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**LAND TENURE SYSTEMS AND SUSTAINABLE
DEVELOPMENT IN SOUTHERN AFRICA**

December 2003

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FOREWORD

Land is considered the most fundamental resource to the poor and is essential to enabling them to lift themselves out of poverty. More than 60 percent of the active population in Southern Africa is dependent on land for livelihood. The last three decades have witnessed some land reforms in Southern Africa, some of which were aimed at land redistribution and introducing land titling for customary tenure. While the issue of land tenure reform has not been given sufficient attention, land distribution has tended to be the core issue in many of the Southern African countries' land policy reforms. However today there is a growing recognition of the centrality of land tenure in sustainable development process in the region as witnessed by a number of regional and national initiatives and meetings.

Providing security of tenure is often seen as a precondition for intensifying agricultural production and is now increasingly stressed as a prerequisite for better natural resource management and sustainable development. Rural people generally need both secure individual rights to farm plots and secure collective rights to common pool resources upon which whole villages depend. Despite the fact that security of land tenure is required for agricultural production and poverty eradication, cases of land tenure insecurity have been reported in the sub-region. What are the major sources of insecurity of rights to land of farmers under the current land tenure systems in the sub-region? What have the governments done to improve land tenure security of farmers? What is the status of women's land rights under the current land tenure systems? What are the barriers to women acquiring land rights under the current land tenure systems? What has been done to improve the land rights of women?

This technical publication attempts to provide essential information on these central questions. The technical publication describes the major sources of land tenure insecurity in six selected countries: Lesotho, Zambia, Malawi, Botswana, Mozambique and South Africa. Findings of this study reveal that land tenure insecurity is still experienced in Southern Africa. The publication presents a summary of the specific initiatives that the study countries are adopting to improve land tenure security of farmers and women's land rights. It offers recommendations on strategies that can be adopted by countries to improve land tenure security of the farmers in general and of the minority groups and women in particular.

ECA-SA wishes to thank the UNDP country offices in Malawi, South Africa, Lesotho, Botswana and Mozambique for facilitating the field missions for this study. Thanks are also due to all the key representatives in relevant government ministries and civil society groups for agreeing to participate in the study. The contribution of the ECA-Sustainable Development Division on earlier drafts of the document is gratefully acknowledged.

A team of experts reviewed the draft document at an Ad Hoc Expert Group Meeting on Land Tenure Systems and Sustainable Development in Southern Africa held from 1 to 3 October, 2003 in Lusaka. The comments and observations made by those experts whose names follow were very helpful: Michael Banda, Lovemore Rugube, Frightone Sichone, Lovemore Simwanda, Henry Machina, Phyllis A. Simasiku, Akinyi Nzioki, Lewis M. Bangwe, Zakes Hlatwayo, Qhobela Cyprian Selebalo, Scott Drimie, Susan Mbaya, Gear Mumena Kajoba, Dirk Effler, Mfaro Moyo, Musonda Kunda, Pamela Mhlanga, Naomi Ngwira, Kennedy A. Liyungu, Abby Taka Mgugu, Sam Moyo, Rogier Van Den Brink, Patrice Kandolo, Ballard Andrew Zulu, Tobias Mulimbika, Joseph Mbinji, Joan C. Kagwanja, Maurice

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It is my expectation that this technical publication will prove valuable and timely to decision-makers in government, intergovernmental organizations, bilateral and multilateral development partners, non-governmental organizations, academia and the general public.

Dickson Mzumara
Officer in Charge, ECA-SA
December 2003

ACRONYMS AND ABBREVIATIONS

AIDS	Acquired Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
DFID	Department for International Development (United Kingdom)
HIV	Human Immunodeficiency Virus
FAO	Food and Agriculture Organisation of the United Nations
GDP	Gross Domestic Product
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit (Germany Technical Cooperation)
ILO	International Labour Organisation
NGO	Non Governmental Organisation
NLC	National Land Committee (South Africa)
SADC	Southern African Development Community
SARPN	Southern African Regional Poverty Network
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Programme
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

This study was commissioned to review the current land tenure systems in selected countries in southern Africa, to identify constraints and opportunities relating to tenure security and improvements in women's land rights and to recommend strategies to alleviate problems.

The study methodology combined the collection and synthesis of existing country level literature on land policies, land laws and other related documents with interviews with selected key informants from relevant government ministries such as agriculture and lands and civil society groups, universities and NGOs. Six countries were selected for detailed study: Botswana, Lesotho, Malawi, Mozambique, South Africa and Zambia.

Land tenure experts critically reviewed the draft report at an Ad Hoc Expert Group Meeting on Land Tenure Systems and Sustainable Development in Southern Africa held 1 - 3 October 2003, in Lusaka, Zambia, and their comments have been incorporated into this report.

Findings

The study has revealed that land tenure insecurity is still widespread in Southern Africa. It manifests itself in a number of ways. It appears in minority groups in Botswana and Malawi; in unclear or overlapping land rights and insecurity of farm workers and farm labour tenants in South Africa; in overcrowding in the form of high population to land ratio in Lesotho, Malawi and South Africa; in land alienation into leasehold in Malawi, Mozambique and Zambia; and in inappropriate and exploitative administrative practices and limited women's land rights in each of the study countries.

All the countries studied are at various stages of undergoing land policy and tenure reforms. Some of the reforms address the problems identified in this study. Botswana's new land law addresses the insecurity experienced by minority groups. Mozambique's new land law and Malawi's new land policy address land alienation resulting from the change from customary to leasehold tenure. Through the Communal Land Rights Bill, the South African Government is seeking to clarify land rights by transferring title from the state to local communities and to establish administration structures to govern the process of issuing and registering land tenure rights to individuals in communal areas.

Exploitative administrative practices have been a long-standing source of tenure insecurity in some countries. The focus of the land reform strategy is to have procedural safeguards and regulations that ensure the land administration system reflects the will of the community and that land administration officials are accountable. Democracy and accountability in land administration are fostered by the recognition of group tenure rights for associations or communities, as in Mozambique and South Africa, and by democratically elected land boards as in Botswana.

Despite the progress made by the study countries in addressing land tenure-related problems, much still needs to be done. Land tenure reform is not just a matter of changing rules, but of implementing them. This requires the development of a comprehensive

implementation strategy which well-funded. Ministries should look at the design and implementation of training programmes that enhance capacity building and skills development in the field. Experience in the region suggests that assistance from both non governmental organizations and the private sector can complement government efforts.

The other tenure-related issue researched was the question of the relationship between customary communal tenure and land degradation. Most of the selected key informants indicated that customary tenure is partly responsible for land degradation. They made it clear that land degradation by smallholder farmers under customary tenure occurs because of ignorance about conservation, unsustainable traditional agricultural production and lack of inputs such as labour, rather than because they do not have tenure security. In this regard, small farmers need extension methods that focus on environmentally friendly technologies. It is also important that chiefs monitor and enforce sustainable land use and that newly decentralized land administration structures support their work.

The HIV/AIDS epidemic has brought a new dimension to land tenure problems in the sub-region. Little work has been done on the impact of HIV/AIDS on tenure systems in the sub-region as a whole. Countries where some work has been done, including Lesotho, Malawi and South Africa, have reported that the epidemic has increased vulnerability of women, children and poor households to land dispossession by patrilineal kin on the death of male household heads and increased risk of losing unutilized/underutilized land. The main recommendation emerging from these studies is for legislation to protect the land rights of women and people living with HIV/AIDS. Similar studies must be done in Botswana, Mozambique and Zambia.

The status of women's land rights in Southern Africa

Women in the sub-region are subjected to discrimination in land ownership and control under both customary and statutory tenure systems. The main sources of discrimination are patriarchal customary law and discriminatory statutory laws. All countries reported discrimination against women owning land under customary tenure due to patriarchal attitudes. In Lesotho, statutory laws discriminating against women owning land are still in place. Where statutory laws are non-discriminatory, as in Zambia, women do not own and control land not only because they are unaware of their rights but because of socio-economic constraints such as lack of capital and illiteracy. In some countries such as Botswana, there is no harmonization of the non-discriminatory land laws with marriage and inheritance laws.

Study countries are progressing in implementing strategies that promote women's land rights. All study countries, with the exception of South Africa, have or are going to have a land law that recognizes the independent land rights of women. Some governments, like Mozambique, have already harmonized their land law with marriage and inheritance laws to ensure that women can take advantage of the land law. Botswana and Lesotho, however, still need to harmonize marriage laws with the proposed land laws.

Another critical issue is whether women are able to participate in decision-making about land issues in their own communities. Traditional values often deny women a voice. Municipal councils, tribal authorities and any other decision-making structures related to land must allow men and women equal representation. The land policies of Botswana, Malawi and South Africa give scope to women as members of land administration institutions.

Although the initiatives being undertaken are generally progressive, they have not addressed all the major sources of discrimination. The removal of legal clauses that discriminate against women will not change day-to-day cultural and social behaviour. Discrimination in the form of customary land tenure will continue until long-term sensitisation and education campaigns influence traditional norms, values and laws to make it easier for women to own and control land.

Women will only benefit from reforms that are explicitly translated into action and there is a need for an organisational body to monitor how much they own or control within the new legal framework at national and regional levels. One such organization has recently been formed in the sub-region, *The Platform on Women's Land Rights in Southern Africa*. At national level, specific organizations must be tasked to monitor closely the progress of enhanced women's land rights. If no suitable organization exists to do this, a National Task Force made up of government departments, NGOs, and women and land lobby groups could undertake the mandate and develop national and local-level indicators that would measure progress towards equity in land rights for women.

Recommendations

Based on the findings in this study, the following recommendations to improve land tenure security and reverse the pattern of discrimination against women in land ownership and control are put forward for consideration by Member States.

