - 1997	200 000		17 000 households
	1998 - 2001	2 796 farms gazetted		

Sources: For Namibia and Zimbabwe: Adams (2001:9) and Whitehead (forthcoming); for South Africa: Turner and Ibsen (2000: 18); <http://land.pwv.gov.za/restitution>, 8/04/01. Redistribution figures for South Africa include 302 060 hectares from the restitution programme, which includes urban land. Note that it is difficult to distinguish in the official statistics between land that has been allocated and settled and land that has been approved for this purpose but not yet transferred to people and/or settled.

The racial disparities in land ownership in these three countries have shifted the focus from poverty *per se* to race as the primary problem; they have certainly overshadowed gender disparities. A major concern is that the emphasis on race in the absence of a clear policy commitment to poverty reduction can allow for the redistribution of land not to the poorest sectors of society but to the wealthier (black) elites. Another is that tenure issues in the 'communal areas', where the majority of the rural population reside and where poverty rests most heavily on women, have tended to be overshadowed or overlooked. In Namibia and South Africa draft legislation relating to the communal areas is only now coming on to the table.

⁶ The data on commercial and communal land in Namibia and Zimbabwe is not consistent across the sources. Adams (2001) puts the extent of commercial land in both countries higher than do Europa Publications reference book and Izumi.

Women's access to land

Hidden in the figures presented above are the gender dimensions of land ownership and land access in the region. This sub-section provides a broad outline of the nature and extent of women's rights to land in both the private freehold and the communal areas; the implications for policy are discussed further below, in relation to the overview of changing socio-economic conditions, including the onslaught of the HIV/AIDS pandemic, as well as general developments in land policy, including debates on customary tenure systems and the objectives of land reform.

In general women's rights to land in sub-Saharan Africa are secondary rights, derived through their membership in households and attained primarily through marriage. In the current context of rapid social change and economic crisis, for many women such rights have become increasingly vulnerable to forfeiture or erosion of various kinds. Two recently concluded research initiatives by African women researchers, on eastern and southern Africa respectively, both conclude that, overall, women's rights in land are insecure and that this is a serious land policy issue for the region. With regard to eastern Africa, the 2001 EASSI draft synthesis report on research it conducted on women's ownership and access to land in five countries⁷ in the sub-region concluded:

While women play an important part in agricultural production, especially the food sub-sector, their role as producers and agents of change in the much-needed rural transformation has been severely constrained by their meager share in the means of production, land, capital, credit and technology, and by their marginalisation in production (Nzioki, 2001: 1).

With regard to southern Africa, a summary of WLSA's country-level research findings on women's access to land in all the countries in the SADC region except South Africa⁸ also paints a picture of increasing vulnerability for women:

A critical analysis on the ground in all the seven countries shows that there are no tangible programmes that have been put in place to facilitate women's access to land. In the area of law, although changes in the legislation ... provide for equal access to land for men and women, traditional and cultural structures have effectively barred women from acquiring land in the rural areas. The WLSA studies reveal that customary law and conservative attitudes and behaviour further prevent women from enjoying full land rights (WLSA, 2001: 43).

However, the generalization that women in sub-Saharan Africa are discriminated against and disadvantaged with regard to land, while broadly applicable, overly simplifies the far more diverse and complicated picture on the ground. For one thing, there is a small elite of professional or generally wealthier women who have been able to secure freehold ownership rights in land; it is often these women who are most vocal in commenting on gender issues and most able to influence the course of the debate. Secondly, within the trust/communal areas there are also important differences among women in terms of land access, security of tenure and the size of the arable land that they own or occupy: some women have access to more land than some men, some women are not poor, and landlessness and poverty are not confined to women only.

⁷ The countries were Eritrea, Ethiopia, Kenya, Tanzania and Uganda.

⁸ Botswana, Lesotho, Malawi, Mozambique, Swaziland, Zambia and Zimbabwe.

For instance, a recent study of 'land and livelihoods' in Lesotho found that nearly one quarter of all female-headed households held three fields, which put them ahead of the 73,6% of male-headed households that held only two or fewer fields. Furthermore, a slightly larger proportion of male-headed than female-headed households in this village had no fields at all – 19,1% for the male-headed households as opposed to 17,8% for the female-headed households (Mohasi and Turner, 1999: 31). This study did, however, confirm the general conclusion that overall female-headed households are poorer than male-headed households, and pointed to some of the gender issues that inform women's access to land in much of the region: 87% of the female-headed households were widows, most were in the older age brackets, and 'most of the poorest households ... are female headed' (ibid: 40). Furthermore:

Although they [i.e. female headed households] usually have rights to fields they often lack sufficient resources to farm them (ibid).

A recent study of land enclosures in eastern Namibia also points to the complex ways in which existing gender and generational relations may intersect with new developments in ways that can confound the simple analysis of female disadvantage. In this pastoral Herero community the practice has been for sons, especially younger sons, to leave their father's group and negotiate access to land and its resources with other groups. As pressure on the rangeland has increased, and especially as fencing has begun to close off access to land, younger sons are finding it more difficult to secure access to land elsewhere once they have 'broken away from' their fathers. Unmarried daughters, however, have been able to establish themselves on land adjacent to their father's homestead, within the enclosed area, with access to the rangeland – these female-headed households, according to Twyman *et al*, are 'negotiating access to these resources in more subtle ways' (2001: 19).

Within the region there are also differences in terms of women's access to land between patrilineal and matrilineal societies (the latter distributed across the central parts of the region). Historically in matrilineal societies, authority and resources were generally controlled by men but in the matriline rather than the patriline (i.e. they passed down through the mother/sister). This can give women important advantages in negotiating their claims to lineage property, including land, especially in those matrilineal societies where it has been the custom for men to relocate to their wives' villages upon marriage. However, a number of sources also indicate that these advantages are coming under pressure from the spread of patrilineal norms and practices. (See Englund (2000: 16) on peri-urban areas in Malawi and WLSA (1997: 112) on Zambia.)

Simply mapping the complex reality of women's access to land reasonably accurately is thus a major challenge for policy makers. Only then can one embark upon the equally challenging task of interpreting the multi-layered data and thereafter developing policies that address the general issues and problems in ways that do not overly simplify or overlook potentially significant disjunctures and exceptions.

Private, freehold land

Although in most societies there are no formal restrictions on women acquiring rights to private, freehold land in their own name, only a small minority of women have either the financial resources or the social independence to do so (WLSA, 2001). Thus the great majority of registered owners of freehold land across the region are men; where women do own freehold land, this is more likely to be urban plots and houses than rural small holdings and farms. In Malawi only 2,7% of the registered owners of 'estate' land are women (Devereux, 1997: 20). A

1995 study on 'Gender Perspectives on land ownership and inheritance in Uganda' found that 7% of the applications for 'legal papers' (title) for land in three districts were by women, mostly for urban plots (figure derived from Sebina-Zziwa, 1995: 20). In the small-scale commercial farming sector in Zimbabwe, WLSA (2001: 29) reports that 'it is well documented that title or leasehold was granted to black men holding a Master Farmer's certificate.' Although precise figures are not readily available, the large commercial farms of the three former settler states are also overwhelmingly registered in the name of men.

In a couple of countries personal and family law continue to discriminate against women's access to privately owned land, especially at the interface between common, statutory and customary law. In both Lesotho and Swaziland, for instance, most married women are married either under customary law or in civil marriages in 'community of property'. In civil marriages, unless an antenuptial contract is specifically entered into, what is termed 'the marital power' vests in the husband – women become legal minors in law and are thus unable to enter into any contracts in their own name. According to WLSA (2001: 26) 'The husband is regarded as the administrator of the joint estate and all the property is registered in his name.' In Swaziland the Deeds Registration Act specifically excludes the registration of title to land by women who are married in community of property; similar Deeds registration restrictions were lifted in Zimbabwe and Botswana after independence (ibid and WLSA, 1998).

The Swazi case indicates that campaigns for legal reform with regard to women's land rights cannot focus only on women's rights under dedicated land reform legislation - other property laws as well as family and personal law have to be brought in line with commitments to gender equality in land reform if that commitment is to be realised.

Communal areas

Because of the economic and social difficulties women as a social category face in acquiring freehold land, as well as the relative unimportance of freehold systems of tenure in most countries, women's rights in and access to land in the communal areas become very significant areas for policy intervention. (Even in South Africa over 30% of women live in these areas.)

A distinguishing feature of customary tenure in its pure form is that it allows for the operation of layers of overlapping rights (sometimes described as 'nested rights') and multiple uses of land by members of the household, lineage or community with regard to the land allocated to or identified with it. Furthermore, because land is not regarded as private and personal property, it cannot be sold by anyone, while all members of the group have rights in the land through their membership of the group; new members may also be absorbed into the group and allocated land for their use. It is the operation of these multiple and overlapping rights in the use of land and its different resources, as well as the relative inclusivity of customary tenure systems, that many advocates of customary systems of tenure regard as so positive, especially for poor people, including women.

Under customary systems of tenure, women's land rights are secured through their membership in the lineage, with their age and marital status important determinants of status in relation to land. There is debate among researchers about how to interpret the strength of women's entitlements to land in pre-colonial societies and the status and security that that accorded them, with some arguing that women were in fact disadvantaged and others that in pre-colonial societies women's rights to land were strong, albeit mediated through their position in kin-based groups. Thus Jane Knowles (1991: 2) argues that 'colonial systems ... found women disadvantaged as to land access

and exploited for their productive and reproductive labor' while WLSA, while noting that power in pre-colonial societies was gendered, state that customary systems of land tenure in pre-colonial Africa 'effectively entitled each community member to an inalienable right to access, control and use of the land through his or her identification with a particular ethnic group' and that 'there were practices that ensured women's rights to land' (WLSA, 2001: 8, 10).

However, what is important for policy today is not how systems may or may not have operated in the, by now, rather distant past, but what is now in place under the rubric of 'the customary' and how appropriate that is, and for whom, for meeting people's needs and circumstances in the coming years. Customary systems of tenure have undergone many changes and adaptations to new circumstances throughout the colonial and post-colonial period, with strong pressures in the direction of more individualized interpretations of custom and the commodification of land, along with huge changes in the role and functioning of the household in the modern economy, and complex patterns of stratification among rural households. Land is no longer a relatively abundant, non-market resource. It is bounded, finite and has a price. Increasingly, under these conditions, lineage land becomes imbued with concepts of individual ownership, under the control of men.

For women living under customary systems of tenure, marriage remains the primary means through which they obtain access to land on which to live and grow food or cash crops. Writing about 'Agriculture, women and land' in sub-Saharan Africa in 1988, Jean Davison (1988: 19) comments:

While most women-as-wives had, and still have, access to some land, unmarried women who are prevented from inheriting property in most patrilineal societies, have little access to land. They must depend on fathers or brothers to provide them with land or seek wage work elsewhere.

Security of marriage thus becomes a major requirement for security of tenure. When the married household is in crisis – through the death of the husband, or separation or divorce - then women's structural vulnerability becomes significant. Most studies agree that marriage as an institution and family structures are becoming increasingly unstable; HIV/AIDS can only be expected to exacerbate the problems. Sebina-Zziwa's 1998 study on succession rituals and inheritance in Uganda describes how men's rights, such as those in land, have become redefined increasingly in market terms and separated from their traditional responsibilities for lineage wives and children; marriage itself has become more transient for many men and women, leading to the creation of extraordinarily complex family networks. In her analysis, the 'patriarchal contract' under which women were 'rewarded with rights in return for conformity to existing power relations' is no longer working, meaning that new property relations need to be established through the intervention of the state to regulate marriage, inheritance and women's rights under the law (Sebina-Zziwa, 1998).

The position of widows

The customary norm or ideal in patrilineal societies is that widows enjoy continued lifetime rights in their marital land (both residential and fields), which passes on to the male heirs after their death. In practice this ideal is not necessarily adhered to. It appears that as land acquires a value, also as a result of increased pressure on land, widows are more vulnerable to being forced off the land by their in-laws, or by their sons. Widowhood represents one of the crisis moments in

a woman's life when her structural vulnerability and her dependence on her male relatives, natal and marital, becomes exposed, as Sebina-Zziwa's (1998) study on Uganda reveals.

While the evidence on the status of widows is mainly anecdotal, many country studies report similar problems. Thus the WLSA study in Swaziland reports on their research as follows:

The study ... revealed that the problems of in-laws grabbing and abusing the property of deceased relatives is widespread in Swaziland. ... many people maintain that custom does not allow the in-law to disinherit the widow. However, in the face of the findings of the inheritance research this seems to be an idealisation of Swazi custom. An alternative view is that some people manipulate Swazi law and custom so that the possible protection of women could enjoy under it has slowly but steadily been eroded. (WLSA, 1998: 188)

The research reports commissioned by EASSI on women's land rights in Tanzania and Uganda both refer to cases encountered during the research where widows reported losing their land to their husband's relatives after his death (Silaa *et al*, 2001: 22; Nyakoojo, 2001: 24). The report for Kenya, however, presents a more varied picture. In the one district where research was undertaken (Kinoo location), widows were 'rarely' disinherited; in the other district, however, the District Officer who was interviewed reported cases of widows trying to reclaim land that had been encroached upon by relatives (Kyalo-Ngugi, 2001: 11 and 17). Furthermore, in a number of cases where women had been able to repossess their land, they 'find themselves living in such a state of tension with their relatives that they opt to sell such land' (*ibid*: 17).

Women's land rights in situations of war and social disruption

Violence and civil strife have plagued many parts of the region in recent decades, notably in Uganda, Mozambique, South Africa and Zimbabwe. Writing on 'Key Issues' in a UNIFEM reader on 'Women's Land and Property Rights in Situations of Conflict and Reconstruction', Chaloka Beyani (1998: 1) states:

The position of women with regard to land and property ownership is further weakened by both conflicts and the ensuing reconstruction process in societies where their access to land and property is already precarious. The usual imbalance in power relations between men and women is sustained and even deepened throughout the conflict and continues up to the stage of reconstruction. Breakdown in social stability and in law and order leaves a socio-economic vacuum in which the subordinate position of women, their social support systems and their access to land and property are compromised by traditional and customary laws.

A study within this UNIFEM collection of the reconstruction process in Mozambique argues that women find it particularly difficult to reassert claims to land in their former villages, especially when they no longer have any male kin who can identify them and also assist them assert their claims (Waterhouse, 1998). Furthermore, single women – numerous in the aftermath of war - 'face particularly severe labour and capital constraints' (*ibid*: 46). These studies raise important but unresearched questions about the extent to which women's interests may be compromised by extra-legal forms of land claims that utilize coercion and/or force to assert such claims, as can currently be seen in parts of Zimbabwe.

2.2 THE SOCIO-ECONOMIC CONTEXT FOR LAND REFORM

Economic and human development indicators

Much of the policy interest in land reform is driven by concerns over the very poor economic record of the region. Table 4 below summarises some of the key economic and human development indicators for the region. The data presented here underscores the severe problem of poverty and underdevelopment in the region but also demonstrates that the notion of 'sub-Saharan Africa' as a relatively homogeneous zone, to which regional generalizations and global policy prescriptions can be readily applied, is misleading. While the language of land reform tends to impose a certain conceptual uniformity on the region – 'redistribution', 'tenure reform', 'customary law' – the reality is that at the macro-economic level there are marked differences between eastern and southern Africa; there are also marked differences within the economies of each of these sub-regions. This is quite apart from other important differences which shape the conditions in which land policies must operate, such as climatic conditions, water resources and agricultural potential, as well as social and cultural differences between, for instance, more and less urbanised societies, pastoralists and cultivators, and patrilineal and matrilineal communities within and across these societies.

Table 4. Selected demographic and economic data for the countries in the study

	Total area (hectares (1))	Population (1)	Popula- tion density (person: ha)	Urban popula- tion (2)	GNI per capita global ranking (3)	HDI global rank (4)	% work force in agricul- ture (2)	GDP % growth 1998-99 (3)	Agricul- ture as % of GDP (2)
Namibia	82 429 200	1 648 000	1:50	27%	107	111	44%	3,1	12,2%
South Africa	121 909 000	43 054 000	1:3	54%	88	94	13%	1,2	4%
Zimbabwe	39 058 000	11 163 000	1:3,5	31%	154	117	67%	0,1	16,3%
Botswana	60 037 200	1 597 000	1:37,5	50%	87	114	44,8%	4,5	2,9%
Lesotho	3 035 500	2 129 000	1:1,4	16%	152	120	39%	2,5	17,3%
Malawi	11 848 400 <i>9 398 721 land</i>	10 500 000	1 :0,9	20%	201	151	86%	4,0	35,3%
Mozambique	79 938 000	19 124 000	1:4	28%	195	157	81%	7,3	32,3%
Swaziland	1 736 400	985 000	1:1,7	22%	<i>No data</i>	113	32%	2,0	18,2%
Zambia	75 261 400	9 664 000	1:7,8	50%	175	143	50%	2,4	17,3%
Kenya	59 274 700	28 809 000	1:2	20%	172	123	78%	1,3	24,6%
Tanzania	94 509 700	31 271 000	1:3	24%	187	140	82%	4,7	45%
Uganda	23 603 600	22 805 000	1:1	15%	178	141	83%	7,4	50%

Notes on sources: (1) National Geographic (1999) for area and population for all countries but South Africa; SA figures from Statistics South Africa (2000). The population density figure is derived as a straight division of the total area by the total population of the country.

(2) Europa Publications (2001) for urban population, % work force in agriculture and agriculture as % of GDP for all countries but South Africa; 'agriculture' includes fishing & forestry. SA figures for urban population, % workforce in agriculture; agriculture/GDP from Statistics South Africa (2000).

(3) World Bank (2001) for GNI per capita ranking and GDP figures for 1998-99. GNI' = gross national income.

(4) UNDP (2001) for HDI ranking. HDI = Human Development Index (measured in terms of life expectancy, educational attainment and adjusted real income). Countries ranked below 127 fall within the 'low human development' category (the lowest ranking country in 2001 is Sierra Leone, at 162); countries ranked between 49 and 126 are classified as 'medium human development' in the UNDP index.

The number of people classified as poor in sub-Saharan Africa (living on \$1 a day) grew from 242 millions in 1990 to 302 millions in 1998 and the World Bank projects the number to increase still further by 2015, to 361 millions (assuming a 'base case' of 3,7% growth per annum, which looks very optimistic in late 2001) or to 426 millions (assuming a 'low case' of 2,3 % per annum growth) (World Bank, 2001: 4). While global growth figures may look quite respectable for much of the 1990s and in some cases (Mozambique and Uganda) very good, generally growth rates are not keeping up with population growth and where high national growth rates have occurred, it is off an extremely low base. Furthermore, these figures say nothing about actual food security nor the distribution of income and resources within national boundaries. Jamal (cited in Bryceson and Bank, 2001: 13) reports that in rural Tanzania real cash incomes declined by 28% between 1985 and 1998, while Devereux (1997: 33) states that 40-50% of all Malawians are 'food-insecure.' In South Africa, 'despite [the country's] relative wealth, the experience of the majority of South African households is either one of outright poverty, or of continuing vulnerability to becoming poor' (May; 2000: 2). Within the region, South Africa and Kenya are among the most unequal societies in the world as measured by the Gini coefficient (UNRISD, 2000: 12).⁹

Poverty has a gendered face, not only in the causes of and responses to poverty, but also in its relative distribution between men and women. As a social category women are poorer than men. In all the countries selected for this study, the 'GDP per capita' figures for women are less than those for men; in sub-Saharan Africa as a whole the comparable figures in 1998 were US\$1,142 per woman and US\$2,079 per man (UNDP, 2000, 161-64).

In terms of other development indicators, Sub-Saharan Africa also has the largest proportion of children out of school and the highest rates of maternal mortality among all six regions that fall within the World Bank's 'low and middle income' category (ibid: 4, 8). Access to secondary education within the region reveals a marked gender bias against girls' enrollment in most countries, although it is noteworthy that in a number of countries in southern Africa girls and boys enjoy relative parity in terms of enrollment - a survey by UNIFEM in 2000 reports that, in contrast to the rest of sub-Saharan Africa, Lesotho, Namibia, Botswana and South Africa buck this trend and all show ratios of girls to boys in secondary schools of 95% or higher (study cited in UNDP and UN/DESA/DAW, 2000: 35).

As discussed further below, HIV/AIDS will only exacerbate the socio-economic problems facing the region. Thus experts are warning that one of the many developmentally regressive impacts of AIDS in the sub-region is likely to be the reversal of gender parity in schooling in the south, because girls of high school age are more vulnerable to the disease than boys of the same age and because girl children in AIDS-affected households are likely to be the first to be pulled out of school to assist with domestic chores and save on school fees (Badcock-Walters, 2001).

