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**Ad Hoc Expert Group Meeting on Land Tenure Systems and
Sustainable Development in Southern Africa**

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Lusaka, Zambia**

**REPORT OF THE AD HOC EXPERT GROUP MEETING ON
LAND TENURE SYSTEMS AND SUSTAINABLE
DEVELOPMENT IN SOUTHERN AFRICA**

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ACRONYMS AND ABBREVIATIONS USED IN THE DOCUMENT

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Committee on the Elimination of all forms of Discrimination Against Women
COMESA	Common Market of Eastern and Southern Africa
CLEAR	Center for Land, Economy and Rights of Women
CSO	Civil Society Organisations
ECA	United Nations Economic Commission for Africa
ECA-SA	United Nations Economic Commission for Africa Office for Southern Africa Office
EGM	Expert Group Meeting
FAO	Food and Agriculture Organisation of the United Nations
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (Germany Technical Cooperation)
HIV	Human Immunodeficiency Virus
ILO	International Labour Organisation
IMF	International Monetary Fund
NGO	Non-governmental organization
SADC	Southern African Development Community
UNDP	United Nations Development Programme
UNESCO	United Nations Education Scientific and Cultural Organisation
WIA	Wills and Inheritance Act

I. ATTENDANCE

1. The Ad Hoc Expert Group Meeting on Land Tenure Systems and Sustainable Development in Southern Africa was held at Pamodzi Hotel, Lusaka, Zambia, from 1 to 3 October 2003. The meeting was officially opened by the Honourable Judith Kang'oma Kapijimpanga, Member of Parliament, and Minister of Lands of the Government of the Republic of Zambia after an opening statement by Mr. Dickson Mzumara, Officer in Charge, United Nations Economic Commission for Africa Office for Southern Africa (ECA-SA).

2. Experts drawn from governments, universities, research institutions and non-governmental organizations from within the sub region attended the meeting. Also in attendance were experts from UNDP, GTZ, and Center for Land, Economy and Rights of Women (CLEAR) Nairobi, World Bank, United Nations Economic Commission for Africa (ECA) Head Office, and COMESA. The list of participants is provided in Annex 1.

II. BACKGROUND OF MEETING

3. Land and functioning land tenure systems are of fundamental importance to improved agricultural production in the Southern African sub-region where the economies are highly dependent on agriculture as a source of food, employment and income. This, notwithstanding, issues affecting sustainable development in the sub-region such as an equal distribution of land, sub-optimal land utilization and insecure land tenure security remain problematic.

4. Of the issues highlighted above, land tenure insecurity has been caused by a number of factors, some of which include colonial influence, rapid socio-economic change disrupting customary institutions, lack of full stakeholder participation in land alienation, and limited land rights of women under all tenure systems.

5. In recognition of the problem of land tenure security and its effect on sustainable development, a study on *Land tenure systems and sustainable development in Southern Africa* was included in the ECA-SA work program. A draft publication on the findings of the study has been prepared. The publication addresses two core land tenure topics: (1) Land tenure security, and (2) Land rights of women and other groups.

6. The ECA Southern African Office subsequently organized an Ad hoc Expert Group Meeting to critically review the draft publication.

III. OPENING OF THE MEETING

7. Opening statements were presented by Mr. Dickson Mzumara, Officer in Charge ECA-SA and the Honourable Judith Kang'oma Kapijimpanga, Member of Parliament, and Minister of Lands of the Government of the Republic of Zambia.

Mr. Dickson Mzumara welcomed participants to the meeting and to ECA Office for Southern Africa located in Lusaka, Zambia.

8. He stated that although land tenure systems are important for efficient agricultural production, the sub-region still experienced land tenure insecurity as reflected by incidences of tenure insecurity among by minority groups and the limited women's independent land rights. The need for sustained livelihood calls upon governments and the international communities to protect the land rights of all individuals.

9. Furthermore in 2002, the Heads of State and Government declared the importance of land tenure systems in sustainable development at the World Summit in Johannesburg. Item 38 of the Johannesburg World Summit Plan of Implementation specifically called upon governments to "Adopt policies and implement laws that guarantee well defined and enforceable land and water use rights, and promote legal security of tenure, recognizing the existence of different national laws and/or systems of land access and tenure, and provide technical and financial assistance to developing countries as well as countries with economies in transition that are undertaking land tenure reform in order to enhance sustainable livelihoods".

10. There are other standards and guidelines at the international level for the protection of individual land rights such as the United Nation's Universal Declaration of Human Rights, and others. However, even though there is a guiding framework to protect and promote land security, tenure insecurity is still a problem in the sub-region.

11. Finally, Mr. Mzumara reminded the participants that they had been invited to assist ECA to review the draft technical publication on "Land tenure systems and sustainable development in Southern Africa". He called on them to:

1. Make suggestions to improve the draft publication;
2. Make specific recommendations on possible national actions that should be brought to the attention of member States on improving land *security* and *land tenure rights of women*;
3. Draw up an action plan with implementable measures highlighting the roles of the different actors in this area.

12. The guest of Honour, Honourable Judith Kang'oma Kapijimpanga, Member of Parliament and Minister of Lands, Zambia, welcomed the participants to Zambia. She indicated that the greatest resource that Zambia has is her land and that the Ministry of Lands of the Government of the Republic of Zambia and indeed the Government are preoccupied with land tenure issues as they are important in the country's efforts towards food self sufficiency and reduction of poverty and hence, improvement in the living conditions of the people.

13. The Minister pointed out that in today's wage economy when jobs are not forthcoming people have nothing but the land and related natural resources to fall back on. This underscores the importance of providing security of tenure to land users to foster agricultural production and sustainable development.

14. Honourable Kapijimpanga expressed concerns on the serious land tenure related issues that affect sustainable development in the Southern Africa sub-region which include unequal distribution of land, sub-optimal utilization of land, and

insecure tenure. She then indicated that tenure insecurity in the region has been caused by a number of factors, including rapid socio-economic change, which disrupted customary institutions, colonial influence, lack of full stakeholder participation in land alienation, and limited women's land rights under prevailing tenure systems.

15. The Minister informed the meeting that the Zambian government had recently developed a draft National Land Policy, published in 2002 that aimed at addressing some of the above concerns. She specifically highlighted one key strategy to improve land tenure security that the government of Zambia is proposing in this draft namely ensuring that thirty percent of all the demarcated land is allocated to women and groups with special needs.

16. The Minister called on the meeting to critically examine pertinent issues that affect land tenure systems and sustainable development in the sub-region and suggest concrete recommendations that can foster land tenure security and sustainable use of the land resource. She noted that the HIV/AIDS pandemic has affected the implementation of programmes in the region because of the loss of productive personnel. Furthermore, she appealed to participants to discuss how the HIV/AIDS pandemic was affecting land tenure systems and suggest strategies to mitigate the impacts.

17. Finally, she commended ECA for convening the meeting and wished participants successful deliberations. She then declared the meeting open.

VI. ACCOUNT OF PROCEEDINGS

1 Meeting Objectives

18. The objectives of the meeting were:

1. Review the draft publication on land tenure systems and sustainable development in Southern Africa;
2. Discuss key land issues on tenure security and lack of land tenure rights by women and other groups in Southern Africa as far as they relate to agricultural production and sustainable natural resources management and contribute examples of best practices and constraints; and
3. Draw up an action plan and propose mechanism (s) for bringing up recommendations to the attention of policy makers for implementation.

19. The agenda that was adopted by the meeting is presented in Annex 3.

2 Summary of Presentations on Land Tenure Systems in Southern Africa: Status of Land Tenure Security

20. In the second session, two presentations were made: (a) Overview and Status of Land Tenure Security in Southern Africa: Evidence from Selected Countries and (b) Enhancing Good Governance in Traditional and Statutory Land Administration Institutions to Promote Land Tenure Security both by representatives of the secretariat.

2.1 Overview and Status of Land Tenure Security in Southern Africa: Evidence from Selected Countries

21. Functioning land tenure systems are important in improving agricultural production in the Sub-region. This is especially so given the importance of agriculture in the economies of the region. The sector employs about 60% of the active population, and is a major contributor to GDP. Land is a main asset for rural households, and is a primary means for generating a livelihood, a main vehicle for reducing vulnerability to shocks and transferring wealth between generations and is thus key to alleviating poverty.

22. Land issues affecting sustainable development include: unequal distribution of land; insecure land tenure; sub-optimal utilization of land; poorly developed land markets; and disputes and conflicts.

23. The main land tenure systems in the sub-region are customary and statutory. Land tenure security is the individual's perception of his/her rights to a piece of land on a continual basis, as well as the ability to reap the benefits of labor or capital invested in land, either in use or upon alienation. The objective of the ECA-SA study was to identify the constraints of the current land tenure systems on tenure security of farmers. The study methodology consisted of a combination of data collection and synthesis of existing country level literature on land policies and land laws and key informant interviews with selected government officials in relevant ministries (agriculture, lands, women's affairs) and with representatives of civil society groups (e.g. universities, NGOs). Six countries (Botswana, Lesotho, Malawi, Mozambique and South Africa) were selected for the study.