General

1. Develop transparent and accountable representative rural land institutions.
2. Develop laws that protect the land rights of minority groups.
3. Speed up the process of converting land policies to land laws.
4. Translate new laws and policies into programmes that are implemented on the ground and prioritise resource allocation to support these activities.
5. Design and implement training programmes on new laws to ensure that change in land tenure arrangements does take place on the ground.
6. Promote stakeholder participation in all land alienation exercises to prevent related tenure insecurity.
7. Disseminate information about new land policies or laws that improve land tenure security to the public.
8. Provide smallholder farmers with expertise on extension methods that focus on conservation and agricultural technologies that are environmentally friendly.
9. Provide land management training for chiefs or the decentralized land administration and ensure they have the power to monitor and enforce sustainable land use.
10. Create an enabling framework that includes improving access to land, and provision of water rights, technology, markets, inputs, training and extension services.
11. Document customary land tenure systems.
12. Draw up legislation that can protect the land rights of women and orphans in the context of the HIV/AIDS epidemic.

13. Initiate more studies to identify the impact of the HIV/AIDS epidemic on land rights in countries where such studies have not been done, such as Botswana, Mozambique and Zambia.

Specific to women's land rights

1. Review and repeal all laws, including provisions on inheritance, which discriminate against women. Make statutory provision for joint registration of customary and statutory household land rights for spouses.
2. Disseminate information about new laws that promote the rights of women to land so that they are familiar to government officials, media, traditional leaders, land allocation committees, and the development community working in rural areas.
3. Support the training of legal personnel, including those who administer customary law, on women's land rights issues.
4. Build the capacity of men and women to appreciate women's land rights.
5. Initiate statutory provision for joint registration of customary and statutory household land rights for spouses.
6. Harmonise land, marriage and inheritance laws.
7. Designate a body at sub-regional and national levels that will monitor closely the implementation of the legal framework on the ground to ensure that women achieve land rights.
8. Develop gender disaggregated indicators at national and local level that measure progress towards equity for women in land rights.
9. Establish equal representation of men and women in municipal councils, tribal authorities and all decision-making structures related to land.
10. Actively engage in sensitisation and education campaigns to change patriarchal attitudes. Establishing new laws alone is not enough to change the status quo; existing gendered social relations and cultural norms may quickly shape these laws.
11. Empower women socially and economically. This may involve legal literacy campaigns that target rural women, provision of credit, waiving of transaction fees for land registration, and accessing markets.
12. Domestic international laws that promote the land rights of women.

1. INTRODUCTION

1. Southern African economies are highly dependent on agriculture. The sector employs about 60% of the active population. This varies from one country to another, from Malawi, where 87% of total employment is agricultural, to South Africa where the comparative figure is 14%. The agricultural sector is a major contributor to Gross Domestic Product (GDP). In Malawi and Mozambique, agriculture accounts for approximately 34% of GDP, but less than 10% in mineral-rich countries, such as Botswana and South Africa (see annex 1 for statistical details). Land is important because it forms the basis of agricultural production in the sub-region.

2. Inequitable distribution and uncertain land tenure security are leading problems of land policies in Southern African countries. Many meetings and conferences have focused on this, including the first Regional Consultative meeting of SADC Ministers Responsible for Land and Land Reform held from 17 - 19 September 2001 in Namibia; the World Bank Regional Workshop on Land Issues in Africa, held in Kampala, Uganda, 29 April - 2 May 2002; and the Southern African Regional Poverty Network (SARPN) conference on Land Reform and Poverty Alleviation in Southern Africa, held from 4 - 5 June 2001, in South Africa. Given that over 60% of the population in Southern Africa is based on the rural economy and has its livelihood mainly linked to land and the exploitation of natural resources, it is crucial to recognize that land tenure rights are central to sustainable agricultural production.

3. The problem of inequitable distribution of land is historical in countries such as Namibia, South Africa Swaziland and Zimbabwe that experienced widespread colonialist settlement on agricultural land. In the post-independence period, land policies have aimed at redistributing land from the large-scale commercial sector to the landless, and those with only marginal access to land. Although land distribution has been a core issue, land tenure reform has not been given sufficient attention. For example, in reviewing progress made in land reform in Southern Africa, Mbaya (2002) says that "Some headway has been made in rationalising the dualistic system of property rights or for upgrading customary tenure, but overall tenure reform has received less attention than land redistribution." Increasingly, the centrality of land tenure in sustainable development processes in the region is recognised, as witnessed by regional initiatives and meetings. Rural people generally need both secure individual rights to farm plots and secure collective rights to common pool resources upon which whole villages depend.

4. This technical publication is divided into six sections. Section 2 presents an overview of land tenure systems in Southern Africa and their attendant problems; section 3 outlines the study objectives and the methodology used in the study; section 4 presents and discusses the findings on the status and land tenure security and sustainable agricultural production in selected countries of southern Africa; section 5 presents and discusses findings on the status of women's land rights in selected countries of Southern Africa, and section 6 presents conclusions and recommendations.

2. OVERVIEW OF LAND TENURE SYSTEMS IN SOUTHERN AFRICA AND STATEMENT OF ATTENDANT PROBLEMS

5. Land tenure is the system of rights and institutions that govern access to and use of land (Adams, 2001). It can be further defined as the terms and conditions under which land is held, used and transacted and is one of the principal factors determining the way in which resources are managed and used and the manner in which benefits are distributed.

6. The two principal forms of land tenure systems found in Southern Africa are customary and statutory tenure. Customary land tenure system is governed by unwritten traditional rules and administered by traditional leaders. Active occupation or usage of a piece of land is the main evidence of ownership or an existing interest on the land. In customary tenure, access to land is contingent upon tribal or community membership controlled by the chief. Households have strong, exclusive residential rights, seasonally exclusive rights to arable land, and shared rights to grazing land and natural resources. Land is not alienable from the community trust, so it cannot be used as collateral for loans. Usually, however, an individual's land use rights are secure, subject to certain conditions, which include that the land be more or less continuously cultivated, subject to periodic fallow. Statutory land tenure system is governed by modern law and supported by documentary evidence, such as a title deed or lease certificate, and administered by the government.

7. Land ownership under the statutory tenure system is often built on freehold or leasehold entitlements to the land and offers exclusive rights to the owner, which guarantee land tenure security. Land rights in freehold include the ability to sell the land, rent it to others and to use it as collateral for a mortgage. Before colonisation, the dominant form of land tenure system was customary. Today, virtually all countries in the sub-region have a dual land tenure system where customary or communal system coexists with statutory private, freehold and leasehold land rights. *Table 1* gives examples.

Table 1: Land tenure systems in selected Southern African countries (% of national territory)

Country	Statutory		Customary
	Private/Freehold/Leasehold	State land and other	
Botswana	5	25	14
Lesotho	44	5	95 ¹
Malawi	8	20	72
Mozambique	3	14	80
Namibia	44	13	43
South Africa	72	14	14

¹ Includes leases in urban areas (all land in Lesotho is vested in the monarch in trust for the nation)

Swaziland	40	-	60
Zambia	3	16	81
Zimbabwe	41	16	42

Source: Adjusted from Adams, Sibanda, and Turner,(1999).

8. Until recently, customary systems were perceived as anti-developmental and the preference was for statutory systems. Some critics argued that customary tenure provides insufficient security that contributes to low levels of investment, is inflexible in responding to market signals affecting choice of technology and crops and, because land is not marketable, better farmers have difficulty gaining access to land. This view is changing. Although there are disadvantages for some people, customary tenures provide low-cost access to land for most of the rural population. Farmers have long-term and secure usufruct rights, and in many places, customary tenures are evolving to accommodate new technologies and formal land markets, at costs lower than state-run land titling and registration systems.

9. The last three decades have witnessed a degree of land reform in Southern Africa, including the introduction of land titles for customary tenure. However, land titles and attempts to do away with customary tenure have proved expensive and divisive, undermining the legitimate rights of many land and resource users (Quan, 2000). Now indications are that governments are recognizing the enduring importance of customary tenure systems, and are trying to integrate these into sustainable arrangements for the allocation and management of land rights. However, there are still some outstanding issues on land tenure security evident in the region. Countries with a history of widespread settler colonisation have major tenure problems. In some countries, numerous cases of overlapping land rights and exploitation by traditional leaders, officials and politicians result in insecurity in land tenure. In some cases, minority groups do not have tenure security at all.

10. Additionally, the current mixture of land tenure systems allows varying degrees of access to resources by women. Under the statutory system, women have rights to access land, but few of them have the resources to purchase land on the open market. On the other hand, communal land held under the traditional or customary system allows women secondary access through marriage but, as soon as the marriage ends, they lose their land. Most women's rights to land are limited, yet they do most of the agricultural work in the sub-region. This phenomenon is further compounded by the HIV/AIDS pandemic, which affects women and children much more than men. Widows and children of AIDS patients, for instance, sometimes are denied the right to inherit agricultural land from their husband or father and can be reduced to poverty and dependency as a result.

11. Problems of this nature affect all the countries in the region and it is important to have an in depth understanding of them.

3. OBJECTIVES, SCOPE, METHODOLOGY AND LIMITATIONS OF THE STUDY

3.1 Objectives

12. The main objective of the study is to review and analyse southern Africa's land tenure systems in as far as they constrain land tenure security and the sustainable use of land-based resources, and to suggest a set of policy recommendations to address the land tenure issues within the context of sustainable development. Specific objectives include identification of:

- The constraints of different land tenure systems on tenure security of farmers
- Initiatives that countries are undertaking to improve tenure security of farmers
- The relationship between land tenure security and sustainable development and recommend strategies for sustainable use of land resource
- The impact of HIV/AIDS on land tenure security, and how the land tenure systems can be improved to address HIV/AIDS-related land tenure issues
- The constraints of the different land tenure systems on the land rights of women
- Initiatives that countries are implementing to improve land rights of women
- Suggestions for policy recommendations to improve tenure security of farmers and land rights of women in the context of sustainable development.

3.2 Scope

13. The focus of this study is on land tenure. Although this impinges on other land issues such as land distribution and adjudication, these topics are not discussed in detail.