Table 4 also highlights the serious problem of population pressure on the land in many countries within the region. The problem is not uniformly distributed – in parts of Zambia, for instance, the main constraint on productivity is a shortage of labour rather than of land (Jiggins *et al*: 19). However, the problem is widespread and is most marked in those countries where the reliance on agriculture is at its greatest. In Malawi and Uganda, both countries with overwhelmingly rural populations, if all the land (including urban, conservation and totally marginal land) were divided

⁹ The Gini coefficient is a measure that has been developed to indicate levels of disparity within countries, where 0 indicates absolute equality in distribution and 1 indicates absolute inequity. The figures for South Africa and Kenya are 0,58 and 0,57 respectively, just behind Brazil at 0,61 and Honduras at 0,60.

up equally among all residents, there would be less than one hectare per person at current population levels. In Malawi by 1988 56% of rural households farmed on less than one hectare of land while 80% farmed on less than 1,5 hectares (Devereux, 1997: 18). Even in a country as sparsely populated as Namibia, mounting pressure on arid and fragile environments is becoming a problem within pastoral Herero communities; the enclosure of communal rangeland through fencing is exacerbating this problem for those groups and individuals excluded by that process (Twyman *et al*, 2001: 12).

The enclosure or fragmentation of land into increasingly smaller, sub-economic units is placing strain on customary systems (which evolved historically in situations of land abundance) and is a serious problem facing policy makers, including those advocating equality between men and women in terms of inheritance rights under customary law. At the EASSI conference in Kampala in October 2001 the issue of land fragmentation was a contentious one for some delegates who were concerned that raising that issue in the debate on gender equity could only retard progress on women's rights.¹⁰ However, further sub-division of land in the absence of any accompanying initiatives to support its more intensive use, or provide economic alternatives to farming or incentives for people not to take up their inheritance, must surely only compound the problem.

Agriculture

There are two distinct (though inter-related) agricultural economies operating within the region – large-scale, relatively capital intensive agriculture found predominantly, but not solely, in the former settler states of the south, and small-scale agriculture, the latter itself covering both small-scale commercial farming and 'subsistence' food production activities.

According to the World Bank (1999: 28) agriculture accounts for about one quarter of GDP in sub-Saharan Africa. This average conceals marked differences within the region, as Table 4 shows. While agriculture is the dominant economic activity throughout eastern Africa, it is notably less significant in terms of its contribution to the national economy in most of southern Africa, with the exception of Mozambique and, to a lesser extent and in a different context (the predominance of large-scale commercial farming), Zimbabwe.

However, not taken into account in the GDP figures are, firstly, the importance of what are termed 'forward and backward linkages' between agriculture and other sectors of the economy (for instance, the food processing industry, financial services etc), which enhance the overall economic significance of the sector, and, secondly, the considerable economic value of non-market, subsistence agriculture as well as access to the natural resource base in the communal areas for the livelihood strategies of the poor. (On this, see Cousins (2000). As economic conditions deteriorate, reliance on these sources of livelihood can only be expected to increase.

In this regard, a 1999 study by Shackleton *et al* made a provisional estimate of the total economic value of land-based livelihoods in the former 'homelands and South African Development Trust areas' of South Africa as some R13,28 billion per annum (R5 535 per household, which is comparable to an average farm worker's wage in that country). With regard to land reform they argue:

¹⁰ This account is based on the author's observations of discussion during the conference in question, at which she was present.

... wild resources, livestock production and cropping in the communal areas of South Africa make significant contributions to rural livelihoods, and ... these data have important implications for the conceptualization, design and implementation of land and agrarian reform. While it is clear that deep poverty in these areas requires radical measures, not least the redistribution of productive resources, including land, a sustainable livelihoods approach suggests that building on the land-based livelihoods which rural people currently practise, and seeking ways to enhance their economic value, might be more appropriate than attempting to replace them with fully market-oriented or commercialized approaches (1999: 62).

In southern Africa, the historic development of agriculture in colonial Namibia, South Africa and Zimbabwe on the basis of large-scale capitalist farming by white settlers continues to dominate the agricultural sector in terms of area, outputs, contribution to the national economy and also, as already described, the land reform debate. Although the level of mechanization (measured below in terms of tractors per 1000 agricultural workers) is low compared to the highly capital-intensive agricultures of the developed world (but comparable to other medium or low income economies), in regional terms agriculture is relatively capital intensive in southern Africa, markedly so in South Africa, as Table 5 illustrates.

Table 5. Tractors per 1000 agricultural workers (1995-97)

Namibia	11
South Africa	68
Zimbabwe	7
Botswana	20
Lesotho	6
Malawi	0
Mozambique	1
Zambia	2
Kenya	1
Tanzania	1
Uganda	1
Brazil	57
India	6
New Zealand	437
United Kingdom	883
United States	1 484

Source: World Bank, 2001: 288-89

However, as a result of global trade pressures and strong moves to deregulate the industry, which has gathered momentum in South Africa after 1994 in terms of its neoliberal macroeconomic policies, the commercial agriculture sector is under considerable economic pressure, with high levels of debt, farm failure and challenges to established products on the global market. As a result, these 'major pressure points and uncertainties ... must raise serious questions about the viability of the new black commercial farming programme ... as well as the attractiveness of full-time farming for many would-be farmers with extremely limited personal resources' (Walker, 2001: 25).

The scale of large-scale commercial farming in Namibia, South Africa and Zimbabwe has led to an additional challenge for land reform policies, that of farm workers. In all three countries a relatively large proportion of the rural population are farm workers, often with very poor working

conditions as well as insecure tenure tied to their continued employment on the farms. The permanent workforce tends to be male; women farm workers tend to be employed mainly as seasonal or casual labourers and those who are resident on the farms are there as dependents of male workers, making theirs a double dependency. In all three countries the position of farm workers is a serious, albeit neglected issue in land reform policies.

The relative economic efficiencies and performances of small-scale versus large-scale farming, as well as of commercial versus food production within peasant production, have been prominent features of the debate on agrarian policies in recent decades. The debate has very important consequences for land reform policy and for gender policy, as is discussed further in Section Three below. While this report has not researched the comparative data, a 1997 study on food security in Malawi does underscore the importance of empirical studies rather than principled positions on this issue in the formulation of policy. This study, on the 'estate' sector, 'found a U-shaped relationship between estate size and various measures of productivity and profitability, with small estates (under 40 hectares) and large estates (over 500 hectares) performing markedly better than intermediate estates' (those inbetween) (study cited in Devereux, 1997: 20); the explanation given for this is that 'both these categories maximize productivity within their respective resource constraints' (ibid). Clearly the issues embedded in this study are extremely complex and any generalisation from it to the very different conditions prevailing in other parts of the region would be suspect. Nevertheless, the example does serve to warn against easy correlations between farm size and productivity in the development of policy.

A further important point to note is that the pressures facing large-scale commercial agriculture in the current global economic policy environment are also impacting on small-scale commodity producers. According to Bryceson and Bank (2001: 10) 'peasant agricultural production has been experiencing a much slower and possibly more painful death [than the continent's 'embryonic industries'] as the removal of transport and crop input subsidies, especially for fertilizers, subverts farmers' returns, exhausts soils gradually and reduces yields.' They cite the declining terms of trade, subsidy cutbacks and dismantling of parastatal marketing boards under the auspices of structural adjustment programmes as having an adverse impact on peasant production in Nigeria, Tanzania, Malawi and Zimbabwe. The study by Devereux (1997) on Malawi suggests that agricultural liberalisation benefited those households cultivating relatively large plots while hurting the majority of householders cultivating very small pieces of land. All of this is consistent with the general view of immiseration in the rural areas and increasingly marked rural class stratification that is described in many studies.

Women in agriculture

Bryceson (1995: 8) has summarised the importance of women's role in agriculture in sub-Saharan Africa thus:

Most countries in Sub-Saharan Africa are predominantly rural in character: roughly 70% of the population live in the rural areas. Agricultural production is relatively uncaptialized and in most countries hoe production prevails. Approximately 68% of the labour force in Sub-Saharan Africa are estimated to be working in agriculture. Dixon (1983) ... estimates that women's labour comprises at least 46% of total agricultural employment.

However, it is important to note that Bryceson's account does not apply to all countries in southern Africa, where the proportion of women practising small-scale agriculture is much less than in eastern Africa. In South Africa the profile of agriculture is very different, and in Namibia

and Botswana the extremely arid conditions found in most of the country make stock farming, traditionally a male domain, more important than crop production.

Generally, where women are involved in crop production, a gendered distinction has evolved between food crop production, which is seen as women's domain, and cash crop production, which is widely considered a male domain. Even where women provide labour for cash crops, the product is commonly regarded as belonging to men, who then control the income. According to Mamdani (1992), writing about Uganda, this distinction arose under colonialism, because men were regarded as the undisputed heads of the household and therefore the ones who were liable to pay taxes. Thus crops which could be sold for cash, such as the newly introduced export crops of coffee and tea, became identified as male crops while crops which were grown to feed the family became more tightly associated with women.

However, once again it would be a mistake to assume that women are not active in the commercial sector. In South Africa, a majority of small-scale sugar farmers are (black) women while Bryceson (1995: 268) cites a 1992 case study in Serenje district in Zambia where 'a small group of divorced women migrants, recently returned from town, were the first to see cash crops as a means of securing a good livelihood', and began producing hybrid maize very successfully, using ploughs rather than hoes, on land they had obtained by using 'their rights of access to land of deceased matrikin.'

In addition to their agricultural labour (in both the household food and commercial sectors), women throughout rural eastern and southern Africa are also responsible for water and fuel collection for their households, for childcare, for family food processing and cooking, and for much of the upkeep of household buildings. To varying degrees they may also participate in various income-generating activities (e.g. crafts and other production for local and more distant markets), and hire themselves out for waged work. A major issue to consider here concerns what has been termed women's 'time famine' – i.e. the absolute demands made on their time, which limits their ability to respond to new opportunities and also affects the quality of the productive work they do, for instance, by limiting the time they can devote to labour-intensive tasks such as weeding.

A recent UNIFEM report notes:

A key insight from gender analysis in Sub-Saharan Africa is that there are interconnections, and short-term trade-offs, between and within economic production, child bearing and rearing, and household/community management responsibilities. These assume particular importance given the competing claims on women's labor time, and the need to raise women's labor productivity in both the household and market economies. Consequently, a key challenge for public policy is to undertake concurrent investments in both the market and household economies, across a range of sectors, which explicitly minimize trade-offs and build on positive externalities (nd: xii).

Yet despite the importance of women's role in food production and household reproduction, women farmers are severely disadvantaged when it comes to access to credit and to extension services. The study by UNIFEM cited above states that 'In Africa, women receive less than 10 percent of the credit to small farmers and 1 percent of the total credit to agriculture.' Women farmers are also less likely to receive extension support from agricultural officials.

An important implication of these constraints for land reform policy is that the allocation of land to women on its own, without due attention being paid to the 'competing claims' on their time or their marginalisation in terms of financial and extension support, will not alleviate and may even exacerbate their economic problems. (On this see Meinzen-Dick *et al*, 1997.)

Urbanisation

Table 4 above highlights major differences in current levels of urbanisation within the region, which also have to be factored into the analysis of land reform policy. Too many analyses work with a static or time-bound view of an essentially unchanging rural sector, whereas the reality is far more dynamic. While in most countries the great bulk of the population is rural, in three countries in the south, Botswana, South Africa and Zambia, this is no longer the case.

Furthermore, the regional trend is towards rapidly increasing levels of urbanisation. According to the World Bank, between 1970 and 1995 the average growth in urban population in African countries was 4,7% per annum and currently 32% of the population in sub-Saharan Africa is classified as urban (World, Bank, 1999: 130, 170). The World Bank Report also highlights a disturbing trend which it calls 'urbanisation without growth', inasmuch as the boom in urbanisation between 1970 and 1995 saw per capita GDP dropping in the region by 0,7% per annum (World Bank, 1999: 130). While generally in other parts of the world urbanisation is associated with economic growth, in much of sub-Saharan Africa this has not been the case, at least not as measured by the formal economic indicators.

More work is required to integrate a gendered account of urbanisation into the analysis of land reform policy across the region. Historically, as already noted, urbanisation developed around a male migrant labour system, with female urbanisation taking place on a far smaller scale. The way in which the migrant labour system developed and its impact on rural society were both profoundly gendered (Walker, 1990) and this continues to resonate in rural societies today. One important consequence has been the predominance of women over men in the labour reserve areas of southern Africa, leading to the concept of the *de facto* (as opposed to the *de jure*) female-headed household – households where the nominal male head was away and his wife took on the responsibilities associated with headship in his absence. Thus in Lesotho in 1976 51% of all males in the 20 to 39 age group were absent from Lesotho at the time that the census was taken (Murray, 1980: 40); as recently as 1996 in South Africa's communal areas (the former 'native reserves' or 'Bantustans'), almost 55% of the population (all ages) was female (Walker, 2001: 21).

Also important for the analysis is the persistence of urban-rural linkages. In southern Africa this has historically taken the form of oscillating migration by different members of households between urban and rural bases. This suggests that a rural base remains a significant component of livelihood strategies for many urban poor. In addition to supplying them with food to supplement formal and informal sector incomes, a rural base can also act as an important social welfare net - for instance as a place to send children or the sick, or where elderly people may choose to retire. At the same time, the growing of food crops within urban and peri-urban areas is also an important source of urban livelihood strategies that requires policy attention. All these functions have strong gender dimensions in terms of how household decisions and responsibilities are played out.

A recent study on migration patterns between rural and peri-urban areas in Malawi concludes that 'frequent rural-urban migration ... rarely leads to permanent urbanisation' (England, 2001: 9) but has profound implications for tenure systems, gender relations and the role and status of

traditional authorities. In the peri-urban areas studied, complex layers of land rights and permutations of customary tenure have emerged, as newcomers have settled on land that is still identified in terms of its 'true owners' within the lineages that constituted the original 'rural' village, before it became absorbed into the urban complex of Lilongwe.

... conflicts between migrants and headmen arise from their different definitions of Chinsapo settlement. Whereas most migrants regard themselves as townspeople when they are in Chinsapo, locals feel that their stay is by courtesy of Chinsapo's headmen. For migrants, Chinsapo is part of the city, regardless of what the City Assembly says, while for locals it has not ceased to be a 'village' Most migrants are not incorporated into this 'village' as its members but remain 'strangers' ... or 'those who have arrived' ... Yet the headmen and their families insist on a recognition of their authority as guardians of the land. This difference in definitions is a source of conflict, because migrants commonly expect a single monetary transaction to end their obligations towards locals (England, 2001: 15-16).

These are important issues to consider and understand better in relation to land reform policy. Much of the debate tends to assume a rural environment and agrarian issues in isolation from the urban environment, whereas what is required is a more integrated and dynamic account of both rural and urban land issues, which also engages urban tenure reform, land release and land administration issues, as well as the prospects for urban agriculture in urban and peri-urban areas. A major policy question is how land reform strategies should respond to the phenomenon of 'urbanisation without growth' and increasing pressure on rural land – should, for instance, policies be aimed at making the rural areas more attractive to people, or at supporting oscillating migration, or at encouraging permanent urbanisation?

2.3 HIV/AIDS AND LAND REFORM

The scale of the pandemic on the region

Sub-Saharan Africa has by far the largest concentration of HIV infection rates in the world. Recent estimates of the levels of infection in each country are set out in Table 6 below.

Table 6. Estimated HIV/AIDS levels in each of the countries in the study (rounded off)

	ADULT RATE	MALE 15 – 49 LIVING WITH HIV/AIDS	FEMALE 15 – 49 LIVING WITH HIV/AIDS	NUMBER OF AIDS ORPHANS*
Southern Africa				
Botswana	36%	130 000	150 000	66 000
Lesotho	24%	110 000	130 000	35 000
Malawi	16%	340 000	420 000	390 000
Namibia	20%	65 000	85 000	67 000
South Africa	20%	1 900 000	2 300 000	420 000
Swaziland	25%	53 000	67 000	12 000
Zambia	20%	380 000	450 000	650 000
Zimbabwe	25%	600 000	800 000	900 000
Eastern Africa				
Kenya	14%	900 000	1 100 000	730 000
Tanzania	8%	530 000	670 000	1 100 000
Uganda	8%	350 000	420 000	1 700 000

Source: UNAIDS (2000).

* The figures reflect the total number of orphans since the start of the epidemic. Orphans are defined as children who were alive and under the age of 15 at the end of 1999, and who had lost their mother or both parents to HIV/AIDS.

Within this region the epidemic is at its most severe in southern Africa, as Table 6 illustrates. Botswana has the highest incidence; Uganda and Tanzania the lowest. Uganda is widely heralded as a beacon of hope in an otherwise bleak landscape, because of the manner in which it has succeeded in bringing its rate of infection down from a peak of 14% in the early 1990s (Guest, 2001: 7) to 8% today - political leadership at the highest level has allowed the implementation of what has been described as a 'broad and multi-sectoral' approach that recognizes that the issues are 'not just medical but societal and developmental' (UNDP & UNAIDS, 2000: 49). However, a small report in a Ugandan newspaper in October 2001, which indicated a rise in the rate of infection in some rural districts, suggests that there can be no room for complacency in the national response.¹¹

Economic implications of the pandemic

The severity of the crisis that AIDS poses for the region cannot be over-emphasised. A hugely important aspect of the disease to understand is that it affects primarily adults between the ages of 15 and 49 – those who are most sexually active, who are most likely to have young dependants, and who are of working age: the heart of the economically active population.

A 1998 report on HIV and AIDS in South Africa describes the long-term economic effects as follows:

The economic effect of HIV and AIDS will be felt at various levels, ranging from the micro (the household) to the macro (national). ... The impact takes time to build up; the effects of HIV and AIDS on the economy are therefore incremental. No country has yet seen the full impact of HIV and AIDS. This will come only some years after HIV prevalence has peaked; indeed it will take generations to work through the full social and economic ramifications. ... At the household level the impact will be catastrophic (UNDP & UNAIDS, 1998: 69).

Already the impact of the disease is becoming noticeable. A 2000 country-level review by UNAIDS and the Economic Commission for Africa on HIV/AIDS in Africa refers to a number of studies which all point to the ravages the disease is wreaking on both household economies and national development prospects. In Botswana, where the HIV/AIDS rate is at its very highest, one model shows a decline in *per capita* income over a ten-year period starting in 1998 of 13% in the poorest households and 8% overall. In Kenya it is predicted that GDP will be reduced by 14,5% by the year 2015, with one study estimating that households experience a decline in income of between 48% and 78% when a member dies from AIDS, excluding the cost of funerals. In Zimbabwe a 1997 survey by the Zimbabwe Farmers' Union found a reduction in smallholder production of 50% in households which had suffered an AIDS death (UNAIDS and ECA, 2000: 24, 110, 236). A Namibian study estimated a 7,9% loss in GNP in 1996 as a result of HIV and AIDS (UNAIDS & UNDP, 1998: 71).

While life expectancy levels across the region are set to fall precipitously (for instance, in Swaziland from 57,8 in 1993 to a projected 37,1 in 2010), the UNDP/UNAIDS study on South Africa notes that the epidemic is unlikely to lead to negative population growth 'except where

¹¹ The author saw the report while attending the EASSI conference on Women and Land Rights in Kampala, Uganda, from October 28 - November 1 2001. The details of the situation are not known.

there is a combination of very high levels of HIV prevalence and rapidly declining fertility;' in this regard it singles out both Botswana and Zimbabwe (1998: 68). For South Africa it projects a population growth rate of 0,4 per cent by 2010 as compared to a presumed rate of 1,4% without HIV and AIDS (ibid: 69). Barnett *et al* (2001: 154) concur:

... there is broad agreement among demographers that African population growth rates are unlikely to fall below 2% per year during the next 20 years, although in a few countries the population growth rate will decline dramatically.

What is of concern, however, is that, according to these authors:

... for the most part, demographers have been producing figures on mortality, changing population growth rates, decreasing life expectancy, and changing population structures that have not been considered by policy makers. Almost all the countries in Africa continue to produce national population projections that taken no account of HIV/AIDS' (ibid: 152).

Whiteside (2000) warns that modeling the impact of AIDS at the macroeconomic level is fraught with problems - projections of both the trajectory of AIDS and of economic trends are difficult enough in themselves and bringing the two together compounds these difficulties. He concludes:

It is clear that the AIDS epidemic in Africa is an enormous challenge to the governments of the region. AIDS will have an impact on their demographic makeup and trends, and will reverse improvements in many of the development indicators. The economic impacts will be complex and take a long time to develop. The impact on the people of Africa will certainly be very serious and will lead to increased poverty and misery (2000: 689).

As already noted above, the impact of HIV and AIDS is felt most acutely at the household level with the burden weighing most heavily on the poorest households, those with the fewest resources with which to cushion the economic impact. A 1999 study by Rugalema in rural Tanzania shows a clear relationship between coping strategies and 'household asset portfolios' (cited in Barnett *et al*, 2001: 158). The epidemic can be expected to destabilize already stressed social support networks and put further pressure on unstable relationships of dependency and allocations of responsibility within households, both across the generations and between men and women. Whiteside (2000: 687) notes that, at the time when his report was being prepared (June 2000), there was only one detailed study of the impact of AIDS on households in Anglophone Africa, that of the Kagera region in Tanzania. Here:

Households experiencing an adult death respond by voluntarily adjusting household size and by reducing their supply of labour to farming, wage employment and nonfarm selfemployment in the first three months after the death. In addition, there is a decline in per capita growth rates of both income and consumption; medical treatment and funeral costs pose a major financial burden, and female children may be taken out of school.

