

# The Right to Land and Justice for Women in Africa



African Women's Land Rights Conference  
Red Court Hotel, 30th May - 2nd June 2011, Nairobi, Kenya



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## Acronyms and Abbreviations

<b>AAI</b>	Action Aid International	<b>HIV</b>	Human Immuno Deficiency Virus
<b>ACORD</b>	Agency for Cooperation and Research in Development	<b>ICC</b>	International Criminal Court
<b>AIDS</b>	Acquired Immunodeficiency Syndrome	<b>ICGLR</b>	International Conference for the Great Lakes Region
<b>AU</b>	African Union	<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>AUC</b>	African Union Commission	<b>IDPs</b>	Internally Displaced Persons
<b>AWP</b>	African Women's Protocol	<b>IFAD</b>	International Fund for Agricultural Development
<b>CAADP</b>	Comprehensive Africa Agriculture Development Programme	<b>IFPRI</b>	International Food Policy Research Institute
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women	<b>IGO</b>	Inter Governmental Organisation
<b>CFS</b>	Committee on World Food Security	<b>ILC</b>	International Land Coalition
<b>CIDA</b>	Canadian International Development Agency	<b>IPCC</b>	Intergovernmental Panel on Climate Change
<b>COK</b>	Constitution of Kenya	<b>LPP</b>	Land Policy Principles
<b>COMESA</b>	Common Market for Eastern and Southern Africa	<b>LVC</b>	La Via Campesina
<b>COP</b>	United Nations Climate Change Conference	<b>MDGs</b>	Millennium Development Goals
<b>CSO</b>	Civil Society Organisation	<b>NEPAD</b>	New Partnership for Africa's Development
<b>DDRR</b>	Disarmament Demobilization Rehabilitation and Reintegration	<b>NGO</b>	Non Governmental Organisation
<b>DRC</b>	Democratic Republic of Congo	<b>NLP</b>	National Land Policy
<b>ECOWAS</b>	Economic Community of West African States	<b>NPCA</b>	NEPAD Planning and Coordinating Agency (a technical body of the AU)
<b>FAO</b>	Food and Agriculture Organisation	<b>PEDSA</b>	Strategic Plan for Development of the Agricultural Sector in Mozambique (Plano Estratégico de Desenvolvimento do Sector Agrário)
<b>FDI</b>	Foreign Direct Investment	<b>PLWHA</b>	People Living with HIV and AIDS
<b>FIAN</b>	Food First Information and Action Network	<b>PNC</b>	National Congolese Police
<b>GDP</b>	Gross Domestic Product	<b>RAI</b>	Responsible Agricultural Investment
<b>GLR</b>	Great Lakes Region	<b>REC</b>	Regional Economic Community



Land for  
african  
women

<b>REDD</b>	Reducing Emissions from Deforestation and Degradation
<b>SADC</b>	Southern Africa Development Community
<b>SDGEA</b>	Solemn Declaration on Gender Equality in Africa
<b>SGBV</b>	Sexual and Gender Based Violence
<b>UN</b>	United Nations
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change

<b>UNSCR</b>	United Nations Security Council Resolution
<b>VG</b>	Voluntary Guidelines on Responsible Governance of Tenure of Land and Other Natural Resources
<b>WB</b>	World Bank
<b>WiLDAF</b>	Women in Law and Development in Africa
<b>WOLAR</b>	Women's Land Rights in Southern Africa



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## 1. Background and Introduction

*Women's land rights are critical for women's own advancement first and foremost, but also to Africa's development. The global financial crisis, the food and fuel crises, and privatization of large portions of customary land through land grabs, all contribute to the pressure on land and increasing the threats to women's land rights. Where large pieces of land have been allocated for energy production, large-scale agriculture or irrigation, women's access to land is reduced, making women more vulnerable to conflict, sexual and gender based violence (SGBV) and HIV/AIDS.*

Women at the grassroots are adopting various strategies to secure their land rights in several countries in Africa. For example in Kenya and Malawi, women have formed watchdog groups with the aim of holding leaders to account. In Ghana and Cameroon, women have formed groups and collectively come together to buy land, a strategy used to overcome high land prices and to ensure that women gain secure title to land. In Tanzania, Maasai women with the help of development partners are negotiating for land ownership with traditional leaders.

Despite such initiatives women still face challenges in securing their land rights. Laws and policies at international, regional and local level foster discrimination against women on issues of ownership, access and control of land. In countries where legislation that protect women's rights exists, there is the issue of ineffective implementation of the laws and policies by the agencies seized with that responsibility. Gender-neutral programmatic interventions and initiatives often serve to compound discriminatory practices that women face in relation to their land rights.

It is imperative that the land policy and law be reviewed where there is clear manifestation of discrimination. It is also essential that emerging policies, laws and programmes integrate gender perspectives in terms of ownership, access to and control of land. There is a need to look beyond legal and policy reforms and adopt broad based social change towards women's land rights. To this end there will be need to engage in dialogue with the community leaders and traditional institutions to ensure women's land rights are protected and supported at this level. This should be done in recognition of the intersections

between women's land rights, discriminatory inheritance practices, agricultural development issues, the appropriation and privatisation of communal and indigenous lands, conflict, post conflict reconstruction, HIV/AIDS and SGBV. There is an urgent need for positive engagement and a proactive approach to securing women's land rights in the context of increasing large-scale land acquisitions, climate change, conflicts over natural resources and civil wars.

In light of this, ACORD, Action Aid and Oxfam with support from other partners convened the African Women's Land Rights Conference, from the 30th May to the 2nd June 2011 in Nairobi, Kenya to discuss the right to land and justice for African women, share experiences and strategies in addressing violations that women are suffering from in their everyday lives.

**“There is a need to look beyond legal and policy reforms and adopt broad based social change towards women's land rights”**

The conference brought together women's and land rights activists and organisations including farmer associations, pastoralist groups, women survivor

groups of SGBV, lawyers, parliamentarians and academics committed to strengthening women's rights in Africa. The meeting was participatory and allowed engagement of participants to put forth their own experiences with land issues as well as sexual and gender based violence within the content.

The following were the objectives of the meeting:

- ✦ Share knowledge, case studies and testimonies and engage in discussion, drawing on the wide experience and empirical information on the status and new knowledge relating to Women's Rights to Land within the continent;



- ✦ Learn from locations where women have been asserting their rights as well as places where rights remain under attack;
- ✦ Generate new ideas to take forward, through collaborative efforts among the different movements in the continent;
- ✦ Look at the intersections between sexual and gender based violence and women land rights
- ✦ Identify gender sensitive mechanisms of resolving SGBV with women land rights today;
- ✦ Deepen the analysis on the question of protection and reparation mechanisms for the victims and survivors of SGBV.

The expected outcomes included:

- i.* Increased understanding of women's experiences of land rights and land use or the lack thereof.
- ii.* Increased commitment of land and feminist movements to women's land rights and to the implementation of actions that strengthen women's land and natural resources rights as a basis for improved livelihoods.
- iii.* A sharper understanding of women's land rights issues leading to practical recommendations for best practices and actions to advance women's rights to land.
- iv.* Increased understanding of the intersection between women's land rights and violence against women and particular livelihoods challenges that women face in conflict and post-conflict situations.
- v.* New guidelines and approaches for reparation and compensation mechanisms understood and commitments made thereof by policy makers and women's and human rights organisations.

Women's land rights and access to justice and reparation for survivors of sexual and gender based violence are fundamental human rights that are the basis for women's empowerment, and improved food security and social justice in Africa.

Africa has for decades dealt with the legacies of its past, that are responsible for its state of poverty and under-development witnessed over the years. At independence, one of the legacies which emerging African governments had to deal with was both the effects of large scale land alienation and skewed land distribution on one hand, and the introduction of Eurocentric land tenure systems based on individual titling on the other. This was one of the biggest challenges that faced Africa's leaders. In some countries, it was dealt with through large scale nationalization of the land, such as in Mozambique. In other countries, such as South Africa, Namibia, Zimbabwe and Kenya, a comprehensive solution to the colonial and settler legacy has arguably not yet been found. This legacy continues to create land and related crisis today. Addressing the lack of land access and rights for women has been even slower as the colonial legacy combines with entrenched patriarchy to maintain the status quo.

Most of the African leaders who came to power did not address the land reform issue head on nor did they deal with it comprehensively. Some leaders were seduced away from their original plans and chose to forget about the poor and landless in particular women.

Land is resurfacing as a very contentious issue in the face of increasing global interests in land, food, water, and fuel security. In addition, there is more competition for land and serious land-grabs that are taking place in Africa and having an immediate impact on land tenure and food security. The effects of land-grabbing have brought new challenges for women's land rights and land use initiatives which need to be understood better to be able to address them and find opportunities to advance women's land rights.

In most African countries, customary land laws discriminate against women, and generally the political will to protect women's land and property rights and interests is not there. In some countries, progressive land policies and even laws have been enacted but not enforced. The reason being, the discriminatory practices and traditions that continue to deny women direct access and ownership of land. Governments have tended to pay lip service to women's land and property rights, but in practice, the reality is that most women are left to fend for themselves

and negotiate the limited space they can without assistance.

The African Union and the regional economic communities (RECs) through close collaboration with development partners, regional farmers' networks, CSOs, academia and private sector organisations have over the past few years done a great deal in taking the CAADP process forward. Close to 25 countries in Africa, today, have signed CAADP compacts and are currently in the process of developing or implementing their investment plans. Although that is true, women's land rights issues and effective support for women in agriculture in Africa needs more support to create greater gender equity and make Africa a productive continent.

The negative impacts on general development that sexual and gender based violence on women and girls in Africa has brought is huge and all actors need to join their efforts to find lasting solutions to women's insecurity. African women and girls continue to face increased violence due to conflicts and the culture of violence and patriarchy in many homes and communities in different regions. In a situation of violence with no redress, legal rights to land are rendered meaningless as are other development interventions. Enabling access to justice by the survivors of SGBV is not easy and will require very clear policies and actions to end impunity and protect women.







## 2. Land Sector Reforms and Women's Empowerment

### 2.1. *Constitutional, Legal and Institutional Instruments*

Land links people to territory and is the basis for citizenship, and access to the other rights i.e. representation and economic empowerment. Yet women's right to own, access and control land remains limited for all land uses, whether agricultural, commercial or pastoral. Land reform, the process of restructuring and redesigning land tenure systems, is a critical interventional point to achieving gender equity with regards to land rights. The land question is multifaceted containing geographical, ecological, political and demographic elements and multiple functions that include economic functions, food security, reduced vulnerability or shock mitigation, social functions, and conservation.

Social and cultural contexts are identified as key issues relevant for land reform in Africa. Systems and laws governing land ownership are anchored on patriarchy. Legal rules and principles are often used to legitimize the subordination of women. The patriarchal ideology further prevents the translation of abstract rights into real substantive rights for women especially where land rights are concerned. In many countries on the continent, law reinforces or makes permanent social injustices and inequalities in women's right to land.

In addition, the simultaneous existence of different normative and institutional regimes as well as diverse juristic norms only serve to further limit women's land rights. Women find themselves situated in the intersection between different systems of laws and a plethora of normative international, regional and national legal regimes as well as diverse juristic norms statute, religious, customary and local norms that negatively influence women's access to land e.g. if women are accorded certain land rights in statute, these rights are easily negated by the decision differing to traditional, religious, or 'personal' law.

Though several countries on the continent have constitutions that prohibit discrimination on the basis of gender, in many countries this prohibition does not cover issues of customary law under which majority of African land is tenured. Where

statutory law is applied in tandem with customary and religious laws the latter tends to prevail maintaining the status quo particularly where the decision makers are male.

There exists a gender variable in all aspects of land ownership and access to land which adversely affects women's land rights. The gender variable is illustrated in 'who makes the law, who distributes land resources.' Gender variable often results in bias or is biased against women when it comes to issues of distribution of land resources, which is un-equal; plurality of property systems and tenure security; sustainable management of the environment; protection of common interest in land; land administration systems and institutions; land policy implementation processes and programmes. There could be slight changes as most countries in Africa are either taking part in land or constitutional reforms or both. Trends in land law reform can be narrowed to five main categories – human rights, economic and ecological sustainability, provision of support services, formalization of land ownership and gender equity.