24. The study results indicate that there is land tenure insecurity experienced in the sub-region. The main forms of the tenure insecurity are summarized in table 1.

Table 1: Forms of Land Tenure Insecurity in Southern Africa

Form of tenure Insecurity	Country (s)
Minority groups	Botswana, Malawi
High Population to land ratio	Malawi, Lesotho, South Africa
Unclear or overlapping land rights	Former homelands of S. Africa
Land alienation without compensation and full stakeholder participation or consultation	Malawi, Zambia, Botswana, and Mozambique (before new law)
Insecurity of farm workers and farm labor tenants	S. Africa, Malawi
Corrupt or exploitative administrative practices	All countries
Limited women's land rights	All countries

25. The implications of the findings are that tenure insecurity is prevalent in both the statutory and customary tenure systems. Consequently, a household is not able to produce as optimally and the household livelihood declines. Thus, there is need to improve tenure security.

26. The study also brought out the implications of land tenure security on the environment. Specifically, there is widespread land degradation in the sub-region. This is due to: (a) lack of knowledge on conservation, (b) use of unsustainable traditional agricultural production practices, (c) lack of inputs such as labour, and (d) breakdown in, management policies, rules and regulations. It is therefore important to promote extension methods that focus on technologies that are sustainable and to give chiefs or the newly decentralized land administration structures the power to monitor and enforce sustainable land use.

27. With respect to the HIV/AIDS epidemic, there is very little work that has been done. Nevertheless, the little work that has been done shows that HIV/AIDS has had a major impact on increasing vulnerability of women, children and the poor to land dispossession in Lesotho, South Africa & Malawi. It is important to draw up legislation that can protect the land rights of women and people living with HIV/AIDS. In view of the limited number of studies on this important subject, more studies need to be conducted in this area.

28. In conclusion, land tenure insecurity is still a major problem in the sub-region and affects livelihood of some land users. There is need to improve tenure security.

2.2 Enhancing Good Governance in Traditional and Statutory Land Administration Institutions to Promote Land Tenure Security

29. The main functions of land administration institutions include: judicial, regulatory, fiscal, cadastral and conflict resolution. *Judicial* functions aim to ensure that land and property rights in general are under the tenure regimes that are defined. This ensures efficient land rights delivery, adjudication, demarcation and registration of land. The *regulatory* element involves the design, implementation and enforcement of performance standards in land management to assist in enhancing land values, public land use planning, functioning markets and market controls. The *fiscal* function involves putting in place land valuation procedures to assist in the use of land for revenue generation, including taxation purposes. *Cadastral* includes information management to determine who owns what, the exact location and condition of the land. This involves mapping and land information management.

30. The challenges that need to be addressed in reforming land institutions include: bureaucratic, complex and unclear management systems. This is mainly due to the existence of multiple tenure systems with overlapping management regimes, lengthy procedures and paperwork and secrecy surrounding land administration. Another challenge is the high level of inefficiency and corruption in the land administration institutions translating into high transaction costs. Quite often those seeking administrative services realize that the costs of these services far outweigh the benefits. Lack of cheap, appropriate technology for cadastral is also a challenge faced in land administration. This results in poor records and inaccurate land registry information. Another challenge is discrimination in both customary and statutory

institutions along gender, class, residency and age. These challenges impede land administration and continue to cause insecurity of land tenure and impede development of the land sector

31. In order to address the above named challenges, it is necessary to reflect on what landholders demand of African land administrative institutions. They require: a simple legal framework; efficient administrative processes; up-to-date technical service and information; user-friendly dispute procedures and; transparency and accountability of institutions and public civil servants and traditional leaders.

32. Democratization of land administration institutions is key to improving the efficiency, accountability and transparency of these institutions. While it may be true that some traditional leaders still represent the will of the people, evidence across Africa suggests that some leaders have turned from being custodians/trustees of land for the people, to land owners of the same, through unfair allocation. There is, therefore, a need to evaluate both traditional and statutory systems to determine how representative these institutions are. There appears to be a need to increase participation of all sectors of society in land administration. Having inclusive forums for land administration will ensure participation and transparency in decision-making. This, however, is not going to be easy. It will involve challenging current hierarchies in order to put power sharing into practice.

33. Another aspect that needs to be examined is how well power is being devolved within the current efforts to decentralize land administrative institutions. Decentralization without both power devolution and resource allocation will not accomplish the intended effects.

34. In conclusion, it is worth noting that many land administration institutions in Africa have failed to perform the functions for which they were designed. The necessary institutional developments needed to cope with land reform may take a long time. This will require political commitment, planning and public consultation. The good news is that many African countries are incorporating the needed changes in recent land reform laws and policies. It is very crucial to develop a mechanism to monitor the process and draw lessons from systems that are working well and reform those that still need changes.

3 Summary of discussion following the presentations on Land Tenure Systems in Southern Africa: Status of Land Tenure Security

35. The Expert Group Meeting raised a number of issues to be addressed. One of the issues was the need to explain the context and rationale for land tenure reforms and that such reforms should not necessarily be donor driven. Rather, they should be based on socio-economic dynamic changes. It was noted that in some countries like Malawi, reforms on land tenure would lead to women losing the security rights they currently had, based on the maternal customary system. The other issue raised was the need to view land tenure and security in terms of overall socio-economic development and not restricted to food production only. In this respect, the experts noted that discussion of land issues need to include such aspects as forest use and game park management, including water resources. In this regard, the definition of tenure

systems needed to embrace broad socio-economic and development aspects. The Meeting stressed the need to move from traditional production to market production and empower the people.

36. The Expert Group Meeting noted the importance of access to land. However, access needed to be complemented by investment capacity to ensure increased productivity. There was concern that current land systems were not working. For example, small-scale farmers were unable to use land as collateral in many countries. However, Mozambique seems to be a good example where small-scale farmers are able to use land for collateral to obtain credit. There was need for the Mozambique case to be disseminated to other countries. Similar good case studies should be identified and shared among countries. There seem to be correlation between land tenure, security and investment; however, such correlation is not always consistent and clear. This is because tenure is not measurable.

37. The Expert Group noted that today people are operating under the misconception that customary land tenure system is insecure and that statutory law will solve the problem of land tenure. However in England, the land tenure system is customary and is operating well and is well documented. There is no need therefore to write off the African customary land tenure system. Instead, we must learn from the best practices in England. The Group agreed that it is still possible to have leases and sub leases and to give title and to transfer land even under customary law and then suggested that probably what was required is for African Governments to document customary land tenure systems.

38. Issues on the role of chiefs and other traditional leaders regarding land tenure security were discussed. The Expert Group felt that good governance and participatory approach up to the grass root level was essential in promoting land tenure security. All stakeholders needed to work together in the reform process without causing any conflicts with the chiefs.

39. In order to strengthen the draft document by ECA, the meeting further suggested the following:

- Reflect the political argument for land tenure security, as it was an important aspect of the reform process.
- Address the issue of inheritance rights for women.
- Include the problem of land encroachment and illegal settlers, as this was a problem in some countries.

4 Summary of presentations on initiatives on improving land tenure security

40. In this session, three presentations were made: (a) Initiatives to improve land tenure security from selected countries by a representative of the secretariat, (b) Initiatives to improve land tenure security in Lesotho by Mr. Cyprian Selebalo and (c) The status and initiatives to improve land tenure security of agricultural land users in Zimbabwe by Professor Sam Moyo.

4.1 Initiatives to improve land tenure security in selected countries

41. The presentation highlighted the initiatives to improve land tenure security in selected countries in Southern Africa. The initiatives and outstanding issues in these countries are summarized in table 2.

Table 2: Overview of Initiatives by selected countries

Country	Initiative	Impact/Purpose	Outstanding Issues
Botswana	Land boards established in 1970 Draft National land policy, 2003	Land boards managed to introduce some democracy. Policy is addressing land alienation, tenure insecurity of women, minority groups and the poor.	The need to find a solution to the practice of dual grazing.
Lesotho	Land Policy Review Commission, 2000	Recommended: -The abolishment of the customary land tenure system -Revocation of underutilized land to allocate to the landless people -Introduction of a land market -Establishment of an elected District Land Board to administer land	-Lack or low consultative process could spell rejection during implementation. -Lack of involvement of traditional leaders in land matters could cause opposition. -Community councils could be too far divorced from local levels to effectively manage land issues.
Malawi	National land Policy, 2002	Recommended -Elevation of customary tenure to full common law status -Registering and titling of customary land -Transparent village land committees and tribunals	-Insecurity of minority groups not addressed. -Successful implementation of reforms require an intensity of administration, skills, and financial resources.
Mozambique	New Land Law in 1998	-Recognizes customary land rights -Requires that local communities be consulted and participate in land alienation -Local communities can apply for a land use title -Grants women land rights	-Law not fully disseminated to all farmers -Not everyone responsible for implementing the new law has full knowledge of it -Practical problems of implementation due to lack of capacity at provincial and district levels
South Africa	Communal Property Associations Act, 1996. Labour Tenants Act, 1996 Interim Protection of Informal Land Rights Act, 1996 Extension of Security of Tenure Act 1997- Draft Communal Land Rights Bill 2002	-Enables group rights -Protects the rights of labour tenants on privately owned farms -Secures the rights for those without formal documentary rights, pending the long-term law -Protects farm laborers from arbitrary eviction -Transfer of title from the state to communities, -Introduction of registrable, legally protected and enforceable	-Need for effective implementation -Legislation has had little success in preventing evictions on farms; need to improve enforcement mechanisms of the current laws -Not all farmers are knowledgeable of the draft land law

		rights of occupation -Democratic Land Administration Committees to undertake land administration for the community	
Zambia	Land Act of 1995 Draft Land Policy 2002	-Allows conversion of customary tenure to lease. -Sensitize the public on procedures and advantages of holding land on title; -Enforce the Ministry's policy of ensuring that 30% of land which is demarcated is allocated to women and groups with special needs	Problem of land alienation into leasehold, once land is granted in leasehold, all customary rights to that land are terminated