The gender dynamics of HIV/AIDS

55% of the infections in sub-Saharan Africa occur among women (Collins and Rau, 2000: 1) – the only region in the world where female infection rates are higher than among men. Poor women are the most susceptible group.

There are a number of interlocking reasons why women are more vulnerable than men, including female physiology, women's lack of power to negotiate sexual relationships with male partners, especially in marriage, and the gendered nature of poverty. Obbo (1995) has also drawn attention to the link between the spread of HIV/AIDS and social instability and conflict, such as was found in Uganda during the 1970s and 1980s. High levels of rape and the breakdown of traditional sexual mores are associated with military destabilization, refugee crises and civil war.

Collins and Rau (2000) argue strongly that poverty must be addressed as an aggravating factor in relation to other predisposing factors (such as gender inequality, biology, and cultural considerations) in the spread of HIV/AIDS.¹² They also refer to studies which suggest that high levels of social inequality (i.e. not absolute poverty but major income differences within society, such as is found in South Africa) may be a factor in the spread of the disease, because of the correlation between social inequality and a lack of social cohesion (Collins and Rau, 2000: 5-6, citing studies by Wilkinson, Barnett & Whiteside). Their overview emphasises the gendered nature of poverty, as reflected in the phenomena of poverty-driven labour migration (primarily involving men) and poverty-driven commercial sex and occasional commercialized sex (primarily involving women), both of which are implicated in the rapid spread of HIV/AIDS in sub-Saharan Africa.

While Collins and Rau are critical of policy initiatives that focus on individual behaviour change and ignore the systemic socio-economic context for AIDS, they do note the need to look at male sexual behaviour in developing strategies to combat the disease:

This paper has considered some of the macroeconomic and social reasons that place both men and women in situations where they are susceptible to STDs, including HIV infection. We have taken a step back from behavioural explanations. But, in the area of gender, it is important to link the structural analysis of development with behavioural studies and insights. The lack of full discussion about male sexual behavior contains a gender bias (Collins and Rau, 2000: 20).

However, in this regard, a major problem that needs to be addressed is that 'Discussions of male sexual behaviour are felt to be threatening' (ibid).

Guest is a little more forthcoming. She summarises the critical factors in the spread of the virus as 'poverty, patterns of sexual networking, cultural practices, the subordinate position of women, wars and migrant labour' (2001: 2). Within this nexus:

The epidemic spreads rapidly in a population when lots of heterosexual people have lots of risky sex (ibid: 3).

HIV/AIDS is impacting on women in particularly severe ways, not only in terms of infection rates, but also in terms of their responsibility, which is generally a primary one, for taking care of the sick and for looking after the orphaned children of other family members. Apart from the emotional burdens this imposes, this is exacerbating the problems associated with women's labour/time famine. Coping with the pandemic puts further pressure on the amount of time women can devote to productive work, including in agriculture, as well as further limiting their ability to participate in social and community networks – at a time when such networks assume

¹² This, of course, does not mean that poverty - or gender inequity - rather than the HIV virus causes the onset of the disease.

even greater importance – and community affairs, including those relating to land reform (for instance, attending meetings or serving on local committees). Women's land rights may become increasingly vulnerable. The study by Sebina-Zziwa on inheritance and succession in Uganda reported on the increased vulnerability of women to land-grabbing:

In a baseline survey (1992) among AIDS afflicted households, 76% of them were headed by women who were young and widowed In most cases, these widows were disadvantaged because they did not have any property; the land and property had been 'grabbed' by in-laws under the disguise of custom (1998: 12).

However, illustrating the complexity of the issues and the need for a multiplicity of both micro-level and broad survey-type studies, a WLSA study on 'The changing family in Zambia' found evidence of AIDS affecting the balance of power within households in ways that actually enhanced the status of women:

... male unemployment has led to a greater recognition of women's role as breadwinners, and thus to the acquisition of property. This in turn has entitled them to more rights to acquired family property (WLSA, 1997: 8).

In the longer term, of course, AIDS is decimating the next generation of caregivers – with particularly sobering implications for the as yet unborn children of today's generation of orphans, who will not have a cohort of grandmothers to care for them. According to the figures presented in Table 6, the AIDS pandemic has created over six million orphans in the countries covered by this study since the epidemic began. Today the term 'child-headed households' is becoming a standard part of the AIDS lexicon. According to Barnett *et al*:

Orphaned children are very likely to lose any property to which they may have had entitlements, their education will suffer or be entirely lost and they will become vulnerable to sexual abuse and exploitation and thus run a very high risk of becoming infected with HIV (2001: 162).

Barnett *et al* also point out that the negative physical, emotional and welfare impacts of being orphaned are gendered 'and there is some evidence that the effects on girls are even greater than those on boys' (*ibid*), (for instance, loss of access to education or vulnerability to sexual abuse).

Within this deeply disturbing picture, it is worth noting on a more positive note the evidence of ordinary people responding creatively, often heroically, to the challenges of the disease - finding ways to support and extend people's resilience and coping mechanisms must surely be a major consideration in state policy development. Obbo (1995) has described how the onset of the AIDS crisis in a community in rural Uganda reactivated social networks and customs among women as a way of coping, with women taking the lead in the community to reduce the number of days spent on mourning (from the customary three to one) on the grounds that the community could no longer afford the amount of time away from the fields that the customary rituals would involve. She also refers to an initiative by women to make land available for those women who were responsible for the care of AIDS orphans. The Guest study describes the humbling capacity of many already stretched kin networks to absorb orphans – in one of her case studies, a single woman with two children of her own is fostering not only the two children of her sister who had died of AIDS but also the six orphaned children of her sister's deceased co-wives (*ibid*: 28).

While there has to date been relatively little work on HIV/AIDS in relation to women and land reform, a recent study on microfinance has some interesting insights on issues that are relevant to policy development. This study, which looks at the impact of HIV/AIDS on mainly female microfinance clients in Kenya and Uganda, found that there was a clear sequence of 'asset liquidation' among AIDS caregivers in order to cope with the economic impact of illness, hospitalization and death of the family member with AIDS, and the care of orphans (including payment of school fees) - first liquidating any savings they might have, then business income, then household assets, then productive assets and, finally, the disposal of land (Kabbucho *et al*: ii). Land disposal is, however, seen as a last resort – but it is a potential option, and the consequences for people driven to that point are disastrous in terms of the loss of their economic base.

All focus groups viewed selling land as an option of last resort. Whereas the sale of small assets had increased in the last five years – perhaps to cover the gap in what one could raise from friends, relatives and business income – selling land had decreased. When asked why, people invariably answered that, "once you know someone is HIV+, there is no sense in selling land to finance the cure – because we all know there is no cure and selling land is not going to help them" (ibid: 15).

Central to the women's coping mechanisms in the study were a range of strategies in which community networks and knowledge of resources played a key part. Factors identified as important in reducing the financial strain imposed by HIV/AIDS were listed as:

... (1) the economic resources a client has when crisis begins to affect her/him; (2) the quality and number of coping mechanisms available to the client; and (3) the networks a client belongs to and knowledge of resources available for her/him to tap into (ibid: 20).

The study reported that in both Kenya and Uganda people seemed to be developing better coping mechanisms over time and that 'fewer people seemed to be using extreme measures ... they stop short of selling their most productive assets so that future income earning capacity is not threatened' (ibid). Those who sell land are likely to be those with fewest options – those who were most vulnerable to start with. Once they have fallen through the economic safety net, however, rebounding is very difficult as their resources are depleted.

This study thus highlights the mitigating effects that a high awareness of HIV/AIDS and low levels of stigma provide in individual and household coping mechanisms. The authors observe that the more positive climate in Uganda compared to that in Kenya means that the identification of HIV/AIDS status tends to occur sooner in Uganda than in Kenya, and that people are therefore likely to get information as well as counseling and treatment sooner (while the psychological health of sero-positive people is more robust), thereby extending their general resilience and productivity for longer. In addition, community support for funeral expenses etc is more open and strongly developed. In contrast, where people are in denial about the disease, they are more likely to expend scarce resources on futile attempts to try to establish a cause of their illness other than HIV, rather than direct their resources to more cost-effective responses to the onset of their illness.

Implications for land reform policy

The need to look at AIDS as a very serious policy issue for land reform specifically is just beginning to move onto research and policy agendas. One recent example is a conference

organized by the SARPN in June 2001, where a session was devoted to this issue. Mullins (2001) put the challenge very starkly:

If we do not explicitly factor in the impact and trends of HIV/AIDS as a central feature of our analysis of how to do land reform (or any other development activity) in Southern Africa, we are being professionally negligent, misusing resources for poverty reduction, and are unlikely to achieve stated objectives.

He went on to note:

HIV/AIDS will influence who gets land in the initial reform process, how the land is then used, and how it will be subsequently redistributed in future' (ibid: 8).

He also points to the major impact that AIDS is having and will continue to have on official capacity to deliver on various government programmes. The loss of capacity, of course, extends beyond government officials to take in all the players in the land adjudication, land management and dispute resolution, including those at the local and village level as well.

Most of the thinking around the policy implications has been in relation to the effects of AIDS on agricultural and food production. A report prepared by the International Fund for Agricultural Development in November 2000 notes that 'the impact of HIV/AIDS is most severe on smallholder agriculture through its effects at the household level' (IFAD, 2000: 2):

Smallholder agriculture in sub-Saharan Africa relies almost exclusively on family labour – often the only productive resource poor people have. HIV/AIDS-induced morbidity and mortality can constitute a serious threat to smallholder agriculture through their adverse effect on household demography, productive capacity and food and livelihood security' (ibid).

The kinds of impacts can be summarized briefly as follows. Labour gets diverted from food and/or crop production as labourers get ill and die, as caregivers need to spend more time with the ill and dying or looking after their dependants after they have died. Money gets diverted from agriculture to pay for medical costs, funerals, school fees of orphans. As inputs into agriculture decline, yields fall. As livelihoods pressures increase on affected households, so assets get sold; where people have title to their land, the pressure towards distress sales mount, which strips not only the individual but the wider kin of any rights they may have had to use that land. When a landowner dies, vulnerable members of his household, including his widow, may find themselves victims of land-grabbing by other relatives of the deceased landowner, such as brothers or sons.

However, land reform policy needs to respond to more than the impact on food and crop production. The pandemic has implications for the types of land tenure and land reform projects that are appropriate, for beneficiary selection in land reform projects, for the functioning of local committees and legal entities, for the land rights of women and of orphans as well as of the poor generally, and for inheritance practices and norms. The likelihood of AIDS exacerbating already observed trends towards increased landlessness on the one hand and accumulation of land in the hands of the wealthier members of society on the other is considerable.

Daphne Topouzis has argued:

Given that many problems arising from the epidemic are not specific to HIV/AIDS, policy and programme responses need not be HIV/AIDS-specific but must address the root causes and consequences of the wider challenges to rural development. In other words, a development rather than an AIDS-specific focus is critical ... (1998: 19, cited in Collins and Rau, 2000: 13).

The study on microfinance clients already cited makes a related point which has relevance for land reform policy:

During the study some microfinance practitioners said, "but our services already reach clients who are affected by HIV/AIDS". Simply reaching clients with a service is not necessarily synonymous with being responsive to their economic needs (Kabbucho: iii).

They go on to warn that microfinance institutions 'should not provide AIDS support services or indeed relax lending discipline' – they should not, in other words, set themselves up as parallel health or education services and abandon their core business, but, rather, change the way they conceptualise and practise their work. The Kabbucho *et al* study makes the point that the better their clients cope, the better their performance will be within the microfinance institution:

Clients have developed very effective ways of dealing with crisis. Understanding these provide an opportunity for MFI to innovate with new products that reflect what their clients value and find relevant (ibid).

This does not mean, however, that land reform practitioners should not, as part of their core business, provide their clients with information about AIDS and direct them to the health and education services that are better equipped to deal with those aspects of the disease than they are. In many isolated rural areas the government official or NGO worker (or researcher) working on land reform may be the only contact residents have with people who are able to give them this basic information.

The challenges of AIDS for gendered land reform policy are enormous. Given that so many countries are reviewing or embarking on land tenure reform policies at the moment (Kenya, Malawi, South Africa, Namibia, Lesotho, Uganda, Tanzania), it is urgent that HIV/AIDS gets put squarely on the table as an issue that has to be addressed in that process. Policies that aggravate tenure insecurity, ignore or overlook the rights and/or interests of women and of children, make it easier for individuals or families to enter distress sales, promote crops that depend on a heavy investment of time, labour and financial resources in order to get a return, will not be responding appropriately to the available information on the impact of AIDS on poor, rural people.

SECTION THREE: AN OVERVIEW OF LAND REFORM ISSUES AND DEBATES

3.1 TYPES OF LAND REFORM

Land reform, whether at the level of policy development, policy review or policy implementation, is currently high on government agendas throughout much of the region, as the following Table illustrates.

Table 7. Current status of land reform policy development and implementation in each country in the study

Namibia	A Communal Land Reform Bill is under discussion, as is a proposal for a land tax.
South Africa	Policy is being drafted on land rights in communal areas; the Land Redistribution for Agricultural Development (LRAD) sub-programme is being initiated. There is pressure to speed up both the redistribution and restitution programmes.
Zimbabwe	A 'Fast-track' programme for land redistribution has been developed, accompanied by farm invasions, amidst international controversy and internal political conflict.
Botswana	No major review is underway.
Lesotho	A draft White Paper on Land Policy is being debated.
Malawi	A draft National Land Policy is being debated.
Mozambique	A new Land Law was passed in 1997 and is being implemented.
Swaziland	A draft Swaziland Land Policy is under review by the government.
Zambia	New land tenure legislation was introduced in 1995.
Kenya	A Commission of Inquiry into land policy has been appointed.
Tanzania	New tenure reform legislation is being implemented.
Uganda	A new Land Act dealing with tenure reform has still to be implemented.

Sources: Various; see Annexure One.

The major land reform issues on the agenda are redistribution of land in the three former settler states of the south and different versions of tenure reform across the board. In this connection, it is worth noting that while redistribution is generally thought of in terms of race, equity and redress within southern Africa, there are some signs of pressure on public purpose or private estate land in the context of growing inequities in land ownership in countries where race is not generally considered an issue. Devereux's study of Malawi, for instance, notes the phenomenon of under-utilised estate land in the context of extreme pressure on the land; he also notes a process of 'land encroachment' on Malawian estates by people seeking access to additional land (1997: 20). An early draft of the national land policy attempted to draw a distinction between the land rights of 'indigenous' and 'non-indigenous' citizens, which provision was subsequently dropped after lobbying, including by the Tea Farmers Union.¹³

Quan and Toulmin (2000: 33) summarise the range of land reform undertakings in sub-Saharan Africa in recent decades as follows:

¹³ I am indebted for this information to K Izumi, personal communication.

- *Land nationalization after independence*, through the vesting of land rights in the state, to 'assert the power of the state over traditional chiefs' and promote its particular development agenda;
- *Tenure reform through registration and titling*, 'to promote farm investment and land markets as a basis for agricultural development and growth', most actively in Kenya but to varying degrees in other countries as well;
- *Land redistribution and resettlement*, in countries where 'inherently inequitable and dualistic systems of land tenure have predominated' such as Zimbabwe and South Africa;
- *Agrarian collectivization*, for instance in Mozambique after independence, where state farms and producer cooperatives were encouraged - an approach which has been increasingly discredited and replaced by various privatization initiatives;
- *Land development projects and protected areas*, for instance through the proclamation of conservation areas;
- *The reaffirmation and recognition of customary rights in land*, a more recent trend throughout the region (for instance in Uganda).

Adams (2000:1-2) defines land reform as 'generally accepted to mean the redistribution and/or confirmation of rights in land for the benefit if the poor' and identifies three major types of intervention by the state:

- *Legally imposed controls and prohibitions*, e.g. nationalization, collectivization, restitution, redistribution, ceilings on land holdings, land taxes etc;
- *Inducements or market-assisted incentives*, e.g. privatization of state farms, state grants to acquire land, credit schemes, and
- *Land tenure reform* - 'a planned change in the terms and conditions on which land is held, used and transacted', e.g. through converting informal rights to formal rights, establishing mechanisms for managing common land rights, recognizing customary rights of occupation, etc.'

However, it needs to be noted that while few governments would deny that their land policies are intended to benefit the poor, either directly or in the long run (as a result of economic development), other categories of beneficiaries may well be targeted in addition. Land reform for the non-poor can be a very explicit component of policy, as in South Africa, where the latest 'LRAD' land redistribution programme targets both low income and high income black people - on the grounds of redressing historically entrenched racial imbalances as well as transforming and strengthening commercial agriculture (Ministry for Agriculture and Land Affairs, 2001). A major concern of critics of the latest policy is that the government is in fact abandoning its pro-poor approach, a charge which it vehemently denies. (See Walker, 2001a for a discussion.)

In other cases, overtly pro-poor national programmes have been criticized for facilitating or not preventing *de facto* land grabs by wealthier members of society or members of the political elite, at the expense of the intended beneficiaries, the poor; this criticism has been made, for example,

with regard to Mozambique (Suca, 2001; Waterhouse, 1998), Namibia (Quan, 2000), Kenya (Kanyinga, 1998) and Zimbabwe (Whitehead, 2001).

Furthermore, while the overall objectives of land reform may be presented by proponents in ways that appear, superficially, very similar – for instance, to promote social and economic development and address poverty – the more specific objectives may diverge in terms of underlying assumptions about what drives development and what the priorities, strategies and the indicators of success for land reform should be.

This is where a well-integrated understanding of gender as an analytical tool becomes particularly relevant. In a 1997 article entitled 'Gender, Property Rights and Natural Resources' Meinzen-Dick *et al* (1997: 1305) criticize narrow, gender-blind notions of economic efficiency that measure only productivity/yield impacts and ignore issues relating to the control and use of income benefits from different types of investments. They give as an example a policy choice relating to the best use of a natural forest where logging – in male hands - might produce higher market returns and therefore be deemed more efficient, but harvesting and marketing of the fruits – in female hands – is more likely to lead to improved household nutrition and investment in children's social and physical welfare, with greater returns to social development and poverty reduction overall. (In making this argument they refer to studies by the International Food Policy Research Institute which show that, in general, women are more likely than men to spend a higher proportion of the income they control on household food and child health.¹⁴)

3.2 POLICY ISSUES WITHIN LAND REFORM

Economic arguments for land reform

The broad economic arguments in favour of land reform in sub-Saharan Africa can be divided into two often antagonistic policy camps. Both are premised on its economic importance, albeit with very different assumptions about how that should be computed:

1. *Those which regard land reform as necessary to enhance agricultural productivity as a basis for economic growth.*

This has led to a range of policies that look to land reform and tenure security to unlock economic potential through, *inter alia*, the promotion of smallholder farming, titling and registration, privatization of land, the promotion of markets and market crops, and/or the development of large commercial estates, whether in private or state ownership.

2. *Those which emphasise the importance of land in supporting what are commonly termed the multiple livelihoods strategies of the poor.*

These include non-market activities on the land such as subsistence farming and the harvesting of common property resources, as well as various combinations of farm and non-farm income-generating activities, along with reliance on social networks for various remittances and transfers. This approach leads to a range of policies intended to address landlessness and land hunger, through promoting secure tenure, emphasizing the value of communal natural resources, and advocacy for the retention or reform of customary systems

¹⁴ AR Quisumbing, LR Brown, HS Feldstein, L Haddal, C Pena (1995). 'Women: The Key to Food Security.' Food Policy Report, International Food Policy Research Institute, Washington DC.

of tenure and conflict management, so as to maintain broad-based access to land and its many use values.

As already indicated, in current policy debates there has tended to be some narrowing of the gap between the two camps, at least at the level of description and analysis. The shifts in the international discourse can be seen most clearly in the policy prescriptions that have emanated from the World Bank, one of the most prominent international players in the land and development policy arena in the region (and elsewhere). Its Land Reform Policy Paper of 1975 recommended formal titling, individual rather than communal tenure, the promotion of land markets and the importance of land redistribution. Within Sub-Saharan Africa, the most prominent exemplar of this approach has been Kenya, which began to adopt a vigorous programme of land titling and registration from the late 1950s.

However, after a major review of the relationship between tenure systems and agricultural productivity in the early 1990s, which suggested that there was not a strong correlation between secure individual tenure in the form of titling and greater investment in the land, the Bank has come to adopt a more flexible approach. While still advocating the value of market-led land reform in promoting greater efficiency, 'they now recognize that property rights need not necessarily be individualized, and that security can be provided within customary tenure systems' (Quan and Toulmin, 2000: 38).

According to Toulmin and Quan (2000: 2):

The present wave of land policy reforms follows a general failure of earlier approaches to land reform, in which free market models, emphasizing the conversion of customary tenure to individualised freehold rights, or alternatively, egalitarian socialist models were dominant. Individual land registration and titling, in particular, came to dominate the land policy prescriptions of international finance institutions in the era of structural adjustment. During the 1990s, mounting evidence of the pitfalls of this approach, in particular its high economic and social costs, and negative consequences for the poor, led donors and African governments alike to re-examine accepted approaches.