3.3 Methodology

14. The study methodology combined the collection and synthesis of existing country level literature on land policies, land laws and other related documents with interviews with selected key informants from relevant government ministries such as agriculture and lands and with civil society groups, universities and NGOs. Six countries were selected for detailed study: Botswana, Lesotho, Malawi, Mozambique, South Africa and Zambia. The countries were selected with a view to bring out as much diversity as possible in existing land tenure systems, policies, geographical location, sustainable development and differences in population and standards of living. Two countries originally selected for the study, Zimbabwe and Angola, could not be visited due to logistical problems and were therefore excluded.

15. In each country visited, UNDP helped select the most knowledgeable experts from the most relevant institutions as the key informants and arranged meetings. An average of 10 key informants was interviewed in each country. The direction of interviews was guided by the questions presented in Annex 2. Important national documents on land policy and land law were obtained from government offices.

16. A draft report of the study was critically reviewed by land tenure experts at an Ad Hoc Expert Group Meeting on Land Tenure Systems and Sustainable Development in Southern Africa held from 1 - 3 October 2003, in Lusaka. Their comments and inputs are incorporated into this report.

3.4. Limitations of the study

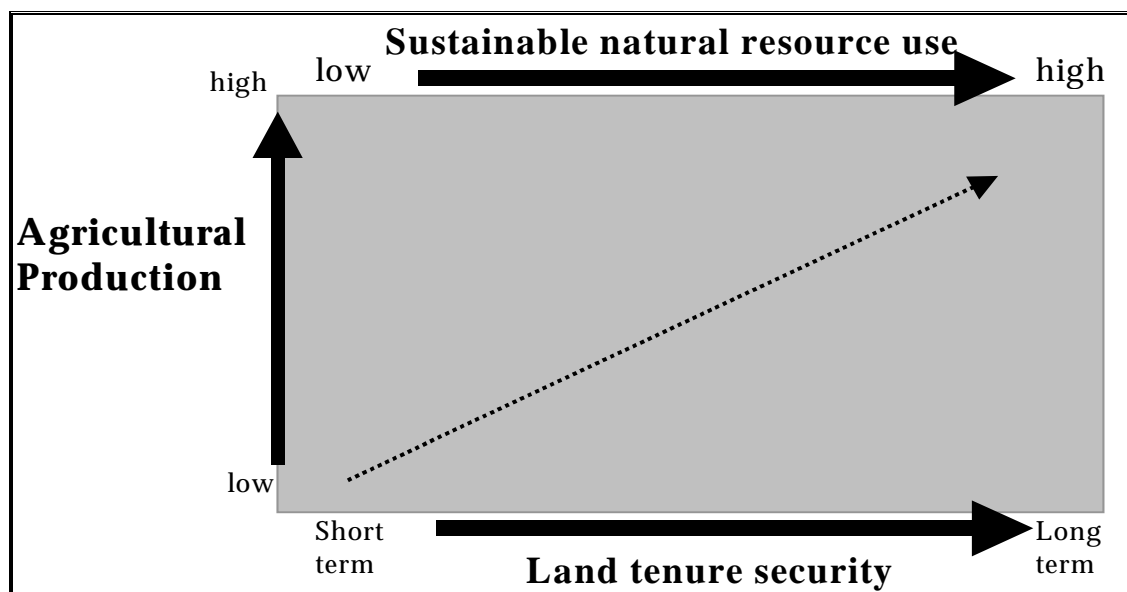
17. The research design adopted in this study has two limitations. First, the study used key informants as the main source of primary information of land tenure systems, which inevitably gives rise to the question of interviewer bias. Second, no statistical comparisons could be made because the study methodology only generated qualitative data, and the results are less accurate than they would have been using quantitative data. Nonetheless, the study design helped provide an in depth overview of the main issues on land tenure systems and sustainable development in the sub-region. By considering the shortcomings associated with this methodology, this study could serve as a basis for a more detailed quantitative research and analysis of land tenure systems in southern Africa in the future.

4. LAND TENURE SECURITY AND SUSTAINABLE AGRICULTURAL PRODUCTION IN SOUTHERN AFRICA

4.1. Conceptual framework

18. This section attempts to build a conceptual analysis of the linkages between land tenure security and sustainable agricultural production. Providing security of tenure is often seen as a precondition for intensifying agricultural production and is increasingly stressed as a prerequisite for better natural resource management and sustainable development. Literature suggests that increased security of tenure in productive resources leads to enhanced and sustainable agricultural production, as shown in *Figure 1* (Maxwell and Wiebe (1998), Roth and Haase (1998), von Maltitz and Evans (1999)). Tenure security has a marked effect on expectations of a return on an investment of both labour and capital. This is as true in rural settings as it is in the urban sector of the economy.

Figure 1: Linkages between land tenure security, agricultural production and sustainable natural resource use

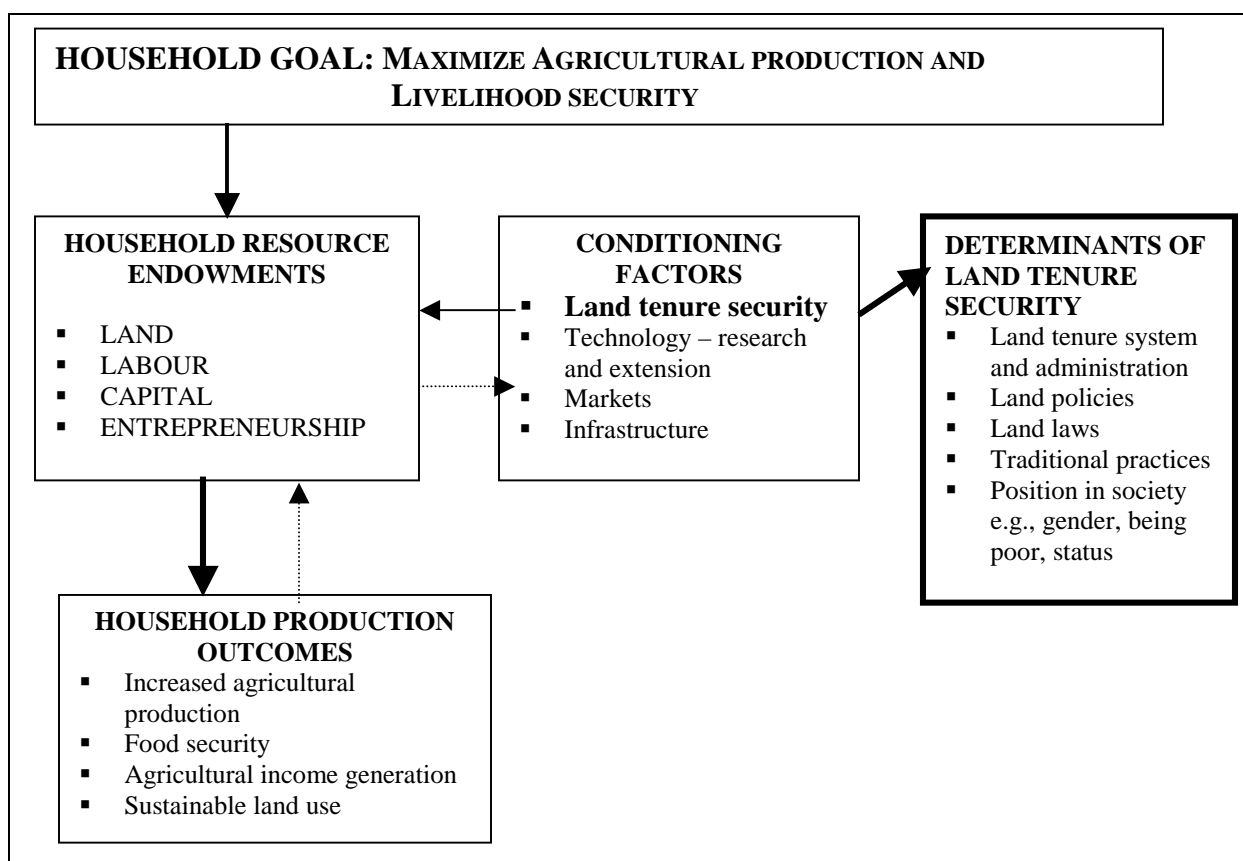


Source: Adapted from McCulloch, Meinzen-Dick, and Hazell (1998).

19. Farmers will be more likely to make medium- to long-term land improvements if their tenure is secure because they will be more likely to benefit from investment. There would be fewer disputes and they would be able to use resources that might otherwise have been used for litigation (Roth and Haase, 1998). Assuming the existence of viable technologies, access to inputs and extension advice, and the availability of household labour and financial resources, enhanced tenure security will lead to higher investment and higher agricultural production. Whether the frame of reference for the system of land tenure is communal or individual, there is widespread evidence that secure property rights are linked to a higher propensity to invest in tree planting, manuring, soil and water conservation and other "permanent" improvements (Maxwell and Wiebe, 1998).

20. *Figure 2* illustrates the linkages between land tenure security and household production. Tenure security is one of the factors affecting the way households utilise assets. If tenure is secure, the standard of living is *relatively* high given available household resources and an environment conducive to production. If tenure becomes insecure, however, the household becomes less productive and the standard of living declines. Literature indicates that the main economic impact is on the resource base of the household, forcing the family to reallocate labour and income in a way that may not yield the original level of well-being. This can result in a multitude of adverse consequences such as lower nutritional status, poorer health, reduced schooling for children as incomes fall and the demand for child labour rises, as well as depletion of the productive asset base. This can affect future viability and sustainability of the household unit and can lead to food insecurity and poverty. Tenure security is basic to human rights and essential if people are to be able to manage their land resources, invest in the land and to sustain their use of it (Adams, 2001).

Figure 2. Conceptual links between land tenure security and household agricultural production



Source: By author.