42. Tenure reforms have focused on changing the law/rules but little has been done on capacity building, translation of new laws into implementable programs and prioritization of resources to support tenure reform

43. In view of the above gaps, there is need to (a) translate law/policy into implementable programs, (b) design and implement training programs on new laws to ensure change does take place, (c) promote wide dissemination of new land policies or laws, (d) allocate adequate resources to tenure reform programmes, (e) establish strong representative rural land institutions which are transparent and accountable, (f) the promotion of stakeholder participation in all land alienation and (g) enact laws that protect the land rights of minority groups.

4.2 Initiatives to improve land tenure security in Lesotho

44. Mr. Cyprian Selebalo made a presentation on the initiatives to improve land tenure security in Lesotho. The Lesotho Land Reform process is being developed and implemented under the auspices of the Agricultural Policy and Capacity Building Project, and is a Multi-Donor supported initiative. The land reform process included a Land Policy Review Commission (2000), development of National Land Policy (2001-2003), development of National Land Code (2003), and development of an Implementation Strategy.

45. The key issues raised in the Land Policy Review Commission's Report include; (a) Constitutional issues such as discrimination against women in customary law, (b) land tenure and administration issues such as insecurity, delays in registration process, and inadequate information systems, (c) land market issues such as informal land transactions (d) land management and environmental issues such as a lack of a comprehensive strategy on land use and physical planning and (e) institutional issues such as weak law enforcement and coordination of land institutions across many ministries. In addition, it was proposed to abolish customary tenure.

46. The National Land Policy was submitted for adoption in July 2003. According to its principles, the National Land Policy (a) blends the best of traditional and modern values as well as lessons from international best practice, (b) draws on accepted principles and practices enshrined in international and national conventions:

justice, equity and gender equality, (c) promotes efficient land markets, (d) promotes sustainable use of land, (e) promotes security of tenure for the marginalized groups such as women, (f) promotes accountability and transparency, (g) provides for just, fair and prompt compensation including access to land by women in their own right and (h) provides for expeditious and just system for resolution of land disputes.

47. The New National Land Bill is replacing the Land Act of 1979. The Cabinet approved development of the land code in September 2003. With the new bill, land lease is the basic form of land holding in Lesotho. There are three kinds of leases; (a) primary lease, the basic form of rural land holding, which replaces allocation of land and is governed by the new Act and indigenous law; (b) demarcated lease with clear rights and boundaries, which will become the basic form of land holding in Lesotho in time and is governed by the new Act and either indigenous law or Roman-Dutch law; and (c) registrable and qualified lease which continues as it is now according to the Land Act 1979.

48. Positive aspects of the reform are the innovative changes that have revolutionized land tenure in Lesotho and the Government's commitment to the reform. The major challenges the land reform process is faced with include; lack or low consultative process could spell rejection during implementation, lack of involvement of traditional leaders in land matters could cause opposition or even insurrection and community councils could be too far divorced from local levels to effectively manage land issues.

4.3 The status and initiatives to improve land tenure security of agricultural land users in Zimbabwe

49. Professor Sam Moyo made a presentation on the status and initiatives to improve land tenure security of agricultural land users in Zimbabwe. The priority land problem in Zimbabwe has been land redistribution and not land tenure reform. Rules governing land tenure systems in Zimbabwe are still in the making. Zimbabwe requires a radical and better land reform and this had necessitated processes of policy formulation and legal framework arising from direct confrontation.

50. The main challenge facing the country is finding a clean legalistic instrument to expropriate land from the settlers. The country adopted a Fast Track Land Reform program where two resettlement models were adopted: (a) A1, which is subsistence, and (b) A2, which is leasehold. The land tenure system in model A1 is customary, while model A2 is leasehold that has an option of buying. However the major problem confronting the country is that those who have been resettled under model A2 do not have their legal transfers finalized as yet. This is a major problem indeed as the legality of land acquisition has not been completed. This inherently gives rise to insecurity of tenure of the resettled farmers. The other form of tenure insecurity is that experienced by women who do not have equal land rights as men.

51. The major initiatives required to improve tenure security include (a) the need to complete the process of allocation and acquisition, (b) leases provision for model A2, and (c) improved land rights of women.

5 Discussion following the presentations on initiatives on improving land tenure security

52. The Expert Group noted that there is need to focus on major issues surrounding land reform. The Group identified the following as the major issues:

- Whether land reform was being used to engineer the democratization of rural areas.
- The need to address land management as part of land reform.
- The need to ensure that all stakeholders are part of the process of land reform.
- Issues of sequencing of the different elements of land reform need to be thought through. For instance in South Africa, land tenure reform (Labor Tenants Act) was established before the land redistribution programme had taken off and this caused the eviction of laborers. It may have been advisable to first have redistribution and then strengthen tenure rights.
- There is need to closely look at why land reforms are being undertaken. Is it a question of government wanting to preside over land and easily dispose of it or is it because donors are demanding recipient countries to undertake land reforms?
- Statistics regarding the proportions of land under different land tenure systems are not updated and therefore the statistics in the technical publication require revision.

53. The Meeting expressed concern that land redistribution is necessary but is not being adequately dealt with in South Africa, Namibia and Zimbabwe. The group suggested that the real issues have to be addressed, so that land reform is not just about producing nice documents. The Meeting also expressed concern on why the process of converting land policies to land laws was so slow in the sub-region.

54. The Expert Group observed that new reforms might actually have an adverse effect on some groups such as women, particularly in matrilineal societies (e.g. Malawi) where women who now own land may lose that control. To emphasize the point the group suggested that new land laws, which are not understood by the people and make some groups of society worse off, are bad laws and should be discouraged.

55. A key factor in achieving tenure security is ensuring that complementary policies or incentives that enhance the access, use and security of land are addressed as part of the land reform process. This includes programs relating to investment incentives, input and output markets.

56. There are multiple actors in land administration including for example, Ministries of Lands, Agriculture, Environment, and Tourism. The Meeting expressed concern that guidelines of their roles might not be clear thereby resulting in unclear management and bureaucracy. The group emphasized the need to synchronize the activities of different line ministries involved in land administration and land use.

57. In order to strengthen the draft document by ECA, the meeting suggested that best practices should be highlighted. The meeting also suggested that participants with

knowledge of any sources of best practices in enhancing land tenure security and administration should provide the secretariat with that information.

6 Strategies to improve land tenure security: Report of group discussions

58. The expert group meeting was divided into three groups to discuss the main sources of land tenure security. For each source of tenure insecurity, the groups were asked to discuss the factors causing the problem and suggest recommendations to overcome the problem. The groups discussed the following sources of land tenure insecurity: (a) the tenure insecurity problem of minority groups such as the San in Botswana, (b) high population to land ratio experienced in parts of Malawi, Lesotho, South Africa, (c) unclear or overlapping land rights experienced in the former homelands of South Africa, (d) land alienation without compensation experienced in Malawi, Zambia, and Botswana (e) insecurity of farm workers and farm labor tenants experienced in South Africa and Malawi, (f) illegal settlers and encroachment (g) corrupt or exploitative administrative practices, (h) inheritance rights of land, (i) management of land including instruments that support land tenure security (j) land dispute resolution mechanisms, (k) problematic land reform processes, and (l) the inherent insecurity or the absence of it in the customary land tenure system.