### **Trends in Implementation of National Land Policies**

Trends in national policies can be divided into 5 categories:

- ✦ Humanisation
- ✦ Economic
- ✦ Ecological sustainability
- ✦ Support services
- ✦ Legal

*Humanisation Trends:* A Human Rights based approach to land rights ensures that there is a non-discriminatory access and independent protection of existing access rights where women enjoy a right to participate in the reform processes and management and distribution of land and natural resources. Furthermore, there is establishment of mechanisms of accountability of duty-bearers and rule of law and consequently due process for right- holders where there is recognition of pro-poor eq-

uitable land tenure systems mitigating effects of a neo-liberal economic framework.

Human rights-based approach also entails addressing ethnic, gender, generation and income differentials' discrimination and exclusion of socially marginalized people while securing tenure for communities and individuals; redressing historical injustices; and providing for marginalised land uses such as pastoralism and informal commercial activities/hawking. There's also an aspect of benefit-sharing land-based resources; judicious dealing with public lands; and cognizance of rights of minority communities, refugees, internally displaced persons.

*Economic Trends* in land reform include efficient and effective utilization of land to ensure productivity; setting of land productivity targets and guidelines; development of frameworks to guide investment in land; regulation of land markets to ensure efficiency and vibrancy; establishment of mechanisms for land taxation for rural and urban land; and creating disincentives for holding unused land.

*Ecological Sustainability Trends* in land reform include conservation and sustainable management of land-based resources; protection and management of the ecosystem; emphasis on maintaining catchment functions and ecosystem services of forests; lakes; wetlands; environmental assessments and audits; sustainable development; restoration and conservation of land quality; land use planning and zoning to ensure that land rights do not harm public interest. There is need therefore to critically examine the impact ecosystems services on women to access rights and ensure that land rights delivery services take into account not only the rights of women but the rights of individual groups of women.

*Trends in Support Services* include:

- ✦ Land rights delivery services, e.g. surveying, mapping, cadastres;
- ✦ Land rights delivery institutions;
- ✦ Land Information Management Systems.

*Legal Trends:* For these trends to become a lived reality they need to exist as laws and not abstract principles. Law has the ability to provide, promote and protect security of land rights, estab-

lishment of appropriate systems for registering land rights, regulation of land rights, land based resource tenure, placement of land under public trusteeship (National Land Commissions), dispute resolution mechanisms, devolution of land rights delivery and dispute settlement systems. Women right to these should be formalized. If all these are only informal, there is a chance that these rights may be lost over time.

### **Land as Public Trust**

With the increasing large-scale land acquisitions, there is need to examine the option of public trusteeship over land. Instead of individual ownership options, land can be held as a public trust and rights given and protected in common. This option would also ensure that certain types of land cannot be sold e.g. customary land, water catchment areas etc. The role of the state would be as a grantor and guarantor of land rights to regulate land rights in the interest of all citizens. There would be a need for accountability in dealing with land through normative and institutional mechanisms to execute trusteeship by the holder of the allodial/radical title.

Given the importance of land, the bundle of entitlements over it should not vest in any one person. There is need to unbundle the entitlements and distinguish between land that can be transferred to private individuals and communities and land that must be held in trust for the public.

### **The Social Side of Land Relations**

Social aspects nuance legal, economic and even environmental concepts of land rights. Land rights have been likened to a bundle of sticks/entitlements. These land rights or entitlements have a strong relational aspect as rights to land are claimed against other people and not against land. If one individual claims exclusive rights to a parcel of land, all others lose their rights in that piece of land, and in so doing lose access to the various functions that land performs. Consequently land rights should promote value-enhancing relationships between the property holder and the society, neighbours and family members. It is the duty of the state to provide mechanisms to protect land for the benefit of all as a public good. Land rights that mesh with social assets should not be transacted in the market place.

Injustices, real or perceived, colour land rights in many African countries hence need for land reform. For instance in Kenya a legal title no longer guarantees uninterrupted enjoyment of the property, it is laced with contesting neighbours' claims. Where people perceive some inalienable rights in the res i.e. claimed as property by another, the costs of protecting the property rise exponentially leading to marginalisation rights and dispossession along gender and generational lines.

### Laws Dealing with Gender Discrimination

Many countries have constitutions that prohibit discrimination except in, personal matters, and matters covered by religious and customary law. Other constitutions make customary law subordinate to equality. Provision for both gender equality and application of customary and religious laws relies on courts as arbiters to decide which should prevail. Where customary law takes precedence, it results in the biases against women land rights.

### The Case of Kenya

The Constitution of Kenya 2010 guarantees gender equality under Article 10 (2) (b) under national values and principles of governance which include equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized. Gender equality is also anchored in the elaborate Bill of Rights Chapter 4 of the constitution. Article 19 (2) obligates the State to recognize and protect human rights and to promote social justice that is important and relevant to women's struggle for gender equality and gender equity. Article 2 (5) and (6) provides the general rules of international law and states that any treaty or convention ratified by Kenya forms part of the law of Kenya. This allows for the automatic application of international statutes on equality and non-discrimination. Article 21 (4) imposes on the State the obligation to enact and implement legislation to fulfill its international obligations in respect of human rights and fundamental freedoms.

Chapter 5 of the constitution requires land to be held, used and managed in an equitable, efficient, productive and sustain-

able manner that is in accordance with land policy principles which include equitable access to land; security of land rights; elimination of gender discrimination in law, customs and practices related to land and property in land; encouragement of communities to settle land disputes through recognized local community initiatives; and finally principles governing dealings in public, private, and community land. The principle of at least a third representation of women in elective and appointive provides for women's representation in all land administration bodies from the National Land Commission to the county and lower levels of land administration.

*Kenya's National Land Policy (NLP)* was drafted in anticipation of a new constitutional dispensation. It identified the need for constitutional provisions on equitable access to land and the protection of rights of women, minorities and children in matters of access to and ownership of land. The guiding principles of the NLP are participation, equitable access to land; inclu-

**“Given the importance of land, the bundle of entitlements over it should not vest in any one person.”**

sion, secure land rights; intra- and inter- generational equity; transparent and democratic administration of land; effective regulation of land development; and gender sensitivity.

The NLP also identifies land rights of women as requiring special intervention. It points out the difficulties HIV and AIDS places on women. The NLP proposes that non-discrimination be adhered to and enforced to ensure that these crosscutting issues are adequately dealt with. It proposes review of succession, matrimonial property and other related laws to ensure gender equity and the enactment of specific legislation governing division of matrimonial property to replace the English Married Women's Property Act of 1882. It provides for the protection of the rights of widows, widowers and divorcees through enactment of law on co-ownership of matrimonial property. The NLP requires appropriate legal measures to ensure that men and women are entitled to equal rights to land and land-based resources during marriage, upon dissolution of marriage, and after death, and development of mechanisms to curb selling and mortgaging of family land without the involvement of the spouses.

## Conclusion

National constitutions and land policies provide a good fulcrum for women's empowerment; constitutions as supreme law of the land and policies as roadmaps for the way forward. However, these laws and policies are not self-enforcing. They require vigilance from all stakeholders. There needs to be an innovative and proactive approach to ensure implementation takes place.

### 2.2. *African Union Framework and Guidelines on Land Policy in Africa*

For land to play its primary role in national and regional development in Africa there needs to be focused attention on state of land administration systems. Particularly the state of land rights delivery and the efficiency and efficacy of the laws, structures and institutions for land governance. Both aspects are in dire need of reform. Developed through a broad consultative and inclusive process, the AU Framework and Guidelines on Land Policy in Africa were adopted by the African Union in July 2009. The Framework and Guidelines provide an overview of the historical, political, economic and social background of the land question in Africa and elaborates on the role of land as a valuable natural resource endowment in attaining economic development and poverty reduction. The guidelines have the potential to ensure agricultural investment and promote economic growth without weakening development of different groups.

The AU framework and guidelines recognize the need for land policies that support a wide range of economic, social and political objectives including the prevention of conflicts and conflict resolution through mutually acceptable dispute processing mechanisms. The AU Framework and guidelines urge African governments to pay attention to the status of land administration systems, including land rights delivery systems and land governance structures and institutions, and to ensure adequate budgetary provision to land policy development and implementation. The framework and guidelines provide for the development of tracking systems and mechanisms for land policy formulation and implementation that will enable governments learn from past successes and setbacks, and make timely read-

justments to national land policy processes as new challenges arise.

The framework and guidelines set out a series of best practices and recommendations that includes the need for governments of Africa to develop comprehensive land policies that make for further development of land related sectors; recognition of the role of local and community land administration; harmonisation of local and national land administrative structures and laws; recognition that women's land rights need to be strengthened through specific mechanisms; and balancing of pro-poor priorities with market orientation.

The framework and guidelines further recommends that in making land deals governments take adequate measures to ensure that market driven policies do not marginalise already vulnerable groups e.g. women; and that civil society organisations be engaged in land policy formulation from the inception of such policy, while land reform should be both inclusive and consultative with representation from women, small scale farmers etc.

### *Opportunities from a Gender Perspective and Challenges for African Countries*

The AU framework and guidelines explicitly recognize that patriarchy dominates social organisation of society and discriminates against women in ownership and control of land resources. The guidelines also acknowledge the role that national land law has played cementing the system of patriarchy i.e. by conferring title and inheritance rights along male lines on the assumption that women can and should access land through their husbands or male children. The framework and guidelines also explicitly recognizes the claw backs of women's land rights through subordination of equality provisions in statute to customary and religious law contained in many African constitutions.

### **Opportunities**

The guidelines articulate principles that are intended to inform land policies of member states, assist states in undertaking or embarking upon and harnessing land policy reforms in the interests of their national development objectives and provide







opportunity for activists to lobby their governments to remove age-old rigidities in traditional structures and systems which discriminate against women, and also critically examining the interface between state and indigenous systems-certification, documentation, codification and the impact of these systems on women's rights.

The framework and guidelines are not legally binding, but African states have made commitments with regards to women's land rights, which can be used to bolster adoption and implementation of provisions of the AU framework and guidelines at national level. These include:

- ✦ Binding Commitments in the *Constitutive Act to Gender Equality and AU Protocol on the Rights of Women in Africa* (2003) ratified by 30 states to date;
- ✦ Binding commitments in sub-regional protocols/declarations e.g. SADC Protocol on Gender;
- ✦ Commitments in National Constitutions and policies;
- ✦ International Conventions-CEDAW, Beijing.

## Challenges

The AU framework and guidelines face significant hurdles in their implementation in that they are not binding normative framework or a draft land policy for adoption by states. Despite evidence of community participation in some countries, the state has generally played the dominant role in driving and shaping land policy formulation with low levels of stakeholder and civil society involvement. Small scale stakeholders and civil society organisations have been either ignored or not included in the development of land policy. Land policy development has tended to follow sectoral paths, foci or is sector-driven with little or no co-ordination or harmonization with policies regarding other sectors. As a result land policies have failed to provide broader ranging prescriptions that take into account fully the concerns of women.

Gaps in institutional and human resource capacity and budgetary allocation are also a major challenge facing the implementa-

**“As a result land policies have failed to provide broader ranging prescriptions that take into account fully the concerns of women.”**

tion of the AU framework and guidelines. The policy also does not address issues like climate change, the food crisis, the new scramble for Africa's re-

sources, and large scale acquisitions. The lack of involvement of the beneficiaries has bred resistance to implementation of the framework and guidelines at local level.