21. Since colonial times, the dominant belief has been that individual tenure is more progressive, modern, efficient, and better for economic growth than indigenous communal tenure. The arguments in favour of titling claimed that customary tenure is insecure for the small farmer and provides no incentive for land improvements, that it prevents land from being used as collateral for credit and that it prevents the transfer of land from inefficient users to efficient ones. They expected that indigenous customary tenure would wither, but it

has proved surprisingly resilient and adaptable, and has coexisted with modern tenure (Palmer, 2000). The most effective form of policy intervention would be governmental guidance and coaxing, so that customary tenure systems evolve and operate more effectively. What are the major sources of land tenure insecurity in the region? The next section examines this question and assesses some of the reforms initiated to address the problems.

4.2 The main land tenure security problems experienced in study countries

22. Synthesis of individual experiences in each country reveals that a variety of land tenure insecurities, not mutually exclusive, are still experienced in the region.

23. **Land tenure insecurity experienced by minority groups** In Botswana, minority groups, such as hunter-gatherers, reported cases of insecurity; this was especially true of the Basarwa tribe. The Tribal Grazing Lands Policy of 1975 implemented in Botswana resulted in an estimated 20,000 people, including smallholders, persons without stock and hunter-gatherers, losing their rights to utilise or occupy the land, as ranches were demarcated and given to individuals and groups for commercial use, with boreholes and fencing (White, 1999). Because rights to hunt and gather are not recognized under customary or statutory law, the indigenous San people, whose traditional hunting grounds have been fenced in, are now being displaced and relocated in settlements (Adams et al, 2003). Literature also indicates that similar groups are experiencing the same thing in Namibia. In Malawi, land users not related to the core lineage members in a community referred to as “akudza or obwera” are increasingly becoming targets for eviction, or are compelled to share land legitimately allocated to them with newer immigrants or members of the core lineage (interviews with key informants). In some countries such as South Africa, the rural poor are vulnerable and have their access rights eroded, or impinged upon by the state, by powerful individuals, or by other community members. They have no clear administrative protection.

24. **High Population to Land Ratio.** There is a massive demand for land in countries that have high population densities such as Malawi - as high as 146 persons per square kilometre in the southern Region – which results in widespread land tenure insecurity. Lesotho and South Africa also experience this problem in certain parts of the country. The difficulties created by land pressure and tenure insecurity manifest themselves through increased land degradation, particularly in customary land areas.

25. **Unclear or overlapping land rights.** The legal status of small farmers in the former homelands of South Africa is unclear (Lahiff, 2001). Tenure rights are often overlapping and conflicting because the original land holders were forced to accommodate thousands of refugees from apartheid, who were sometimes told by state officials that they had been awarded land in compensation, or who became informal tenants without clear contractual agreements. There is no administrative support for existing practices³. As a result, there is a complex and often dysfunctional mixture of old and new institutions and practices. People are often confused about the real extent and nature of their rights or about what institutions and laws affect them (Adams, 2001). This is mainly because the role of traditional structures in land tenure administration is ill defined.

³ Cousins (1997), Lahiff (2001), NLC (2003), discussions with key informants.

Box. 1. Insecurity of land tenure of black South Africans in the former homelands

In 1997, approximately 12.7 million people (or 2.4 million households) of South Africa's population lived in the former homeland areas of whom 63.6% have permission to occupy the land where they live, 26.8% lack permission, with the remaining 9.6% uncertain whether they had permission or not (Source: National Land Committee, 2003).

26. **Land alienation without compensation.** In Malawi, small farmers occupying the land under customary tenure have been alienated from the leasehold of their land since the late 1960s. The area of land farmed in this way has been shrinking in size over the years so that by the end of the 1980s the acreage lost because of transfers was in excess of 700,000 Ha. In Mozambique before the Land Law of 1997, small farmers were losing land to well-placed individuals and foreign investors who were lawfully acquiring state farmland at the expense of smallholders and small private Mozambican interests. Tenure security was weak for all agricultural producers and investors, particularly for smallholders. In Zambia, insecurity because of land alienation in customary areas is caused by State intervention. Grants of land to investors in customary areas in the 1995 Land Act, otherwise known as “conversion” of customary to statutory tenure, have been the main reason for insecurity in these areas. At present, the conversion of customary land to statutory land is a clandestine process and those likely to be affected have no opportunity to question the transaction (Hansungule, 2002).. This is because the Lands Act (1995) allows the President to alienate customary land to leasehold provided he consults with the local chief, thus depriving other stakeholders in the community of a voice in the proceedings (Hansungule, 2002). Converted state land cannot revert to its original status, even if the title deed is cancelled.

27. **Corrupt or exploitative administrative practices** In almost all countries tenure insecurity is sometimes caused by the exploitative behaviour of traditional chiefs and government officials. In Malawi and Zambia, key informants indicated that tenure security under customary tenure is sometimes dependent on the smallholder’s good relationship with the chief or other traditional authority figure.

28. **Farm labour and tenant system. Farm workers** are particularly vulnerable because they have no recognized rights as workers. Reports indicate that **farm labour tenants**, black workers on leasehold or freehold farms who pay for the use of agricultural land by working for the farm owner, also lack land tenure security (Lahiff, 2001). In the early 1990s, an estimated 30,000 to 40,000 families were labour tenants in Mpumalanga and KwaZulu-Natal (Cousins, 1997). Both farm workers and labour tenants were, and still are, highly vulnerable to evictions by landowners. Malawi has the same problem.

29. **Land encroachment and illegal settlers.** The ad hoc expert group identified that farmers in some countries in the region experienced tenure insecurity because of land encroachment and invasion by illegal settlers. Affected farmers cannot prevent invasions without legal protection.

30. **Women’s independent land rights are limited.** Under customary tenure, and even statutory tenure in some countries, the land rights of women are still limited. A later section covers this issue in detail.

Table 2: Summary of land tenure security problems experienced in the sub-region

Land tenure security problem	Botswana	Lesotho	Malawi	Mozambique	South Africa	Zambia
Insecurity of minority groups	√		√			
Unclear or overlapping land rights					√	
Overcrowding/ population:land ratio		√	√		√	
Land alienation into leasehold			√	√		√
Insecurity of farm workers and farm labour tenants			√		√	
Land encroachment and illegal settlers			√			√
Limited women's land rights	√	√	√	√	√	√
Corrupt or exploitative administrative practices	√	√	√	√	√	√

Source: Interviews by author

31. The ad hoc expert group identified a number of additional problems and issues. They identified two further sources of tenure insecurity in the sub-region: land reform and the nature of customary tenure. They indicated that land reform programmes could induce forms of land tenure insecurity in some countries. For example, they observed that new reforms might create land tenure insecurity amongst some groups such as women, particularly in matrilineal societies, as found in Malawi. Reforms depend on the official processing of rights, which means that those who are not competent to navigate the processing system, such as the poor and women, will be left out.

32. The ad hoc expert group also identified the land tenure insecurity for some farmers bought about by the land reform programme in Zimbabwe. Zimbabwe adopted a Fast Track Land Reform programme where two resettlement models were adopted; A1, which is subsistence, and A2, which is leasehold. The land tenure system in model A1 is customary, while model A2 is leasehold with an option to buy. The major problem confronting the country is that those who have been resettled under model A2 do not yet have their legal transfers finalised. There is no clean legal instrument to expropriate land from the settlers so the legality of land acquisition has not been established and the tenure of the resettled farmers is inherently insecure.

33. The ad hoc expert group noted that there is a perception or an assumption that statutory law is better than customary law in providing land tenure security. This is because the nature of customary tenure (unwritten laws, lack of title deed or lease certificate etc)

makes it inherently insecure. In England, the land tenure system is customary, but operates efficiently and is well documented. Participants in the meeting suggested that governments should document customary land tenure systems to make land tenure security more credible.

4.3 Initiatives to improve land tenure security in member states and implementation problems experienced

34. The study countries have been active in reviewing and promulgating new land tenure reforms in their land policies (see *Table 3*). This section analyses the land tenure reforms that have been proposed or implemented, indicating how far they address the land tenure security problems outlined in *Table 2*. This analysis is followed by a presentation of shortcomings that are not addressed within the current land reform frameworks and put forward suggestions on what could be done to resolve them. An analysis of how the land tenure reforms address land rights of women is presented in a later section.

Table 3: Recent land reform processes

Country	Land Policy Formulated	Has policy been translated into law yet?
Botswana	Draft National Land Policy, 2002	No
Lesotho	Draft National Land Policy, 2003	No
Malawi	National Land Policy, 2002	No
Mozambique	National Land Policy, 1995	Yes, implemented 1997
South Africa	White Paper on South African Land Policy, 1997	Yes, The Draft Communal Land Rights Bill
Zambia	Draft National Land Policy, 2002	No

Source: Government documents and interviews with key informants

Botswana

35. Botswana has developed a robust land administration system, which has greatly contributed to good governance and economic progress. The Tribal Land Act of 1968 provided for the establishment of Land Boards, which are non-political bodies composed of members elected and nominated from the community, to take over the customary land administration functions from chiefs and other tribal authorities. Tribal land is held either by the Land Board itself or by eligible applicants as customary grants or common law leases. The allocation powers of the chiefs were ceded to the Land Boards to ensure a more equitable distribution of land. Twelve main Land Boards were established which began operating in 1970.

36. The Boards are empowered to award customary rights or common law leases to applicants, or to transfer land to the State if it is required for public purposes. The Land Board issues customary land grants in the form of certificates that are valid indefinitely and common law leases valid for 99 years. Both forms of tenure rights can be inherited. All

customary land grants may be converted into common law leases at the grantee's initiative. All unallocated tribal land is common property.

37. One of the most frequent complaints against Land Boards is that they allocate land inequitably, that they favour those with influence and who own many cattle, and they ignore the land claims of those who are politically inarticulate or have few animals (Adams et al, 2003, White, 2000). Interviews with key informants revealed that one of the main problems experienced with the Land Boards is the length of time it takes to effect transfers and allocations, creating a source of insecurity.