Table 3: Overview of the main land tenure security problems experienced in Southern Africa and suggested strategies to improve tenure security

Tenure security problem	Factors causing the problem	Suggested recommendations
Minority groups	<ul style="list-style-type: none"> ▪ Historical dispossessions and creation of high-density areas. ▪ Land pressure because of over population. ▪ Poor mapping or cadastral systems. ▪ Socio-economic reasons 	<ul style="list-style-type: none"> ▪ Nation states to develop clear policies. ▪ Positive affirmative action should be undertaken to ensure that minorities own land. ▪ Development of quotas to provide for minority needs.
High population to land ratio	<ul style="list-style-type: none"> ▪ Colonial dispossession as foreigners took the best lands for themselves forcing indigenous people to marginal lands. ▪ It is not necessarily caused by high fertility but by poor land policies. 	<ul style="list-style-type: none"> ▪ Resettlement schemes to deal with congestion. ▪ Tax larger farm owners to discourage them from owning unused land. ▪ Adoption of land size ceilings.
Unclear or overlapping land rights experienced in the former homelands of South Africa.	<ul style="list-style-type: none"> ▪ Colonial land dispossession forced people into some areas like the so-called homelands in South Africa. ▪ Traditional leaders allocate and accommodate various groups thus exacerbating the problem. 	<ul style="list-style-type: none"> ▪ Improve socio-economic conditions of people. ▪ Decentralization of decision-making.
Land alienation without compensation.	<ul style="list-style-type: none"> ▪ Land was forcibly taken and there is no reason for compensation. 	<ul style="list-style-type: none"> ▪ Development of mediation and conflict resolution skills. ▪ If and when compensation is

Tenure security problem	Factors causing the problem	Suggested recommendations
		given it should be for the improvements or investment and not the land.
Insecurity of farm workers	<ul style="list-style-type: none"> ▪ Colonial legacy ▪ No regulation of terms of employment to protect workers ▪ Poverty leading to migration ▪ Length of stay away from original homestead ▪ Natural calamities leading to migration 	<ul style="list-style-type: none"> ▪ To regulate stay of workers and formalize when workers stay in a particular place for a specified length. ▪ Set land quotas for farm workers. ▪ Address farm workers conditions (use rules used for domestic workers). ▪ Enforcement of labor laws.
Illegal Settlers and Encroachment	<ul style="list-style-type: none"> ▪ Absentee landlords ▪ Colonial legacy ▪ Desperation through lack of properly allocated land ▪ Ignorance (lack of knowledge or information) 	<ul style="list-style-type: none"> ▪ Information dissemination. ▪ Decentralization of allocation authority. ▪ Generate political will. ▪ High taxation of absentee landlords. ▪ Capacity building for illegal settlers and allocation authorities. ▪ Improve enforcement.
Corrupt or exploitative administrative practices	<ul style="list-style-type: none"> ▪ Bureaucracy ▪ Centralization of management ▪ Poor conditions of service ▪ Undemocratic traditional allocation system 	<ul style="list-style-type: none"> ▪ Title of land should belong to the people. ▪ Monitoring of allocation processes. ▪ Awareness of the provisions of the law. ▪ Democratization of traditional systems and government systems at national and local ▪ Remunerate local decision making bodies. ▪ Integrated land resource management by local community.
Inheritance rights of land	<ul style="list-style-type: none"> ▪ Absence of appropriate land policies ▪ Dual legal system ▪ Customary land not inheritable ▪ Women still minors ▪ Vested interests ▪ Ignorance of existing laws 	<ul style="list-style-type: none"> ▪ Need to harmonize laws (consultation) ▪ Update laws ▪ Awareness creation and sensitization ▪ Lobbying governments
Land management	<ul style="list-style-type: none"> ▪ Bureaucracy ▪ Vested interests ▪ Inaccessible information ▪ Invisibility of CSOs 	<ul style="list-style-type: none"> ▪ Clear land use policies, regulations ▪ Democratize institutions ▪ Decentralization

Tenure security problem	Factors causing the problem	Suggested recommendations
	<ul style="list-style-type: none"> ▪ Political interference or legalistic tribunals 	<ul style="list-style-type: none"> ▪ Disseminate information ▪ Sensitization – CSOs ▪ Coordination – working group ▪ Democratize traditional institutions ▪ Coordinated land administration system
Problematic land Reform	<ul style="list-style-type: none"> ▪ Top-down, externally driven ▪ Vested interests, political gain ▪ Inability to learn from other countries ▪ Inadequacy of resources ▪ Limited scope of land reform 	<ul style="list-style-type: none"> ▪ Stakeholder-driven reform ▪ Take holistic approach to reform ▪ Wider participation ▪ Strengthened civil society ▪ Institutional reform
The inherent insecurity or the absence of it in the customary land tenure system	<ul style="list-style-type: none"> ▪ Practice ▪ Perception 	<ul style="list-style-type: none"> ▪ Codification ▪ Document and disseminate information. ▪ Democratize land committees – should be transparent and accountable

7. Discussion following the group presentations on strategies to improve land tenure security

59. Before the session ended Mr. Rogier van den Brink made a presentation on land reform in Africa and the role of the World Bank. He said that land is important in Africa because it helps in conflict prevention, economic growth and poverty reduction. He added that the broad approaches to land reform include strengthening of tenure security of existing customary or informal land tenure, land titling, legalizing or formalizing property rights, and redistribution. Secure property rights boost domestic and foreign investment and growth. Increasing tenure security would have to include establishing and enhancing legal status of informal or customary land tenure and putting in place better land dispute resolution mechanisms. The conditions for successful land titling include: scarcity of land for it to be valuable, land needs to be worth the cost of titling, and existence of a land market with significant number of transactions (informal, semi-legal, extra-legal) and a functioning banking system and a functioning court and arbitration system.

60. He said that the Bank has undertaken knowledge activities, which include research, analytical work and consensus building and limited lending operations. The World Bank is now planning to develop a Business Plan to step-up engagement in consultation with partners (Governments, IMF, ECA). Specifically the Bank plans to do knowledge activities in Mozambique, Ethiopia, Benin, Chad, Guinea-Bissau, Zambia, Kenya, Guinea (in collaboration with FAO on land tenure), Sierra Leone (as part of Rural Development Strategy), disseminate Policy Research Report, carry out a distance learning course “Land Policy and Land Reform” (through the World Bank Institute) and undertake inter-country exchanges (study tours).

61. In the discussion that followed, it was observed that in cases of land expropriation, individuals should be compensated for improvements on the land and not on the land itself. Since the colonial settlers did not pay for the land that is now being expropriated from them, there is no need for compensating them for the land but for improvements thereon. In addition, under customary tenure, land is a free commodity in most of the countries in the sub-region.

62. The Experts stressed the need to revisit the issue of land redistribution so as to redress the distortions associated with the historical and colonial factors. The meeting further suggested that these are issues that must be considered when talking about international financing for land reforms.

63. The Expert Group also noted that land is a finite resource and it is important to find ways of managing this resource. One way of doing this is looking at the land issue from a holistic approach in order to emphasize the multi-sector element of land and coordinate and enhance its use.

64. The Expert Group suggested that there was need to identify the best practices of initiatives to improve land tenure security and recommend them for replication in the sub region.

8 Summary of presentations on the status of land rights of women in Southern Africa

65. In this session, three presentations were made: (a) Status of Land Rights of Women in Southern Africa: Evidence from Selected Countries by a representative of the secretariat, (b) Why women need land by Dr. Elizabeth Akinyi Nzioki, and (c) The status of land rights of women in Malawi by Dr. Naomi Ngwira.

8.1 Status of Land Rights of Women in Southern Africa: Evidence from Selected Countries

66. A representative of the secretariat presented the paper. While women are responsible for 80% of agricultural production in the sub-region, women are still largely discriminated against in land ownership. Yet the International community has a framework which includes: Universal Declaration of Human Rights, 1948, Committee on the elimination of discrimination against women (CEDAW) International, 1979, and the 4th World Conference on Women, Beijing Declaration and Platform for Action, 1995. At the regional and sub-regional levels the regional framework for dealing with women rights include the African Charter for Human and People's rights, and SADC Declaration on Gender and Development.

67. Article 14 of the CEDAW obliges state parties to ensure equal treatment between men and women in land and agrarian reform. All countries in the sub-region with the exception of Swaziland have ratified CEDAW.

68. In all the 6 countries studied, women do not have full ownership and control of land under both customary and statutory land tenure systems. The key obstacles are as shown in table 4.

Table 4: Key obstacles to women's land rights

Custom/Tradition	Statutory Law	Socio-Economic
<ul style="list-style-type: none"> ▪ Patriarchy – all countries eg. in Botswana some Land Boards were asking women who apply for land to bring their husbands, fathers or brothers. ▪ Matrilineal societies of Zambia, Malawi Mozambique – some men experience tenure insecurity ▪ Daughters cannot inherit land ▪ Traditional leaders do not know about land laws that provide for non-discrimination against women ▪ Limited participation of women in traditional community decision-making 	<ul style="list-style-type: none"> ▪ No clause in the land law that promotes/ protects the land rights of women in the land law - S Africa ▪ Land law not harmonized with other laws in the system – Botswana ▪ Lack of capacity/ knowledge by implementers – Mozambique, South Africa ▪ Some legal clauses do not allow joint ownership of land ▪ Women who marry become minors unless they explicitly marry under out-of-community-of-property type of the Dutch law in South Africa, Botswana, Lesotho 	<ul style="list-style-type: none"> ▪ High female illiteracy rates. ▪ Women ignorant of their land rights ▪ Lack of resources: capital, labour ▪ Internalized discrimination.

69. Although the CEDAW, Beijing declaration, SADC declaration all set a clear framework, women are still discriminated against in land ownership. There is therefore need to address the sources of inequalities and disadvantages women face in land ownership.