## *Positive and/or Negative Impacts for Women*

### The Case of Sierra Leone

In Sierra Leone, there are two distinct systems of land tenure co-existing within a geographical divide with *customary law* applying to the provinces (Protectorate) and *English land law* applying to the Western Area (The Colony). The law of Sierra Leone also makes provision for communal ownership. Paramount Chiefs or traditional rulers of the various chiefdoms and communities are custodians of family property and administer it in line with existing customary usage and practice. All lands in the protectorate are vested in the tribal authorities that hold such lands on behalf of the native communities.

The land tenure system in the provinces of Sierra Leone manifests itself in three ways:

- ✦ **Communal Tenure:** This is where the paramount interest in the land within a given area in the chiefdom has precise boundaries. The Paramount Chief is regarded as a symbol of ownership of all lands held by the community and holds a capacity of caretaker.
- ✦ **Family Tenure:** When the absolute or paramount interest in certain land(s) within a particular chiefdom is vested in various descendant groups, each group having a common ancestral lineage, which constitutes a family unit then the tenure, is referred to as Family Tenure. The administration and control of the family land is vested in the eldest male family member. Once appointed he takes care of all family land(s) and account to his family, which cannot be enforced through legal means but by negotiations.

- ✦ Individual Tenure: This occurs when the paramount interest in land or ownership is vested in an individual, and then such land tenure is referred to as Individual Tenure. But Individual Tenure is strange and of modern development as opposed to the traditional communal and family tenure.

The land tenure system in the rural area discriminates against women. In traditional customary law, the wife is considered the property of the husband and so whatever she owns devolves to the husband. In addition a woman's continued interest in a property owned by her husband is dependent on two factors:

- ✦ Whether she bore children with the husband, or
- ✦ Whether on the death of her husband she chooses to remarry a male relation of her deceased husband.

However, if none of these factors exist, the woman/widow loses every right or interest in her deceased husband's property.

The government of Sierra Leone has enacted the Devolution of Estate Act of 2007, which repealed and replaced the former law. This 2007 Act cures many discriminatory provisions of law and practices against women. Under the law, there are no legal barriers against women owning property. Both husband and wife can either separately or jointly acquire, own, manage or dispose of property, particularly real property, including land and house. However high rates of poverty and high illiteracy among women (nearly 60% of the rural women are illiterate) hampers women's ability to take full advantage of the provisions of the Act.

### **The Case of Zambia**

Zambia covers 552,164km<sup>2</sup> with a population of 13 million, 51% of whom are women. Only 6% of Zambia's land is governed by statutory law and is under titled ownership. The other 94% is owned under customary laws, with user rights granted in perpetuity. However tenure over customary land is tenuous as its rights are not registered and therefore difficult to prove. The process of acquiring registered title over land is also lengthy and expensive and is out of reach of most Zambian nationals. Women are the worst affected by the conversion of customary

land to leasehold. Corruption in land dealings results in women being continually dispossessed land.

Several structural issues that exist perpetuate discrimination against and erosion of women's land rights e.g. the misconception that women are inferior class and less capable of developing land once allocated; Male dominated institutions allocating land; Lack of information on land acquisition procedure or inappropriate dissemination channels; Lengthy and tedious procedures, and corruption, perception of women as being in transit and the notion that husbands will provide for the wives.

There have been some changes recently. However, these are mostly small scale changes which include: traditional leaders as champions in the advocacy for women land rights; joint land ownership under statutory tenure; and issuance of joint farm permit to couples by traditional leaders.

### **2.3. *Constitutional Dispensations: what do we need to see Regarding Women's Land Rights?***

Constitutions must create the space to challenge the power structures that keep people in poverty, that develop class differences, that maintain gender discrimination, that allow the massive accumulation by some, while others toil in poverty. A Constitution can and should favour the more marginalized in order to overcome discrimination, such as gender discrimination that is still so prevalent. It is only with clauses that specifically favour currently marginalized groups that equitable and developmental outcomes will be achieved.

A good Constitution can greatly enhance the advancement of land rights for women if it creates clear obligations on the state including affirmative duties supported by other enabling clauses such as just administrative action, equality, and right to information. More importantly a constitution could advance the rights of women to land if it creates real rights, as opposed to procedural rights or rights still to be defined by parliament or the executive, to land for women that women can assert through their own direct actions. In addition rights can also be granted by the Constitution if it creates provisions that go beyond providing procedural equality to specifically favour women, landless people and small-scale food producers in the acquisition of and protection of rights to land. There has to be

a constitutional mandate for equitable outcomes, not just supposed equality in processes.

### The Case of South Africa

The South African constitution obligates the state to create programmes to promote the exercise of rights. It embodies a conception of equality that goes beyond formal equality and non-discrimination. It embodies social rights, affirmative state duties, horizontality, participatory governance, multiculturalism, and historical self-consciousness. ‘Positive state duties’ imply the government must do more to remedy injustices and that it must be proactive instead of reactive in realizing that inequality is structural as well as individual in nature.

South Africa’s constitution was drawn up in a process closely linked with the negotiation of the end of Apartheid and the ushering in of a new, liberated and democratic South Africa. It was a creative and widely consultative process that included previously unheard voices. The process was also highly contested with different groups competing and trying to ensure that their interests were protected particularly the white minority in South Africa that had so recently been ruling the country and still maintained control over the largest part of the economy. There were also many from the liberation movements who as a matter of principle and in line with the objectives of the liberation struggle wanted and pushed for strong human rights provisions. This has helped to leave the country with a legacy of strong human rights protections in the Constitution. This was especially the case in the discussions about land issues.

The South African Constitution does well in section 25 to create obligations on the state to address key land questions. Section 25 has sub clauses mandating important land reforms that include the state taking reasonable legislative and other measures, within its available resources, to foster conditions that enable citizens to gain access to land on an equitable basis. Further, it provides that a person or community whose tenure is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

It is just as important that these specific rights to land are backed up by clarity on the responsibility and obligations on the state. Again the South African Constitution does this well under Section 7(2) where the State is obligated to respect, protect, promote and fulfil the rights enshrined in the Bill of Rights.

### What Have Been The Results For Land Rights And In Particular Land Rights For Women?

Unfortunately the reform process in South Africa has fallen short of promises and expectations. In the ten years since the beginning of land reform, land redistributed, including through restitution of land rights claims amounted to only about 4% of agricultural land and this amount is contested. 95% of the land “redistributed” had already been occupied by the “beneficiaries” prior to the project. Only two of the projects actually involved transfer of land previously owned by white farmers. Women and poorer men in organised groups who were beneficiaries paid higher prices for land, than wealthy individuals. On average men received 91.5 hectares of land compared to 20.4 hectares per women. The figure for women is skewed by one woman who on her own gained ownership of 1,628 hectares. The rest of the women got an average of only 7.33 hectares each.

In practice, it has indeed proved very difficult to push the South African government to fulfil its obligations effectively. It is easy for the state to continually underperform even in the face of court rulings. There are arguments made by the state that they are trying, that they are working on it, complaints of lack of resources, and questions raised about the powers of the courts to interfere in the executive sphere of government. Meanwhile the outcomes continue to further marginalize the already disadvantaged. The rich are also far better equipped to utilize the courts in their own interests. Despite court rulings, residents threatened with eviction and other denial of rights on other people’s land continue to struggle to get legal assistance to defend their homes and often their source of livelihoods; The Constitutional Court and laws such as the Access to Information Act are more often used by the rich to defend or assert their rights than by the poor.



Erosion of land rights in South Africa is driven by lack of political will to drive far-reaching change in land rights that would broaden opportunities especially for women and the poorest; over reliance on the state to ensure a change in power relations and patterns of ownership, which does not work even where there are constitutional obligations;<sup>1</sup> and finally, the Constitution has protected registered property rights and not been effective in protecting customary and other informal rights to land that have not been deemed to amount to “property”.

One of the possible solutions to this would be the creation of real rights, rights that enable and encourage people to act directly in the defence and assertion of their rights. A tenure security clause like section 25(6) should read more like “Women, men, or communities whose tenure is legally insecure as a result of past racially discriminatory laws or practices are recognized as owners of the land they live on and use in perpetuity and with full rights of succession to her or his inheritors (female and male). Such rights can only be limited by a law of general application, and no law may permit arbitrary deprivation of these rights to property.”

#### 2.4. *Women Land Rights in Conflict Situations*

Despite the importance of land to women, women generally lack security of tenure. This is largely a result of: gender biased laws which at their best only protect *married* women and at their worst do not protect women at all; legal systems which are inaccessible to women or which privilege customary law over statutory law; titling systems which grant title to or which require payment for land which women cannot afford; and discriminatory lending or credit policies.

If women’s enjoyment of their rights to land is limited during times of peace, their enjoyment of these rights during conflict situations is nearly prohibited. In addition to loss of land rights during conflicts, conflicts draw men away from their communities and require women to perform all the functions of head of household, which is particularly difficult under wartime conditions where access to food, water, labour and transport is obstructed.

As a result of violence associated with conflict, women often have to flee their homes and lands. As refugees or internally displaced, women lose their access rights to land and property as traditional systems and mechanism that protected women land rights are eroded. Women who return to their homes post conflict either face the same lack of access as they did pre-conflict or, particularly if they are widowed or if their spouses are missing, women returnees are often confronted by male relatives who rely on custom or power to deny and usurp women’s claims to land. Women are increasingly rendered homeless and landless during conflict and post conflict reconstruction. They are also vulnerable to sexual and gender based violence.

#### **The Case of Uganda**

Northern Uganda experienced 20 years of conflict followed by 5 years of post conflict reconstruction. During the war many people were displaced from their land, the resettlement and return of IDPs to Northern Uganda has led to increased conflict over land. Land boundary disputes are prevalent in former IDP communities in North and Eastern Uganda where women constitute 46% of the residents. This has affected returnee women who have traditionally accessed land through male members of the household and have no formal claims to land.

Initially, the Northern Uganda region was flooded by NGOs doing short-term interventions. Most of the NGOs have since left, but their legacy is a dependency combined with disruption of the livelihood systems. Moreover, many of the elders who would traditionally enforce women’s access to land were killed during the war. Also as a result of the war, the traditional systems and power of the remaining elders have been severely eroded.

In almost all instances boundaries and rights to land were not documented before the conflict. Consequently competition for and conflict over ownership, access to and control of land continued. In this environment women’s ability to access land or assert their land rights was almost impossible. Women have lost social networks through which they accessed land. Returnees and widows particularly are finding it difficult to re-establish these networks. Returning women also find that land they have

1. *The constitution entitles to tenure security “to the extent provided by an Act of Parliament”. It is not an absolute right; it is up to the State to define the extent of the right and the extent of resources it might put behind the fulfilment of that right.*

previously had access to has been legally acquired by other parties leaving them landless. These issues form complicated situations, even for sympathetic judicial systems.

### ***Factors Affecting Women's Land Rights***

The recovery process has reinstated formal institutions to oversee land administration; however, these formal institutions are undermined by lack of resources, and skilled personnel that can support women in reclaiming land rights. Reparation programmes also do not take into account structural inequalities between men and women, and are geared and formulated towards the reparative needs of men, thereby increasing the rate of dispossession as land is acquired by multinational companies, or reclaimed by conservationists. Competition for land needed to resettle returnees, and the presence of armed personnel is resulting in forced evictions of vulnerable groups who consist of mainly women and children.