38. Notwithstanding these challenges, Botswana's Land Boards are often held up as a model of democratic development. In no other country in the region has land been so judiciously administered as an essential component of good governance (Adams et al, 2003). Botswana has succeeded where others have failed, partly because of the consultative and systematic policymaking processes that it follows in various sectors, including land. This process of policy development and change is in stark contrast to that played out elsewhere in the region, where it is difficult to detect a linear relationship, or any other kind of systematic relationship, between the analysis of a problem or opportunity, the assessment of the evidence, the formulation of recommendations and the announcement of a policy change (Drimie, 2003).

39. In 2002, Botswana embarked on a National Land Policy Review, which culminated in the draft National Land Policy. It draws the government's attention to the concerns about privatisation of the commons by sectional interests in the cattle industry and the likely negative impact on the livelihoods of the poor and outstanding issues concerning tenure insecurity of the poor, women, minorities and other vulnerable groups. The draft National Land Policy Government was submitted for consideration by Parliament in 2003.

Lesotho

40. A Land Policy Review Commission, appointed by the Prime Minister, published a report in September 2000. The key issues raised in the Land Policy Review Commission's Report include:

- Constitutional issues, such as discrimination against women in customary law
- Land tenure and administration issues, such as insecurity, delays in registration process, and inadequate information systems
- Land market issues, such as informal land transactions
- Land management and environmental issues, such as a lack of a comprehensive strategy on land use and physical planning
- Institutional issues, such as weak law enforcement and coordination of land institutions across ministries; it was proposed that customary tenure be abolished.

41. The Commission also recommended that underutilised land be revoked for re-allocation to the landless and that a land market be introduced. These recommendations will help address the tenure security problem of overcrowding and population to land ratio. The Land Policy Review Commission also recommended the establishment of elected District

Land Boards to administer land in the 10 districts of the country. The suggested composition of the District Land Boards includes farmers, a legal officer, a district land use planner, a chief and property developers. To some extent the establishment of such land administrative structures will contain insecurity caused by corrupt or exploitative administrative practices by traditional leaders.

42. The National Land Policy was submitted for adoption in July 2003. The National Land Policy draws on accepted principles and practices enshrined in international and national conventions: justice, equity and gender equality, promotes efficient land markets and security of tenure for the marginalized groups such as women and provides for an expeditious and just system for resolving land disputes.

43. 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) a lease that can be registered and qualified that continues as it is now according to the Land Act 1979.

44. Positive aspects of the reform are the government's commitment and the innovative changes that have revolutionized land tenure in Lesotho. The major challenges are: the lack of a substantial consultative process that could result in rejection during implementation; the lack of involvement of traditional leaders in land matters that could cause opposition or even insurrection; and community councils may not be involved enough at a local level to manage land issues effectively.

Malawi

45. In 1996, The Presidential Commission on Land Reform was established and its work led to the formulation of a National Land Policy that was drawn up after countrywide consultation and approved by Cabinet in January 2002 (GOM, 2002). The government is preparing a Sector Wide Approach (SWAP) for implementation of the policy to which the World Bank, EU, DFID and USAID are contributing. Component projects under design include land acquisition and resettlement on under-utilised land to relieve landlessness.

46. The National Land Policy suggests some of the following tenure-related changes:

- Elevate customary tenure to full common law status so that customary land will be categorized as private land. Once the new land policy is in force, the categories of land recognized in Malawi will be defined as government land, public land or private land. Private land is defined as both land under freehold tenure and customary land that has been allocated exclusively to a clearly defined "community, corporation, institution, clan, family or individual" (to be known as customary estates). Leasehold estates may be created out of any category of land. Existing leaseholds on what was previously known as public land will be reclassified as leaseholds on government land.

- Comprehensive registering and titling of customary land interests. Customary estates will be registered as private usufructuary rights in perpetuity, once the owner is registered, such title may provide the basis for leasing or pledging as security. This is a defensive measure to offer some security in a context of growing conflict and competition, including family conflicts, insecurity and uncertainty, and ethnic nationalism. It also ensures that no more land will be alienated from the customary land through arbitrary conversion to public land.
- Placing some constraints on foreign ownership but applicants will be able to apply for citizenship.
- Supporting and strengthening customary land tenure and putting its administrative integrity on a firm, transparent and equitable foundation. This involves establishing village land committees and village and land tribunals, as well as democratizing village land allocations. The village headman's exclusive authority to allocate land will end. The administrative rights and duties of traditional authorities will be clarified, codified and made transparent.
- Equal rights for men and women. In matters involving land inheritance, there will be no victimization of a male child in the matrilineal society, and no victimization of the female child in a patrilineal society. The laws of both matrilineal and patrilineal succession will be modified to permit spouses and children to inherit the land. All children will inherit land equally.

47. Overall the New Land Policy is addressing some of Malawi's major land tenure security problems, specifically arbitrary land alienation into leasehold, overcrowding in the form of high population:land ratio and, to some extent, corrupt or exploitative administrative practices.

48. The new Land Policy still has some shortcomings. The Land Policy does not address one source of land tenure insecurity directly - the insecurity of minority groups. Implementation will be challenging. The proposed tenure reforms are demanding in terms of administration, skills and financial resources. Gradual implementation of the suggested recommendations over the long term might improve their effectiveness.

49. Another concern raised by key informants is that the incorporation of customary land administration matters under the Land Law would result in the destruction of local culture. The issue of placing customary land into statutory land is therefore likely to continue presenting a huge challenge to the Malawian legislators.

Mozambique

50. In 1997, the Mozambican parliament passed a new Land Law followed by the Regulation for its implementation a year later. The Law retains the principle that land is the property of the State and cannot be sold or mortgaged, but it attempts to adjust this legacy from the socialist past to the reality of a market economy. The State and its agents are the only bodies able to authorise a Land Use Right. The 1997 Land Law: (1) recognizes customary land rights; (2) grants greater leasehold security to smallholder and commercial interests - the new law strengthens smallholders' chances to defend their rights in the face of growing

competition from commercial interests for scarce resources; and (3) grants women land rights. The land policy statement does not denationalise land so that it remains under the control of the state.

51. Important innovations of the new legislation are that local communities can apply for a land use title, have their boundaries delimited and can enter into contracts with commercial firms. Communities have permanent rights by right of occupation; if a member of a community has been utilising the land they are living on for at least 10 years, then they have the land right for it. The new law permits the use of non-written forms of evidence such as oral testimony to defend one's claims to an individual's or community's parcel of land. Private individual investors or corporations are able to apply for long-term, fifty-year leases. The law requires that communities be consulted and participate in the approval process for land concessions to determine whether a piece of land is occupied.

52. The Land Law of 1997 made substantial progress in terms of reinforcing the tenure security of smallholder farmers from land alienation and the land rights of women. Customary land is now considered secure both legally under the 1997 Land Law and under the traditional system that governs them.

53. Approximately 200 non governmental organizations, churches, associations, cooperatives and other entities representing civil society, which had similar preoccupations at the provincial level, carried out a campaign to disseminate information about the new land bill among local communities. The aim of the Land Campaign was to inform the producers, as well as the operators and businessmen, about the rights and duties of each according to the Land Policy and Law. In areas where it has been disseminated, positive results have been recorded. Field visits confirm how local people have been empowered and stimulated to reassess and value their natural resources, and explore new ways of using them. Their understanding of the new law and its implications for their future lays to rest any assertion that they are somehow unable to make the most of new opportunities and rise to the challenges of development (Tanner, 2002).

54. Although the new land law successfully addresses the main sources of land tenure insecurity in Mozambique, implementing it is not always straightforward. Campaigns were successful in areas where NGOs are based and farmers have been able to use their land rights to defend their tenure, however, there are still farmers in other areas that the recent campaign did not reach who need to know about the benefits available under the new law. Not everyone responsible for implementing the new law is fully conversant with its terms. Many local administrators, political leaders and public officials responsible for implementing the new policy and law have had little real exposure to these documents and very few have had them fully explained to them by technically competent people (Tanner, 2002). For example, cases have been observed of District Administrators who are applying the old law and regulations in the absence of any training or instruction in the new approach (Tanner, 2002). The result is slow and haphazard implementation. There are other practical problems due to lack of capacity at provincial and district levels.

55. Despite the apparently progressive terms of the 1997 Land Law, there is a danger that stronger actors in the market, such as private and commercial investors and some senior government officials, have the best chance of securing land concessions and titles.

South Africa

56. In 1994, South Africa's new government inherited major land problems from the apartheid government. The distribution of land was highly inequitable, with white individuals and enterprises owning 90% of the land; the remaining 10% was in the hands of the indigenous black majority in the homelands and on farms, with the attendant lack of land tenure security. South Africa's post-apartheid government has embarked on a wide-ranging and ambitious programme of land reform, designed to redress the legacy of centuries of dispossession, racially defined and discriminatory legal frameworks, and deep seated rural poverty. The three principal components of land reform are market-assisted redistribution, restitution of land to people who were dispossessed by discriminatory legislation or practice, and tenure reform aimed at creating tenure security within a variety of tenure systems (Cousins, 1997, Government of South Africa, 1997). After implementing the land redistribution programme, the distribution is now 13% homeland and 87% white commercial farms.

57. The land tenure reform laws aim to improve tenure security and to accommodate diverse forms of tenure, including communal tenure. The constitution of South Africa guarantees human rights (equality, freedom from discrimination, due process). The Bill of Rights within the new constitution also includes an entitlement to security of tenure for those whose tenure is insecure because of past discrimination, or to comparable redress. The Communal Property Associations Act, 28 of 1996, enables a group of people to acquire, hold and manage property under a written constitution.

58. The Land Reform (Labour Tenants) Act, No. 3 of 1996, protects the rights of labour tenants on privately owned farms. It also makes provision for them to acquire land (either those portions of the farms they occupy and use, or alternative land), using the government's Settlement/Land Acquisition Grant, which is the main financial instrument used by land reform beneficiaries for land acquisition. Tenants can only be evicted when they are in breach of their labour contract, or are guilty of misconduct, or when the owner has specific needs for the land they occupy or use. Evictions must follow set procedures, and magistrates must refer the cases to the Land Claims Court if the evictee can establish that he or she falls under the Act (Department of Land Affairs 1997). Key informants indicated that the biggest problem experienced with the Act is the excessively narrow definition of labour tenants, which makes it difficult to defend their right. Magistrates interpret the Act conservatively. Despite these problems, some key informants feel that the Act has been effective inasmuch as far fewer evictions are now taking place.