8.2 Why women need land

70. Dr. Elizabeth Akinyi Nzioki made a presentation on why women need land. Women play crucial roles in agriculture as producers and providers of food. They work on land more than any other category of society, providing 80-90 per cent of the labour in subsistence production, and over 70 per cent in cash-crop production yet they suffer discrimination in all matters relating to land ownership.

71. Several countries in the region are undertaking land reforms. Unfortunately most of these reforms do not promote women's legal ownership and inheritance rights. Indeed, in most cases they have undermined the women's traditional use right under customary land tenure by registering family land in the name of the husband or son.

72. There are a number of practical reasons why women's rights in land must be addressed. At this time when the total production of food in the sub-region is decreasing and cannot adequately feed our populations, there is an urgent need to look

into the constraints of those who produce food - the women. Women's poverty is directly related to the absence of economic opportunities and autonomy, lack of access to economic resources, including credit, land ownership and credit.

73. The most critical entry point to women's empowerment is women's legitimate share in land. Providing women with legal rights to land will not only empower them economically but also strengthen their ability to challenge social and political gender inequalities.

74. Advancement of women and the achievement of equality between women and men are a matter of human rights and a condition for social justice and should not be seen in isolation as a woman's issue. They are the only way to build a sustainable, just and developed society. From a philosophical point of view, if human rights include all people by the virtue of their humanity, they must include women as well as men. As women's roles and social structures change, women's rights must be protected in law and practice particularly when real constraints on human rights are hindered by differential access to material resources between women and men.

75. National Constitutions of the sub-regional countries categorically state that all citizens are equal and will be granted equal opportunities in all areas of development. Thus, equity remains a central concept in development planning, particularly in terms of creating equal opportunities for everyone, irrespective of their gender. It is imperative that the availability of equal opportunities in access to and ownership of land must be protected by law for women as for men.

8.3 The status of women's land rights in Malawi

76. Dr. Naomi Ngwira made a presentation on the status of women's land rights in Malawi. Based on the entitlements approach of Sen, the status of rights of women can be understood as a tripod of (a) assignment of rights, (b) security of rights, (c) exchange mapping of rights. First, society gives rights (entitlements) through the law, customs or norms or perceptions or international conventions. Then the land entitlements given have to be secured through proper administration of ownership and transfers and also adjudication of disputes over ownership or transfer (sale or inheritance). Third, the exchange mapping of land is important: tenure security is meaningful largely when it translates into economic provisioning/welfare.

77. There is lack of or measly entitlements to land ownership for women in Malawi. Under patrilineal customs women cannot own land. Under matrilineal customs, women own land in the custodial sense; they access land as part of the marriage contract while in patrilineal customs they cannot own or inherit it except as proxies for children.

78. Most of what happens in terms of property ownership and inheritance depends on perceptions that are influenced by androcentric religions and capitalistic values. Men tend to be perceived as owners of property so that even in matrilineal systems men said they owned property.

79. While the Constitution gives women equality in property ownership the Wills and Inheritance Act (WIA) does not deal with land, consigning it to the jurisdiction of

customary law, except if leasehold. The law on property is also not well harmonized with the inheritance and marriage laws. The WIA deals with property left intestate; the shares for heirs are gender biased and open ended, creating room for property grabbing: the hardship principle often applied can lead to small shares and fragmentation of land/property.

80. There are various causes of insecurity of land rights in Malawi; these are poor administration of land rights, poor adjudication and the new land reforms. Poor administration of land rights relates to poorly resourced offices for processing titles and inheritance; bottlenecks due to too much centralization; no customer orientation, remnant of colonial mentality and gender insensitivity. Other causes of poor administration are women's illiteracy; offices intimidating to women, procedures contrived like mazes; and overall too much paper work and procedural steps.

81. Poor adjudication is in form of courts using laws that are already gender biased because they are not well synchronized; statutory inheritance laws do not favor women and land administration institutions are staffed with gender insensitive people. The process also takes too long as the courts lack resources to do work quickly. Furthermore, traditional systems of adjudication are gender biased and not transparent. Witchcraft is also a major cause of abrogation of rights. It is used as an adjudication system. In addition, there is poor exchange mapping of land or outputs from land; livelihoods from land due to poverty; low output prices; low productivity; thin land markets; lack of information; lack of access to credit and extension; all combining to create land insecurity especially for women.

82. Malawi has embarked on land policy reforms. The reforms are designed to guarantee security and instill confidence and fairness in all land transactions; promote a decentralized and transparent land administration system and extend land use planning strategies to all urban and rural areas. In addition the reforms are to establish a modern land registration systems for delivering land services to all; enhance conservation and community management of natural resources; and promote research and capacity building in land surveying and land management.

83. With respect to land policy reforms in the case of Malawi, the new laws are going to create new forms of tenure insecurity. The reforms entail too much dependence on official processing of rights, which means that those who are not competent to navigate the processing course will be left out such as the poor and women. Poverty and HIV/AIDS means that giving title instead of imparting security, the right to land will actually increase propensity for alienation, through sale or sub leasing. Looking ahead, what should be done is known, but is not being done. This includes the need for full consultation with people on the law and procedures for land management, the need to move slowly but effectively to prevent opportunists from hijacking the process; people should be well informed; need for the laws to be reviewed and harmonized and the capacity for land administration and also of the courts need to be enhanced.

84. In conclusion, women's land rights are tenuous because of limited or no assignment of entitlements; patrilineal customs do not assign women entitlements to land and matrimonial customs assign only custodial ownership rights. The law does not assign inheritance entitlements to women and laws are not harmonized. In

addition, there is lack of security of whatever entitlements women may have, because there is poor administration of inheritance rights and poor adjudication of land ownership and inheritance disputes.

9 Summary of discussion following the presentations on the status of land rights of women in Southern Africa

85. The Expert Group Meeting noted that the issue of women's rights to land remains a challenge that needs to be addressed in the context of land tenure systems and sustainable development.

86. Further, it noted that there is a felt need among disadvantaged women with regard to land rights. There are however critical issues such as internalised discrimination and lack of knowledge of the existence of land rights among most disadvantaged women. It is imperative that these issues are addressed through sensitization campaigns. Such campaigns should not only be for women alone but also for men. Men too need the knowledge of women's land rights and can in turn become sensitization agents for land rights for women.

87. The Expert Group Meeting acknowledged the existence of the duality of the economic systems that exist in countries of the sub-region. This duality pertains to the rural and urban divide. An analysis of the rights of women to land should recognize this dual characteristic.

88. The Meeting emphasized the need to look at women's land rights, in the context of the dynamics of a marriage. This is in view of the fact that women tend to greatly value marriage. Consequently, they tend to see their security more in a marital context and not in their individual status. The experts noted that the law supports co-ownership and individual ownership of property.

89. There is need to understand the full implications of access to and ownership of land vis-à-vis the control of assets in a matrilineal set up because the status of women in a matrilineal society may not guarantee women's control over resources. It was thus observed that although women in matrilineal societies have access to and own land, they do not necessarily have control over assets they own. The Experts noted that with commercialization of land, even women in matrilineal societies who have access to and own land have relinquished control of the land resource to their spouses.

90. The Meeting stressed that in dealing with the land rights issue, it is critical to assess the guarantees the national constitutions offer with regard to women's land rights and further emphasized the need for more studies on the impact of HIV/AIDS on land rights.

91. The Experts pointed out that the debate on land rights for women should recognize other livelihood sources on which women depend on such as forests and pastoral lands.

92. The Expert Group Meeting also emphasized that some inheritance rights disadvantage women. This is evident in patriarchal societies where male children inherit land even though female children who are older are present in the family.

93. The Meeting noted that cultural practices and customary laws that are discriminative of women are so embedded in societies and affect rights of women to land. Thus, to promote the women's land rights there is need to deal with these cultural and customary issues. But for effectiveness there is need to identify the drivers of change of cultural practices and customary laws.

94. The Expert Group Meeting further noted that women's land rights would be enhanced by the harmonization and updating of laws. An example given is that of the inheritance rights law in Lesotho that requires proof that one has moved away from customary norms before one can bequeath land to female children.

95. Literacy levels play a very key role to land rights for women. It is thus critical that literacy levels are raised in order for women to be aware of their rights.

96. Although international human rights instruments that support women's rights including land rights exist, it is very clear that countries in the sub region have not domesticated these instruments. An example is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which all countries except Swaziland have ratified, but none of the countries has domesticated the Convention.

97. Lastly, the Expert Group Meeting agreed that gender inequality situations are very complex and social arrangements influence women's rights as well as their perceptions of those rights. Thus more detailed analysis beyond the scope of the ECA study is required to capture the dynamics of the rights of women to land.

10 Summary of presentations on initiatives on improving land rights of women in Southern Africa

98. Three presentations were made in this session: (a) Initiatives to improve land rights of women in selected countries by a representative of the secretariat, (b) The Platform of Women's Land Rights in Southern Africa by Ms. Abby Taka Mgugu and (c) Initiatives in Eastern Africa by Dr. Elizabeth Akinyi Nzioki.