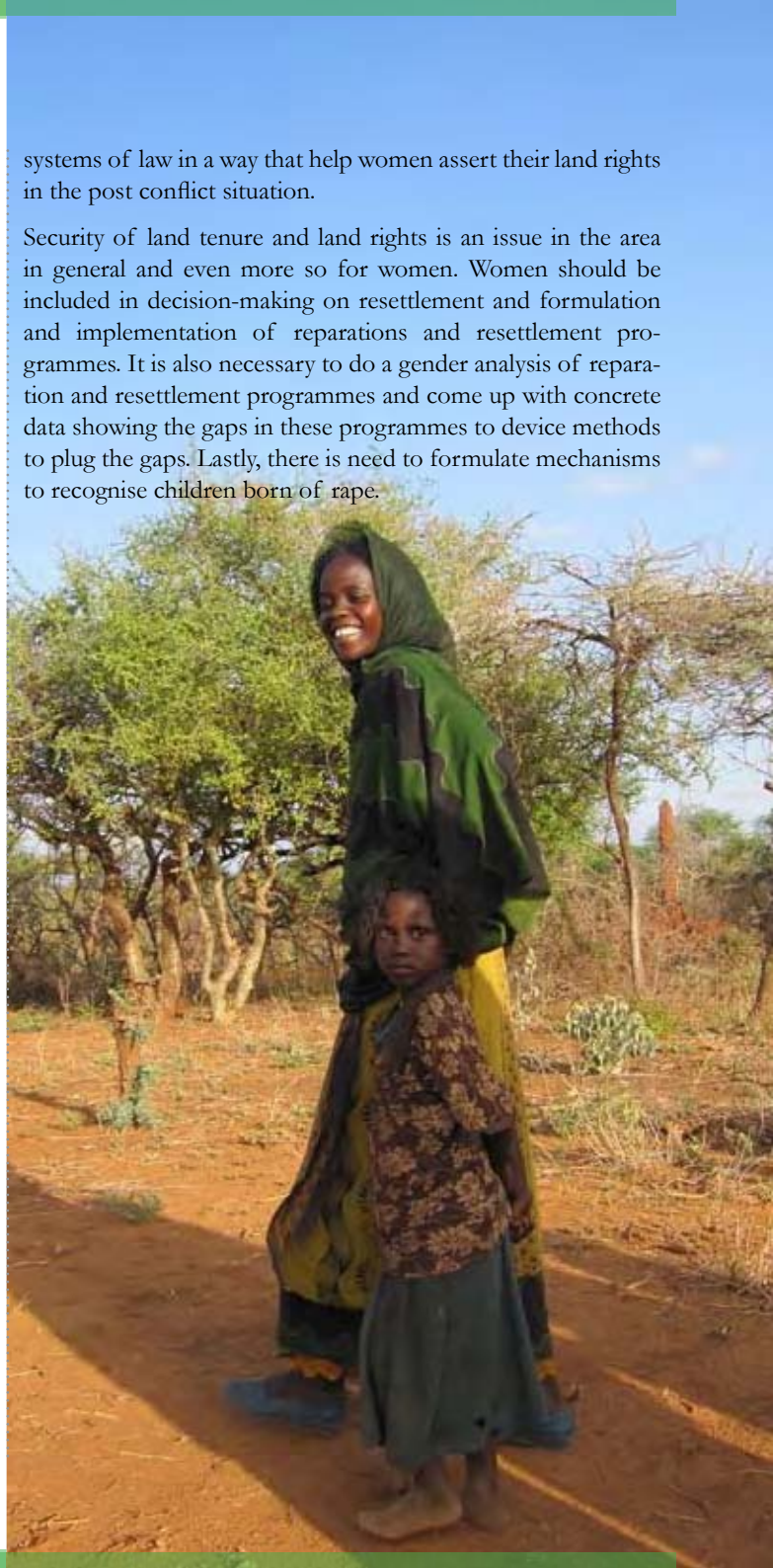
The existence of the diverse land tenure systems have provided grounds for land grabbing at the expense of women. Further, women's ignorance of tenure systems or even their rights under customary law makes them vulnerable not only to land grabs but to violence as well. Even where women's rights are recognised in the statutory law biases still exist especially as men control the law. Reparations and resettlement programmes signed between the Lord's Resistance Army and the government of Uganda do not adequately take into account the needs of women. Lack of clarity over the demobilization of armed forces and their resettlement in the area has increased competition of land.

### **Recommendations**

There is a need to document the issues affecting women's land rights for future use, and to document women's rights to land particularly in situations of conflict and displacement. Moreover, there is a need to inform women about their rights and the avenues through which these rights can be enforced. During the war in Northern Uganda not all elders were killed, however, structures have been so weakened that elders are unable to respond to new challenges particularly involving land rights in post conflict. There is need therefore to rebuild the institutions and the capacity of leaders to apply customary and statutory

systems of law in a way that help women assert their land rights in the post conflict situation.

Security of land tenure and land rights is an issue in the area in general and even more so for women. Women should be included in decision-making on resettlement and formulation and implementation of reparations and resettlement programmes. It is also necessary to do a gender analysis of reparation and resettlement programmes and come up with concrete data showing the gaps in these programmes to devise methods to plug the gaps. Lastly, there is need to formulate mechanisms to recognise children born of rape.





### 3. Agricultural Investment Policies and Programmes

Africa is still an agricultural continent. The agricultural sector accounts for about 60 percent of the total labour force, 20 percent of the total merchandise exports and 32 percent of GDP.<sup>2</sup> Decades of lagging agricultural productivity, coupled with external setbacks such as climate uncertainty, biases in economic policies and instability in world commodity prices, have resulted in increased numbers of Africans living below poverty line from 150 million in 1980 to approximately 300 million today.<sup>3</sup> The continent's per capita agricultural productivity remains the lowest in the world.

Women's role in achieving food security in Africa is highly significant, given their responsibility for as much as 80% of food production in Africa. Despite this, the gender perspective is very weak in continental, regional policy and national level policy.

#### 3.1. CAADP Framework and National Agriculture Policies and Programmes

The Comprehensive Africa Agriculture Development Programme (CAADP) represents major opportunities to close the gender gap in the agriculture sector in the continent. CAADP is the agricultural programme of the New Partnership for Africa's Development (NEPAD) endorsed in 2003, following African governments' recognition of agriculture as being central to eliminating hunger and reducing poverty. CAADP is intended improve food security and nutrition, boost agricultural productivity at least 6% per year; and increase public investment in agriculture to 10% of national budgets.

The programme focuses on four pillars:<sup>4</sup>

- ✦ Land and water management;
- ✦ Rural infrastructure and trade related capacities for improved market access;

- ✦ Increasing food supply, and reducing hunger, and
- ✦ Agricultural Research, Technology Dissemination and Adoption.

As of April 2011, 25 countries have signed the compact and incorporated CAADP into their agricultural agenda. In 2003, African heads of state met in Mozambique, and pledged to allocate 10% of their national budget to agriculture by 2008.<sup>5</sup> In Western Africa the Economic Community of West African States (ECOWAS) has been mandated to support and coordinate the implementation of CAADP. To-date, 19 member states have nominated CAADP Focal Points. However it must be noted that though African governments have pledged to commit to allocation of at least 10% of their GDP there have only been varying degrees of commitment to this goal. The gaps in CAADP exist both at draft and implementation level. Though programme has been assented to by governments there is limited ownership of CAADP at local level as it is feared that CAADP could be hijacked by multinational corporations and large farmers or that women may end up being relegated to the category of the 'hungry and malnourished', as opposed to being recognized as key producers in their own right.

#### 3.2. Analysis of CAADP and the Potential Benefits for Women

According to the Food and Agriculture Organisation of the United Nations, closing the gender gap in agriculture could reduce the number of hungry people in the world by 12-17 percent, thereby reducing the number of hungry by at least 100 million people. However, a close examination of the CAADP policy framework reveals that there is a lack of analysis of the specific needs of women and smallholders and the best policy mechanisms to address these needs. Lack of policy attention to gender is also reflected at the structural level. There

2. NEPAD (*New Partnership for Development*) 2001

3. [http://newsfromafrica.org/newsfromafrica/articles/art\\_12426.html](http://newsfromafrica.org/newsfromafrica/articles/art_12426.html)

4. *Comprehensive Africa Agricultural Development Programme, AU/NEPAD, 2003*

5. *To-date, Burkina Faso, Ethiopia, Ghana, Guinea, Malawi, Mali, Niger and Senegal have exceeded this.*

is no organisation within CAADP with clear responsibility for championing women's needs. These gaps in the CAADP policy framework are mirrored at country level in the CAADP-aligned national strategies and investment plans.

Action Aid's research into CAADP plans in six countries uncovered systematic policy neglect of women farmers and a failure to define robust climate adaptation strategies, as well as urgent gaps in funding e.g. In **Nigeria** the National Food Security Programme 2010 – 2020 makes no explicit reference to the role of women in agriculture. **Kenya's** livestock programme is mainly concerned with male pastoralists with no mention of the particular challenges that face women pastoralists. This lack of policy provisions to address the needs of women is mirrored in **Tanzania's** Agricultural Sector Development Programme (ASDP) and Tanzania Agriculture and Food Security Investment Plan (TAFSIP) where even though the issues of smallholder farmers are addressed, there is little mention of the specific challenges faced by women farmers. In **Ethiopia** and Nigeria, the strategy seems to favour producers better, while making inadequate provision for the poorer majority and women.

Though most country plans recognize the need for sustainable agriculture there is very little focus on the impact of climate change and no provisions for mitigating its effect on poorer communities. In the case of **Ghana** for instance, the Sustainable Management of Land and Water, provides no analysis of the impact of climate change on agriculture, despite its emphasis upon 'mainstreaming' environmental considerations into planning and incorporating sustainability.

### Recommendations

Although both rural women and rural men each have complementary roles in guaranteeing food security at the household levels, women often play a greater role in ensuring nutrition, food safety and quality. In Africa, women produce most of the food that is consumed in their homes, and are generally respon-

sible for processing and preparing food for their households. Women play a core role as producers of food and managers of natural resources. However, most important, for food production; gender-based division of labour must be analysed in detail. The service offered to smallholdings has to be extended to include the female members and smallholdings run by women.

Project activities, especially training, are often inconveniently located for women. Some strategies to promote greater participation among women include: changing the activity site; providing transportation; assisting with child care; providing separate sleeping facilities; scheduling training during women's off-peak labour hours and seasons; and shortening the length of training. Daylong training away from the village usually curbs the attendance of most women. The language in which training is given can also be a barrier to women's participation.

**“In Africa, women produce most of the food that is consumed in their homes, and are generally responsible for processing and preparing food for their households.”**

Agricultural and natural resource programmes planned without an understanding of the land tenure system tend to overlook, ignore, or discourage women's participation. To fully harness the benefits of enhancing land and water management, the issue of ownership and access to land as well as women land rights have to be addressed especially with a view to promoting commercial agriculture. To prevent inappropriate planning, women must be directly involved from the onset in planning and designing rural water supply systems. More women must be trained to service and maintain water supply systems. Apart from actual provision of water, measures designed to improve rural water supply must also cover domestic water treatment and storage as well as disposal of waste water. Expansion of road network tends to expand marketing activities especially for women. It is important to visualize from the onset whether male traders will displace small women traders. It will also be important to analyse negative as well as positive effects on women traders and design appropriate counter-measures if needed.

On the whole and within the context of CAADP, promotion of women thus primarily means supporting women in their





role as producers and earners. The ten-year review of CAADP comes up in 2013; there are also currently processes to ensure the inclusion of gender concerns. There is need for CSOs and women farmers to engage in implementation of CAADP, to ensure there is knowledge of CAADP at all levels, as well as to identify the opportunities and gaps at both policy and grass-roots level. Partnerships should be formed between local and regional organisations to more effectively build women's capacities to engage with CAADP.

At the continental level, NEPAD should commission the drafting of a *women's rights analysis* and an *ecological sustainability analysis for each pillar* theme. At the national level, governments should conduct *gendered social and ecological impact assessments* prior to signing off on national agricultural investment plans. All *monitoring and evaluation* tools should include an assessment of how well the poverty reduction and gender inclusion are addressed. The NEPAD *Climate Change Adaptation Framework* (CCA Framework) should also incorporate a gender analysis of the intersection between climate change and agriculture. Gender and climate change remain adrift in the CAADP organisational structure. The NEPAD Secretariat must articulate the *roles, responsibilities, and accountability mechanisms* for ensuring that these issues can be integrated throughout the CAADP process. Finally, CAADP policies and investment plans need to advance a clear vision for addressing the needs of women and smallholder farmers and to take into account the dramatic impact climate change will have on African agriculture.