59. An Interim Protection of Informal Land Rights Act, No. 31 of 1996, intended as a temporary measure to secure the rights of people occupying land without formal documentary rights pending the introduction of more comprehensive long-term tenure reform measures, has also been introduced. The Act recognises that most people in the former homelands, as well as in other areas such as the South African Development Trust land, are unable to establish a clear legal right to the land despite the fact that they occupy the land as if they were its owners, and are recognised as such by their neighbours. This is due to the legacy of discriminatory laws and practices and of administrative disorder. Pending the confirmation of these informal rights, the Act provides for protection mechanisms against their loss, for example, by illegal sales of communal land by corrupt chiefs, or development projects

initiated without consultations with the land holders. In the absence of more permanent legislation, the Interim Protection of Informal Land Rights Act has been extended each year. According to Cousins (1999), this Act has hardly ever been applied since its approval by Parliament in early 1996. Not only have potential beneficiaries not been informed of its existence and the rights that it provides, but government officials, especially those in departments other than Land Affairs, as well as those in provincial government, are barely aware of its provisions or implications.

60. The Extension of Security of Tenure Act No. 62 of 1997 protects occupants of privately owned land, mostly farm labourers, from arbitrary eviction and provides mechanisms for the acquisition of long-term tenure security. It also lays down procedures that owners and persons in charge of the land must follow before they can evict people. Few cases of illegal eviction have come before the courts and few permanent settlements have been approved since the Act was established in 1997 (Lahiff, 2001).

61. The Draft Communal Land Rights Bill applies mainly to the 13% “homeland” and former South African Development Trust areas, home to about 13 million Africans. The Draft Communal Land Rights Bill, published on 14 August 2002, incorporates comments and written responses received from the public. Its primary objective is to create strong land tenure security that is more or less similar to the dominant legal tenure security in the rest of the country.

62. The principal features of the Draft Land Rights Bill include the following:

- Transfer of juridical title from the state and other trusts-of-convenience to communities; the land will no longer be registered in the name of the state.
- Registrable, legally protected and enforceable rights of occupation, use and alienation in the form of Deeds of Land Tenure Rights to individuals, households and families as the case may be.
- Recognising and securing women’s and children’s land rights in the land allocated for common use and land alienated to individuals, households and communities.
- Recognising democratic participation of traditional institutions in communal land administration and management structures; the community must appoint a Land Administration Committee to undertake land administration functions on behalf of the community. The institution of traditional leadership or its nominee will have a 25% representation in an ex-officio capacity in the Land Administration Committee and 75% of its composition will be elected by the community.
- The day-to-day functioning of the Land Administration Committee will be guided by community rules, which the community has to develop and submit to government for approval.

- The community rules must comply with the fundamental human rights principles set out in the Constitution and the Communal Land Rights Bill.
- The Bill empowers the Minister to set up Land Rights Boards to advise her on various land issues and to provide supervisory and oversight functions over several administrative structures. The Land Rights Boards will be composed of appointees of the Minister, nominees of the Provincial Houses of Traditional Leaders and representatives of communities.

63. The major shortcoming in South Africa's land reform is need for effective implementation. Although significant tenure reform laws have been enacted since the new government assumed office, little has been achieved in terms of providing greater tenure security to those living in the homelands (Kepe et al, 2002, Turner, 2001). The reform must provide for effective implementation of the new rights-based laws, or the rights defined so precisely in the Government Gazettes will be of little use (Cousins, 1999).

64. More work must be done to improve the security of farm workers and labour tenants. Legislation has had little success in preventing evictions of vulnerable people living on farms, and few have received land in their own right (Lahiff, 1999, Kepe et al, 2002). Enforcement mechanisms of the current laws must be improved to strengthen the tenure security of farm workers and labour tenants.

65. Not every farmer knows about land rights and few know about the draft land law. A comprehensive information dissemination strategy needs to be in place when implementing the legislation once Parliament passes it.

Zambia

66. At independence in 1964, Zambia inherited four categories of land: State Land (formerly Crown Land), Freehold Land, Reserves and Trust Land. The Land (Conversion of Titles) Act of 1975 confirmed and completed the land nationalisation programme by vesting all land in Zambia in the President, held by him in perpetuity on behalf of the people of Zambia. Freehold land held by commercial farmers was converted into leaseholds for 100 years and unutilised tracts of land were taken over by the state. The Act also decreed that land should have no value in itself, except the improvements on it. Native Reserves and Native Trust Land became customary land. The Land (Conversion of Title) Act of 1975 was in effect until 1995.

67. The Lands Act of 1995 repealed the Land (Conversion of Titles) Act of 1975 on the principle of land having no monetary value. The Act is the base of the current land tenure system. The Lands Act of 1995 did not change the land tenure system significantly. All land in Zambia is still vested in the President (Lands Act, 1995 Part II section 3.1) and land held under customary tenure before the commencement of the Lands Act 1995 continues to be so held and recognized. The 1995 Land Act allows any person who holds land under customary tenure to convert the holding to a lease (State Land), not exceeding 99 years, or any other title that the President may grant.

68. Zambia's new Draft Land Policy was published for public comment on 21 November 2002. Civil society reports that the Draft Land Policy still fails to address some outstanding land tenure problems. For example, the Zambia Land Alliance reports that if customary land is leased and for some reason is repossessed, it no longer falls under the jurisdiction of the chief. It seems that once land is granted in leasehold, all customary rights to that land are extinguished and so is the authority of the chief over that land. This could be rectified by amending the law to provide for the local community to have the benefit of ground rent from land excised, but not alienated, from the customary domain.

69. With regard to the problem of land alienation from customary to leasehold, the Rural Participatory Appraisal (RPA) should be employed. This would allow for transparency and accountability in converting land from customary to statutory tenure. This is a bottom-up approach in decision making, allowing community members to participate in matters concerning their livelihood. The Act should, therefore, ensure that both the chief and the community approve the alienation of land into leasehold.

Table 4: Summary of land tenure security initiatives implemented by study countries

Country	Initiative	Impact/Purpose	Outstanding Issues
Botswana	Land boards established in 1970 Draft National land policy, 2003	<ul style="list-style-type: none"> ▪ Land boards managed to introduce some democracy ▪ Policy is addressing land alienation, tenure insecurity of women, minority groups and the poor 	<ul style="list-style-type: none"> ▪ The need to find a solution to the practice of dual grazing
Lesotho	Land Policy Review Commission, 2000	<p>Recommended</p> <ul style="list-style-type: none"> ▪ The abolishment of the customary land tenure system ▪ Revocation of underutilised land to allocate to the landless people ▪ Introduction of a land market ▪ Establishment of an elected District Land Board to administer land 	<ul style="list-style-type: none"> ▪ 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	<p>Recommended</p> <ul style="list-style-type: none"> ▪ Elevation of customary tenure to full common law status ▪ Registering and titling of customary land ▪ Transparent village land committees and tribunals 	<ul style="list-style-type: none"> ▪ Insecurity of minority groups not addressed ▪ Successful implementations of reforms require an intensity of administration, skills, and financial resources

Mozambique	New Land Law in 1998	<ul style="list-style-type: none"> ▪ 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 	<ul style="list-style-type: none"> ▪ 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	<p>Communal Property Associations Act, 1996</p> <p>Labour Tenants Act, 1996</p> <p>Interim Protection of Informal Land Rights Act, 1996</p> <p>Extension of Security of Tenure Act 1997-</p> <p>Draft Communal Land Rights Bill 2002</p>	<ul style="list-style-type: none"> ▪ 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 labourers from arbitrary eviction ▪ Transfer of title from the state to communities, ▪ Introduction of registered, legally protected and enforceable rights of occupation ▪ Democratic Land Administration Committees to undertake land administration for the community 	<ul style="list-style-type: none"> ▪ 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
Zambia	<p>Land Act of 1995</p> <p>Draft Land Policy 2002</p>	<ul style="list-style-type: none"> ▪ Allows conversion of customary tenure to leasehold ▪ 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 	<ul style="list-style-type: none"> ▪ Problem of land alienation into leasehold, once land is granted in leasehold, all customary rights to that land are terminated

Source: Government documents and interviews with key informants

4.4 Land tenure security and environmental implications

70. As indicated earlier, some studies argue that tenure insecurity is correlated negatively with the quality of resource management. Overexploitation and degradation of natural resources, such as deforestation and soil erosion, are often characterised because of incomplete, inconsistent or non-enforced property rights, as the costs are borne by society as a whole, whereas benefits accrue to individuals. To broaden the perspective on the relationship between tenure security and sustainable land use, key informants were asked what the main agricultural land-related environmental problems were in their countries and what was the relationship between tenure security and sustainable agricultural production techniques in customary tenure.

71. Key informants identified the most pressing environmental problems in arable agriculture and rangeland in the sub-region as soil erosion and deforestation. This is confirmed by data that show deforestation occurring on an annual basis in most countries at a rate of between 0.2% and 2.4%, with Malawi and Zambia experiencing the highest rates. Deforestation is more severe in forests on customary land in Malawi. The main reasons for deforestation include cutting down trees to pave the way for farming, for firewood and charcoal production, and bush fires. The rate of deforestation is of particular interest to policy makers in Southern Africa because the cost goes beyond the losses of forest products alone, extending to such indirect costs as decreased agricultural productivity and potential loss of forest resources for future generations.