Within the World Bank as a whole, the earlier insistence on strict structural adjustment programmes has also been relaxed to some extent by the acknowledgement of the importance of government poverty reduction strategies and of social safety nets for the very poor (UNRISD, 2000: 3).

Political and social objectives of land reform

While the typologies developed by Quan and by Adams focus primarily on the economic objectives of land reform, it is important not to overlook the political and social objectives of land reform, which also inform policy development in much of sub-Saharan Africa.

In some instances, political objectives may be primary, for instance, to reduce conflict or redress past injustices, as with the land restitution programme in South Africa, or to increase electoral support through programmes that target actual or potential party supporters, as appears to be the case in recent state-sanctioned land invasions in Zimbabwe. Land reform may also be embarked upon - or resisted - because it is seen as a mechanism for enhancing or diminishing the powers of traditional leaders, or for promoting elected local bodies, or for strengthening the hand of the

central state itself. The political nature of land reform in terms of intended outcomes, and not simply processes, is particularly visible in southern Africa.

Linked to these strategies may be a host of social objectives - to recognize and affirm customary systems of law and local authority as valuable social and cultural resources, or to recognize the importance of land for cultural, symbolic, and aesthetic purposes. This generally plays a smaller part in policy development than the economic or political considerations already mentioned, but these non-material aspects are often very important for potential beneficiaries of land reform. For many rural communities and individuals, land is bound up with a sense of identity and belonging, which underpins social cohesion and impacts back on the value and utility of land as a material resource in complex ways. (For instance, as already discussed, levels of social cohesion within communities and access to social networks can play an important part in influencing how effectively people cope with the economic impact of AIDS.)

The promotion of gender equity may be another social objective within land reform policies, which can cut across and even conflict with other objectives, such as the strengthening of systems of customary law to manage land. This issue is explored further in sub-section 3.3.

Customary law and tenure systems

The perceived failures of land titling have led, among other things, to a more favourable re-evaluation of the role and relevance of customary systems of tenure – with complex implications for women's rights in land as is discussed further below. In the 1990s there have been a series of initiatives to revitalize what is today classified as customary law, both as a way of reclaiming indigenous philosophical and legal systems and because of their perceived value and continued relevance for rural society. (On this see Toulmin and Quan, 2000.) Earlier assumptions that communal land tenure systems would inevitably lead to the degradation of land, because of a lack of incentives to manage common resources, have been challenged, as has the faith that the World Bank once held in the necessity of land titling to create tenure security and support the emergence of an active land market.

However, behind the Bank's change in emphasis lies the calculation that Africa's tenure systems are evolving in the direction of individual ownership anyway. This has led some critics to question the degree to which there really has been a shift in its approach. Whitehead and Tsikata (2001: 17), for instance, comment:

Although still dominated by a free market philosophy, the LPD's¹⁵ current thinking is influenced by evolutionary theories of land tenure which see privatisation developing from below in response to population pressure and commercialization. As a consequence, policies to replace customary systems of tenure, explicitly analysed as inhibiting incentives and investment, have been replaced with ones which aim to work with and support the 'positive' aspects of customary systems.

Thus some analysts have questioned the degree to which those who advocate securing tenure within 'customary' systems in fact differ from the earlier individual titling perspective, inasmuch as the remedies for securing customary tenure involve adjudicating clear boundaries and registering rights, both of which involve significant innovations for traditional systems. However, the Ugandan 'Land Sector Strategic Action Plan' for 2000/01 – 2002/03 draws a number of

¹⁵ The World Bank's Land Policy Division.

distinctions between registered freehold titling systems and the customary demarcation and certification system proposed under Uganda's 1998 Land Law, which relate to issues of accessibility and local control. Whereas titling is seen as 'centralized, expensive to the user, and designed for the middle class and educated and/or previous settler population', customary certification processes are described as accessible to the poor, respectful of secondary rights and local knowledge, and relatively speedy in terms of delivery (Ministry of Water, Lands and Environment, 2000: 7-8).

One problem is that the term 'the customary' can be used by policy makers to cover a range of very different assumptions, interpretations and objectives. An important distinction operates between those uses which emphasise communal rights as essential to customary systems of tenure (along with household rights) and those that emphasise household rights. Thus in Uganda – where, as already noted, commonage land has all but disappeared in many areas - customary law is defined in the 1998 Land Act as a system of tenure which applies 'local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land' (cited in Kharono, 2001: 4). Cousins's work on the importance of common property resources in rural livelihoods, on the other hand, emphasises the role of the community, rather than the household, as well as the significance of the commons in what he refers to as communal tenure systems in Africa:

Communal means, in the great majority of cases, a degree of community control over who is allowed into the group, thereby qualifying for an allocation of land for residence and cropping, as well as rights of access to and use of shared, common pool resources used by the group (i.e. the commons). Groups often restrict alienation of land to outsiders ... However, allocation of residential and arable land usually result in strong rights for individuals or families (2000: 152).

'The customary' is thus a malleable concept. It is applied to a number of different systems of land ownership (vested variously in the community, the household, the household head, the chief, the state, local land boards), as well as to different systems of land allocation and administration (village councils, land boards, local committees, traditional leaders). The systems may be more or less communal, more or less inclusionary, more or less discriminatory towards women, and, arguably, more or less conducive to poverty alleviation or rural development, depending on local conditions.

In the former settler states the ethos of private property continues to be strongly entrenched, within statutes, the justice system, and land administration and planning systems, and this exercises a strong normative influence on land reform debates across the political and racial spectrum. For many people previously excluded from access to private title to land, it is seen as the most desirable form of tenure to aspire to. Furthermore, even where privatized land rights are not consciously aspired to, customary norms and practices have been infused, to varying degrees, by the concepts and values associated with the private ownership of land.

Thus to speak as if there is today a single 'customary law', that is the same as the customary law of the early twentieth century or the pre-colonial period, is to underestimate both the adaptability and the flexibility inherent in these systems, as well as the profound changes that they have undergone in response to their subordination to larger social and economic forces at the national and global level. As already noted, customary tenure systems developed historically under fundamentally different conditions from the present, in which land was relatively abundant; production was based within the homestead, and the imprint of the market and the cash economy

was very limited or non-existent. Today new values, new opportunities and new constraints mingle in complex ways to structure new relationships between 'the customary' and the land and its products. For instance, a 1995 study of grassland management in Lesotho by Quinlan describes how, over the past ten years, stock-owners have begun removing the crop stover from household fields after the harvest, to use exclusively as fodder for their own stock. Under 'traditional' customary law, however, the stover is regarded as communal forage, available for grazing after the harvest by all the stock of the village. A combination of factors has led to the gradual privatisation of this resource – on the one hand, according to Quinlan, changes in the land tenure system, in terms of which people have now begun acquiring (or asserting) property rights in the actual land on which they grow their crops; on the other hand, increased pressure on the (communal) rangeland, which has led to a decrease in the amount and quality of grassland available for people's stock to graze (Quinlan, 1995: 504).

It is for these reasons that Whitehead and Tsikata (2001: 15) prefer to do away with the term altogether and to speak rather of 'local level ...practices of land management.' The difficulty, however, is that so many players continue to speak of 'customary tenure' – indeed, to insist on using it precisely because they want to emphasise continuities with the past - so that to insert a new term into the debate, even if more accurately descriptive, is to run the risk of not being part of the dominant (often very political) conversation.

The extent to which communal systems of land tenure and customary law need to be refined or reformed to meet contemporary conditions and how large a role they can play in supporting economic development thus remain major areas for further research and debate. An assessment of the Uganda tenure reforms described in Section Four below is instructive in that the preliminary findings bring clearly into focus how complex the relationship is between tenure systems and the economy - how many variables intervene. What this suggests is that, just as with individual title, 'customary certification' of land on its own can be no panacea for the hugely difficult challenges of economic development in sub-Saharan Africa. Policy on tenure reform needs to start not with ideological or political commitments to one ideal type of tenure or another, but, rather, with an understanding of the actual patterns of tenurial relationships and the economic strategies which they support or hinder on the ground. The importance of a gendered analysis of these relationships and strategies cannot be over-emphasised – 'gendered' as in looking at both men and women, not only at women.

Traditional leadership

Linked to the issue of customary tenure – but not as inextricably as some analysts like to claim – is the role of what are commonly referred to as 'traditional institutions', the local-level systems of political and judicial authority exercised by clan elders and/or hereditary chiefs and their councils over people and land. In many countries economic and political constraints are encouraging a move to decentralize land management from the center to local levels of government and land boards; the renewed interest in customary systems of tenure has focused attention on the value and role of traditional leaders within this.

To understand the present salience of these institutions in each country in the region today requires an understanding of the very different ways in which colonial governments moulded them to serve indirect rule, as well as the very different ways in which these institutions have re-inserted themselves into national and ethnic political discourses in the years after independence.¹⁶

¹⁶ For a major study of indirect rule in colonial and post-colonial sub-Saharan Africa see Mamdani, 1996.

All that can be done here is to remind readers of the variety and the mutability of these institutions historically and to warn against the assumption of a universal system of 'traditional leadership' that accompanies 'customary tenure' According to Whitehead and Tsikata:

The idea of social embeddedness [of customary land tenure systems] has been used by some land specialists to support the idea that indigenous systems are universally characterized by political control over land ownership. ... Land disposition is often said to be held, in the final analysis, by clan heads and chiefs. The empirical evidence suggests that in the earlier parts of the twentieth century there was extraordinary wide variation in the salience of political authority with respect to land tenure making. This is linked both to the relative abundance of land and the forms of indigenous political authority. In situations of land abundance and where centralized and hierarchical systems of political authority were either weak, or hardly existed at all, political control of the land could hardly be said to have existed (2001: 15).

Current government policy on the role of traditional leaders or chiefs varies considerably in the region as well, as Table 8 illustrates.

Table 8. National policy on traditional leadership institutions and land administration

Namibia	The Communal Land Reform Bill proposes setting up Land Boards to administer these areas. The role of traditional leaders in the proposed Boards is under debate.
South Africa	Policy on the role of traditional leaders in the communal areas has not yet been finalized; it has been a neglected and politically contentious issue of the land reform agenda since 1994. Current government thinking leans towards recognizing their role in land administration and potentially vesting ownership rights in them,.
Zimbabwe	Responsibility for administering land in communal areas rests formally with rural district councils, but chiefs still play an important role in land allocation. Proposed legislation will enhance their rights in land administration.
Botswana	Responsibility for administering land in communal areas rests with Land Boards; the chiefs have retained only a judicial function at the local level.
Lesotho	Lesotho is a monarchy, with the chiefs a powerful layer of local government. Land allocation is administered in terms of customary law by chiefs; however, the latest land policy proposals aim to convert customary rights to common law rights.
Malawi	Customary land is vested in the chiefs who allocate it along patrilineal or matrilineal lines. The Draft Land Policy recommends that the role of Traditional Authorities in customary land management be retained.
Mozambique	Traditional leaders do not have a formal role in local land administration but may have political influence at the local level.
Swaziland	Swaziland is a monarchy with the chiefs a powerful layer of local government. Land allocation is administered in terms of customary law by chiefs on Swazi Nation land.
Zambia	Radical title vests in the President; chiefs have a role in the administration of customary tenure.
Kenya	Customary land is vested in county councils, to hold for the benefit of the occupants. District Officers chair Land Control Boards which deal with land disputes that cannot be resolved by chiefs and community elders.
Tanzania	Radical title vests in the President while authority for the management of land at village level rests with elected village councils.
Uganda	Local land administration is in the hands of Local Councils, not traditional leaders. However, some traditional leaders have been elected to Councils. In some areas they play a role in conflict resolution.

Source: Various; see Annexure One.

A number of countries have separated support for customary tenure from support for traditional leaders as the administrators of that 'customary' or communal land, notably in Botswana shortly after independence and in Tanzania more recently. Distinctions have also been drawn between the ritual and judicial functions of chiefs on the one hand, and responsibilities around land allocation and land ownership on the other. In Botswana, where traditional leaders are no longer empowered to allocate and administer land, they retain responsibilities for local dispute resolution and may continue to be consulted on land matters (Mathuba. 2001). Traditional leaders may also retain *de facto* authority in communities where other forms of local administration have been put in place, by virtue of their continued legitimacy in the eyes of local people, as described, for instance by Suca in the case of Mozambique – 'at the local level we have community leaders and that is different from traditional leaders. But traditional leaders still have a role mainly in the regions where they have high level of legitimacy.' (2001: 3).

Proponents of traditional institutions argue for their importance as 'institutions of social coherence' and because of their 'remarkable efficiency and economy when compared to direct administration by the state', in the words of the Draft Land Policy of Malawi (quoted in Englund, 2001: 18). Opponents criticize them for their lack of democracy and accountability, their dubious past as agents of colonial administrations, as well as the dangers of corruption associated with their informal systems and powers of patronage. (See Ntsebeza, 1999 for a discussion on these issues in relation to South Africa.) From this perspective, one of the most powerful criticisms against traditional institutions is that they are deeply patriarchal institutions that reproduce the subordination of women and can serve as a major obstacle to women gaining full land rights within revised 'customary' tenure systems. This point is picked up below.

3.3 GENDER EQUITY AS A POLICY GOAL IN LAND REFORM

The gap between high-level commitments and land policy practice

In most – but not all - countries in this study, gender equity has achieved respectability as a high-level constitutional or policy commitment as Table 9 below indicates. Furthermore, all countries bar Swaziland have ratified the international convention, CEDAW. (However, according to WLSA (2001: 40), Botswana, Lesotho, Mozambique, Zambia and Zimbabwe have all 'laid down procedures ... to be followed before a particular convention becomes law.')

Yet concerns remain at the persistent gap between high-level commitments and their translation into policy interventions that actually reach women on the ground. While the commitment to gender equity as a worthy policy goal is formally present in most land reform policy documents across the region, this principle is not prioritised as a policy objective, nor has serious attention been paid to how to carry through these commitments in practice, outside of a small number of dedicated projects (Walker, 2001b). This is well illustrated by the discussion on land reform initiatives in South Africa, Uganda and Zimbabwe in Section Four.

Furthermore, there are often tensions between constitutional commitments to gender equality on the one hand and to customary laws and practices on the other, for instance in Zimbabwe, Zambia and Lesotho, as well as other inconsistencies on the status of women within legislation (Whitehead, 2000; WLSA, 2001). Local attitudes at the community and family level are also often hostile to women gaining rights in land independently of their membership within and obligations to patriarchal households. Many studies report ignorance on the part of women and

men about the legislation, while litigation to claim or defend constitutional rights is generally prohibitively expensive.

Table 9. Gender equality commitments in national Constitutions and Land Policy documents

Namibia	The Constitution prohibits discrimination including on the grounds of sex, affirms the equality of all before the law and subordinates the practice of tradition and custom to the principles of the Constitution.
South Africa	The Constitution affirms gender equality in the Bill of Rights and subordinates rights to cultural expression and customary practices to the equality clause South Africa, Act 108 of 1996). The White Paper on South African Land Policy (Department of Land Affairs, 1998: 17) endorses the principle of gender equity and the targeting of women as a specific category of beneficiaries.
Zimbabwe	The Constitution was amended in 1996 to prohibit discrimination on the grounds of sex by the state but discrimination in the area of family and customary law is not prohibited. A 1999 Supreme Court ruling denied a woman inheritance rights on these grounds.
Botswana	Section 15 of the Constitution specifies that there shall be no discrimination on the basis of sex but this section is not, in the view of WLSA (2001: 37), sufficiently broad in its application to guarantee women's rights unambiguously.
Lesotho	The Constitution provides for the fundamental human rights of all people regardless of sex and status, but also affirms the authority of customary law, including any discriminatory provisions (Selebalo, 2001: 8). The report of the 1999 Land Policy Review Commission and current draft White Paper on Land Policy recommend the abolition of measures that discriminate against women in terms of access land.
Malawi	The Malawian Constitution has an equality clause which is not qualified with respect to customary law. However, customary tenure prevails and discriminates against women.
Mozambique	The Constitution formally recognizes the equality of men and women. The 1997 Land Law recognizes women's rights in land in their own right.
Swaziland	There is no operative constitution in place and hence no constitutional guarantee of gender equality in Swaziland as yet. Married women are generally considered legal minors and do not enjoy equal property rights with their husbands. The draft White paper on Land Reform is calling for reforms to customary law, to move away from discrimination against women.
Zambia	The Constitution prohibits discrimination but excludes family and personal law from this provision. The Land Act guarantees women access to the system of 99-year lease for customary land but also recognises customary law.
Kenya	The Constitution provides for individual rights and freedoms and also respecting the privacy of the home. The system of individual title has favoured men. Legislative provision for women to inherit land registered in the names of their husbands has been ineffective in practice.
Tanzania	The National Land Policy recognizes women's rights to land (Hilhorst, 2000: 189).
Uganda	The Constitution makes a commitment to gender equality and affirmative action (Hilhorst, 2000: 189).

Sources: Various; see Annexure One.

In an analysis of gender policy in South Africa's land reform programme, I draw a distinction between high level policy statements, such as White Papers or National Policy documents, and what I term second-tier or middle-level policy documents, i.e. 'documents such as departmental criteria for project approval and project monitoring, generic briefs for consultants contracted to undertake tasks such as project planning, community facilitation and policy monitoring, and training materials for staff':

These are documents which begin to operationalise policy, by translating broad commitments into project procedures and general guidelines and standards. They set the parameters within which projects will be approved, funds disbursed, consultants appointed and managers and staff rewarded or penalized for their performance (Walker, 2001a: 21).

It is here that broad commitments to gender equity commonly fail to get translated into practical requirements or guidelines, and the problems with implementation begin to set in. A common complaint of South African officials in the field is that they do not know how 'to do gender' (ibid).

This, as a recent UN report makes clear, is not a problem in the land sector alone. Reporting on an assessment of 'gender mainstreaming' across a range of projects and programmes in sub-Saharan Africa it concluded:

The lack of conceptual clarity surrounding gender mainstreaming must be overcome before operational implications could be clarified and the gap between concept and day-to-day practice narrowed/closed (UNDP and UN/DESA/DAW, 2000: 7).

Human rights and development perspectives

An influential account of why gender equity should be a major component of land reform policies was provided by Bina Agarwal in her book, *A Field of One's Own*, first published in 1994. She identified four main reasons why women should not simply own land but, equally important, be in a position to exercise control over it:

- *Welfare*: Women's access to land will improve both their own and their households' poverty standing because of the perceived correlation between an improvement in women's position in relation to land and an improvement in household food security and child nutrition.
- *Efficiency*: Giving women rights in land will increase agricultural productivity because women will invest more in their land and the knowledge pool will be increased;
- *Equity*: Recognising women's rights in land is necessary for justice for women, and
- *Empowerment*: Having land rights will empower women and strengthen their ability to fight for equality, dignity and additional economic rights.

During the course of the 1990s these broad arguments have become commonplace in much of the literature - gender equity in land reform is now firmly entrenched in the international discourse as a basic component of policy. An example of how these arguments have moved into the mainstream of development thinking is provided by the latest 'World Development Indicators' of the World Bank, which lists the promotion of gender equity (along with the elimination of other forms of social exclusion) as one of seven steps that must be taken in order to achieve the international development goals that were set at the September 2000 Millennium Summit (which was attended by 149 Heads of State) (World Bank, 2001: 11).¹⁷

¹⁷ The other six steps are 1) Promote fast, sustainable growth that benefits the poor and reduces inequality; 2) Strengthen the participation of poor people in political processes and local decision making; 3) Reduce vulnerability

These arguments have generally been summarised into a two-fold case for women's rights in land – the human rights argument (women's rights to equality, human dignity, non-discrimination, autonomy) and the development argument (investing in women brings society higher social and economic returns). Gender advocates are, however, not in agreement as to how these two arguments should relate to each other nor which of them deserves priority. Furthermore, there is no ready consensus on the best strategies to be adopted to advance women's interests, and a number of sharp polarities structure the debate. Two major polarities concern the relative importance of securing independent land rights versus joint rights within households for women, and the linked debate on whether women's rights are best advanced through statutory law or through reforming customary law and institutions.

Independent rights in land and/or joint rights within the household

In a keynote address to a 1997 conference on 'Gender Policy Research and Land Development' in South Africa, Agarwal summarized her argument in favour of independent rights for women as follows:

By land rights I mean claims that are not just legally, but also socially recognized and which are enforceable by an external legitimizing authority. ... in making a case for women having rights in land, I mean effective and independent rights. ... And by 'independent rights' I mean rights independent of male ownership and control. ... In other words, I am not talking about joint titles with husbands which have several disadvantages for women ... (1998: 18-19).

In making her case, Agarwal drew on the welfare, efficiency, equity and empowerment arguments to argue that all four objectives are best served by programmes that extend independent rights to women rather than programmes that continue to locate them within restrictive and inegalitarian family and household structures. Although her research area is India, Agarwal does draw on African data to suggest a wider application, including, recently, some South African land reform projects (ibid). However, her views are based on her work on the position of women in South Asia, where land and tenure regimes are very different from those prevailing in much of sub-Saharan Africa. Her emphasis on women's independent rights in land derives from her analysis of the gendered agrarian transition in India and the resulting feminisation of Indian agriculture – in India, she argues, women's absorption into rural non-farm employment is limited and that which is taking place is likely to be at the low return/low wage end (Agarwal, 2001). Furthermore, in India 86% of the land is in private ownership, mostly in the form of small family plots of less than six hectares each (Agarwal, 2001: 19); thus communal tenure systems, unlike in sub-Saharan Africa, are not that significant, and the major form of property transmission, according to Agarwal, is not through the market but through inheritance within families. Her tenure model is thus one of private title (although she does look at group projects and collective production schemes for women).