### The Case of Kenya

In Kenya gender equity in agriculture is partially addressed through other government policies and the national constitution that clearly spell out how mainstreaming and capacity building of women will be carried out. However, there are no clear policies on the implementation of these legislative provisions e.g. livestock development policy recognizes the need to develop special gender sensitive programmes for women and youth to enable them access credit, land, technology and market information. No other special priorities are provided for this group. The terms women farmers or pastoralist women are not used at all in the entire policy. The policy does not acknowledge challenges and constraints facing women. The policy does

not identify access to other assets such as cattle and farm equipment as challenges facing women farmers. It does not go into details of the challenges and constraints facing women farmers – apart from recognizing access to land and credit as the key challenges.

### The Case of Mozambique

In contrast Mozambique's Strategic Plan for Agricultural Development (PEDSA) makes specific provisions to cater for the needs of the women farmers. The PEDSA has made a number of provisions in the draft text to address issues relating to gender equity. For instance, it seeks to improve women's access to and ownership of land, paying particular attention to the needs and interests of households headed by women. The PEDSA also makes explicit calls for development and implementation of programmes to improve the integration of people living with HIV/AIDS into agricultural development.

Despite this, the PEDSA does not come out clearly on whether the poor, smallholders, peasants and women farmers should be supported to market their produce (locally/abroad) to improve their livelihoods. Marketing is solely left to private sector practitioners and may not necessarily cater for the needs of all farmers. The PEDSA does not specify who sets the research priorities. PEDSA does not protect the local producers from unfair competition in the region market and also globally. The Plan needs therefore to support growth of key agricultural sectors/sub-sectors and even towns negative effects of PEDSA also need to be countered eg. the suggestion to increase use of fertilizers which may turn out to be of great danger- especially the high intensive fertilizer input-use.

### 3.3. *Impact of Land-Based Investment on Women's Rights and the Role of International Instruments*

The United Nations Framework Convention on Climate Change and its Kyoto Protocol contain very little reference to gender. COP 15 documents were totally gender blind, and COP 16 in Cancun had little gender language like "the most vulnerable groups". This is despite the fact that 70% of the 1.3 billion people in the developing world living at or below the poverty threshold are women, a majority of which are women farmers. Climate change will increasingly exacerbate the stresses on the



vulnerable and poor – much, of which have a gender-differentiated impact. The African continent is no exception.

### Land Grab in Africa

In a rush to secure food supplies, investors from around the world are snapping up agricultural land at soaring prices, especially in Africa. National governments, private companies and investment funds are buying up access to land across the continent to grow crops for food and fuel.

### Food Security

The sudden interest in land is driven in large part by food security and fuel supplies. The sharp rise in food prices in 2007 and 2008 and the volatile oil price appear to have led a number of countries to question the security of supply, with fears exacerbated by expectations of how climate change will affect agriculture in years to come especially for women. The fourth IPCC assessment highlights Africa as one of the most vulnerable continents to climate change. This makes the continent susceptible to threats that include reductions in crop yields in some countries of as much as 50% by 2020; increased water stress for 75-250 million people by 2020s and 350-600 million by 2050s; and cost of adaptation to sea-level rise of at least 5-10% of gross domestic product.

### Proof of Land Ownership

Under these circumstances questions about women's ability to own, control and access land becomes even more pertinent. "Who owns the land" can be a complex and contentious issue, especially in countries where there is no formal means of land registration. In some countries, for example Mozambique, land is owned by the state and can only be leased by foreign developers. In most countries, negotiations with different government agencies are required before any land deal is done. In some countries, community elders are consulted on land acquisition, but these consultations can be corrupted with reports of elders granting permission unwittingly or in exchange for money, without any involvement of the wider community.

Relevant here is the African Union framework and guidelines on land policy in Africa, aimed at strengthening land rights, enhancing productivity and securing livelihoods. This sets out how African countries can develop policies to support better use of land, including acknowledging indigenous land rights, the land rights of women, as well as local and community-based systems. It recommends a more holistic approach to policy and measures to ensure that market-driven policies do not expose vulnerable groups to further marginalization. "Equally distributed and effectively managed, land can be instrumental in eradicating poverty."

### 3.4. *Cancun's REDD Agreement Seen as Land Grab by Big Polluters*

REDD "Reducing Emissions from Deforestation and Degradation" presents opportunities for outcomes of forest dependent communities, but also risks serious negative outcomes, especially for women who rely on forest resources to sustain their families and livelihoods. Some see that the REDD as a plan or framework for Reducing Emissions from Deforestation and Degradation (REDD) constitutes a land grab, transferring natural wealth from the poor to the rich under the auspices of saving the planet.

Studies suggest that a third of the land sold or acquired in Africa is intended for fuel crops - some 5 million hectares. A number of, often small, EU companies are involved, sometimes with support or involvement from their national government. Many are keen to vaunt the social and environmental benefits of their business, offering employment and the promise of development to rural areas. But there is also a growing awareness of the downsides of this agro-fuel boom. As scientists and international institutions challenge the climate benefits of this alternative fuel source, local communities and in some cases national governments are waking up to the impact of land grabs on the environment and on local livelihoods.<sup>6</sup>

6. In Kenya for instance, the government has already evicted people – including Ogiek indigenous people – from some 21,000 hectares of the Mau Forest and intends to carry out further evictions.



## Impact on Environmental Damage

Pressure on farmland has led to forest being cleared to make way for agrofuel plantations, destroying valuable natural resources and increasing greenhouse gas emissions.<sup>7</sup> Climate change induced changes to biodiversity and natural systems will also affect women. The loss of pollinators, such as butterflies and bees, could seriously affect the agricultural production of fruit, honey, nuts and flowers – important resources for women in their role as providers of food for the family. The impacts of climate change are increasingly recognized as important drivers of migration and displacement.

## Carbon Trading – Emit less or Create more Carbon?

Carbon trading is based on the idea that a price should be placed on emissions. Companies or countries would have a cap set on the amount of pollution they could spew. Those who curtail their emissions below targeted levels could sell atmospheric space to polluters who exceed their limits. This approach does not however work for some who believes carbon or offset schemes including REDD are a “two faced initiative” from major polluters in the developed world.

At COP 16 organisations working on women’s rights raised very fundamental issues regarding REDD. On the forefront was that REDD+ as currently designed will contribute to a global land grab from communities and Indigenous Peoples, which will particularly affect women. Industrialized-country governments and corporations will only pay for the preservation of forests if they get rights over the carbon in those forests in return. This will have a particular impact on women, as their property rights are less secure. It was also discussed that REDD+ initiatives, as they are currently designed, create perverse incentives and inequities. Women play a differentiated and key role in forest conservation and restoration. The current REDD+ design is that actors will receive carbon credits for reducing their deforestation. Women are, overall, less responsible for deforestation and forest degradation and therefore, according to this set-up, they would be less eligible for forest carbon credits.

Another issue raised was that REDD+ as an offset mechanism will not address climate change as it takes away the responsibility for mitigation from the North and shifts it to the South. Contracts to provide pollution licenses for fossil fuel-dependent corporations will potentially harm communities elsewhere who are suffering from the fossil fuel extraction or pollution for which those corporations are responsible. Women and girls in these communities carry a disproportionately higher amount of this burden. For that reason, forest carbon offsets do not only impact indigenous communities in the South.

Finally, it was agreed that the commercialization of life and carbon markets is incompatible with traditional and indigenous cosmologies and a violation of the sacred. Women, as holders of at least half of all traditional knowledge, are integral to the preservation and living practice of this knowledge. Many indigenous tribal traditions in their historic responsibility protect the sacredness of Mother Earth and are defenders of the Circle of Life that includes biodiversity, forests, flora, fauna and all living species.

## Recommendations

The systematic incorporation of gender perspective in REDD, should be included in the existing international standards and guidelines to ensure that women have equal access and control over all REDD benefits using the gender mainstreaming tools. The REDD planning processes should also include gender responsive indicators and targets. REDD benefit sharing and payment restructuring should be developed further in order to effectively deal with the plight of women.

REDD projects should comply with International Agreements related to women equal access to land ownerships and rights (i.e. CEDAW, MDGs, Convention on Biodiversity, Convention on Desertification, and Agenda 21. Women and Women’s Networks involved in natural resource management should be recognized as principal stakeholders in REDD consultations, nation REDD working groups, in the design, implementation, monitoring and evaluation of REDD projects. REDD should abide by good governance practices to ensure participatory processes to gender equality concerns.

7. *Farmers have found that the much vaunted wonder crop **jatropha**, rather than bringing a guaranteed income, in fact takes valuable water resources and needs expensive pesticides. In some cases, food crops have been cleared to plant **jatropha**, leaving farmers (most of them are women) with no income and no source of food.*

REDD should provide equal and timely access to information regarding planning and implementation of projects while availing capacity building opportunities for women in order for them to participate effectively in the process. REDD should value women's traditional and scientific knowledge of the indigenous people in relation to forests and national resources. It should also create a connection between itself and gender should be noted in all the UNFCCC processes.

### 3.5. *International processes for dealing with land governance: Principles for 'Responsible Agricultural Investments'*

'RAI' refers to the 7 Principles of Responsible Agricultural Investment proposed by IFAD, FAO, UNCTAD and the World Bank. The principles are based on the corporate social responsibility framework and are intended to guide countries, corporations and other actors in developing socially responsible agricultural investment. The 7 Principles focus on respecting existing land rights, food security, the need for transparency and good governance, consultation and participation, economic viability and responsible agro enterprise investing, social sustainability and environmental sustainability. The main theme of the principles is that land rights should be protected. The RAI encourage a process of rapid registration and demarcation of communal lands while putting a lot of pressure on host countries to implement land rights.

Critics of RAI argue that it has not been developed through meaningful consultations. Civil society organisations, farmers groups, and indigenous people, forest dwellers, women, pastoralists, and fisherfolk have not been adequately included in the development of the principles. Furthermore there is no general agreement on the principles or the need for them. LVC and FIAN are opposed to the development of principles governing large scale land acquisition arguing that such principles legitimize the practice of large scale land acquisitions/land grabs. Farmers' organisations and civil society have been divided as to the implications and responses to large-scale land acquisitions.

**“If women’s land rights are to be entrenched, then grassroots women must be part of the land rights agenda.”**

The principles are voluntary and therefore are not enforceable; furthermore, principles of prior and informed consent are missing in the framework.

Proponents of the principles state that respect for the proposed Principles by host and investing countries would assure protection of food security as well as minimum standards for host governments.

### 3.6. *Voluntary Guidelines on the Responsible Governance of Land Tenure and Other Natural Resources*

The Committee on World Food Security (CFS), the foremost global platform for discussion for policies on food security, was re-formed after the food crisis of 2008. The CFS will be leading the process of consultations on the Voluntary Guidelines on Responsible Governance of Land Tenure and Other Natural Resources (VG). The VG were developed over time through a series of thematic studies and consultations lead by FAO and will be negotiated by CFS in July 2011.<sup>8</sup> FAO has been leading multi-stakeholder consultations for development of the VG,

building on existing regional processes.

The guidelines are global but are to be implemented at national level. The main goal of the Guidelines is

to improve tenure over land by having international standards. They provide a framework to develop policy or evaluate existing policy with regard to large-scale land investments. They target policy makers, governments, private sector and CSOs. The guidelines are not legally binding and do not replace any laws or treaties, but make reference to human rights conventions including CEDAW.

Draft Voluntary Guidelines on the Responsible Governance of Land Tenure and Other Natural Resources have been developed and a working group consisting of FAO and member states are currently working on the final draft, which is expected to be ready by July 2012. This document can then be used to influence policy at national level.

8. The CFS plans to adopt the Voluntary Guidelines on the Responsible Governance Tenure of Land and Other Natural Resources at their 37th Session on October 2011. The intention is to implement them in 2012 through a series of country and regional policies and action plans.