10.1 Initiatives to improve land rights of women in selected countries

99. A representative of the secretariat presented the paper. Initiatives in selected countries in the sub-region are summarized in Table 5 below:

Table 5: Initiatives to improve land rights of women in selected countries

Country	Initiative	Purpose
Lesotho	Amending Deeds Registry Act	To allow women to own land and to register in their own names.
	Draft Land Bill	Allows a woman to have right to own land.
Botswana	Raising women's representation in parliament and councils to 30%, and in other land related decision-making bodies.	Increase women's representation in land related decision-making bodies.

Mozambique	Passed New Family law 2003 Land Law of 1997 Dissemination of New Land Law to women through sensitization campaigns	Allow joint registration of property. To clearly recognize the right of women to own land. Sensitize women on their land rights. Efforts very successful where message was integrated into literacy programs.
Malawi	National Land Policy 2002	Promote registration of individual and family title.
Zambia	Setting a quota of 30% for land that will be allocated to women.	Allows a woman to have access and right to own land.

100. Notwithstanding the above-mentioned initiatives, there are still some outstanding gaps and policy needs that include:

- Training and capacity building including education on the new laws, sensitization and education campaigns to change the patriarchal attitudes in all countries;
- Harmonization of marriage /family laws with land laws;
- Body at the national level and regional level that will monitor implementation of the legal framework;
- Development of national and local level indicators;
- Socio-economic needs of women such as education, credit and other resources, access to markets;
- Increased participation of women in land decision-making at community levels; and
- Need for effective implementation, there is need to translate laws into programs and prioritize allocation of funds for implementation.

101. In conclusion, countries in the sub-region are making some progress in dealing with the land rights of women. However, there is need to accelerate the translation of legislation into effective implementation, to harmonize laws, to effectively monitor, to conduct capacity building, to enhance wide dissemination of supportive laws and also to deal with patriarchal attitudes.

10.2 The Platform of Women's Land Rights in Southern Africa

102. Ms. Abby Taka Mgugu made a presentation on the Platform of Women's Land Rights in Southern Africa. Launched in 2000, the Platform of Women's Land Rights in Southern Africa has a membership of 8 organizations in Southern Africa, Lesotho, Malawi, Mozambique, Tanzania, South Africa, Swaziland, Zambia and Zimbabwe. The Platform has been established because women's land rights are not sufficiently dealt with in the region. The objectives of the Platform are to:

- Infuse gender sensitivity into land and water policy planning and implementation;
- Campaign for the domestication of international human rights instruments that the SADC governments are party to;
- Advocate for policy changes to create a space for the empowerment of women;
- Improve the playing field that has created major barriers to women in the region to own and control the key factors of production;
- Build a strong regional network to influence behavioural change among policy and decision makers through dialogue between governments and civil society negotiating for change; and
- Strengthen civil society organizations to enable them to advocate for the issues raised in ECA's land tenure study, like modification of legal frameworks that address ownership, and management and distribution of key factors of production.

103. In order to achieve the above objectives, the Platform engages in research and documentation of the best practices in the countries, repackaging and information dissemination, advocacy and lobbying, monitoring and evaluation, and education and publicity.

104. The Platform plans to develop a coordinated information system and a website with support of ECA, to ensure information dissemination. Other planned activities include identification, development and strengthening of a framework on gender, land and water for integrated rural development, undertaking a gender audit of existing legal and policy frameworks as it pertains to women's access to and control of land and water, and capacity building on linkages between land and water for sustainable livelihoods. In addition, the Platform plans to develop norms, standards and principles for mainstreaming gender into the land and water discourse, commissioning a study on women's land and water rights and implications on food security and integrated rural development, develop a gender sensitive monitoring tool and document and publish best practices on women's land and water rights in the region.

105. In the conceptual framework used by the Platform, a better synergy of access to and security of tenure, and access to water and water rights, depends on access to technology, training, inputs, markets, and conducive legal and policy frameworks. Secure land tenure and water rights for women lead to increased agricultural production, and greater food security.

106. So far, a regional office has been established in Harare, the organization has officially been registered in Zimbabwe recently and a planning meeting was held. The Platform tries to build its profile by the publication of a newsletter and a brochure, the development of linkages with several SADC units, a roundtable meeting, development of a website and a gender analysis of land and water policies in the region. The connection with the 'people on the ground' is through its member organization.

10.3 Initiatives in Eastern Africa

107. Dr. Elizabeth Akinyi Nzioki made a presentation on initiatives in Eastern Africa. The Eastern Africa Sub-Regional Support Initiative commissioned six countries of the sub-region Tanzania, Kenya, Ethiopia, Eritrea, Uganda, and Rwanda to carry out an action research on women's land rights. The main purpose of this research was to:

- Make comprehensive assessment of land policy and legal frameworks on each of the countries and provide concrete recommendations for appropriate interventions;
- Identify actions and actors at community, district, national, sub-regional level on women and land rights;
- Increase political consciousness among women on women's land rights;
- Increase support and commitment, gender responsive land laws among policy makers, legislatures, the media and the general public;
- Increase networking, lobbying and advocacy on women's land rights; and
- Propose actions to be implemented at the national and sub-regional levels.

108. Actions that were identified at the national level include: engendering constitutions and formulation of gender policies; reviewing laws to make them gender sensitive; providing legal literacy programs; creating media strategies; organizing public forums on women's land rights; and politicizing women's land rights; documenting women's realities on land and the formation of a national task force to promote women's land rights in policies, laws and work out strategies for action and advocacy.

109. At the sub-regional level, activities include building a platform for action on women's land rights to enhance programmes on women's land rights, creating strategic alliances and intensifying collaboration with selected partners working on the issue; formation of a sub-regional taskforce on women's land rights to give leadership and vision, advise on actions and targets, and build consensus on issues of advocacy; developing sub-regional joint programs and identify progress monitoring indicators.

110. As a way forward the Center for Land Economy and Rights of Women (CLEAR) has been formed to begin to address the identified actions more effectively. CLEAR is committed to setting up a center of excellence, addressing social and economic justice, working with the poor and vulnerable, especially women, and in solidarity with similar initiatives working towards improving women's livelihoods through secure and equitable access and the utilization of natural resources with a regional outreach to cover Eastern and Southern African with country-specific interventions.

111. Operationally, CLEAR's niche is on research, policy analysis and advocacy with regard to women's land rights. It aims to develop practical frameworks for national programs and initiate network activities on land reforms and policies. In

addition CLEAR will be a center for information exchange, collaborative research and capacity building for policy debates, technical analysis of world trends affecting land issues, and practical implementation involving governments and civil society.

112. CLEAR will be holding a Regional Consultative workshop in November 2003. The theme of the Conference is "Addressing Women's Livelihoods and their Land Rights through Gender Equality".

11 Summary of discussion following the presentations on initiatives on improving land rights of women in Southern Africa

113. The Expert Group Meeting underscored land tenure security as cardinal if women are to benefit from land. Given the fact that women constitute a large majority of the poor, it is important that the land reform schemes put in place should benefit the poor and other marginalized groups.

114. The Experts agreed that apart from land, water is another resource that needs proper attention, especially now that it is commercialized and privatized. The Experts also were conscious of the fact that land laws were blanket in nature and thus not addressing or recognizing the specific needs of urban and rural economies. It was also noted that while in matrilineal societies women have access and use of land, due to the social cultural factors, men continue to control the benefits from land such as the income from marketed produce. Men also have more opportunities to access credit. Therefore, in addition to securing land tenure for women, it was suggested that access to inputs and knowledge is needed to use the land productively.

115. There was concern on whether land ownership was a felt need for women or whether it was something that was externally driven. The Expert Group Meeting noted that while some women might not know of their rights to land, or would wish to shun from possible trouble, given the importance of women owning and controlling land, it is imperative that they are provided with information and education in order to be empowered and have knowledge that land ownership is a human right.

116. The Expert Group Meeting suggested that the revised technical publication should be widely circulated through all possible media including the internet and a website. The intended outcome is to influence policy makers to put in place policies that are conducive to promoting women's land rights.

117. It was also highly recommended to seek strategies to address the aspect of culture in the subject of land tenure and women's land rights. The Experts noted that initiatives being implemented focus on development of new laws paying little attention to cultural constraints. Because cultural aspects mainly affect rural women, Experts emphasized that it is urban women and not rural women that are going to benefit from the initiatives. Therefore, unless cultural constraints are addressed in the current initiatives, rural women are likely to be left out. It was also noted that in dealing with culture, it is important to establish the linkage between the written law and the 'living law' and harmonize any conflicts.

118. The Experts also indicated that political will is a key factor in tenure security for women. This includes representation of women in land committees, gender

sensitized policies and harmonization between constitution and laws. It was noted that the only recognized initiatives to improve the land rights of women are those at national and sub regional levels and not community level. It was therefore recommended that initiatives at community level should be recognized as well.

119. The Experts agreed that the need for continued research is eminent, as tools to continually interrogate how well laws incorporate women's land rights. However, the Meeting emphasized the need to translate research results pertaining to women's land rights into implementable actions.