Agarwal's thesis has been extremely influential in South Africa where the Department of Land Affairs (DLA) has incorporated it into its gender policy documents and training materials, and many gender activists have echoed the call for women's independent rights in land. (See the

to economic shocks, natural disasters, ill health, and violence; 4) Invest in people through education, health care, and basic social services; 6) Forge effective partnerships between civil society, governments, and international agencies, and 7) Encourage public discussion of the goals and the means of achieving them.'

discussion in Hargreaves & Meer, 1999, and Walker, 2001a.) The call for independent rights for women is also strongly articulated in the recent set of research reports commissioned by EASSI (2001) and WLSA (2001), although both sets of research combine this with proposals for reforms that would give women joint title to household land with their husbands as well. The call for independent rights in land overlaps with an emphasis on the importance of investing in what is called 'own-account' farming for women, i.e. farming in which women are in control both of the decisions around production and the disposal of the product at the end.

However, while the call for separate and independent rights in land for women has resonated strongly with many gender activists, there is also a body of literature which is critical or sceptical of this approach in the context of much of rural sub-Saharan Africa. This body of work tends to emphasise the importance to women of their kin and other networks, the value of common property resources, and the complexity of household relationships. It also draws attention to women's 'time famine' as well as their difficulties in mobilizing additional labour resources, with all the attendant negative implications for women's 'own account' farming. This, as noted above, is a major theme in the literature on women and agriculture in sub-Saharan Africa.

Thus O'Laughlin (1995: 76) draws on field work in Tchad and Mozambique to argue against what she terms 'the concept of relative autonomy':

Since 'relative to what' is not clearly specified, the concept becomes the opposition autonomy/dependence. The bonds of interdependence, as well as conflict and difference, that unite conjugal families in Africa, as well as in the rest of the world, are given too little analytical attention. Theoretically, it leads to a kind of methodological individualism which begins with women's interests, rather than the ways in which different gender interests are socially and historically shaped. At a practical level, it gives rise to development theories that assume women's economic independence, such as Palmer's conviction that promotion of women's own-account farming represents the way forward for African agriculture.¹⁸

In a recent analysis of three land reform projects in the province of KwaZulu Natal, South Africa, I argue along similar lines that 'the women in the case studies are also signalling ... that they have a strong interest in household and community rights in themselves, which needs to be respected:'

While the patriarchal household may be a site of oppression for women, it is also a source of identity, material and emotional support, and membership in a social network that is often the only effective resource poor women have. ... individual survival is often dependent on the ability to benefit from a variety of income sources garnered by different household members. The relationships within rural households are complex and multi-dimensional – and increasingly vulnerable to dissolution in ways that do not necessarily enhance rural women's life chances. The impact of HIV/AIDS is likely to exacerbate this problem (Walker, 2001a: 62).

Given that for most poor, rural women marriage is the main way through which they access land, given the instability of many modern marriages that has already been described, given women's lack of economic resources, and given the capacity constraints restricting governments' ability to implement land reform, securing joint rights for women in household land to which they already

¹⁸ The reference is to a 1991 ILO paper by I Palmer, 'Gender and Population in the Adjustment of African Economies; Planning for Change.' Geneva, ILO, Women, Work and Development, Vol. 19, 1991.

have access certainly seems to be the first priority for improving their security in relationship to land. Statutory co-ownership in Uganda, joint registration of spouses in new projects, as well as spousal consent for the disposal of land in both Uganda and Tanzania are some of the mechanisms that have been put forward. However, this need not be an either/or debate, and reform of legislation and programmes aimed at shifting negative social attitudes towards women's independent rights in land can also play an important part. What is more appropriate is for land reform to cater for a range of outcomes, attuned to a variety of needs and circumstances on the ground, including recognition of women's rights to acquire land independently outside of marriage.

Statutory and/or customary law

The place of customary tenure and traditional leadership in land reform raises very complex issues with regard to the status of women.

It is now widely accepted that, certainly in southern Africa, the interpretation of 'customary' law by colonial administrators and magistrates served to strengthen not weaken patriarchal controls over women and to freeze a level of subordination to male kin (father, husband, brother-in-law, son) that was unknown in precolonial society. However, it is also argued that this project involved not simply the imposition of eurocentric views and cultural and sexist prejudices on the part of the colonizers, but also the input of male patriarchs within African society, who were anxious to retain and shore up their diminishing control over female reproductive and productive power (Walker 1990). Today, as a result, contemporary customary law generally sanctions male authority over women, limits their rights in land to secondary rights derived through their membership in patriarchal households, and denies them the right to inherit land from their spouses or natal families. It also underpins a patriarchal system of traditional authority that tends to reinforce these values and disadvantage women who challenge their subordinate role in society. (WLSA, 2001; see also Ngubane in Walker, 2001a). In matrilineal societies a trend has been observed whereby patrilineal norms have begun to infuse earlier customary practice in ways that have weakened women's relative advantages as transmitters of lineage membership and property rights (WLSA, 2001).

Thus the extent to which women stand to gain from the 'turn to the customary' that has already been described is a matter of considerable importance for that debate. The evidence from the region is contradictory. A recent WLSA report (2001: 6) acknowledges that historically under customary law women were afforded a level of protection as members of the group, within a system which was 'well suited to agricultural subsistence economies' but suggests that these conditions no longer apply. Examples of the problems that women, particularly widows, have experienced in enforcing their claims to land in terms of customary law and through traditional courts have also been discussed above, in the sub-section describing women's access to land, and are evident in the country case studies presented in Section Four.

Also noted above is the ambiguity that features in many national Constitutions between constitutional commitments to equality for all citizens and constitutional protection for customary systems of law that continue to discriminate against women. In South Africa the Women's National Coalition won a major victory during the constitutional negotiations in 1993/94 when they succeeded in entrenching the 'equality clause' as pre-eminent in the hierarchy of rights, and blocked an attempt by traditional leaders to exempt customary law from the provisions of that clause (Walker, 2001a). In Zambia, Lesotho and Zimbabwe, however, the authority of the equivalent equality or non-discrimination clause is not as far-reaching, and the formal

commitment to equality and non-discrimination is more circumscribed. A celebrated case in Zimbabwe in 1999 highlights the problems this poses for women: in *Magaya vs Magaya* the Supreme Court ruled that a woman, the eldest child of her deceased father's first wife, could not inherit her father's estate, even though she had been appointed heiress by the community court, because customary law did not permit a woman to inherit property when there were adult males in the family (WLSA, 2001: 41).

On the other hand, it has also been argued that local level customary courts and authority systems are not necessarily hostile to women and may in fact be more effective arenas where they can defend or claim their rights – because they are accessible and cheap, and because traditional courts are made up of people who are well informed about local household dynamics and needs and may well use this knowledge to support women in particular cases, including those related to land. Patriarchal systems may be benevolent towards weaker members of society and traditional institutions are in a position to look at each case on its merits. Thus favourable interpretations of an individual woman's needs, character and behaviour may override formal considerations of male authority or concerns about precedent. This point on the flexibility of customary law and its ability to respond to specific conditions rather than being bound by formal requirements and legal precedent, is made strongly by Whitehead and Tsikata (2001), who review a number of case studies of actual dispute resolution around land issues, where traditional institutions ruled in support of women defendants or claimants, against the claims of men.

On a more pragmatic note, Mwebaza, cited in Toulmin and Quan (2000a: 243), considers it a mistake not to make better use of traditional authorities, because they are cheaper in terms of cost and time, as well as being more rooted in local communities and their norms. In commenting on the Uganda Land Act Mwebaza suggests that a reformist and incremental approach to existing institutions, rather than the wholesale displacement of traditional institutions at the local level, would have worked better:

Customary systems do have problems of their own, notably the exclusion of women, the poor and the young in decision making. However, building on the existing infrastructure and adopting best practices while rejecting those which are inconsistent with good governance and natural justice, would have provided many benefits for the implementation of the Land Act, especially at the initial stage (Toulmin and Quan, 2000a: 243).

Once again, it seems that an either/or approach is not appropriate. There is certainly evidence for the importance of constitutional and statutory provisions at the national level to provide an enabling environment for gender equity, within which local level negotiations over power, rights and changing social values can be accommodated and directed towards more equitable outcomes. The point about this, however, as the South Africa case material suggests, is that what is put in place is only enabling – the extent to which these gains may be realised will depend on the extent to which women are able to use the space that has been created. Here there are many obstacles, including women's ignorance of the law, lack of financial resources and legal aid systems, hostile social attitudes, and weak levels of organization and support for women among NGOs.

However, it also seems there are advantages for women, including for rural women, in harnessing the flexibility, responsiveness and accessibility of 'local-level' systems of land management that are rooted in local, 'customary' institutions. A major political and policy challenge, then, is to define the most beneficial fit between statutory law that entrenches gender equality as a

fundamental principle and reformed systems of customary rights allocation and conflict resolution.

A key issue in the debate on traditional institutions and customary law in South Africa is where ownership of communal/customary tenure land should lie. Here traditional leaders are making a very strong claim, politically, not simply for land management functions, but for formal ownership of communal land to be vested in them, as custodians on behalf of 'their' people, in the demarcation and registration of communal land rights. Thus at the recent National Land Tenure Conference held in Durban in late November 2001, *Inkosi* Holomisa, the head of CONTRALESA (Congress of Traditional Leaders of South Africa), argued:

Our advice to government is that legal title to communal land be in the name of the relevant traditional authority. [Not] to do so would not only amount to the further erosion of the role of traditional leaders in the life of our people, but would serve to cut the ties that are between the land, the people, and their ancestors who bequeathed the land to us. ... We are aware of the shortcomings of the traditional authorities as they now exist. We do not believe, however, that such shortcomings justify the divestment of traditional authorities of their historical responsibility to control and administer land (Holomisa, 2001: 7).

What the above discussion brings out, however, is that 'historical responsibility', however constructed, is not a sufficient basis on which to make policy decisions with such far-reaching implications for people's livelihoods and rights in contemporary rural society, especially not if gender equity is accepted as one of the basic principles informing government's policy choices. Current responsibilities, social relationships, economic needs, problems and challenges, and the effectiveness or otherwise of institutions in managing these, should be the 'chief' considerations.

Limitations of policies targeted at 'female-headed households'

The problems with targeting policy interventions at 'female-headed households' have by now been thoroughly discussed in much of the literature on gender and development, but the use of female-headed households as a 'proxy' for women (Budlender, 1997) persists in land reform. Thus in South Africa in the first phase of redistributive land reform between 1994 and 1999, one of the few measures used to gauge women's participation was the number of female-headed households registered on project lists (Walker, 2001).

The problem is not simply that this focus excludes women in male-headed household or that there are substantial variations in terms of income and wealth within the category of female-headed households, not all of which are poor. The way in which the household and headship are understood, as fixed and stable entities, is also problematic. Peters (1995: 101) makes the important point that one needs 'to enquire simultaneously into both *units* and *processes*':

Research has now shown very clearly that households and their relations among persons within a household change and adapt over time, whether seasonal, over a project cycle, or over longer periods. Research and policy need to build in *time* to their methods of analysis. (Emphases in original.)

She also reminds us that gender relations do not refer only to relations between husbands and wives but also embrace other kin and non-kin relationships, and stresses the importance of other relationships and networks:

... an essential lesson from research on the continent has been that 'households' or 'domestic units' cannot be understood in terms of their internal dynamics alone, but only in relation to the broader social groups, networks and categories in which they are embedded' (Peters, 1995: 98).

Furthermore, there are many problems with the conception and categorization of 'headship'. The assumption that headship denotes a single locus of power and control of resources within households is an overly simplistic one.

However abandoning the notion of households as a key unit within planning does not make sense either. Households and families remain basic components of social organisation, even if their variety, mutability and structure are more complex than is often thought. Independent women (and men for that matter) are not pure autonomous and isolated individuals but are still embedded within all sorts of complex attachments, networks and commitments. Again, this points to the importance of working with flexible notions of households while also looking at different categories of people and of need within and across households within policy development.

Capacity to implement gender-sensitive land reform

The final issue to raise briefly in this discussion on gender and land reform policy relates to capacity. A number of recent studies comment on the lack of capacity of governments to implement the ambitious land reform policies they have set for themselves, and the implications of this for policy development (Adams, 2000; Manji, 2001, and many of the articles in Quan and Toulmin, 2000). Capacity constraints are seen as a major challenge for already stretched, under-resourced governments across the region. Thus Adams (2000: 93) comments with regard to the Land Act in Uganda:

The passage of Uganda's tenure reform legislation was not preceded by a financial and economic appraisal. The budgetary implications were not the subject of rigorous review. No provision was made in the budget for its implementation. When the Bill became law, the responsible implementing agencies were without the necessary staff and funds to implement it.

The point that needs to be made here in relation to gender policy is that these problems are likely to be magnified rather than reduced when gender equity is added to the set of objectives.

The problems associated with 'mainstreaming' gender into government programmes have already been referred to above. Another important consideration relates to costs. The high cost of implementation is already seen as a major factor in delaying and undermining land and tenure reform. Gender policy is likely to have additional costs attached to it (Walker, 2001b). In order to increase women's participation in project-level planning and decision-making, there has to be an investment in facilitation in which the policy, its advantages and community concerns can be addressed, as well as opportunities created for women to engage with the issues among themselves. This increases the amount of time and the level of resources, including staffing, required, thereby putting further pressure on hard-pressed budgets and the politicians and bureaucrats who must manage them. Higher costs are also likely to be incurred in enforcing policies that enhance women's land rights, through programmes of public education, the training of officials, and financial support for litigation through the courts (e.g. legal aid).

SECTION FOUR: GENDER POLICY AND LAND REFORM: FOUR CASE STUDIES

The following accounts of how gender policy issues have been addressed in land reform in four specific countries in the region indicate the very different trajectories that land reform can take, and the complexities, from a policy and implementation point of view, that are involved. The focus here is on the way in which women's interests have or have not been accommodated in land reform, rather than the detail of each programme. Readers are referred to Appendix One and to the various tables in the text for additional background material on each country.

The four countries that are discussed here are:

1. Kenya
2. South Africa,
3. Uganda, and
4. Zimbabwe.

4.1 KENYA

Kenya is an interesting case study because it introduced tenure reform at an earlier stage than the other countries and because of the nature of that reform – individual title, on the assumption that this would create security of tenure, improve efficiency and incentives for investment and hence improve agricultural outputs and food/income security. The titling programme was directed at men only, as the presumed heads of households with authority over and responsibility for the women and children within those households. Knowles (1991: 10) notes that although there was no 'legal prohibition against women either receiving title or owning land in Kenya ...they did not receive their titles in the adjudication/consolidation process.' According to Karanja (1991: 121), women were not represented on the adjudication committees that were set up to determine ownership and boundaries for the land and did not participate in the meetings at which these issues were discussed.

The process of land reform solidified the role of men as the inextricable link between women and the land and further hardened their land rights into absolute ownership to the exclusion of women (ibid: 122).

Thus by 1991 only some 5 - 6% of the land was owned by women (Karanja, 1991; Knowles, 1991), which land had generally been acquired not through the initial titling process but through subsequent purchase by women.

Furthermore, women's tenure security on the land now owned by their husbands or fathers was undermined, while women's access to credit for farming or other purposes was also curtailed (Karanja, 1991), because lending institutions required ownership of land as collateral.

It is now widely acknowledged that the process [of titling] has worked to the significant detriment of women in that men are now free to sell land to which they hold legal title, thus completely extinguishing women's customary rights of access (Knowles, 1991: 10).

A 1967 Land Control Act, which was put in place to curb 'improvident land sales' by requiring that the Land Control Board approve all sales, gifts, sub-divisions and mortgages of land and that it take into account the needs of the family in the process, failed to offer women any substantial

protection. Karanja (1991) reports that these provisions were ineffective in the face of active resistance as well as ignorance of the law and the widespread preference for informal transfers of land.

The reforms did make provision for women to inherit land that had been registered in the names of their husbands and have it registered in their own names. However, this was often opposed by the husband's male relatives (Whitehead and Tsikata, 2001: 78).

Recent field research carried out by EASSI in two districts in Kenya broadly confirm that these discriminatory conditions persist. In Kinoo Location, within Kiambu district, Central Province, most land parcels are very small (below 2 acres) and registered in the names of men. Very few women hold land in their own names. Marriage is the major form of acquiring rights in household land for women. Inheritance customs favour male descendants though cases were reported of men bequeathing their land to all their descendants, irrespective of gender, in recognition of changing social conditions, including the instability of marriage. Most farms rely on family female and child labour (Kyalo-Ngugi, 2001: 10-11). A similar pattern prevails in Mutituni Location, but here land holdings are even smaller, below one acre (ibid: 14-15). Here too there is some evidence of changes in attitudes towards inheritance norms, with some men looking at giving their daughters land because they consider them more 'responsible' and more likely to look after fathers in their old age (ibid).

According to Whitehead and Tsikata (2001), the colonial period changed the balance not only between men and women but also between the patrilineal sub-clan and the individual members of the clan – 'kin corporate rights in land ... became individual interests which in most cases meant male ownership of land' (ibid: 78, citing a study by F Mackenzie). The individualization of tenure took place at a time when women's contribution to agricultural production was increasing, thereby 'raising the levels of contradiction between women as producer non-owners and men as non-producer owners' (ibid). However, they also note that although, 'in the main', women were disadvantaged by the process, the new tenure regime allowed them some opportunities to contest rights to land and brought benefits to a very tiny elite 'with access to non-farm income' (ibid).

What also needs to be remembered is that the process of individualization and titling of land has led to the loss of land rights for men as well. Kanyinga (1998) reports that the privatization of land led to mass displacement of people and the creation of a class of squatters and people without land rights, especially among the Kikuyu of central Kenya. This impacted upon land rights in other regions, as displaced people moved to settle elsewhere. In the mid-1970s it was estimated that about one quarter of the coastal population was landless (ibid: 58). A re-africanisation programme introduced into the areas formerly set aside for white settlers in the White Highlands further complicated the land dispensation by introducing land settlement schemes for the landless and introducing a land purchase programme for the African middle class (ibid).

Land continues to be a highly contested issue in contemporary Kenyan politics. Kanyinga (1998) describes fierce ethnic conflict over land, particularly in the Rift valley and along the coast, an increase in the appropriation of government land by political elites from the 1990s, and ongoing individualisation of farm ownership. The extent of titling varies – on the coast only about 20% of land has been registered since the 1970s (ibid: 63). However, the remaining customary tenurial relationships have themselves been deeply affected by complex patterns of displacement, new forms of patronage, and land alienation of public land involving national and local elites as well as foreign developers in the tourist industry and other enterprises. (Unfortunately, while

Kanyinga's account is important for bringing into focus the loss of land rights among sections of Kenyan men as well as the class politics at play, his account does not bring out the gender dynamics within these processes.) However, what is also striking is how customary norms and practices have continued to exert an influence on land and social relations in those areas where individual title has been introduced:

... sub-division of holdings and customary patterns of land allocation and inheritance have in fact persisted, despite registration Registers are becoming outdated, as heirs or lessees fail to renew registration (Quan, 2000: 37).

While the original rationale for land titling was to promote agricultural development programmes, the outcomes in this regard have been, at best, ambiguous. Quan summarises the findings of research conducted by J Bruce and SW Mighot-Adholla in the early 1990s on this question as follows:

For the direct beneficiaries, land titling has provided very secure tenurial rights, and the early phases of the programme were indeed accompanied by increases in farm income for recipients of title. However, it is difficult to disaggregate the impacts of tenure reform from the many other agricultural development programmes carried out in the post independence period.

The policy implications of the Kenyan experiment, according to Quan, are:

- The process of registration has been very costly, and the net benefit ambiguous;
- Tenure reform alone is not likely to enhance smallholder production without a range of associated measures;
- Land titling tends to generate damaging impacts on the position of the poor (ibid: 37).

The question must be asked whether these results would have been the same had women been targeted as beneficiaries in the process, their household rights protected in the form of joint title with their husbands and secure inheritance rights. Certainly this would have secured their tenure rights on paper, but without strong mechanisms in place for enforcing their claims at the local level, as well as major shifts in social attitudes towards women, it seems unlikely that these rights would have been widely implemented – although possibly, over time, they might have become more socially acceptable. The costs of such a programme could only have been enormously increased, while gender conflict and competition over land and labour would also surely have escalated. When one inserts gender relations within the complex mix of social forces described by Kanyinga it becomes even more difficult to imagine a gender-equitable programme of individual titling unfolding relatively smoothly in the political climate of Kenya today. Yet it also seems that simply maintaining customary tenure systems – even reforming them to specify women's rights – would not provide the answers to women's insecurity and marginalisation either. Whitehead and Tsikata argue that it is likely that 'even without land reforms ... the imperatives of cash crop cultivation and the growing concentration and scarcity of land would have resulted in more insecurity for women' (2001: 79).