## Observations on the Voluntary Guidelines and Responsible Agricultural Investments

There is dearth of information on the VG and the RAI in terms of process, engagement with the process, merits and demerits of international policies governing land, and their impact on women's land rights. However, the VG and the RAI are highly technical and complex and thus excludes active participation of grassroots' women. This is likely to jeopardize further women's land rights. There is an underlying assumption that the guidelines are good but there is need for further interrogation of their benefits vis-a-vis large scale land acquisition.

It is further observed that the guidelines have inadequate or lack of a gender lens and there is need to effectively integrate gender. There is also need to re-examine whether organisations should constructively engage with the VG and RAI processes over which they have no control and may endorse large scale land acquisitions.

### 3.7. *Women's Land and Natural Resources Rights: Learning from Women's Struggles*

#### The Case of South Africa

In South Africa there is a dual system of land ownership. Since 1994, land reform has been taken as integral to bringing about a more equitable and just society and economy. This is because as early as 1913, the apartheid system systematically stripped Black South Africans of their rights to own, reside on and cultivate land. Post-Apartheid land reform policies have therefore focused on formalizing tenure rights, eradicating racially skewed patterns of property rights in land, and ensuring the productive use of redistributed land for commercial production. Policy mentioned specific categories of intended beneficiaries - the poor, labour tenants, farm workers, women and emergent farmers. It contained no analysis of the distinctive obstacles confronting these groups in accessing and using land. However, this does not translate into practice since South Africa has a market-based land policy.

Historically agriculture was well protected. After 1994 South Africa signed an agreement with WTO, which opened South Africa to the market and removed protections on agricultural production. Liberalisation also saw the introduction of a range

of laws introduced to protect tenure and farmers. 95% of land is in the hands of white farmers. Farm workers have no land for food production. Farmers can give land, but not access to water, most of farming water. Entry-level jobs are reserved for women, while more complex jobs are reserved for men. Permanent farmer workers are male, while women farmers are generally temporary employed. This makes women's standing and access to land tenuous. It tends to be dependent on their relationship with males, which basically perpetuated Gender Based Violence against women.

Four main developments have occurred as a result of the land policy which includes casualisation of labour force; feminisation of labour; women replacing men as workers but still doing the house work; and lastly farm labourers are contracted through labour brokers, the farmers are not held responsible for workers, and their access rights are even more tenuous.

#### The Case of Malawi

Malawi's constitution proscribes discrimination on the basis of gender and guarantees women the right to hold property either jointly or severally. Malawi still applies a 1965 Land Law which fails to guarantee women equal rights to land as men. Land particularly in the rural areas is still governed primarily by customary law, which is patriarchal. Both statutory and customary law are discriminatory.

Through CSO initiatives WOLAR and SERVE, women have benefitted immensely on issues of land, for example, over 1,000 women have accessed land, 10 have land registered in their names, and over 2,000 have acquired literacy skills which allow them to understand and demand their rights. Consequently, men are beginning to respect women's land rights. Government subsidy programmes have made Malawi self sufficient in terms of maize production which has been in large part due to women's empowerment. The government is complying with the CAADP target by allocating 11% of its budget to agriculture, and there is need for gender sensitivity in the allocation.

Despite the milestones in Malawi, rural women still face several major challenges. These include the declining prices of crops such as tobacco, technological know-how, and domination of industries by men.



A close-up, high-angle portrait of a woman with dark skin and her hair styled in thick, dark braids. She is looking slightly to the right of the camera with a calm, steady gaze. Her lips are painted with a vibrant red lipstick. The background is a soft, out-of-focus yellow. The lighting is natural and soft, highlighting the texture of her skin and the intricate patterns of her braids.

## **What do women need?**

If women land rights are to be strengthened and women's capacity in agricultural production enhanced, women demand the following: Proper infrastructure in rural areas to facilitate sustainable agriculture, food processing preservation and value addition; legal titles to land; ability to determine prices for their commodities; community needs assessment to map and identify their own issues. Moreover, women need to engage in local dialogues to address issues collectively, and effectively engage their leaders. There is need for use of paralegals and community watchdogs to ventilate their issues; legal rights education; peer exchanges; and formation of a critical mass of grassroots women to ensure their voices are heard.

## **Conclusion and Recommendations**

If women's land rights are to be entrenched, then grassroots women must be part of the land rights agenda. Emphasis should be on encouraging women to take leadership roles, network with like-minded organisations at local, regional and international level. The active involvement of communities in decision making, policy and programme design is also an important factor for entrenching women's land rights. Other issues to consider are the establishment of national platforms for grassroots women engagement on diverse issues affecting their land rights as well as establishment of funding mechanisms and resources to facilitate credit facilities for investment.

## 4. Getting Justice; Reparation and Compensation Mechanisms for Victims of SGBV in Africa: Opportunities and Challenges



The post-conflict reconstruction phase offers an opportunity to redress women's lack of rights to access and control land through reparations and transitional justice mechanisms. However, this seldom occurs. Women find that upon returning home, their new roles are retrenched, and their pre-conflict, social roles are reinstated. This is because women are excluded from decision-making processes relevant to reconstruction (e.g. peace agreements, reparations and resettlement programmes, reintegration and land reform negotiations). Large-scale land acquisitions only act to exacerbate this situation.

The move toward the privatization of customary land tenure schemes post conflict often leaves women landless so even though registration of land rights may appear to be an improvement over customary law, it is not. In fact, for women, privatization and registration of land in post conflict settings creates a vicious circle where women cannot purchase land in private-market driven schemes because they are poor, economically marginalized and have no access to capital. This dispossession of women's right to land in conflict makes them vulnerable to sexual and gender-based violence.

### 4.1. *Ending Impunity for Sexual Gender Based Violence: Defective Legal Mechanisms to Deal with Impunity: The Experience of Congolese Military Justice*

Sexual and Gender Based Violence (SGBV) is defined as “Any act which violates the sexual autonomy and bodily integrity of women and children under international criminal law”.<sup>9</sup> It includes rape, sexual assault, grievous bodily harm, mutilation of female reproductive organs, sexual slavery, enforced prostitution, forced pregnancy, abortion and enforced sterilization, infection of women with sexual transmitted diseases including HIV/AIDS, and trafficking in women and children for sexual slavery.

SGBV has been a major factor in the conflict in the Democratic Republic of Congo (DRC). Both Government and UN forces and non-state militia have been accused of SGBV. SGBV is so

prevalent in DRC that it has been described as the “worst place for women to live”, as victims rarely get justice. SGBV is real in peace and in war- the difference is in its nature and extent. In eastern DRC more than 2000 suffered sexual violence in less than a year.

### Access to Justice Challenges for Victims of SGBV

SGBV as a violation of human rights has mostly remained hidden. Despite the legislative changes in DRC, incidences of sexual gender based violence are still very high and there remains a large gap between the alleged crimes and crimes actually tried. Justice is still elusive for most victims of sexual and gender-based violence. Because of the exorbitant costs associated with formal justice processes, it is financially inaccessible. The deplorable state of prisons has led to multiple incidences of escapee retaliating against survivors. In addition there is lack of the medical and psychological care for survivors of gender-based violence. There is also lack of compensation criteria and unequal treatment of victims, since SGBV is not considered a serious crime as is reflected in the compensation. There is also a narrow interpretation of victims, and as a result the majority of the survivors of sexual violence may find themselves excluded from compensation programmes. Monetary compensation is usually the only form of redress yet sexual and gender-based violence needs a more holistic approach if survivors are to be fully rehabilitated.

Recently a national strategy to address sexual and gender-based violence has been adopted. The strategy incorporates several components such as the military which includes evaluation of the role of the Armed Forces, training of trainers and peer educators, raising awareness of SGBV, code of conduct that address SGBV by military personnel; police component which includes training on gender based violence, awareness raising, and staff feminization; DDDR component that engages the vetting of DDDR processes for gender sensitivity, increasing role of women in the DDDR processes; capacity building of

9. Art 5 of ICGLR Protocol on sexual violence



the justice system which involves added recruitment, training, documentation, provision of equipment and infrastructure to equip the judiciary to adequately deal with cases of SGBV; and improving access to justice through mobile hearings, free assistance of victims, logistical support, Judicial Monitoring and legislative reform.

### Scope of the Mechanisms

The mechanisms put in place are aimed at:

- (a) Prevention of SGBV through raising awareness, changing attitudes, training actors, and research.
- (b) Protection against SGBV through law enforcement, promotion of legislative reforms, creation of ad hoc structures (reception, support mechanisms); and
- (c) Accountability for SGBV: through education, work and involvement of women in decision-making (Security Council Resolution 1325).

#### 4.2. *Getting Justice Reparation and Compensation Mechanisms for Victims of SGBV in Africa: Opportunities and Challenges*

The term ‘reparation’ is not widely understood and is sometimes used interchangeably with the word compensation. Yet effective reparations are much broader and encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. *Restitution* means restoration of “status quo”, that is, returning back to the situation before the violation occurred. Restitution may thus include restoration of liberty, legal rights, social status, family life and citizenship, return to one’s place of residence, restoration of employment and return of property. *Compensation* on the other hand covers any economically assessable damages resulting from the crime. Physical or mental harm/pain & suffering, humiliation, lost opportunities, loss of zeal of life, loss of social relationship, costs required for legal

assistance, medical care, psychological and social services etc. Compensation may be financial or in kind.

The right to reparations and compensation is often enshrined in law however women are largely excluded from the formulation and design of these reparation programmes consequently these programmes rarely recognise the needs or address the specific concerns of women with regard to restoration of citizenship, territory, lost assets etc.

### The Right to Reparations

The right to reparations is guaranteed by several Human Rights conventions including the Convention Against Torture and other Cruel Treatment or Punishment (Article 14 Para1), the International Covenant on Civil and Political Rights (Article 2 Para 3). These treaties require that each state party provide in its national legal system the right of survivors to obtain redress, as well as a means of rehabilitation as soon as possible after the conflict.

International statutes on reparations recommend that reparations include the right to restitution, including restoration of liberty, legal rights, social status, citizenship, and return of property. The statutes require that rehabilitation accompany tangible reparations i.e. mental care, access to the legal system, guarantees of non-repetition, verification of the facts, full public discourse, and disclosure of the truth, apologies and public recognition of the facts and acceptance of responsibility by perpetrators, judicial or administrative sanctions against those responsible for violations.

**“Another difficulty is that there are very weak institutional linkages, thus not facilitating the proper collection and preservation of evidence needed for successful court case.”**

While most of the governments are signatories to these international and regional instruments these need to be domesticated to form part of the national laws, programmes and strategies to ensure the right to reparations particularly in cases of SGBV.

Extrajudicial measures are important as an immediate solution until reparation programmes are put in place, e.g. Rwanda be-

gun its reparations process with a fund to assist victims of the genocide until the law on compensation fund was enacted.

Reparations need encompass the right to truth; i.e. the right to memory which is the recognition that a people's history is part of their heritage. The state must take specific measures to protect the right to memory; and the right to know since survivors and their families are entitled to the truth about the circumstances in which wartime violations were committed.

### **Challenges in Getting Justice**

Specific laws addressing SGBV exist but with no specific provisions for protection and reparations for SGBV survivors. For instance in DRC the two recent laws (2006) which amended the penal code of 1940 and the criminal procedure code of 1959 to recognize SGBV, have no clear provisions of reparations. There is also no coherent policy on reparations. Instead reparations provisions are scattered in various legislations. The nature of compensation for survivors is at the discretion of the court. Formal justice mechanisms tend to focus on punishment of perpetrators and not what happens to the survivors, e.g. in DRC Colonel Kibibi Mutware was sentenced to 20 years, but there were no provisions for survivors.

Another difficulty is that there are very weak institutional linkages, thus not facilitating the proper collection and preservation of evidence needed for successful court case. This hampers survivors' ability to claim for any form of reparations. Furthermore, there is little or no profiling or gender assessment of the crimes/victims/ conflict. As a result the specific needs of different groups are not addressed in reparations programmes. Finally, there is little political will to deal adequately with crimes that involve sexual and gender based violence.