120. The Experts indicated that transitioning from customary to titling would not by itself guarantee women's land rights. It is a necessary but not sufficient condition. Women may not get a chance to obtain title deeds due to socio-economic constraints. These issues need to be addressed in trying to improve the land rights of women.

12 Strategies to improve the land rights of women in Southern Africa: Report of group discussions

121. The Expert Group Meeting was divided into three groups to discuss the identified problem areas falling under the three categories of customs and tradition, statutory laws and socio-economic issues relating to improvement of women's land rights. For each specific problem area the groups were asked to identify the factors causing the problem and to make recommendations on how to address the problem. The following tables summarize presentations from the group discussions.

Table 6: Factors causing custom/traditional law related barriers to women's land rights and suggested recommendations

Problem	Factors	Recommendations
<p>Patriarchy a system where society is structured such that males dominate female members in access to resources, have control, leadership and make decisions.</p> <ul style="list-style-type: none"> ▪ Women regarded as minors. ▪ There is discrimination in inheritance and succession laws. ▪ Patriarchy has translated itself into policies, laws and structures- based on similar patriarchal colonial systems. 	<ul style="list-style-type: none"> ▪ The customary system itself allows it to happen. ▪ Socialization. ▪ Fear of being ostracized if you act differently. ▪ Women not allowed to participate. 	<ul style="list-style-type: none"> ▪ Review patriarchal systems through consultation. ▪ Address elements that are in conflict with laws relating to women's rights to land. ▪ Raise awareness of women's rights within the constitution and the law - involve NGOs. ▪ Review policies, laws and structures in a view to weed out those aspects that are discriminatory. ▪ Monitoring and evaluation of this process. ▪ Put in place a compliance mechanism -e.g. country reports, use media, creates peer pressure. ▪ Affirmative action to increase women's participation. ▪ Training and capacity building of both men and women.

Problem	Factors	Recommendations
<p>Matriarchy Inheritance is through the lineage of the woman, decision-making is supposed to be made by women but in practice, this does not happen. Brothers and uncles assist in decision-making or consultation.</p>	<ul style="list-style-type: none"> ▪ The customary system itself. ▪ Socialization ▪ Fear of being ostracized if you act differently. 	<ul style="list-style-type: none"> ▪ Review matriarchal systems through consultation to address the areas in the constitution that allow women to own land. ▪ Raise awareness of people's rights within the constitution and the law- involve civil society. ▪ Monitoring and evaluation of this process. ▪ Put in place a compliance mechanism – e.g. country reports, media, create peer pressure.
<p>Lack of knowledge by traditional leaders Some traditional leaders do not know the laws and policies. Others know the law but do not act on the law because customary law binds the traditional ruler.</p>	<ul style="list-style-type: none"> ▪ Lack of sensitization and awareness. ▪ Socialization of discriminatory patriarchal customs. 	<ul style="list-style-type: none"> ▪ Educate traditional leaders. ▪ Raise awareness and sensitization on laws and arbitration mechanisms. ▪ Encourage women to bring issues of abuse to relevant institutions. ▪ Make international instruments widely circulated, translating them to local languages.
<p>Limited participation of women in traditional community decision making</p> <ul style="list-style-type: none"> ▪ Women regarded as minors ▪ Women not allowed to participate 	<ul style="list-style-type: none"> ▪ Restrictive and discriminatory customary laws ▪ Overloaded multi-roles of women - lack of time 	<ul style="list-style-type: none"> ▪ Affirmative action to increase women's participation. ▪ Improved infrastructure to reduce the burden of women's time. ▪ Engender decision-making documents. ▪ Training and capacity building of both men and women.

Table 7: Factors causing statutory law related barriers to women's land rights and suggested recommendations

Problem	Causes	Recommendations
No clause in the land law that promotes/ protects the land rights of women	<ul style="list-style-type: none"> ▪ Laws are gender neutral – due to lack of political will. ▪ Inherited laws have patriarchal aspects. ▪ Diversity of customs. ▪ Dual legal systems. ▪ Lack of women participation in the law formulation. 	<ul style="list-style-type: none"> ▪ Sensitizing parliamentarians. ▪ Need to revise legal framework. ▪ Lobby and advocacy. ▪ Constitutional amendment to promote the rights of women.
Land law not harmonized with other laws in the system	<ul style="list-style-type: none"> ▪ Lack of coordination. ▪ Lack of consultation. ▪ Lack of a holistic approach. 	<ul style="list-style-type: none"> ▪ Multidisciplinary law reform commission. ▪ Provide resources for harmonization. ▪ Holistic approach in law reforms. ▪ Acknowledge duality in the land law systems but recommend the removal of negative aspects in both systems.
Lack of capacity or knowledge by implementers	<ul style="list-style-type: none"> ▪ Inadequate resources and lack of prioritization. ▪ Lack of sensitization by stakeholders and implementers. 	<ul style="list-style-type: none"> ▪ Need for dialogue. ▪ Need to simplify and translate law. ▪ Need to simplify land management system processes.
Some legal clauses do not allow joint ownership of land	Inherited laws have patriarchal aspects	<ul style="list-style-type: none"> ▪ There should be legal reform to incorporate legal provisions that allow for joint ownership. ▪ The law should protect the rights of spouses equally.
Women who marry become minors unless they explicitly marry under out-of-community-of-property type of the Dutch law	<ul style="list-style-type: none"> • Inherited laws. • Roman Dutch law gives the man marital powers. • People not fully aware of implications of out-of community or in-community of property ownership in marriages. 	<ul style="list-style-type: none"> ▪ Both marriage and land law should protect the property rights of both spouses equally. ▪ Harmonization of laws that protect land rights of spouses and the surviving spouse after the death of the other.

Table 8: Factors causing socio-economic related barriers to women's land rights and suggested recommendations

Problem	Causes	Recommendations
High female illiteracy rates causing women's land tenure insecurity	<ul style="list-style-type: none"> ▪ Policies, laws, etc. ignore illiteracy as an issue. ▪ Education inaccessible for women. 	<ul style="list-style-type: none"> ▪ Simple land literacy programs. ▪ Participatory awareness approaches.
Ignorant of their land rights	<ul style="list-style-type: none"> ▪ Institutional weakness/challenges. ▪ Inaccessibility of information. ▪ Lack of mechanisms to translate rights into reality. 	<ul style="list-style-type: none"> ▪ Use a variety of dissemination. ▪ Target men in male environments e.g. bars. ▪ Simplify messages.
Lack of resources e.g. capital, labour denies women's ability to buy or lease land.	<ul style="list-style-type: none"> ▪ Lack of financial, human and social capital. ▪ HIV/AIDS compounds the problems. ▪ Limited government support. 	<ul style="list-style-type: none"> ▪ Create a critical mass of institutions. ▪ Longer land development grace period for women. ▪ Broader agricultural support for women. ▪ Encourage input credit organizations to get women apply.
Internalized discrimination where women themselves become the agents of discrimination	<ul style="list-style-type: none"> ▪ Norms, structures of society reinforce discrimination (gender, class, race, locality, family). ▪ Negative portrayal of gender as an issue. ▪ Confrontational stance/resistance. 	<ul style="list-style-type: none"> ▪ Recognize positive cultural norms. ▪ Challenge oppressive structural, cultural norms of society that reinforce discrimination. ▪ Use successful women as role models. ▪ Use male peer educators. ▪ Target society institutions. (Religious, marriage) ▪ Educate the next generation.

13 Discussion following the group presentations on strategies to improve the land rights of women in Southern Africa

122. In the discussion that followed the group presentations, the Expert Group Meeting recommended that while seeking to develop new literacy strategies it is imperative to identify existing literacy programs on the ground and seek to incorporate issues regarding women's land rights into such programs. This is in view of resource limitations that may not support the proliferation of literacy programs. The Expert Group Meeting also emphasized the need to focus on functional land literacy programs.

123. The Expert Group Meeting noted that patriarchy and matriarchy systems present different problems of tenure security. It was recommended that it is important to address any elements in both systems that limit women's land rights.

124. The Expert Group Meeting noted the importance of distinguishing between patriarchy and patrilineal systems in dealing with women's land rights. Patriarchy is a practical phenomenon that describes a system of power and structures of governance at various levels in which men dominate the decision-making structures while on the other hand, a patrilineal system is one where inheritance of property is through a male child.

125. The Expert Group Meeting further reiterated that it is important to differentiate between control of and access to land, as women's access to land does not give women control over the resource.

126. The Expert Group Meeting also noted the impact of HIV/AIDS on land availability. It was observed that HIV/AIDS related illnesses and deaths have forced the affected families to either dispose off or lease out their land resources to raise income. It was further noted that HIV/AIDS incapacitates the affected families' abilities to utilize the land. The Experts noted that, as a result of this scenario, there is an increase in land transactions on the land market.

14 Lessons, recommendations and action plan on land tenure systems and sustainable development in Southern Africa

127. The Expert Group Meeting was divided into two groups to discuss the main areas of the draft publication, which are land tenure security and women's land rights. The groups were asked to (1) discuss the relevant lessons and recommendations identified, (2) draw up an action plan, and (3) suggest the way forward with the draft technical document.