In 1999 Kenya embarked upon a process of land policy review, which is still underway. It thus opens up the opportunity for women's current vulnerability as a social category to be highlighted and the difficult process engaged of putting forward proposals for policy interventions that might turn this around. It is, however, striking that no women have been appointed to the Commission of Inquiry (Nzioki, 2001: 88). This raises doubts about the political priority that principles of

gender equity enjoy within Kenya at present. Furthermore, while the strength of women's organization in Kenya has not been investigated for this report, it does not appear from the literature that there is a strong women's movement that is mobilizing rural women around this issue.

4.2 SOUTH AFRICA¹⁹

The South African land reform programme has not proceeded very far in terms of implementation since 1994, with less than 1,5% of commercial farm land being redistributed, perhaps 20% of restitution claims finalised (most of them urban) and policy on tenure reform in the communal areas not yet defined. However, what is of interest in the South African case is that, like Uganda, there are strong formal commitments to gender equity in land reform policy and the level of organisation among women is relatively high. South Africa has one of the highest percentages of women parliamentarians in the world, a progressive constitution in which the principle of gender equality is entrenched, and considerable civil society activism on issues of concern to women, particularly around violence against women and children. As already noted, a major battle during the constitutional negotiations of 1993/94 involved the status of the 'equality clause' vis-à-vis respect for 'traditional leaders' and 'customary law', with a cross-party alliance of women, the Women's National Coalition, succeeding in blocking an attempt by traditional leaders to have customary law exempted from the provisions of the 'equality clause'. (The equality that was of concern to the traditional leaders was that of women.)

Nevertheless, achieving the government's stated policy objectives of promoting gender equity and enhancing women's access to and control over land in and through land reform since 1994 remain major challenges. Generally implementers have struggled to turn high-level policy commitments to gender equity into effective interventions in land reform projects on the ground. DLA and provincial and national managers have not prioritised gender policy goals at the level of implementation and the DLA has not managed to develop adequate indicators and project management tools for integrating work on gender into its project cycles. Nor have the Minister and senior departmental officials been held politically accountable on the issue of progress towards gender equity.

The land reform policy of the government in the 'first phase' of land reform (1994-99) took some years to acquire formal shape. In 1995 and 1996 the Ministry and DLA embarked on a lengthy process of public consultation and drafting which culminated in the adoption of the *White Paper on South African Land Policy* in April 1997 (henceforth the *White Paper*). The policy pieced together a series of interventions that attempted to respect the political compromises of the constitutional negotiations (see Appendix One) while honouring the commitments of the ANC's Reconstruction and Development Programme. The *White Paper* outlined a moderate programme of market-assisted land reform, based on a state land grant to poor black households for the purchase of land, with a strong emphasis on redress, poverty alleviation, the extension of rights and the democratisation of rural institution.

In the *White Paper* the redistribution programme was envisaged as providing 'the disadvantaged and the poor with access to land for residential and productive purposes'; women were identified as a major category of land reform beneficiaries, reflecting the prominence of high-level

¹⁹ The following account draws heavily on two research reports I have recently completed, listed in the references as Walker, 2001a and Walker, 2001b.

commitments to gender equity in the democratic transition, a commitment, I have argued, which has remained largely at the level of high principle rather than operational policy (Walker, 2001a). Land for redistribution was to be obtained through the 'willing buyer-willing seller' approach that was initially understood to preclude the DLA from any supply-led initiatives such as the purchase of land in anticipation of specific projects for targeted categories of beneficiaries.

In practice, especially in the early years, the residential settlement focus predominated, in part because of the very limited reach of the state grant, which encouraged beneficiaries to cluster in group projects in order to buy farms, in part because of an implicit assumption that land reform was intended to benefit 'communities' on the part of many officials, and also in part because of the social and political dynamics among many of the groups clamouring for land in the mid 1990s. In the province of KwaZulu Natal, for instance, many early redistribution projects were driven by a very strong restitution ethos, where groups of beneficiaries mobilised to purchase farms which they regarded as their collective ancestral lands, from which they or their forebears had been evicted, rather than because of the productive potential of the land (Walker, 2001a).

Much of the popular demand for land operated in the context of the 'multiple livelihoods strategies' referred to in Section 3.2. Beneficiaries were envisaged as households, with men playing the dominant role as 'household heads', although officials were encouraged to target 'female-headed households' within the programme in order to honour gender equity commitments. Officials also tried to ensure that women were represented on project committees and in the new legal entities that were set up to own the redistributed land. Major problems have been identified in the functioning of these legal entities after the transfer of the land and the withdrawal of officials from the project, however, and the continued effectiveness of many of them, including with regard to the participation of women, is in doubt.

During the first phase of land reform, tenure reform moved very slowly. Legislation was passed in 1996/97 to protect farm workers against unfair evictions. Work was initiated on a Land Rights Bill to address tenure insecurity and the incoherent land administration situation in the former homelands, but this work proved contentious and the draft bill that had been prepared by the end of 1998, which aimed to recognize common property rights, was not approved by Cabinet before the 1999 general elections. This Bill had some features in common with the Ugandan legislation of 1998, inasmuch as it aimed to give statutory recognition to the rights of the occupants of communal lands, while allowing for a range of legal entities to take ownership of demarcated areas. The rights of women and how to protect them were considerations in the drafting process.

In the second phase of land reform, under the Mbeki presidency from mid-1999, the major development in the redistribution programme has been the formulation of a new policy initiative to link land reform far more closely to agricultural development, with the stated (and hugely ambitious) aim of ensuring the transfer of 30% of agricultural land to black people over a period of 15 years. The broad outlines of this policy were announced by the newly appointed Minister for Land Affairs, Minister Didiza, in February 2000. Thereafter there was a lengthy process of policy formulation within the national Department of Agriculture and the DLA, which finally culminated in the release of a document entitled 'Land Redistribution for Agricultural Development: A Sub-Programme of the Land Redistribution Programme' ('LRAD') in late 2000.

The major features of the LRAD sub-programme are as follows:

- It is open to all black South African citizens irrespective of income;

- It is intended to assist black people acquire land for agricultural purposes or to finance improvements to support increased production where access to agricultural land has already been secured;
- It is targeted at individuals as the grant recipient rather than, as in the previous programme, 'households'; however, individuals who wish to come together in group projects will be able to pool their individual grants to finance such schemes.
- The old grant structure of a flat R16 000 award per eligible household has been replaced by a new system which awards grants of varying sizes ranging between R20 000 and R100 000 and requires the payment of an 'own contribution' by all beneficiaries in addition; the size of this contribution (which can be made in either cash or kind) increases on a sliding scale in proportion to the size of the state's grant.
- It continues the demand-driven philosophy spelled out in the 1997 *White Paper*. The onus is on potential beneficiaries to identify potential land and submit applications that meet all the state's requirements, rather than on the state to identify and acquire suitable land for targeted categories of beneficiaries.
- It also envisages a major role for the private sector, including NGOs, to act as 'design agents' for prospective applicants, to assist with the preparation of the project proposal

The new programme has only recently been launched. There are major concerns about the ability of the government to meet its transfer targets as well as about the viability of the programme itself, given the hostile environment in which South African commercial agriculture is operating. While some gender activists see the awarding of the grant to individuals as an advance that could improve women's independent access to land, there are real concerns that most women will not be able to afford the 'own' contribution or negotiate the application and design process without considerable support from government and/or the NGO sector.

In late 2001 the issue of tenure reform for the communal areas has returned to the forefront of land reform policy debates. After a lengthy process of internal policy formulation, with little public participation, the DLA organized a 'national consultative forum' on tenure reform at the end of November 2001. While no draft Bill is formally on the table as yet, the principles of a proposed Communal Land Rights Bill were presented by the Department which indicated that the state was wanting to divest itself of ownership of the communal and was looking to vest ownership in both groups and individuals. What also became clear was that traditional leaders, in the form of chiefs and Tribal Authorities, were being considered favourably as institutions in whom ownership should vest, on behalf of their people. Many questions about the proposed legislation have not been clarified, including how the White Paper commitment to gender equity will be honoured. It is of concern that gender equity was not specified as one of the eleven underlying principles that have informed the drafting of the tenure proposals (see Sibanda, 2001: 8-9), although the formal acknowledgement of this principle within the overall objectives of land reform continues to be made.

4.3 UGANDA

Uganda is an interesting case study because of its pioneering of a land policy based on the registration of customary rights in land, operating alongside a strong constitutional commitment to gender equality that has, however, yet to be given full expression in the land legislation. One recent assessment of the likely impact of the new legislation, discussed below, raises questions about the relationship between tenure security and productivity. The process by which the Land Act passed into law also shows the persistence of customary practices and values that

discriminate against women in practice and, in a very different context from South Africa, how difficult it is to achieve gender equity goals without persistent and strategic lobbying by and mobilization of women.

In Uganda 85% of the population is rural and agriculture, primarily in small holdings, is the predominant economic activity. Uganda is very densely settled, one of the poorest and least developed countries in the region, which has, however, shown very rapid growth in GDP in recent years.

A 1988 study in four districts of Uganda found that 93% of the rural women were farmers:

However, most of the land they cultivate is in the power of men, i.e. husbands 63%, or male relatives 17%. Only 7% of the women own the land they cultivate, 10% borrow. ... 82% of this land was indicated to be customary or public land, 8% freehold, while in 10% of cases, it was not known by the respondents (Sebina-Zziwa, 1995: 13).

This same study found that while women provided over 70% of the agricultural labour on both cash and food crop fields, their decision-making powers over the proceeds from these crops were limited. With regard to food crops, the decision on how to spend the income from sales rested with women in 40% of the cases and with men and women jointly in 18% of the cases. In the case of cash crops, women controlled the income by themselves in only 19% of the cases, with men making the decision on their own in 65% of the cases (*ibid.*). (Joint decision-making occurred in 14% of the cases.) More recent research (Kharono, 2001; Nyakoojo, 2001) confirms this general picture.

In 1995 a new Constitution was adopted as part of the reconstruction of Ugandan society after its devastating years of civil war and conflict. This overturned the 1975 Land Reform decree which had declared all land in Uganda to be in state ownership, and vested ownership of land in the citizens of Uganda – a first for sub-Saharan Africa (*Haramata*, 2000: 18). The Constitution also affirmed the principle of equality for men and women 'during and after marriage' (Busingye, 2001: 3), recognised the need for affirmative action to redress historic gender imbalances and prohibited 'laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status' (Article 33(6) of the Constitution, cited in Kharono, 2001: 1).

The Constitution was acknowledged at the time as one of the most 'women-friendly' in the world (Goetz, 1998: 245). The Ugandan parliament also had an unusually high percentage of women in its ranks, with women making up 18% of members (50 in number; UNRISD, 2000: 119). Yet despite these favourable factors, Goetz has noted how women parliamentarians have struggled to make an impact on major economic planning and to advance women's gender interests (*ibid.*: 244-5). They have had most success in areas of social policy more conventionally associated with women, such as violence against women, education, and HIV/AIDS orphans.

This analysis is borne out by the developments around the passage of the Land Act of 1998 and attempts to get a co-ownership clause for spouses (essentially for women) included in the legislation. According to Adams (2000: 87) 'earlier drafts of the Bill focused on the desire to provide a basis for the emergence of a functioning land market' and there was initially very limited public consultation. However, over time public interest grew and with that 'the focus shifted to the need for a more equitable system in which the rights of the poor and vulnerable were protected.'

The Ugandan Land Act of 1998 was intended to give legislative content to the constitutional commitments of 1995. It aimed to provide security of tenure to all users and occupants of land and to recognise customary tenure systems as on a par with freehold and leasehold. It provided for a system of adjudication and certification of customary rights and the establishment of Land Tribunals at district level to hear disputes. The Land Tribunals have a discretionary power to pass on cases to traditional leaders where considered appropriate. In terms of this Act, 'any person, family or community holding land under customary tenure on former public land may acquire a certificate of customary ownership in respect of that land' (Toulmin and Quan, 2000: 226, citing R Mwebaza) – the formal certification process is encouraged but not required. In an attempt to protect secondary rights in land, the Act stipulates that no customary tenure land may be transferred without the consent of the would-be seller's spouse and children. The Act provides for communities to establish Communal Land Associations (CLAs) to hold their land; however, individuals can also apply for such certificates and the onus is on the community to protect communal lands from subdivision and individualization, through the formation of CLAs.

Despite the tenure innovations in the legislation, the Land Act was a major disappointment for the Uganda Land Alliance, a group of national and international NGOs which had lobbied hard for women's interests to be protected. This was because of the failure of the legislature to push through a clause that would have ensured automatic co-ownership rights for spouses in the certification of household land. The co-ownership clause disappeared from the Bill at a very late stage in the process. The circumstances are not at all clear and the matter is still a source of confusion and frustration among gender activists today.

Not only did they [NGOs] feel that they had been given a raw deal, but also all their efforts to impact on the law making process seemed to have been a waste of time and energy. Despite voicing their view in different fora, little was at the end of the day adopted. Rather even the single amendment to the Bill intended to provide for co-ownership of spouses mysteriously disappeared, and was ignored by the legislators when they denied its having been initially passed by Parliament. Could it have been fraudulently lost by the responsible committees ...? (Busingye, 2001: 3)

In reflecting on the process, Busingye identifies hostility to the concept of gender equality in many circles 'including parliament' as significant and quoted a speech by one member of parliament as follows:

Customarily women are catered for and are comfortable so long as the head of the family and the clan leader shows you where to cultivate. These issues of ownership and inheritance in our society are discussed by men. You NGOs go and merely incite people to shout about these things. The facts are not going to be changed by this august House (Busingye, 2001: 8).

Busingye also points to the failure of policy makers to see women's land rights as a development issue and, interestingly, cites class divisions among women as an additional factor:

There was also a feeling common among middle class women that co-ownership was not favourable since it would mean sharing their land with their husbands. These women have up till now largely avoided this issue, either because it is too sensitive or it appears to be remote to their own day-to-day lives and existence (ibid: 9).

In response to vocal criticism on the matter, the government has moved to incorporate the co-ownership provision into the Domestic Relations Bill (dealing with family law) that is currently under discussion. Activists are divided on the merits of this. Some feel that unless the provision is included in the land legislation as well, the likelihood of its being enforced is reduced. There is also a feeling that it is inappropriate to deal with women's land rights in legislation dealing with family law rather than in the national land legislation. A measure of the confusion surrounding the issue, in October 2001 participants at the EASSI conference on Women and Land Rights were unaware that the provision has apparently already been included in the Domestic Relations Bill.²⁰

To date implementation of the Land Act has just begun, amidst growing concerns about the cost of setting up the new administrative infrastructure, and the capacity of the state to carry it through. (See for instance, Adams, 2001; Manji, 2001.) Drawing on a 1999 'Land Act Implementation Study' that looked at the technical, fiscal and socio-economic implications of the Land Act, Adams (2000) discusses the major difficulties of implementing so radical a shift both in tenure relationships and in land administration systems and the likely economic impact of the more secure forms of customary tenure. The conclusion is that 'it would be unrealistic to expect the 1998 Land Act to generate major economic benefits over the short to medium terms, either in the farm or non-farm sector' (Adams, 2000: 91). While Adams hails the Act as 'a major step forward in equitable tenure reform,' the 1999 assessment is that the Act is 'unlikely to have major impacts on farm production through improved tenure security:'

The available evidence in Uganda did not indicate a clear-cut relationship between tenure security and farm investment. While some longer-term investment in farming had been inhibited on some farms ... it was not clear whether the problem was widespread. Nor was there evidence of widespread lack of investment in customary tenure areas stemming from uncertainty relating to land rights. Where some evidence of a possible constraint of this nature was identified, there was no reason to suppose that, on its own, the Land Act could be expected to lead to the necessary strengthening of these rights. If it led ultimately to speedier dispute resettlement, it might have some positive production impact, but it was unlikely to be large enough to be reflected in the country's agricultural growth rate. One unexpected short-term impact ... was it had itself created new uncertainties as to the allocation of rights over some urban and rural land (Adams, 2000: 92).

However, the study did conclude that there were likely to be potential welfare benefits in the form of an 'enhanced well-being' and a reduction in land disputes in the future because of defined rights holders and plot boundaries (ibid: 90).

Adams does not specifically consider what the implications might have been had women's rights been more strongly secured. What is of particular interest in this regard, however, is that the commercial banks are reportedly unhappy about the family consent requirement as a condition for transferring land, as that is seen to have an 'adverse impact ... on the value of land as collateral' (ibid: 91).

²⁰ Information on the Domestic Relations Bill from K Izumi., personal communication.

4.4 ZIMBABWE

In Zimbabwe the focus of land reform has been on the redistribution of land from the large-scale commercial farming sector to small-scale peasant producers, and the deracialisation of land ownership.

As already noted, Zimbabwe's early record on redistribution compares very favourably to that of Namibia and South Africa in terms of hectares distributed, the number of people settled and various economic indicators for the settlement schemes. Since early 2000, however, Zimbabwe has been in the grip of an escalating political and economic crisis as a consequence of its 'fast-track' resettlement programme, the state-sanctioned wave of farm invasions, and mounting conflict in the run-up to national elections in early 2002. The crisis is seeing the contraction of the formal economy and rising levels of unemployment which, among other things, has meant an increase of the dependency ratios on formally employed workers as well as a greater dependency on land across all sectors of society (Mbaya, 2001: 2).

Between 1980 and 2001 there have been three phases of land reform:

- The Land Reform and Resettlement Programme, Phase 1, between 1980 – 1997, operating in terms of the 'willing seller/willing buyer' conditions of the Lancaster House agreement;
- The Land Reform and Resettlement Programme, Phase 2, starting in 1997, with the aim of settling 150 000 families on 5 million ha. within five years (demonstrable experience required);
- The 'fast-track programme' formally announced in mid-2001.

In terms of the 'Lancaster House Agreement', land was to be acquired from the predominantly white, commercial sector for redistribution to families within the communal areas, allocated to households in 5,5 ha plots. The land remained state-owned, with tenure secured by means of permits which were issued mainly to married men. Originally the programme had a poverty reduction focus – the eligibility criteria emphasized need, prioritizing refugees and people displaced by the war, as well as landless and land-hungry families (Mbaya, 2001).

Fairly impressive progress was made in the 1980s but thereafter implementation of the programme slowed down. Thus between 1980 and 1989 some 3,3 million hectares were distributed to 54 000 families (Adams, 2000: 40). In the next eight years, however, only another 200 000 hectares were distributed, so that by 1997 a total of 71 000 families had been resettled on 3,5 million hectares (Whitehead, 2001: 4).

A major study by Bill Kinsey in 1999 of the Phase 1 resettlement programme concluded that the poverty reduction goals had been met and that the programme had led to higher and more equally distributed incomes among households in the resettlement areas compared to those in the communal areas (Adams, 2000: 109, citing Kinsey, 1999). Kinsey also found that the better-off settlers began to realise these benefits relatively quickly, but the poorer beneficiaries only began to realise benefits after a decade or so. The significance of this finding, according to Adams, is that it indicates that land reform programmes do not offer quick fixes and that time is required before the impact of projects can be adequately measured (Adams, 2000: 108).

In 1990 the Lancaster House Agreement expired. That same year saw the start of Zimbabwe's Structural Adjustment Programme, which led to drastic cuts in government spending. In 1994

Zimbabwe adopted a Poverty Alleviation Action Plan but at the same time it shifted the emphasis in its land reform programme from poverty reduction to promoting farming competence and facilitating the entry of black Zimbabweans into the commercial sector. The Zimbabwean government also began to look at non-market mechanisms for acquiring land from the commercial sector at a faster rate, such as state valuation and setting limits to farm size and the number of farms that could be owned. There was growing criticism of the programme internally, including popular concern that the land was being redistributed to the elite, alongside unease at the threat of non-market mechanisms on the part of domestic and foreign investors.

In the meantime, tenure reform in the communal areas, where poverty and land pressure were most acute, was largely neglected. In 1993 a Land Tenure Commission was established, which reported in 1995. Whitehead (2001: 5) describes the Commission's work as gender-blind. There was no 'specific brief' to look at gender issues, although it was asked to look at the issue of inheritance. Another neglected area of policy work has concerned the position of farm workers and residents on commercial farms, both in terms of their general tenure security and their status in relation to any resettlement schemes that get established on the land on which they live and work. (On this see Moyo *et al*, 2000.)

In September 1998 an International Donors Conference endorsed the need for land reform and committed to a 24-month 'Inception Phase', to redistribute up to 1 million hectares as quickly as possible and to improve beneficiary participation and effectiveness. This was followed by the adoption of a National Land Policy in 1998. However, the donor countries made their financial support conditional on the Zimbabwean government fulfilling certain guidelines, including greater transparency and fairness in the allocation of land. In 1999 they withdrew their pledge of support on the grounds that Zimbabwe had not followed through on its undertakings, and the programme was flung into disarray. These events coincided with a referendum on new constitutional proposals which were rejected by the electorate, precipitating a political crisis for the government. Shortly thereafter the first of the farm invasions began.