72. Southern Africa loses an estimated 400 million tons of soil annually (UNECA, 2003). Zambia has lost an estimated 3 million tons of topsoil per year from cultivated land, while in Swaziland the rate of soil loss is 50 000 tons per year. In South Africa, it is between 300 and 400 million (UNEP, 2002). Annual soil loss due to erosion in Malawi is estimated at 20 tons per hectare per year (UNDP, 2001). Irreversible loss of soil productivity of at least 20% of the land due to erosion occurred over the past century in parts of Lesotho, South Africa and Swaziland (UNECA, 2003). The main causes of soil erosion identified by key informants and confirmed by literature are overgrazing of communal land, veld fires, the practice of dual grazing, periodic droughts and floods, and some wildlife, traditional ways of agricultural production (slash and burn, veld fires), intensive agricultural production due to overcrowding, unsuitable agronomic practices that include continuous cropping, farming on steeply sloped land, limited crop rotation, and unprotected gullies (UNDP, 2001, White, 2000). In Botswana, about 85% of the country's 2.4 million cattle graze on communal lands, and the remainder on ranches on freehold land. The annual off-take rate of cattle on communal lands is only 8%, compared to 17% on freehold ranches (White, 2000). With such a low off take, the communal lands are overstocked. In some countries such as Malawi, the high poverty prevalent in the rural areas is blamed for fuelling land degradation, as the population is preoccupied with surviving from day-to-day.

73. On the question of the relationship between customary tenure and land degradation, most key informants indicated that customary tenure is partly responsible for land degradation. They emphasised, however, that the behaviour that leads to land degradation by smallholder farmers under customary tenure cannot be linked to their lack of tenure security under customary tenure. Rather it is linked to other reasons such as lack of knowledge of

conservation practices, use of traditional agricultural production practices that are not sustainable, and lack of inputs such as labour. In this regard, small farmers need extension methods that focus on relevant technologies that promote sustainable agricultural production.

74. In Botswana, although some key informants indicated that customary tenure is partly responsible for land degradation, they indicated that even those farmers with exclusive rights to individual ranches tended to overstock and practise dual grazing. Some literature indicates that tenure security was improved by fencing, as in the Tribal Land Grazing Policy, but did not result in the improvements in rangeland management they had expected (White, 2000). White (2000), argues that under the conditions in Botswana, the traditional cattle post system is both biologically and economically more efficient than fenced ranches. A comparative study on the environmental impacts of privatising tenure through fencing and the traditional cattle post system may help in clarifying which system works better to sustain the rangeland.

75. In a study of two communal areas in South Africa, Von Maltitz et al (1999), concluded that a lack of, or breakdown in, management policies, rules and regulations is what causes poor resource management and that changes in tenure on their own are unlikely to change this situation. The following are identified as areas where rules are lacking or control has broken down: (1) Lack of control of stocking density. (2) Control of movement and grazing patterns. This is traditionally well regulated, but a number of factors including breakdown of fencing structures, lack of access to herd boys and lack of security and theft mean that animals are concentrated in environmentally sensitive areas. And (3) Breakdown in the traditional resource management structures, such as chiefs, tribal councils and traditional management practices. Discussions with key informants in Malawi and in the Expert Group Meeting revealed similar ideas, that although chiefs were given the authority to allocate land, they were not given authority to enforce sustainable use of the land and this partly explains why land degradation is high on customary tenure. Chiefs or decentralized land administration personnel must have the power and the expertise to monitor and enforce sustainable land use.

4.5. Land tenure security and HIV/AIDS

76. HIV/AIDS prevalence rates are alarmingly high in some countries in Southern Africa, as shown in *Table 5*. In some countries, a start has been made to explore the potentially catastrophic impact of HIV/AIDS on land tenure as mortality levels continue to rise. However, very little work has been done in the sub-region as a whole. Lesotho, Malawi and South Africa have conducted studies that have identified an increase in the vulnerability of women, children and poor households to land dispossession by patrilineal kin on the death of male household heads. As HIV/AIDS prevents families from making the most productive use of their landholdings, they risk losing their unutilised or underutilised land to landless families that are able to make more productive use of it. Land codes in a number of countries (e.g. Lesotho and Mozambique) specify that land not used for a specified number of years in succession will revert to the allocating authority. In Lesotho and South Africa, studies showed traditional authorities helping to protect the land rights of widows and orphans but not always being effective in enforcing their decisions when relatives usurped land (Drimie, 2002). The main recommendation emerging from these studies is the need for legislation that can protect the land rights of women and people living with HIV/AIDS. Overall more studies need to be done to identify the impacts of HIV/AIDS epidemic on land rights in countries where such studies have not been done such as Zambia, Botswana and Mozambique.

Table 5: Estimated Adult HIV/AIDS prevalence in southern Africa, 2002

Country	% Of Total Adult Population
Angola	5.5
Botswana	38.8
Lesotho	18.0
Malawi	15.0
Mozambique	13.0
Namibia	22.5
South Africa	20.1
Swaziland	33.4
Zambia	21.5
Zimbabwe	33.7

Source: UNAIDS 2002, Report on the Global HIV/AIDS Epidemic, December 2002.

4.6 Shortcomings in land tenure security in Southern Africa

Findings of this study reveal that tenure insecurity is still experienced in southern Africa. It appears mainly in the form of: insecurity of minority groups (Botswana and Malawi), unclear or overlapping land rights (South Africa), overcrowding in the form of high population to land ratio (Lesotho, Malawi and South Africa), land alienation into leasehold (Malawi, Mozambique and Zambia), insecurity of farm workers and farm labour tenants (South Africa), inappropriate and exploitative administrative practices (all study countries) and limited women's land rights (all study countries). Because tenure security is crucial to sustainable agricultural production, governments, civil society, donors and the development community in the sub-region must address these problems.

79. As indicated in an earlier section, the countries included in the study are at various stages of land policy and tenure reforms and have addressed some but not all of the tenure insecurity problems. For example, Botswana is addressing tenure insecurity of the minority groups in its new land policy. Mozambique's new land law and Malawi's new land policy are addressing land alienation from customary to leasehold tenure, while Zambia's proposed new land policy fails to address this problem. Land tenure insecurity caused by high population to land ratio in Lesotho, Malawi and South Africa can only be partly solved by land redistribution and resettling. The South African Government is tackling the problem of unclear and overlapping land rights by means of the Communal Land Rights Bill. The Bill facilitates the transfer of title from the state to local communities and sets up administrative structures to register land tenure rights and issue land tenure rights to individuals.

80. The problem of inappropriate or exploitative administrative practices has been a long-standing source of tenure insecurity in some countries. This is especially true where traditional leaders, who exercise authority over land matters and property rights over land held in trust, may acquire an interest in the development or disposal of community property, and make self-interested, discriminatory or arbitrary decisions causing tenure insecurity to others (Deininger, 2003). Reforms that establish procedural safeguards and regulations to ensure that land administration systems reflect the will of the community and that land administration officials are accountable address this problem through the recognition of group tenure rights (associations, or communities) as developed in Mozambique and South Africa. With group tenure rights, collective boundaries can be demarcated, then registered, and perhaps subsequently upgraded to title, a process that empowers local regimes. What is important is that beneficiaries feel comfortable and secure in their tenure.

81. The other strategy used to introduce democracy and accountability in land administration is through democratically elected Land Boards as in Botswana. Developing strong representative rural institutions is now widely recognized as being central to rural economic development. The Boards have to be genuinely representative, transparent and accountable to the constituencies they represent. A critical component is ensuring that these local-level institutions are empowered through an appropriate legal framework and with sufficient skills and resources to exercise such control. Botswana's Land Boards are often held up as a model of democratic development that has managed to reduce the powers of undemocratic traditional leaders. Land tenure reform initiatives in Lesotho, Malawi and South Africa seem to have similar institutional structures.

82. The Ad hoc Expert Group Meeting also discussed the role of chiefs and other traditional leaders regarding land tenure security. They felt that good governance and a participatory approach at grassroots level was essential in promoting land tenure security. All stakeholders needed to work together in the reform process without conflicts with the chiefs.

83. Despite the progress made by the study countries in addressing land tenure-related problems, some shortcomings still need attention. Tenure reforms have focused mainly on changing the law and the rules but little on building capacity, translating new laws into programmes that can be implemented, and prioritising resources to support tenure reform. Tenure reform is more than changing rules. It involves implementing rules that require reorganization of established land administration institutions. Some of the earlier tenure reform legislation has remained on the books for years without having any effect on access to land or security of tenure. The new laws and policies must be translated into programmes with substantial resources to undertake public education, create new systems for recording rights, hire staff, run offices and vehicles, and train those participating in the system.

84. Despite the many innovations in land tenure reform in Mozambique's land law, implementation has a long way to go. Lesotho's land policy framework recognize the need for upgrading land rights, but the lion's share of resources go to land redistribution, land use planning, and land management (Adams, 2001). In South Africa, implementation of the new land tenure-related laws has been painfully slow, in part due to capacity constraints (Kepe and Cousins, 2002, Lahiff, 2001).

85. Training programmes are needed to ensure that change does take place on the ground. This may call for substantial capacity-building and skills development activities by various government ministries. Experience in the region suggests that assistance from NGOs and the private sector can complement government efforts.

86. As indicated earlier, discussions in the Ad hoc Expert Group Meeting revealed that customary land tenure systems are perceived to be inherently insecure when compared to statutory land tenure systems and should be documented. The Meeting suggested that countries should document customary land tenure system in order to address this problem.

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

88. The other tenure-related environmental issue explored in the research was the question of the relationship between customary communal tenure and land degradation. The study findings show that smallholder farmers need training on sustainable agricultural production methods in order to curb and prevent land degradation and that chiefs or the newly decentralized land administration structures are trained in how to manage land in a sustainable way and have the power to monitor and enforce sustainable land use.

5.0 WOMEN'S LAND RIGHTS IN SOUTHERN AFRICA

5.1 Human rights-based approach to women and land rights

89. Discussions about whether the right to development can be regarded as a human right led to the United Nations Declaration on the Right to Development in 1986. The Declaration established the right to development as a universal and inalienable right and an integral part of fundamental human rights. According to the office of the High Commissioner for Human Rights: "A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights." Essentially, a rights-based approach integrates the norms, standards and principles of the international human rights system into plans, policies and processes of development.