14.1 Lessons on land tenure security and women's land rights in Southern Africa

128. Important lessons on land tenure security and women's land rights in Southern Africa that were identified in the group discussions include:

- There is an assumption that statutory law is better than customary law in providing land tenure security. However, insecurity of tenure could exist in both the customary and statutory systems.
- Some of the problems of land tenure insecurity originate from historical factors and postcolonial policies.
- Legal response to tenure insecurity is problematic, because there is lack of political will as well as ineffective implementation due to socio political factors.
- Policy decisions are not anchored on social justice and equity principles, and are often driven by outside forces.
- The link between security of tenure and productivity is not straightforward.
- Laws are gender neutral – partly due to lack of political will.
- Inherited laws have patriarchal aspects that encourage discrimination of women from owning land.
- Norms and structures of society reinforce discrimination against women.
- HIV/AIDS compounds the socio-economic problems of women leading them to experience to tenure insecurity.

14.2 Recommendations on land tenure security and women's land rights in Southern Africa

129. Important recommendations on land tenure security and women's land rights in Southern Africa that were identified in the group discussions include:

- In undertaking land reform programmes, there is need to link land distribution and tenure in such a way that legal framework prevents mal-distribution of land.
- There is need to provide production and market support services in order to successfully address the problem of insecurity of tenure.
- Create awareness for legal and non-legal recourses that women can take with regard to land.
- Countries should embark on literacy programs with practical subject matter issues such as land.

14.3 Suggested action plan on land tenure security and women's land rights in Southern Africa

130. The groups suggested an action plan for improving land tenure security and women's land rights in Southern Africa that is summarized in table 9.

Table 9. Suggested action plan to improve land tenure security in Southern Africa

Activity	Who	Time	Output
Design activities to reduce and prevent mal-administration of land	Member States, ECA and Partners	1-3 years	National land policies and regulatory frameworks
Initiate or strengthen functional land and literacy programs	Member States, Civil Society organizations; UNESCO, the Media; Formal Education System	Immediate	User friendly campaign materials; radio programs
Harmonization of land, marriage and inheritance laws	Member States, and their development partners and assisted by ECA	3-5 years	Research studies New laws to guarantee tenure security
Review both customary and statutory laws, including the constitution to address sources of land tenure insecurity and discrimination against women owning land.	Member States, and their development partners and assisted by ECA	3-5 years	Research studies New laws to guarantee tenure security
Develop mechanisms for implementation of new supportive laws.	Member States	Continuous	Implementable programmes
Demonstrate political will to improve land tenure security and women's land rights	Member states	Continuous	Improved budget allocation to land tenure reform.
Development and support of critical mass activism on land issues and women's land rights Lobby for constitutional change and reform in laws Lobby to translate clauses into concrete action Sensitization and awareness creation	Civil Society	Continuous	Lobbying and advocacy materials, and forums
Capacity and retraining of staff in communication, gender issues	Member States, and their development partners and assisted by ECA	Immediate and continuing	Training programs and materials
Establish community paralegal centers and other initiatives to build capacity within the communities.	Member States, civil society	Immediate and continuing	Capacity of communities is built.

In order to ensure that the above action plan is implemented, the following were recommended:

- ECA should hire a regional expert to spearhead issues on land.
- Establish a national task force to link up with the Intergovernmental Committee of Experts in the implementation of the action plans on land.
- All stakeholders should develop their own checklists of what needs to be done for monitoring and evaluation purposes.

14.4 The way forward with the draft technical publication

The group discussions suggested the following as the way forward for ECA's draft technical publication on *Land tenure systems and sustainable development in Southern Africa*.

- i. The ECA should revise the paper to reflect the discussion in this meeting
- ii. The document should explain how problems of tenure insecurity are related to or originate from distribution issues.
- iii. The paper should be made available to members countries to help improve the reform processes in these countries using policy briefs
- iv. ECA should present findings to appropriate forums and disseminate the report; including to SADC and COMESA.
- v. There is need to make a case for tenure reform
- vi. The ECA should use land-networks to obtain more comments to improve the technical publication.
- vii. ECA should develop an inventory of the stakeholders guided by national land networks.
- viii. Document must be taken to each country's stakeholders who can really draw up concrete action plans.
- ix. Identify and fund national bodies that will champion the process.

15 Summary of discussion following group presentations on lessons, recommendations and action plan on land tenure systems and sustainable development in Southern Africa

130. The Expert Group Meeting expressed concern as to the capacity of ECA to undertake the actions that the groups proposed. The Expert Group Meeting noted that ECA's main role would be facilitative while the individual member states must be at the forefront of undertaking the action plans. The Experts also noted that the civil society must be capacitated to monitor targets and time frames.

131. The Expert Group Meeting pointed out that apart from issues of class and gender, and patterns of land distribution, the question of race in issues relating to land is also critical. It is therefore important that this aspect is factored into the analysis in the draft report.

132. The Expert Group Meeting noted that there is need to broaden the ownership of the draft technical document to other stakeholders. In this regard, the Experts proposed that the dissemination of the publication must be done through relevant forums of SADC and COMESA.

133. The Expert Group Meeting noted that the concept of community paralegal land centres is a very important concept. Paralegal land centres are intended to build the capacity of communities to deal with issues that affect them in a relatively simpler manner. The Experts noted however that limiting the role of paralegal centres to issues of land only would not be effective as a tool to deal with problems that women are faced with. It was therefore recommended that the paralegal land centres must take a broader perspective to become multipurpose paralegal centres that will deal with a myriad of issues that affect women. The Experts noted that the concept is being tried in Kenya, Malawi, Uganda and Zimbabwe.

134. In view of the recommendations of the groups for further consultations to enrich the document, participants raised the question of how the draft study publication was going to be treated; would it be treated as a knowledge base and/or as a tool for advocacy? The Experts advised that the document must be treated as an advocacy tool and as a basis to champion the cause of land tenure security and women's land rights.

135. The Expert Group Meeting further pointed out that the circulation of the publication to stakeholders is to seek wide-ranging comments that will enrich the paper.

136. The Secretariat informed the meeting that the publication is due for completion by December 31, 2003 and therefore had to move fast to ensure its timely completion. The Secretariat further explained that the revised report of the meeting and the revised study publication would be made available to the experts as soon as they were finalized.

16 Summary of recommendations of the Expert Group Meeting on land tenure systems and sustainable development in Southern Africa

137. The Expert Group Meeting adopted the following recommendations presented by the Expert Group Meeting rapporteur, as the summary of recommendations of the Expert Group Meeting:

Recommendation 1. Countries should strengthen the legal basis for secure tenure. This can be done through:

- Update and harmonisation of laws governing land;
- Implementing reforms;
- Documenting customary tenure laws;
- Addressing negative tenure provisions in both customary and statutory tenure systems;
- Democratising land administration institutions; and
- Strengthening land administration and dispute resolution mechanisms.

Recommendation 2. Efforts should be made to translate land tenure reforms into reality on the ground. This can be achieved by undertaking the following actions:

- Ensure reform processes are locally driven by need for socio-cultural equity;
- Governments need to allocate adequate resources for land reform processes;

- Ensure prioritisation of resources to enable women's participation in the land sector;
- Develop effective mechanisms for implementation of the reforms;
- Develop monitoring and evaluation indicators; and
- Create a critical mass of institutions to spearhead changes.

Recommendation 3. Governments, civil society, intergovernmental organisations and other stakeholders should ensure that gender sensitive laws are developed through advocacy, legislation, education and capacity building.

Recommendation 4. There is need to recognise and make provisions for the impact of HIV/AIDS on land tenure systems.

Recommendation 5. Provision of a total package is necessary. Security of tenure is necessary but insufficient on its own. It is therefore important to create an enabling framework that includes improving access to land, and provision of water rights, technology, markets, inputs, training and extension services.

Recommendation 6. ECA should consult with national land networks in order to enrich their draft technical paper.

ANNEX 1

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ANNEX 2

List of Documents

Agenda of the Ad hoc Expert Group Meeting on Land tenure systems and sustainable development in Southern Africa: ECA/SA/EGM.Land/2003/1

Draft Technical Publication Land tenure systems and sustainable development in Southern Africa: ECA/SA/EGM.Land/2003/2

Draft Report of the Ad Hoc Expert Group Meeting on Land Tenure Systems and Sustainable Development in Southern Africa: ECA/SA/EGM.Land/2003/3

ANNEX 3

Agenda of the Ad hoc Expert Group Meeting

1. Opening
2. Meeting Objectives and Programme of work
3. Land Tenure Systems in Southern Africa: Status of Land Tenure Security
4. Lessons from some initiatives on improving land tenure security
5. In depth group discussions on strategies to improve tenure security for selected countries
6. Status of land rights of women in Southern Africa
7. Lessons from some initiatives on improving land rights of women in Southern Africa
8. In depth group discussions on how to improve the land rights of women in Southern Africa
9. Way forward, gaps, recommendations and action plan
10. Adoption of the report
11. Closing