In terms of women's rights and interests in land, the land reform programme in Zimbabwe can claim only very modest achievements; those that have been realised have been essentially incidental to the main purpose of the programme. This is despite what Whitehead (2001: 3) has described as 'the long history of well developed women's and feminist organizations in Zimbabwe.' She suggests four factors for the hostility to gender issues and the 'masculinist' nature of Zimbabwean politics – firstly, strong patrilineal and patrilocal social organization; secondly, the 'veneration' in some political quarters of men who are war veterans; thirdly, the 'pre-feminist' socialist ideology that has informed policy programmes, and, fourthly, the undemocratic nature of politics (*ibid*). Racial inequalities and the dominance of the discourse on race politically have also served to overshadow the debate on gender inequalities – '... at the crux of the land problem in Zimbabwe lies the persistent unequal racial access and control of land' (Moyo, 1995: 16).

In Zimbabwe the redistribution programme has focused on household heads, 'therefore perpetuating married women's lack of access to land in their own right' (Jacobs, 1999: 1). WLSA (2001: 25) reports that the number of women who qualified for land as household heads was insignificant and that often women in resettlement schemes who became divorced or widowed were forced to move from the schemes, even though technically women's marital status was not a qualification issue. However, within the context of this household-based redistribution programme, Jacobs (2000: 1) notes that 'married women ... along with better-off widows have made some gains.' The intersection of costs and benefits that are described is complex. While work loads on women tended to increase, this was accompanied by changes in the gendered

division of labour and a perceived increase in the contribution of men to household labour. There were also positive gains made in overall household income. However, Kinsey's study has indicated that increased income has not translated into higher nutritional standards for children – while chronic under-nutrition appears to be less severe than in the communal areas, malnutrition in the resettlement areas times of drought appears to be more serious. This may be related to the increased demands on women's labour time in production, and to the creation of socio-economic systems that are more vulnerable to drought-induced shocks' (Mbaya, 2001: 6). .

In Jacobs' study both men and women expressed concerns about tenure insecurity. However, while men were concerned that their permits could be revoked by government action, women 'were more likely to express the insecurity of their position not in terms of landholding, but in terms of the lack of security in marriage' (Jacobs, 1999: 10).

In resettlement areas, divorced wives will always lose access to resettlement land since upon divorce wives are always evicted, never husbands. With divorce comes the possibility or likelihood of destitution and (above all) fears of losing children since customarily the man has custody of children over the age of seven Fear of divorce inhibits most rural and many urban women from asserting their needs and rights. Should the husband die, wives face a similar prospect of destitution. The practice of the husband's patrilineal relatives plundering the estate of the deceased and evicting his widow/s has not decreased in frequency and may have increased (ibid).

Jacobs concludes that 'processes within resettlement schemes have contradictory effects on women, and may have differing effects on different groups of women' - 'for married women this has entailed a trade-off of greater material security for decreased autonomy' (ibid: 21).

More information is needed on what the position of women within land reform in the current situation is. However, while it has been reported informally that some women war veterans and government supporters have gained plots for themselves in this process, it is difficult to see how a process of informal land distribution that is based essentially on coercion, group power dynamics and political patronage can secure the rights of the great mass of women who need land, or provide a secure base from which to develop these lands for the benefit of the new settlers in the longer term. The admittedly limited literature that has been consulted on women's land rights in situations of violence and conflict emphasises women's vulnerability under such conditions (UNIFEM, 2001). A related area of concern involves the position of women farm dwellers.

SECTION FIVE: CONCLUSION

5.1 KEY FINDINGS

The Terms of Reference for this study specifically identified the following as key issues for investigation in relation to women's access to and rights in land:

- Land policies and legislation
- Efforts to formalize indigenous land tenure systems
- The changing role of traditional institutions
- The impact of HIV/AIDS
- Agricultural production and food security.

Each of these issues is revisited below. First, however, it is useful to summarise the broad findings regarding women's rights in land and the challenges for gender-sensitive land reform.

Women's rights in land

⇒ *Most women's rights in land are vulnerable.*

Land is a major resource in women's livelihood strategies. However, in general women are discriminated against in terms of the robustness of their rights in land and this can create severe hardships for them and for those who depend on them. Generally their rights in land are secondary rights, derived through their membership in households and secured primarily through marriage. While women make a major contribution to household well-being through their domestic and productive labour, they are often not rewarded fully for their contribution. Furthermore, their productivity is constrained by the many demands on their time and energy that they have to manage, as well as by their poverty.

In the current context of rapid social change and economic crisis, the institution of marriage is increasingly unstable and the rights in land that women acquire through marriage are thus vulnerable to forfeiture or erosion of various kinds. Women's vulnerability becomes most exposed during times of crisis – when the household breaks up either through marital conflict leading to divorce or separation, or upon the death of the husband. This indicates the importance of policies that will strengthen women's rights in marriage and inheritance, as well as secure their rights to common property and any property that they bring into or acquire themselves during marriage.

Women's weak economic and social position hinders their independent access to private freehold land and very little private land is owned directly by women. In a few countries there are still legislative barriers to married women owning land in their own right, because they are regarded as legal minors.

However, not all women are landless or poor, nor should women's particular disabilities be read to imply that there are no poor men with strong interests in land as a source of livelihood as well. Small numbers of generally elite women have been able to access land through the market and also invest in land and agricultural production in the communal areas, at times very successfully. Furthermore, while patriarchal attitudes and institutions are deeply entrenched, social attitudes are not static nor monolithic. Although resistance to women gaining stronger

rights in land is evident in many quarters, there is also evidence of a softening of attitudes in some areas, especially towards the inheritance rights of daughters. These processes of social change can be expected to accelerate.

Land policies and land legislation

⇒ *Land policies and land legislation do not prioritise gender equity, while patriarchal norms and customs limit the effectiveness of provisions that specify women's equal rights.*

Addressing women's particular disadvantages in relation to land ownership, access and control has not been a major focus in the drafting of new land policies, although most countries formally acknowledge gender equity as a goal at the level of principle. Policies aimed at individual tenure, such as those applied in Kenya, have disadvantaged women by undermining women's secondary rights in land, in a country where most women are too poor to acquire land through the market. Redistribution programmes in Namibia, South Africa and Zimbabwe have not targeted women as potential beneficiaries and have in any case not been implemented on a sufficiently large scale to address land hunger and land need in the communal areas. Where customary tenure has been secured, patriarchal norms still prevail, even where the land legislation specifically recognizes women's equal rights in land, such as in Botswana.

Land redistribution and tenure reform programmes pose different challenges for the development of gender-sensitive land policies. Land redistribution programmes generally involve the settlement (or, in the case of land restitution, the resettlement) of individuals or groups on land that is in principle unencumbered²¹ – the creation of 'new' communities with 'new' sets of rights and obligations on land where previously existing rights have been extinguished. The state (with or without input from other agencies such as donors) is thus able to set the terms for eligibility as well as the conditions of tenure, depending on what its broader economic, political or social objectives are. Redistribution projects, as the South African and Zimbabwean programmes make clear, can cover a wide spectrum of objectives – settlement, production, redress of past injustices - and also embrace a range of different tenure systems – communal property systems, individual freehold, leasehold, permit-based etc.

There is thus considerable potential for the state to target marginalized groups, such as women, or to ensure that the principle of gender equity informs the terms of membership and participation within these projects. The extent to which this happens, however, depends on the extent to which the state is committed in this direction or under pressure to do so – and, again as the South African example makes clear, the actual implementation of such projects may prove extremely difficult in practice. All three redistribution programmes (Namibia, South Africa and Zimbabwe) have experienced major capacity and administrative problems and weaknesses, which have hampered effective and relatively speedy delivery of land in general, as well as undermined that the provision of infrastructure and follow-up services and support.

Tenure reform, on the other hand, involves interventions in already existing social and property relationships, and the affected communities may be more or less resistant or supportive and more or less united or divided in their responses to such innovations as enhanced land rights for women or women's representation on land management bodies. Women are likely to be in a much weaker

²¹ The degree to which it is fact unencumbered varies. Difficult complications arise on the ground when other groups of people are already living on the land (for instance farm workers) or have claims to the land, but in principle the land is open for new dispensations.

position to bargain for or assert their rights within these communities. Nevertheless, given the value of common property resources to women, policies aimed at strengthening community access to these resources and recognizing the layers of overlapping rights in land that are accommodated within customary systems, can be very important for women, especially poor women.

A serious problem, however, is that state capacity to implement land reform is already a problem in many countries; implementation of gender policy in land reform will require the deployment of additional capacity and resources.

Efforts to formalize indigenous land tenure systems

⇒ *Efforts to formalize indigenous land tenure systems have contradictory implications for women.*

The extent to which women are likely to benefit from current initiatives to formalise indigenous tenure systems will depend on how 'the customary' is defined and by whom, as well as the extent to which customary tenure systems are required to work within a national constitutional and policy framework that prohibits discrimination against women in the name of custom and tradition. In practice 'the customary' is often defined in such a way as to undermine and subordinate women's rights to and interest in communal land. However, poor women's access to household and communal land is very important in their livelihood strategies and can be protected under customary tenure systems that affirm the rights of all users and protect the 'nested' nature of customary rights. Nevertheless, so long as women's membership of the group is determined primarily by marriage, they remain vulnerable to exclusion and/or diminution of their rights if they are widowed, divorced or never married.

Population growth and pressure on communal land are also serious problems in many communal areas requiring policy attention. Under egalitarian systems of inheritance and in the absence of alternative sources of off-farm livelihood, women and men face the prospect of gaining access to ever-diminishing patches of land, with little or no developmental benefit to them beyond the affirmation of their rights and the (not insignificant) advantage of residential security.

The changing role of traditional institutions

⇒ *The changing role of traditional institutions is best described as 'double-edged' for women.*

Traditional institutions present themselves as the custodians of customary law and tenure but the Botswana case shows that they are not indispensable for managing and allocating land in communal areas. The main advantages of traditional institutions for women are that they are accessible, relatively cheap, familiar, likely to be well informed about local conditions and people's circumstances and can be flexible in their response to the merits of individual cases. The main disadvantages are that they are likely to uphold patriarchal relations of power and be resistant to change, and may be corrupt and open to manipulation by particular interest groups.

This points to the importance of constitutional provisions at the national level that entrench gender equity as a fundamental principle in government and social life at all levels. While a Constitution cannot ensure that there is no discrimination against women on the ground, it does create an enabling framework within which policies must operate, and establishes a set of standards to which local and national government institutions can be held accountable.

The impact of HIV/AIDS

⇒ *The impact of HIV/AIDS poses a huge threat to rural development, is particularly severe on women and must be addressed in land policy as a matter of urgency.*

The social and economic impact of HIV/AIDS on sub-Saharan Africa, and on women in particular, can only be described as devastating in the medium to longer term. It will affect the most vulnerable members of society the most severely and reverse developmental gains that have been made. The impact of HIV/AIDS is gendered. Women are particularly vulnerable to the impact of the epidemic not only in terms of higher infection rates, but also because they are most likely to carry the primary responsibility as caregivers for AIDS sufferers and AIDS orphans.

Strategies to combat the pandemic have to be located within a broad developmental framework rather than construed simply in narrow health and education terms. Uganda provides a positive example of how a high-profile, nationally coordinated programme can reverse the spread of the epidemic and allow people to adopt more effective coping strategies at the household and community level. However, most countries across the region have not begun to grapple effectively with the epidemic, with land policies showing little awareness of its significance. It is imperative that current land policies be reviewed as a matter of urgency in terms of the likely demographic, social and economic impacts of the disease.

Agricultural production and food security

⇒ *There is no simple correlation between any one tenure system, investment in land by women and enhanced food security.*

The evidence indicates that there is no simple correlation between more secure access to land for women and improved food production, and that the testing of that hypothesis is in any case extraordinarily difficult to achieve. Security of tenure is one element in the equation, but access to sufficient labour to work the land, to resources to invest in the land, and to extension and support services are very important as well. So are the quality and size of the land. Unless there are additional inputs – credit, extension services, labour, access to markets – secure tenure rights may offer women little more than residential security, i.e. provide benefits in terms of welfare and possibly empowerment (using Agarwal's classification), but not guarantee an 'efficiency' outcome directly.

Defining tenure security is also not a simple task, with many variables and cultural assumptions at play. The available evidence suggests that there are no simple correlations between the type of tenure (for instance individual title or customary certification) and levels of productivity. Nor has it been established that women are necessarily likely to invest more in land that they own independently than in household land. Many other variables intervene in shaping such choices and calculations, including how secure women feel in marriage, what alternatives they have, and the levels of support available to them in their farming activities.

Furthermore, both commercial and small-scale agriculture in sub-Saharan Africa are under heavy pressure in the global market and this is impacting negatively on the viability of the agricultural sector as a whole. While in the absence of economic alternatives, access to land on which to grow food and gather natural resources is critically important for the livelihood strategies of the poor,

economic policies that develop off-farm sources of income for men and women are also needed to address rural poverty.

5.2 RECOMMENDATIONS

Research

A number of broad recommendations arise from the study for consideration and further development in relation to the circumstances of particular countries.

1. Comparative studies are needed that look at land access and use on the part of both men and women in order to understand better the specifically gendered interests of both around land, household labour and economic strategies. Most research on gender policy looks only or primarily at the position of women, in isolation from men's experiences, and this limits the analysis. Researchers and policy makers also need to understand the constraints on poor men in relation to land, family and economic development in order to develop more appropriately gender-sensitive policy.

2. It would also be useful to look at successful women and men farmers and rural entrepreneurs, to understand what accounts for their success, how they acquired land, what resources they have been able to control, and tease out the implications for tenure and land reform policy.

3. Another issue to emerge is the importance not only of mainstreaming gender into economic analysis but of mainstreaming economic analysis into gender research and policy development. Much of the literature on women's land rights tends to look at gender issues very narrowly. Gender advocates would strengthen the force of their arguments considerably if they were able to engage general economic policy and development issues. A case in point is the issue of land fragmentation and pressure on land in much of eastern and central Africa.

4. Research on the impact of HIV/AIDS needs to combine microstudies of impacts and coping strategies with more general assessments, including mapping demographic projections in relation to land reform projects and programmes at district level. Barnett *et al* (2001) refer to studies in Zambia, Uganda, Tanzania and Zimbabwe which look at changing cropping and cultivation practices, household responses and gender relations and should serve as bases for further work in these countries, as well as models for similar research in other parts of sub-Saharan Africa. They describe in particular a 1999 study by Mutangadura *et al* as 'a first port of call for anybody who is working on the social and economic impact of HIV/AIDS in rural subsistence/smallholder farming communities (Barnett *et al*, 2001: 159).

5. The WLSA studies on customary law, changing family structures, and women's rights, including in land, provide a very good base for the development of policy on marriage, inheritance, succession and the rights of minors and unmarried adults, and should serve as a model for similar research in other countries in the region. Such research should lead to concrete recommendations to the appropriate bodies on how the customary laws that are in practice need to be reformed or adapted to accommodate women's rights more effectively and exclude discrimination.

6. A related area for research would be an investigation into local-level/customary dispute resolution mechanisms around land in individual countries, to see what works effectively for

local people, what does not, how women and men are treated and why, and what can be distilled out of that in terms of strengthening the capacity of these institutions to deal with land disputes in a gender-sensitive manner.

7. Monitoring of government land policies and budgets as well as the implementation of land reform in terms of gender equity is important for each country and will continue to be so for some time to come. The implementation of the Land Act in Uganda and the Village Land Act in Tanzania will be especially instructive.
8. Multi-disciplinary research projects that look at the potential contribution of land reform to rural development strategies more broadly and not only in terms of agriculture need to be encouraged.
9. Urban land policy, the changing nature of urban-rural links, and land tenure issues in peri-urban areas constitute another major area for research.
10. It has been suggested that organisation among women is necessary for advancing their land rights but that this tends to be weak in rural areas, furthermore that the interests of middle class women tend to be more readily heard in the formulation of policy and these are not necessarily the same as those of poor, rural women. This is another area for further research.

6.2 POLICY

The following recommendations outline a broad policy framework for the promotion of women's rights in and access to land within the region but, again, they need to be adapted to the circumstances of each country in terms of relevance, prioritisation and the strategies that may be required for implementation. It is recognized that achieving such a framework lies within the realm of the political and that there are fiscal and capacity constraints on governments' abilities to implement policy. It is also recognized that local conditions will play a part in shaping responses to policy interventions at the community level.

Requirements for a framework that advance and protect women's rights in land include:

- An unequivocal Constitutional commitment to gender equality as a fundamental principle, to which commitments to cultural rights and customary institutions must be subordinated. The principle of gender equality and non-discrimination should be affirmed in national land policy documents as well.
- The unqualified ratification of CEDAW by those countries which have not yet done so.
- Statutory provision for joint registration of customary household land rights for spouses and the adoption or retention of the spousal consent requirement in the case of land transfers.
- Provisions to protect communal resources from privatisation and alienation.
- Government investment in non-farm rural development as an urgent priority.
- Government investment in basic public health (water, sanitation, etc.) and in rural social services such as schools and clinics.
- Provisions to ensure that women are represented on local level land administration bodies.
- Training for government officials tasked with the implementation of land policies on gender issues and women's rights.
- The development of indicators that would measure progress towards equity for women in land access and land rights.

- The review and repeal of all personal, family and customary law, including provisions on inheritance, which discriminate against women, as well as the review and repeal of any other legislation that prevents women from owning land or entering into contracts in their own right.
- Strengthening the capacity of local-level institutions to administer land and adjudicate disputes in a gender-neutral way, through the recruitment of women personnel, the training of personnel, and the review of existing practices.
- Taking steps to ensure that information on women's rights and on remedies if they are violated are widely disseminated, utilising institutions such as local government offices, schools, the media, clinics, advice offices, etc.
- Provision of legal aid to support women secure their rights through the courts if necessary.
- Vigorous programmes around AIDS awareness, following the Uganda example.
- Initiating a major review of all land policy in the light of HIV/AIDS, looking at district-level demographic, economic and social impacts on land access and land use.
- Developing projects for housing and supporting AIDS orphans in communities, with government support.
- Investment in agricultural support services which target both women and men.
- Investment in labour-saving domestic and agricultural devices which address women's needs with regard to their labour/time famine.
- Finally, at the macroeconomic and global level, addressing the unequal terms of trade for African agriculture and industry.

APPENDIX ONE: SYNOPSIS OF COUNTRY-LEVEL LAND POLICIES

The following synopsis presents brief profiles of land reform in each of the countries in the study under three headings:

- Tenure/property regimes and issues
- Major land legislation and policy development landmarks
- Gender policy within land reform.

The countries are arranged in alphabetical order.

1. Botswana

Tenure/property regimes and issues

- Three categories of land are recognized: tribal land (71% of the total), state land (23% of the total) and private, freehold land (6% of the total) (Mathuba, 2001).
- Ownership of tribal land is vested in district level Land Boards, with a mix of elected and nominated members, and allocated in terms of customary land grants and common-law leasehold systems.
- Customary tenure systems are patrilineal.
- Botswana is an arid country, with very little land suitable for crop production; cattle are the major farming activity. Mining plays an important part in the national economy.

Major land legislation and policy development landmarks

- In 1968, soon after independence, the Tribal Land Act was passed (coming into effect in 1970). This established a system of district and subordinate Land Boards in each Tribal Area and vested all rights and title to that tribal land in the Boards, in trust for the benefit of the local people. Previously this land had vested in the state but land allocation and administration had been in the hands of traditional leaders (chiefs).
- The composition of the Boards has changed over time. Since 1989 chiefs no longer sit on them. Boards have 2 *ex officio* representatives from central government; half of the remaining members are elected by the local traditional assembly, with the other half nominated by the responsible Minister.

Gender policy within land reform

- The Tribal Land Act empowers Boards to allocate land to all qualifying applicants irrespective of gender but according to WLSA (1997: 23) patriarchal norms continue to prevail, presenting difficulties for women in practice.
- The Constitution prohibits discrimination on the grounds of sex but WLSA (2001: 37) argues that the provision is not sufficiently broad in its application to guarantee women's rights unambiguously.

2. Kenya

Tenure/property regimes and issues

- Historically when Kenya became a British Colony in 1920, all land was regarded as Crown Land; subsequently a distinction was made between Crown Lands, which could be granted to settlers under title, and 'native lands' held in trust for the occupants by the Crown. In the mid 1930s a little over 7% of the land was set aside for white settler occupation (figure derived from Hallett, 1974: 587).
- Land continues to be divided between private land, unalienated state land and trust lands (Okoth-Ogendo, 2000: 124). 10% of the total area is now set aside in National Parks and Game Reserves and some 15% is allocated to state land, commercial centers and large-scale commercial farms. The remaining approximately 75% is divided into small agricultural and residential holdings under a mix of privatized 'individual' (family) ownership and customary tenure systems (Kyalo-Ngugi, 2001: 2).
- Since the mid 1950s Kenya has embarked on an aggressive programme of land titling and registration, which has attracted considerable attention as an experiment in land tenure reform in the direction of privatizing land ownership and abandoning customary tenure systems.
- This policy has failed to deliver unambiguous evidence of increased investment in agriculture and rural economic development. Rural poverty, fragmentation of land holdings and growing landlessness remain serious problems, and this has prompted re-evaluation of the policy at a number of levels (Quan, 2000).
- Customary tenure systems are patrilineal.
- The minority of Kenya's population who are pastoralists are experiencing growing pressure on their grazing lands and livelihoods.
- Ethnic conflict over land has been reported, especially on the coast and in the Rift Valley (Kanyinga, 1998).