### **Recommendations**

There is need to enhance access to information on procedures and avenues for getting information on protection and reparation for SGBV survivors while also enhancing collaboration amongst various actors (along the chain of evidence) for a holistic approach to SGBV reparations. National governments should further demonstrate political will by domesticating and effectively implementing international and human rights in-

struments on SGBV. This can also be done through putting in place mechanisms for effective reparations by establishing trust funds for SGBV survivors; support systems for survivors throughout the duration of proceedings; and support systems for reparations to include both the direct and indirect victims (e.g. parents, dependents etc).

### **4.3. *Accessing Justice, the Challenges and Opportunities: Strategic Litigation***

Strategic litigation is primarily a tool for effecting social change. Though cases do not always lead to immediate change they may act as a trigger for processes that lead to social change. Strategic litigation has the potential to cause impact that affects the broader public or a class of affected persons.

Strategic litigation recognises the state as a primary duty bearer in the protection of its citizens and can be used as tool for holding the state accountable, enforcing rule of law and development of human rights standards or reinforcing standards/rights which is basically holding the state to its constitutional obligations. In addition to their constitutional obligations, states enact legislation and accede to international treaties. All these obligations have to be realised, and violations of rights need to be remedied.

Among the challenges facing strategic litigation is the fact that it is lengthy, so tenacity is needed on the part of lawyers or filers of strategic litigation cases; It is costly, though can be cost effective when done properly; it is complicated as it requires understanding of the legal process and linking it appropriately to issues on the ground to ensure that the outcome matches the broader change goal; success is not always guaranteed; multiple legal systems make it harder to implement change made through strategic litigation; and most of the times women appear to be pitted against communities.

### **Limitation of the Current Strategy**

Focus normally shifts on winning as opposed to development of jurisprudence or broader social change while there is also the aspect of asking courts for inadequate remedies, which the court may find almost impossible to grant. Another limitation is the fact that there is a misconception on the concept of



separation of powers as the courts cannot direct parliament on what to do.

#### 4.4. *Getting Justice: Reparations and Compensation for Victims of SGBV in Africa: Regional Mechanisms*

There are 10 protocols that are integral to the Pact on Security, Stability and Development in the Great Lakes Region (art 12). Three have specific provisions for dealing with sexual and gender based violence:

- ✦ The Protocol on the Prevention and Suppression of Sexual Violence against Women and Children
- ✦ The Dar-es Salaam Declaration
- ✦ The Goma Declaration

#### **The Pact – Protocol Relationship and Implications**

The Pact on Security, Stability and Development in the Great Lakes Region is a summation of the protocols (10 of them). When the Pact is ratified, by implication, all protocols are considered ratified (see article 7.1 and 7.2 of the Protocol against sexual violence). The Pact makes specific provision for dealing with sexual and gender based violence. Article 11 of the Pact obliges member states to combat sexual violence against women and children through criminalization and punishment both in war and in peace. Articles 6, 27 and 67 of the Dar Declaration deals with sexual violence and sexual exploitation and slavery of girls and women in the GLR and demands member states to protect women, children, youth and other vulnerable persons; it also addresses SGBV.

Setting-up a regional mechanism aimed at providing legal, medical and financial support (including traditional support) to victims of sexual violence and exploitation is provided for under Article 67 of DD. The Pact includes a Regional follow up mechanism, the Fund and the Programs of Action under Article 3.

#### **ICGLR Protocol**

The Protocol on the Prevention and Suppression of Sexual Violence against Women and Children is a short instrument

with only 7 articles covering definitions, objectives, principles, categories, sentencing and regional responses to sexual violence. It provides protection for women and children against the impunity of sexual violence in the context of the Great Lakes Region and establishes a legal framework to prosecute and punish the perpetrators of the Crime of sexual violence. It further provides the legal basis for surrender of persons and fugitives charged with committing offences of sexual violence.

The judicial cooperation provided in the protocol helps where there have been crimes committed across borders. In case of a fugitive, a written request for the arrest and surrender of the fugitive (accused person) is transmitted through diplomatic channels. The Member state would then be required to cooperate and comply with the arrest and surrender to the jurisdiction of the requesting member state. The Protocol also establishes a regional mechanism to provide legal, material, and social assistance including counseling and compensation to women and children victims. This is provided for under Art 6 (8) where it provides that the Fund for Reconstruction and Development should have a facility to cater for social and legal assistance, medical treatment, counseling, training rehabilitation and reintegration of survivors and victims of sexual violence including those who can not identify the perpetrators of sexual violence.

It recommends that member states put in place a **special regional facility** for training and sensitizing judicial officers, police units, social workers, medical officers and others who handle SGBV issues<sup>10</sup> (and amend the law and criminal procedures to conform to the protocol.<sup>11</sup> It provides punitive measures for perpetrators and requires their rehabilitation. Maximum punishment - sentence of imprisonment or other severe punishment is encouraged, and persons convicted of sexual violence are to undergo rehabilitation and social correction.<sup>12</sup> Procedures would be simplified for lodging complaints of sexual violence and prosecution sensitive to the emotional state of victims. Under the Protocol, member states assume responsibility for ensuring that victims are compensated by the perpetrators.

10. See Art. 6 (9)

11. See Art. 6(10)

12. See Art. 5



## Goma Declaration

The Goma Declaration was developed in 2008 at a High Level Regional Consultation Conference attended by CSOs, religious and traditional leaders, international non-governmental organisations, development partners and UN agencies. The Goma declaration has 51 recommendations to deal with sexual and gender based violence. The declaration addresses initiatives that can be carried out at national, regional and continental level. These recommendations include creation of a vetting mechanism by member states to screen out candidates for official positions in the army, police or other security services who have a past record of human rights abuses including SGBV, while also ensuring criminal procedural guarantees during trial of SGBV cases by member states.

The Goma Declaration also anticipates training of the police, army, prisons, medical personnel and social workers in trauma management and sensitivity to victims in handling sexual cases providing specialized and professional training for police, prosecutorial and judicial staff on gathering evidence (including forensic evidence); stopping proliferation of small arms; facilitating access of girls and women to DDDR; domesticating the ICGLR Pact; facilitation of high level consultations on the fight against SGBV for high ranking military and police officials of the Great Lakes Region; deployment of an adequate peacekeeping force and enforcement of their protection mandate; strengthening or set up of child protection units at all police and military stations and have child protection focal points in all stages of civilian and military justice system; allocating funds from the National budget for SGBV activities; and establishment of a Reparation Fund to assist victims and establish Reparation commission.



## 5. Conclusion

Rights to use and control land is central to the lives of rural women in countries where the main sources of income and livelihood are derived from these natural resources. The lack of land rights by women and girls threatens their living conditions, their economic empowerment, their physical security and, to some extent, their struggle for equity and equality within a patriarchal society. Without rights to land, women's economic and physical security is compromised. They are deprived with a reliable source of food and in addition further curtailed access to other inputs, especially credit, necessary for carrying out productive activities. Limited access to credit and to extension services further erodes women's capacity to maintain control over their lands. Women make up more than 60% of small farmers, and provide about three-fourths of the workforce in food production and processing. Women's access to land therefore determines not only women's and households' level of living and livelihood, but also food security. The problem of lack of access to land is particularly critical in the context of the land grabs, climate change and conflict especially when juxtaposed with increasing numbers of female heads of rural households.

Despite development of land policy reform at continental, regional and national level women's tenure in land remains legally insecure as a result of the existence of discriminatory laws, multiple land law regimes operating simultaneously, and gender-neutral statutes. The land reform discourse fails to take into account women's socially and legally constructed disadvantages and confer equal land right to women and men in form but not in substance. There is need for a deeper understanding of the complexities at stake for women land rights in the context of increasing land grabs, climate change, a gendered analysis of the impact of land reforms, a deep knowledge and understanding of the different tenure systems and their impact on women's ability to access, own and control land and how women's land rights can be protected in the context of land grabs; and the role that common land management systems which traditionally protect access rights for the poor, women, pastoralists, and others can be restored. The complexity of ten-

ure systems requires complex policy solutions, which should be tailored to respond to cultural, political and ecological demands at multiple levels. The implementation and impacts of land tenure reforms should be evaluated at multiple governance levels in order to identify constraints, craft solutions, and to ensure that reforms are securing the rights and livelihoods of women, the poor and marginalized groups.

Land reform and giving legal recognition to women's rights to land is often the first step necessary to promote gender parity in land and property rights. The battle for women's land rights does not end with the enactment of the laws providing for equal rights to women and men. It begins with the challenges of implementation and what is needed to change culture of practice, a task that is more difficult than enactment of law, and which greatly affects whether or not rights are realised.

### Key Action Points

#### Research

Existing researches need to inform advocacy, support partner capacity building, and be linked to policy and action. The areas for further research are:

- ✦ Need to understand the implications of land tenure systems on women in the short and long term to be able to come up with evidence-based analysis, policy and legislative suggestion for securing women's land rights;
- ✦ Understand better the different legal systems governing land in the different countries to understand the best ways to secure land rights for women;
- ✦ Continue the interface between policy and practice, including identifying policy gaps at regional, and national level;
- ✦ Document effects on customary practices on women's land rights;

- ✧ Document incidences of land grabs and their effect on women.

### **Advocacy**

There is need to continue with work around law reform and ensuring that women's rights are taken on board. Provision of Legal aid and social services must also be given utmost priority while developing skills in alternative dispute resolution mechanisms. Continued community mobilization and engagement between actors must be supported in order to effectively deal with the issues of resource allocation for investment in the national budget to address issues of women and land e.g. gender budgeting initiatives. This should be coupled with continued multi-sectoral approaches and law and policy reform at sectoral and broader macro-economic processes.

### **Capacity Enhancement/Development**

There is need to deepen our conceptual base on broader issues e.g. linking land rights to SGBV, HIV/AIDS, while also enhancing capacity around community engagement, awareness and protection of rights, and negotiation skills. This can be done through augmenting government partners on issues of gender equality and equity and land and work with different line ministries at all levels and also at the regional level.

Capacity building of women to negotiate on issues concerning their lives and property is also very important, more so grassroots women need to be brought into the national level and into decision-making. There is need to put together research information and monitoring tools so as to effectively explore private sector partnerships in order to identify which issues would be addressed in them. Finally, there is need to invest in communities to help them document their own experiences.







## Appendix I. Communiqué

### *Communiqué of the African Women's Land Rights Conference held in Nairobi from the 30th May to the 2nd of June 2011*

We, the participants in the African Women's Land Rights Conference committed to advancing women's rights, having met in Nairobi from the 30th of May to 2nd of June 2011 to inform and review the progress made in the advancement of women's rights to land, property and freedom from sexual and gender based violence.

**United** in our commitment to advancing women's rights

**Appreciative** of the fact that land rights are basic human rights that have a correlation to realization of economic, cultural and social rights.

**Recognizing** that women constitute over 60% of the farming sector in Africa and continue to be under represented and marginalized in decision making structures and ignored in policy making processes at all levels

**Concerned** that Patriarchal power relations and related discriminatory practices, continue to deny women equal rights and undermine their access and rights to land and property even where laws and constitutions promise equality

**And** that national land and agricultural policy reforms in most countries in Africa have had and continue to have, limited consultations and participation of women, particularly those affected by the impact of these policies

**Further concerned** by the politicization of Sexual Gender Based Violence (SGBV) against women and girls in Africa - both in times of peace and armed conflict. The failure to effectively address SGBV has resulted in grave psycho socio and health disorders of survivors further increasing their vulnerability to poverty, landlessness, marginalisation and continued cycles of violence and abuse.

**Recognizing** the progressive commitments made through the declaration of the International Conference for Agrarian Reforms and Rural Development

**Recognizing** the commitments made by African Heads of States to effect fundamental protocols including the i) Convention on Elimination of all Forms of Discrimination against Women (CEDAW) -1981 and its optional Protocol; ii) The African Charter on Human and Peoples Rights; iii) The AU Protocol on Women's Rights – 2003; iv) The Protocol on the Prevention and Suppression of Sexual Violence against Women and Children in the Great Lakes Region -2006; and v) The Goma Declaration on Eradicating Sexual Violence and Ending Impunity in the Great Lakes Region – 2008, vi) UN security Council resolution 1325 and 1820 that stresses the importance of women's equal participation and full involvement in all efforts to maintain and promote sustainable peace and security.