Major land legislation and policy development landmarks

- 1954: The Swynnerton Plan of 1954 introduced a policy of individual title and registration, with a view to stimulating economic development and counteracting anti-colonial insurgency. This policy has been maintained and extended after independence. The system involves a process of adjudication by Adjudication Committees, with provision for a district-level Land Arbitration Board and final appeal to the Minister of Lands.
- 1963: The Constitution provided for individual rights in land and protection against compulsory acquisition by the state, except for a public purpose and with the payment of full compensation.
- 1999: A Land Commission has been appointed by the President to review Kenyan land policy.

Gender policy within land reform

- Researchers argue that women have seen an erosion of their customary rights in land as a result of the titling and registration programme, as ownership has generally been vested in the male head of household (Knowles, 1991; Karanja, 1991); Nzioki, 2001). .
- Few women have secured individual ownership rights through land titling.
- No women have been appointed to the Commission of Inquiry into land policy (Nzioki, 2001: 88).

Lesotho

Tenure/property regimes and issues

- 95% of the country is classified as 'Nation land' held in trust by the King on behalf of the Basotho nation. On this land communal tenure in terms of customary law is practiced.
- Some 5% of the land is State (public purpose) land.
- In 1996 35% of adult males worked as migrants in South Africa; their remittances were a critical component of the domestic economy, including investment in agriculture. Rising levels of unemployment among migrants are increasing levels of poverty and putting additional pressure on land.
- Lesotho is a small and mountainous country; with stock farming on communal grazing land an important agricultural activity. Cattle also play a complex role in social organization, including the institution of bridewealth in marriage.
- Soil erosion and degradation of the environment are major concerns.
- Customary tenure systems are patrilineal.

Major land legislation and policy development landmarks

- In 1963 upon independence, all land was held in trust by the King and allocated and administered by a hierarchy of traditional leaders in terms of customary law.
- 1979: A Land Act was passed which vested powers to allocate land in community land committees and elected village development committees under the chiefs (Adams *et al*, 2000: 146). Male heads of household were entitled to an allotment which would pass to his widow and designated heir in terms of customary law upon his death.
- In the 1980s Range Management Areas were introduced in an attempt to manage the communal grazing lands and reduce environmental degradation.
- 1986/87: A Land Policy Review process was initiated but not followed through.
- 1999: A Land Policy Review Commission was appointed, chaired by a High Court Judge. It reported in September 2000. It recommended that land continue to vest in the Basotho nation but that agricultural land be held under a system of leasehold, involving the survey and registration of land holdings and the abolition of customary law as the basis of land policy.
- 2001: a draft White Paper on Land Policy does not support the radical abolition of customary law but the conversion of customary law rights to common law rights.

Gender policy within land reform

- Lesotho customary law was codified in the course of the late nineteenth century. It specifies that all Basotho married men are entitled to land; women gain access to land through their husbands.
- Married women are, in law, regarded as legal minors under the guardianship of their husbands.
- However, the Land Policy Review Commission recommended that property laws that discriminate against women be abolished.
- The draft White Paper on Land Policy also proposes that all laws that discriminate against women be abolished, that women should be entitled to have land registered in their own names, on merit, and that decisions about who should get rights in land, including through inheritance, should be determined by who would make the most productive use of the land (Selebalo, 2001).

Malawi

Tenure/property regimes and issues

- Malawi is a small country that is heavily dependent on peasant farming and very densely populated.
- Land is allocated across different tenure/use systems as follows: 67% state-owned communal land; 19% state-owned public land; and 11% 'estate' land, with about 3% of the land classified as urban (Kandodo, 2001: 1). Estate land derives from concessions awarded to settlers during the colonial period, which are classified as private land and involve both freehold and leasehold title (UNDP *et al*, 2000: 126). .
- After independence leading politicians and civil servants were able to acquire large tracts of good land through the alienation of communal land and its incorporation into the estate sector.
- Malawi has both patrilineal and matrilineal systems of customary tenure. Customary tenure systems prevail in the communal areas.

Major land legislation and policy development landmarks

- 1967: Legislation was passed providing for the alienation and registration of customary land as private estate land.
- March 1996: a Presidential Commission of Inquiry on Land Policy was established.
- 1999/2000: A draft National Land Policy was prepared.
- June 2000: A Strategic Action Plan was prepared, leading to a national workshop in October 2000 and a final draft document in November 2000.
- The draft policy proposes the titling and registration of customary tenure, recognizing but limiting the powers of traditional authorities, with provision for local and district assemblies to administer land. It puts a ceiling to future land holdings but does not propose to redistribute the large estates already in existence (Kandodo, 2001: 5).
- NGOs are concerned that there has been insufficient consultation around the draft land policies and that as the documentation is only available in English, it is difficult for Malawians to become informed about the content of the new proposals (Izumi, 2000; Kandodo, 2001).

Gender policy within land reform

- The proposed land legislation provides for equal rights for men and women, with all children entitled to inherit land equally (Kandodo, 2001: 5).

Mozambique

Tenure/property regimes and issues

- After independence, all land was nationalized. The State has retained radical title, with registration of customary rights operating at village level alongside provisions for the issuing of leaseholds for commercial development.
- A devastating civil war after independence led to up to one third of the population being displaced as refugees within the country or in neighbouring states (Suca, 2001: 1). A Peace Agreement was reached in 1992, which led to general elections in 1994 and encouraged a process of market-oriented economic reform that had already started in the 1980s.

- A major issue facing the country has been the repatriation and resettling of refugees within their former villages.
- An informal land market is developing in the south in particular.
- Mozambique has both patrilineal and matrilineal systems of customary tenure, the latter system found in the northern parts of the country.

Major land legislation and policy development landmarks

- 1975: The Frelimo government nationalised all land
- 1990: A new Constitution was adopted, vesting 'radical title' in the state.
- 1997: A new Land Law was adopted after considerable debate within civil society about the degree to which private ownership of land should be allowed or not. This retains ownership of land in the state but provides for a system of registration of rights at village level, based on occupation and use.

Gender policy within land reform

- Women were accorded equal rights during the socialist period but, according to WLSA (2001), women faced discrimination in practice and they only played a significant role in decision making at the village level in Gaza Province.
- The 1997 Land Law provides for women to have rights in land in their own right.
- According to Waterhouse (1998) many peasant women are struggling to assert their rights in land because of ignorance of the law; furthermore, women refugees returning to their former villages often find it difficult to reclaim rights in land, especially if they lost their husbands or male relatives during the civil war.

Namibia

Tenure/property regimes and issues

- 44% of the land is privately owned freehold; 43% is classified as 'communal' and held in trusteeship for its occupants by the state; the remainder of the land is 'public-purpose' state land.
- Privately owned land outside the urban areas is divided into some 5000 large commercial farms, of which 4500 are white-owned; redistribution of land to the black majority is thus a major issue.
- Displacement of farm workers on commercial farms as a result of redistribution projects is a concern.
- Very arid conditions in most of the country preclude intensive, small-scale farming except in the north and puts major ecological limits to the redistribution programme.
- Customary tenure systems are patrilineal.
- Enclosure of communal lands, including grazing rangeland, is threatening access and rights of poorer members of communities.

Major land legislation and policy development landmarks

- 1991: a National Conference prioritised redistribution within a market-led framework but did not adopt a land restitution programme, on the grounds that it was 'impossible' (Livula-Ithana, 2001: 5).
- 1994: A People's Land Conference was held.

- 1995: The Agricultural (Commercial) Land Reform Act provided for acquisition of land for redistribution by the state on the 'willing seller/willing buyer' principle.
- 1998: the National Land Policy was adopted by the National Assembly.
- 2000/01: a Communal Land Reform Bill is under discussion; it provides for the establishment of Land Boards to manage the communal areas. The Bill has not been passed, amidst concerns about the status of traditional leaders and ongoing land enclosures.
- A proposal for a land tax is also on the table.

Gender policy within land reform

- Little attention has been paid to women in policy development
- Land reform policy works with the notion of the household as the land-holding unit, with male headship and authority presumed as the norm.
- Provision has been made for women representatives on the proposed Land Boards.

South Africa

Tenure/property regimes and issues

- 67,5% of all land is privately owned commercial farm land, almost all of it white-owned.
- 14% of the land, the former reserves/Bantustans, is held by the state in trust for the people living on it, who number some 30% of the population.
- South Africa is the most urbanized and industrialized country in sub-Saharan Africa, but very high levels of unemployment and inequality in income distribution make the formal non agricultural economy hostile to the aspirations of the majority of South Africans.
- South Africa's negotiated transition to democracy in 1994 involved, amongst other contentious issues, a fierce debate about the nature of future property rights and the limits of a future restitution programme to compensate the victims of the apartheid government's programme of forced population removals (in which an estimated 3,5 million people or more were relocated (Platzky and Walker, 1985). The result was the entrenchment of a property clause in the Constitution which committed the country to a programme of market-led land reform after 1994, while recognizing existing property rights.
- Land reform has been conceptualized in terms of three relatively discrete programmes; restitution, redistribution, and tenure reform. Policy on tenure reform in the communal areas has not been finalized.
- The government is committed to a neo-liberal macroeconomic policy involving deregulation (introduced extensively within commercial agriculture), privatisation, and creating a climate conducive to foreign investment.
- Customary tenure systems are patrilineal.
- Traditional authorities were utilized under the apartheid regime as low-level state functionaries to manage the Bantustans; their continued role in land management in the communal areas is a major area of debate.
- The very slow pace of land reform delivery has created fears of Zimbabwe-style land invasions. In fact, most reported land invasion activity in South Africa has been around access to peri-urban land and linked to housing issues in the urban centers (COHRE, 2001: 87). However, low-level conflict over land, with encroachment on both private and public land, is widespread in many rural areas.

Major land legislation and policy development landmarks

- 1993/94: Negotiations around the Interim Constitution resulted in a market-led process of land reform.
- 1994: The Restitution of Land Rights Act provided for the establishment of a Land Claims Commission and Land Claims Court to process claims for land rights that were lost after 1913 as a result of racially discriminatory legislation.
- 1995 a National Conference was convened to discuss the draft policy paper on land reform.
- 1996 the final national Constitution confirmed the market-led land reform programme defined by the earlier constitutional negotiations, but gave the government powers to expropriate land for a public purpose, which was defined to include land reform. This power has not been used.
- 1996/97: Interim tenure legislation was developed to protect insecure tenure rights, including those of farm workers and occupiers on commercial farms.
- 1997 the White Paper on Land Policy was adopted by the government.
- 1999 a draft Land Rights bill intended to secure the tenure rights of people living in the communal areas was shelved as a result of a change of national ministers and new policy directions.
- 2000/01: The redistribution policy was revised in terms of LRAD (land redistribution for agricultural development), a new policy aimed at linking land reform more tightly to agricultural production and to deracialising the large-scale commercial farming sector.
- 2001: Draft proposals on a Communal Land Rights Bill were presented to a national consultative conference in November.

Gender policy within land reform

- During the constitutional negotiations, women's organizations were able to block an attempt by traditional leaders to have customary law exempted from the provisions of the Equality Clause in the constitution.
- The government's 1997 White Paper on Land Reform makes gender equity a basic principle and identifies women as a social category that must be targeted in land reform programmes.
- In the first phase of land reform, redistribution projects were designed with homesteads as the beneficiary unit; female-headed households were recognized but the majority of beneficiaries were men.
- A major focus of gender policy implementation within land reform was to ensure that women were represented on the development and legal entity committees established in land reform projects.
- LRAD is open to men and women but there are concerns that women will not be able to compete for access to land and grants on equal terms with men because of their weaker social and economic status. (See Walker, 2001a).

Swaziland

Tenure/property regimes and issues

- Historically considerable land was granted by the colonial state to settlers and companies in the form of private title – in the early twentieth century a programme of buying back this land by the Swazi people was initiated, which has resulted in the increase of the 'Swazi Nation Land' to at least 56% (Europa Publications, 2001: 1134). (According to Mndzebele, 2000: 2-

3, the amount of land in private freehold ownership is now down to 25% of the total land area; Adams (2000: 136), however, puts the figure of privately owned land at 40%.)

- 'Nation' land is held in trust by the King on behalf of the Swazi nation; this amounts to some of land. This land is allocated in terms of customary land tenure through the chiefs in terms of the practice of *kunkhonto*, whereby subjects owe their allegiance to the chiefs in return for access to the land. In order to qualify a man has to be married; a woman can only access such land through her husband or son.
- Customary tenure systems are patrilineal.

Major land legislation and policy development landmarks

- Swaziland's Constitution was repealed in 1973 by Royal Decree; in the late 1990s a Constitutional Review Commission was established to reconsider the need for a Constitution.
- A draft Swaziland Land Policy is under review.
- 2001: civil society organized a Land Conference to review the draft policy.
- Swaziland has not signed CEDAW.

Gender policy within land reform

- Married women are generally subject to the marital power of their husbands, under both customary and civil forms of marriage, unless they are among the very small group of women who are married under civil law and have taken steps to specify that the marriage is out of community of property (WLSA, 1998).
- The draft land Policy does make some cautious nods in the direction of gender equity at the level of principle, by advocating the removal of land-related legal impediments to gender equity in customary tenure (Mndzebele, 2001: 6).

Tanzania

Tenure/property regimes and issues

- Freehold and leasehold rights issued to settlers in the colonial period were converted to 99-year leases after independence in 1963 and to Rights of Occupancy in 1969 (Hilhorst, 2000: 181).
- In 1975 a radical villagisation programme was introduced; this provided for the allocation of land to the head of the household who was generally taken to be a man.
- Land is publicly owned, with the radical title vesting in the President. Proposals to vest ultimate ownership in village communities have not been adopted although devolution of land management to the village level is being pursued.
- 80% of the society is patrilineal with the remaining 20% organized along matrilineal lines.

Major land legislation and policy development landmarks

- 1991: A Presidential Commission of Inquiry into Land was established, reporting in 1993 (Palmer, 2000: 281), but its recommendations for decentralisation were not accepted.
- 1997: A National Land Policy was adopted.
- 1999: A Land Act and a Village Land Act (dealing with land administration and management in the villages) were passed. This designates Village Councils, which are already existing elected bodies, to administer village land 'in what is arguably a unique form of tenure democratisation' (Palmer, 2000: 281).

Gender policy within land reform

- According to Silaa *et al* (2001: 8), the 1991 Commission of Inquiry was briefed to look at the position of women only towards the end of its work and its recommendations for women therefore took the form of 'broad suggestions'; the Commission identified problems in women's access to land, especially with regard to succession and inheritance.
- The 1997 Land Policy is ambiguous or ambivalent with regard to women's rights in terms of customary law – it confirms that women should have legal rights to own land but that inheritance of clan land should be in terms of customary law, provided that that is not in conflict with the Constitution. It also proposes that the ownership of land between husband and wife should not be subject to legislation but that family land should not be disposed of without the consent of both spouses (Silaa *et al* . 2001: 8).
- The 1999 Land Act specifically declares that women have the same rights as men to acquire, own and deal in land, and 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 that has not been consented to by both spouses is invalid. However, the principal of joint rights in land of spouses – which, according to Izumi (1999: 12) was agreed to in a 1995 workshop – was dropped from the draft legislation.
- The Village Land Act authorizes the Village Council to allocate land and specifies that at least one third of its total of 25 members should be women; a quorum is four members, of whom at least two should be 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.

Uganda

Tenure/property regimes and issues

- Under colonialism four forms of tenure were recognized: customary; *mailo* (a form of tenure which vested ownership of land in the Buganda notables); freehold and leasehold. Today 15% of the total land area is registered freehold, with the majority of the country under customary forms of tenure (which includes 'individual permanent holdings') (Ministry of Water, Lands and Environment, 2000: 4)
- Uganda is densely settled. Most agriculture is crop-based but there are some pastoralist communities.
- The country suffered a long period of civil war and destabilization.

Major land legislation and policy development landmarks

- The 1975 Land Reform Decree declared all land to be public land, including freehold, and also provided for the alienation of land by the state without the occupiers' consent.
- The 1995 Constitution reversed this Decree by vesting ownership of land directly in the citizens of Uganda, rather than the state, and restoring the four tenure systems that had been in operation before 1975 (customary; *mailo*; freehold and leasehold). Lawful occupants on these lands were extended security of occupancy. The Constitution also set up District Land Boards and provided for 'certificates of occupation' for customary owners and for the conversion of both customary and leasehold rights to freehold (Adams, 2000: 86-87).
- 1998: A national Land Act was passed confirming these provisions.

- The Act has not yet been implemented and there is currently considerable debate as to the logistics and cost of its implementation. An Implementation Plan is being prepared. The cost of implementation has been raised as a serious concern (Palmer, 2000: 277-78).

Gender policy within land reform

- The 1995 Constitution is regarded as being 'woman-friendly' (Goetz, 1998: 245).
- The Land Act is formally gender-neutral; however, customary norms continue to shape the way in which land is owned and utilized.
- A household consent clause prohibits the disposal of land without the consent of the vendor's spouse and children. Commercial banks have reportedly raised concerns about this and are unwilling to extend collateral to such lands at least primarily because of the 'adverse impact of the household consent provisions on the value of land as collateral' (Adams, 2000: 91).
- Controversy surrounds the dropping of a clause in the Land Bill which would have provided for joint land rights of spouses. This disappeared from the Bill during its passage through Parliament.
- The Government's alternative proposal to protect women's land rights through a proposed Domestic Relations Bill has not been accepted by those gender activists who believe this provision should be in the Land Act as well. As of October 2001, this clause had apparently been inserted into the Domestic Relations Bill but this was not widely known.

Zambia

Tenure/property regimes and issues

- Zambia has both patrilineal and matrilineal systems of customary tenure.
- Land vests in the presidency.

Major land legislation and policy development landmarks

- At independence three categories of land were recognised: state land; state-owned Trust land (the former 'native reserves'), both of which vested in the President, and the Barotse Reserve, which enjoyed special status until 1975.
- In 1975 a Land Conversions of Titles Act was passed. All land was now vested in the President. All freehold rights were extinguished and converted to 100-year leaseholds; in the urban areas only developments on the land, not the land itself could be sold.
- 1995: A new Land Act of Zambia provides for any one with customary tenure to apply for title to a piece of land on a 99-year basis (WLSA, 2001: 23). Provision is also made in terms of the Land and Deeds Registries Act of 1994 for the registration and transfer of freehold land (WLSA, 2001: 26), which has raised fears about the alienation of communal land.

Gender policy within land reform

- The 1995 Land Act is formerly gender-neutral and women can apply; however, the Act also allows for the customary laws of an area to be paramount and women's applications for land have been rejected as contrary to customary law (WLSA, 2001: 23).
- In 1999 the Ministry of Lands made a policy announcement that 10% of all advertised plots of land should be allocated to women.

Zimbabwe

Tenure/property regimes and issues

- Zimbabwe has four main tenure systems: private freehold (about 30% of the area is privately-owned within the commercial farming sector); state-owned communal areas (about 42%), state-owned resettlement areas (about 9%) and other state-owned land, such as national parks.
- Redistribution of land from the white farming community to address landlessness, land hunger and poverty within the communal areas as well as redress severe racial inequities in land ownership is the major land reform issue; tenure issues in the communal areas have been neglected.
- Controversy surrounds the financial commitments made by Britain to support land reform and the acquisition of land from white farmers.
- Zimbabwe is currently experiencing an escalating crisis of state-sanctioned land invasions, rising political tensions and economic decline.

Major land legislation and policy development landmarks

- 1980: The Lancaster House Agreement, which negotiated the terms of Zimbabwe's decolonisation by Britain, allowed for a land redistribution and resettlement on a willing-buyer/willing-seller basis.
- A National Land Policy set new targets for redistribution after the expiry of the Lancaster House Agreement in 1990, while the Land Acquisition Act allowed for a process of land designation.
- 1993/95: A Land Tenure Commission was set up which reported in 1995.
- 1998: A Donors Conference on Land led to new pledges to assist redistribution.
- In early 2000 a process of farm invasions, led by war veterans, began. The Constitution was amended to facilitate the acquisition of white-owned land by dropping the obligation on the state to compensate landowners for land that was historically owned by the indigenous people (Whitehead, 2001: 6).

Gender policy within land reform

- The Land Tenure Commission had no specific brief to look at gender issues and had only one woman among its 12 members (Whitehead, 2001: 5).
- The Communal Lands Act excludes women from being allocated land because it requires that land be allocated in terms of customary law, to those families who have customarily lived in the area.
- In the resettlement areas land was awarded to households through a system of permits; most household permits were issued to married men. Divorced women lose their right to stay in the resettlement areas and widows can also be vulnerable.
- In 1999 the Supreme Court prevented a woman from inheriting her father's property on the grounds that this was against customary law (WLSA, 2001: 41).

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