**Appreciative of the African Union Framework and Guidelines on Land Policy in Africa (F&G) whose formulation encompassed high level of involvement of civil society and women, recognizes patriarchy as undermining women's rights to land and the need therefore to act in order to strengthen women's rights to land**

**Reaffirming** the principle of promoting gender equality, as reflected in the 'AU Framework and Guidelines on Land Policy, led by AU, the African Development Bank, and the United Nations Economic Commission for Africa,

**Appreciative** of the fact that many African governments are making deliberate efforts to use the AU Framework and Guidelines on Land Policy in Africa to help review their national land policies to redefine approaches to land governance and women's land rights

**Noting** the growing global demand for food, fuel, and minerals resulting in "land grabbing" by international companies, national and local elites is further threatening the customary and communal land systems upon which communities depend for livelihood and undermining women's already fragile rights

to land at an alarming scale and increasing conflicts on the continent.

**Concerned** that African leaders and institutions that should protect women's security and right to land are failing to do so due to poor governance, corruption and legal loopholes and absence of the rule of law.

**Noting** that climate change is increasingly impacting negatively on women and in all the four dimensions of food security that include food availability, accessibility, utilization and food system stability and is most likely to undo all the development gains already made

**Alarmed** by the high number of women displaced, increased incidences of sexual and gender based violence, weak national justice mechanisms and a lack of gendered reparation and compensation framework at the national level.

**Recognising** that the African Court on Human and People's Rights provides avenues for women to assert their rights and access justice if national legal remedies fail them. But concerned that only five countries have ratified the necessary protocols to allow direct access, and that failure of the majority of African states to yet give direct access to the court is a major hindrance for African Women to access justice.

**Proud and heartened** by the efforts of rural women and communities to organize, demand and protect their land rights across the continent.

**Now therefore we state that;**

**National Government;**

1. Must fast track development and finalization of agricultural and food security policies, legislations, and programmes that involve and prioritise women's secure access to land, enhance the realization of the right to food and the food sovereignty concepts and principles.
2. Must include community organisations and grassroots women's groups in land governance, and specifically design programmes for land administration and governance that prioritise rural women
3. Must address landlessness and inequalities in land-holding,

where necessary implementing redistributive land reforms in favour of women and other landless people, small scale farmers, farm workers and pastoralists, PLWHA, Widows, people with disability, Orphans and Vulnerable Children, off farm rural communities, Internally Displaced People and Returnees. Particular attention must be given in such reforms to women and girl survivors of violence and women in post conflict situations. Measures must be taken in such reforms and through delivery of additional health and psychosocial services to give rights and hope for the future to widows, people living with HIV and Aids, orphans and vulnerable children, and children born as a result of rape in conflict situations.

4. Must improve tenure security and increase ownership and control over land by women including systematic distribution of physical land to women and elimination of all policies and practices that discriminate against women in matters of land rights.
5. Must act to end the corruption and poor governance that allows investors to undermine the rights of women. Agriculture Investments in African must benefit women and other small scale farmers and pastoralists increasing their productive capacity, and not be allowed to take away the land, water and soil fertility that African women need to achieve food security and dignified lives.
6. African governments must also ensure gender sensitive resettlement processes that provide women land titles and resettlement packages, and protect the rights of orphaned children.
7. Must prioritize and deliver on commitments made to establish reparation mechanisms which include national health and psychosocial support services, reparation funds, institutions, land and livelihood based packages.
8. Governments must ensure that policy, programmes and budgets take into account the specific needs and roles of women farmers and give priority to systematic involvement of women and smallholder farmers in agricultural policy making, programme design, implementation, monitoring and evaluation.



9. The National Agricultural policies and investment plans must take cognizance of threats to women farmers posed by climate change and undertake necessary interventions to mitigate the effects of those threats and support adaptation efforts.
10. Governments should establish an open and transparent process for women and other Non-State Actors to be adequately represented and involved in the CAADP process at all levels.
11. Governments should conduct *gendered social and ecological impact assessments* prior to signing off any national agricultural investment plans.
12. African States need to redress causes of conflicts in the continent, ensure the protection of women and girls from SGBV and facilitate prompt access to justice for victims of sexual crimes committed during armed conflict when preservation of evidence and identification of perpetrators is difficult to establish.
13. African States must undertake reforms on law impeding women's access to justice both at national and continental levels by eliminating inhibitions limiting individual and civil society organisations' direct access to the African Court on Human and People's Rights.

***The African Union Commission and NEPAD Planning and Coordinating Agency must***

14. AUC must lead the development of an African response to stop the 'land grabbing' that is a threat to African States' sovereignty.
15. Commission the drafting of a *women's rights analysis and an ecological sustainability analysis for each of the four CAADP pillars*.
16. Lead and resource a process for integration of gender and climate change in the *roles, responsibilities, and accountability mechanisms* of CAADP to ensure adaptation and capacity building for women and ensure that financing climate change will mainstream women as custodian of land and forests.

***Civil Society Organisations & INGOs in Africa must***

17. Ensure women's leadership in our own operations, in particular in dealing with land, climate change, agriculture and the ending of violence against women and girls.
18. Raise awareness of the all continental and international instruments on women's rights to women at the grassroots level, and the opportunities for women to exercise their rights in terms of these international instruments and institutions including the opportunities to access the African Court of Human and People's Rights.
19. Engage governments and multilateral institutions in the development and reviewing of international guidelines and instruments in order to improve the recognition of the rights, roles and needs of women in them.
20. Engage with governments on reviewing national land policies and laws using the AU Framework And Guidelines On Land Policy, and Monitor the implementation of agriculture and land policies and ensure that gender indicators are incorporated in the tools used.
21. Engage with progressive elements of the private sector and local small business that are committed to the advancement of women's rights.
22. Responding to the urgent matter of 'land grabbing' that is stripping African women off their land and hampering the opportunity to get land in the future.
23. Monitor the implementation of governments' commitments to women's rights in laws, policies and strategies on agriculture, land and reparation for survivors of SGBV.
24. Work together to share information and resources and build capacity of local women's groups to mobilize, engage, document and share best practices.
25. Engage government and related institutions for women's land, security, and reparation-based strategic litigation, and assist victims of SGBV to access legal aid institutions.

***Grassroots women, smallholder women farmers and their movements must***

26. Demand to be involved in agricultural and natural resources management and be recognised as principle stakeholders.
27. Mobilize and position themselves strategically, locally and nationally with governments who are the main negotiators in large land deals.
28. Work with other CSOs to access and share information in relation to food security agriculture, climate change and land management policies and programmes.

29. Establish community watchdogs mechanism to report perpetrators and abusers of Women's rights and mitigate sexual and gender based violence against women and girls at community level.

***Development partners must***

30. Meet their commitments on increasing financing for agriculture and food security and reparation, applying the human rights based approach that will ensure integration of gender equality and inclusiveness.

***List of Organisations***

ACORD, ActionAid, Action for Women and Awakening in rural environment, Advocates Coalition for Development and Environment, African Commission for Human and People's Rights, African Court, African Gender Institute, African Institute for Agrarian Studies (AIAS), African Woman and Child Feature Services, AFEBO, Agency for Independent Media, AEPV, AGRA, ADDF, Akina Mama wa Africa, AMANI Forum, AMWIK - Association of Media Women in Kenya, Angaza Africa, Association for Rural Advancement, Association of Small-Scale Agro producers of Nigeria (ASSAPIN), Association of Women Lawyers in Uganda, AU Land Policy Initiative, AusAID, AWEAPON, Canadian High Commission, CAFOD, CARE, Caritas, Center for Applied Social Sciences University of Zimbabwe, Civil Society Coalition on Land, CIDA, CLEAR, CNCPR/PROPAC, CNCR, CNOP, Coalition of Women Farmers Malawi - Women Forum, COCIN Community Development Programme (CCDP), COHRE, COMESA, Community Land and Development Foundation – COLANDEFF, Networked Intelligence for Development Conservation International, Confederation Paysanne du Faso - (CPF), COVAW, Dynamique des Femmes, EAFF, EALA, Economic Justice Network, ECOWAS Gender Development Center, Enda-Pronat, Endorois Welfare Council, Equality Now-Africa (SOAWR), ESAFF, Ethiopia Peoples Coalition for Food Sovereignty – PCFS, Ethiopian Women Parliamentarians, European Inter University Centre of Human rights and Democratisation, EWLA, Farmer – Zimbabwe, FAHAMU, FAO, FAFAD - Facilitation for Peace & Development, Federation of Women Lawyers – Kenya, Femmes Afrique Solidarité (FAS), Femmes pasteurs du Mali, FEMNET, FES, FIAN Burkina Faso, FONG, FOPAC, Ford Foundation, Forum Mulher, Futures Agricultures, Gender Violence Recovery Center, Grassroots Sister Foundation, GRAIN, Groots Kenya, G-10 Coalition, Haki Ardhi, Huairou Commission, IMBARAGA - Rwanda Farmers Union, Initiative Prospective Agricole et Rurale, Institute for Law and Environmental Governance, Inter Rights, International Land Coalition, International Food Security Network, International Center for Transitional Justice, ICGLR, IPAR (Initiative Prospective Agricole et Rurale), IRPADISIS-WICCE, Iterambere Association, Justice Law and Order Sector, Judicial and Judiciary Training Center, Justice Development and Peace Commission, Katuba Womens Association, Zambia, KENFAP, Kenya Land Alliance Trust, Kenya Small Farmers Association, Kituo cha Sheria, Land Development and Governance Institute, Land Redistribution Department, Government of Zimbabwe, Land Access Movement of South Africa, LandNet West Africa, Liverpool VCT, LOFEPACO, HARDI, Masindi District Women Council, MARWOPNET, MDG3 Fund, Ministry of Lands Namibia, Resettlement and Rehabilitation, Muslims for Human Rights, MVIWATA, Mopani Farmers Union, Nahouri province women farmers association, MWEDO - Masai Women Development Organisation Nants, National Rural Women Network, NEPAD Secretariat, New Sudan Women Federation, Nkuzi Development Association, Nzuzi Development Association, Northern Ugandan Women and Children initiative, NSWF, ORAM Mozambique, OSIEA, Oxfam, PAFFO, Pan African Parliament, Pastoral Women's Council, Pastoralist Forum Ethiopia, PELUM, PFPN, PINGOs, PLAAS, PROPAC, RADI, Ray of Hope Zimbabwe, Raising Voices, RAPDA, REC-ONCILE, Resource Based Conflict Management Network (RBC), ROPPA, Rwanda Institute for Sustainable Development, Rwanet (Rwanda Women Network), AU-CCP, SAFIRE, Slum Women's Initiative for Development, South Sudan Land Commission, Strathmore University, TCOE, TGNP, The Uganda Land Alliance Limited, Tribunal de Grande Instance et Formatrice, Trust Fund for Victims in Kenya, Truth Justice and Reconciliation Commission, USOFORAL, Uman Tinap Tranga Wan, Uganda Land Alliance Uganda Women's Network, Uganda Women Council, Ujamaa Center, UN Women, Urgent Action Fund, Volunteer Efforts for Development Concerns, We can Campaign, Wellspring Advisors, Widows and Development support Services, WIFIP, WiLDAF, WOCAN, WOLPNET-Liberia, Women and Law in South Africa, Women Bee Farmers, Land and Agriculture Trust, Women Land Link Africa, Women on Farms, Women's Legal Resource Center (WOLREC), Women and Land Right Project, Young Women Leadership Institute, Zambia Land Alliance, Zimbabwe Farmers Union, ZIMSOFF – ESAFF and Zimbabwe Coalition on Debt and Development.



## Appendix II. List of Participants

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