90. Rights to use and control land is central to the lives of rural women in countries where the main sources of income and livelihood are derived from these natural resources. The lack of land rights by women and girls threatens their living conditions, their economic empowerment, their physical security and, to some extent, their struggle for equity and equality within a patriarchal society. Without rights to land, women's economic and physical security is compromised. They are deprived with a reliable source of food and in addition further curtailed access to other inputs, especially credit, necessary for carrying out productive activities. Limited access to credit and to extension services further erodes women's capacity to maintain control over their lands. In Southern Africa, women make up more than 60% of small farmers, and provide about three-fourths of the workforce in food production and processing. Women's access to land therefore determines not only women's and households' level of living and livelihood, but also food security (ILO, 1996). The problem of lack of access to land is particularly critical for the increasing number of female heads of rural households, which is now evident in Southern Africa.

91. The land rights of women are elements in the "social bases of self-respect," which Rawls (1971, 2001) defines as perhaps the most important of his "primary goods." Sen (2000) argues that millions of people living in developing countries are not free: "Even if they are not technically slaves, they are denied elementary freedoms and remain imprisoned in one way or another by economic poverty, social deprivation, political tyranny or cultural authoritarianism." He says that governments need to contribute to development by enhancing individual freedom, which in turn is sustained by social values through institutions such as markets, political parties, legislatures, the judiciary and the media. Because the land rights of women are crucial to their sustained livelihood, the international community, as well as the study countries, has an obligation to protect them. The human rights argument emphasises women's right to equality, human dignity, non-discrimination, autonomy and economic well-being (Walker, 2002). The questions of why women still experience discrimination in obtaining land rights, how they can be observed and protected, and what steps governments need to undertake to ensure they are acknowledged are fundamental to the human rights approach. If international treaties, declarations and set guidelines are adopted, the right conditions for human development can be met.

92. The international community has created specific standards to protect women's rights. These include the Universal Declaration of Human Rights, 1948, the International Covenant

on Economic, Social and Cultural Rights, 1966, and the Convention on the Elimination of all forms of discrimination against women (CEDAW). At the regional level the standards are set in the African Charter on Human and Peoples' Rights, 1981, the Southern Africa Development Community Declaration on Gender and Development, 1997, and the African Union Protocol on the Rights of Women in Africa adopted on 11 July 2003.

93. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) brought together all conventions and treaties that protect and promote the rights of women in particularly vulnerable areas into a single instrument.⁴ It established women's right to non-discrimination because of her sex and affirmed equality in international law. The United Nations General Assembly adopted the Convention's resolutions in 1979. They came into force on 3 September 1981, monitored by a committee.

94. CEDAW lays the basic principles of how women's land rights should be treated in a rights-based approach. Specifically, Article 14 of the CEDAW obliges state parties to ensure equal treatment between men and women in land and agrarian reform. Land rights under marriage and inheritance laws should be based on equality. Article 16 states that land tenure reform must ensure women's property rights during marriage, at divorce and in the event of her husband's death. All countries in the sub-region with the exception of Swaziland have ratified CEDAW. By signing CEDAW, these countries agreed to incorporate the principles of equality of men and women in their legal systems, to abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women. The question is: are all the countries that ratified CEDAW doing what they agreed to do?

95. This study adopts the human rights approach, exploring how different countries in the sub-region have handled the issue of women's land rights and suggests strategies that ensure that women are accorded full and equal rights to land.

5.2 Status of women's land rights

96. In all six countries, women are still discriminated against with regard to independent ownership and control of land in both customary and statutory land tenure systems. Yet more than 50% of women in the countries live in rural areas and derive their livelihood from agricultural production.

Botswana

97. Single women head about 50% of all households in Botswana, and about one-half of the people living in these homes are below the poverty line (UNDP, 2001). Improving the land rights of women and their ability to utilise the land will increase both their own and their households' income, and improve food security and child nutrition.

98. Traditionally, every male head of a household in Botswana was entitled to three pieces of land: one each for his homestead, cultivation and grazing (Kalabamu, 2001). When a man died, his male children inherited his land. Women, regardless of their marital status or age,

⁴ Convention on the Political Rights of Women (1952), Convention on the Nationality of Married Women, (1957), Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), and the Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1965).

could not acquire land or landed property of their own. They had to live with their parents, husbands or sons. Until 1971, when the Married Persons Property Act was enacted, husbands were sole administrators of properties held by either party before and after marriage. A husband had absolute power over the joint estate and was at liberty to dispose of it without his wife's consent. She could not acquire any property or loan without the consent and assistance of her husband. Today wives can acquire property, but cannot get a loan without their husbands' written consent.

99. Some of the main factors constraining women from owning and controlling land include: (1) Application of customary law and patriarchal mores. Key informants indicated that some Land Boards were asking married women who apply for land to produce written permission from their husbands. "Land Boards sometimes ask you to bring your husband, father or brother" (woman key informant). (2) Unmarried women aged below 21 years have to obtain the consent of their parents in all property transactions. (3) Women who marry become minors unless they explicitly marry under out-of-community-of-property Dutch law. And (4) Most women lack the assets, capital or labour to use the land productively.

Lesotho

100. All agricultural land in Lesotho is under customary tenure. Women do not have the right to own and control land because of patriarchal customs and discriminatory legislative laws. Customary law treats women as minors, who cannot be allocated land, inherit it or make decisions about its management and use. A daughter cannot inherit her father's fields, and in cases where there are no sons, land reverts to the chieftainship for reallocation on the holder's death. The Lesotho Land Act of 1979, which is still the guiding legislation, is gender neutral, but since a married woman is regarded as a minor under the marriage law, she is unable to acquire land unless she has her husband's consent. The Act states that land can be inherited through: (i) a will, (ii) Interstate where the guiding principle is customary law, and (iii) A widow can inherit land but on remarriage the property is not part of the matrimonial property. The Deeds Registry Act 1967 prohibits a married woman from registering land in her own right. It empowers the Registrar to refuse to register a deed in respect of immovable property in favour of a married woman whose rights are governed by Basotho law and custom. The Constitution of Lesotho section 19 provides for the equality of all, but section 18(4) still discriminates against women by deliberately exempting customary law. Women are not treated as equal partners in marriage. A divorced woman is not entitled to any fixed property from her marital home, including land. She has to return to the family in which she was born.

Malawi

101. Women make up 51% of Malawi's population of 10 million, 85% of them live in rural areas and derive their livelihood from agricultural production. In terms of women and land ownership, women's rights to land under customary tenure depend on the type of marriage. There are two types. If the marriage is patrilineal, which is common in the northern region of Malawi, land inheritance is through the male lineage and women can only access land through their husbands and sons. A divorced woman loses the right to cultivate her field and has to return to her own village. Upon her husband's death, she can use the land that her husband owned as long as she remains unmarried. As the sons grow old, she shares her land with them and might be squeezed out (Shawa, 2002).

102. The matrilineal marriage system is practiced in more than 50% of the country. There are two types of matrilineal marriage: *chitengwa* or virilocal (taking the wife to the man's home; and *chikamwini* or uxorilocal (the husband stays in the wife's village). Widows experience land insecurity in a *chitengwa* marriage, as when her husband dies she is chased away from the village where she was married and she loses her land rights. Widowers experience similar land insecurity in a *chikamwini* marriage, as when his wife dies he is chased away from the village where he was married and he loses his land rights (Shawa, 2002).

103. Discussions with key informants also revealed that while some women do have full ownership and control of land under a *chikamwini* marriage, others under the same marriage system do not because men, especially uncles, control the land owned by the women. Because of marriage customs, women in Malawi are more vulnerable to land tenure insecurity than men are.

104. Under statutory tenure, the law does not discriminate against women in terms of obtaining land rights. However, in practice women do not have land rights because of socio-economic obstacles such as lack of education, and lack of resources to buy or lease land. Cultural practices also discourage women from participating in land allocation committees and decision-making meetings. The law on property is not well harmonised with inheritance and marriage laws. There is poor administration of inheritance rights and poor adjudication of land ownership and inheritance disputes (Ngwira, 2003). Although they are the major agricultural producers, women remain largely absent at all levels of policy-making, project formulation and management of land (Shawa, 2002).

Mozambique

105. More than 70% of women in Mozambique live in rural areas and derive their livelihood from agricultural production. The constitution of Mozambique has since 1975 upheld the principle of gender equality. The Constitution was revised in 1990 to give more explicit form to this principle through articles 6 and 67 where it is stated that: "All citizens are equal before the law, enjoy the same rights and are subject to the same obligations, irrespective of colour, race, sex, ethnicity, place of birth, religion, level of education, social status, marital status of parents or profession (art. 6)." And "Man and woman are equal before the law in all spheres of political, economic, social and cultural life (art. 67)." However even though the constitution of Mozambique is non-discriminatory, before the New Land Law of 1997, women were largely discriminated against in land ownership and control. The factors which constrained women from acquiring land rights prior to the Land Act of 1997 included; (1) Application of customary law in the patrilineal societies of the south and central provinces of Mozambique. (2) Widespread ignorance among women of their rights to land from the provisions of the constitution due to factors such as illiteracy, and (3) Lack of dissemination of the constitutional legislation to grassroots levels.

South Africa

106. In South Africa, rural women comprise 53% of the population; 71% of these live under the 350 rands per month poverty line and 62% are unemployed (National Land Committee, 2003). Women are unable to fall back on the land as a means of sustaining their livelihood in the face of rising poverty because they lack independent land rights. While there is enormous variation from one communal tenure system to another, women do not usually

qualify to hold land independently from men. Rules of access and inheritance generally tend to favour men over women and women with children over those without.

107. The factors that constrain women from acquiring land rights include: (1) Application of customary law of patriarchy, which discriminates against women. (2) Lack of representation on community land committees and participation in traditional community decision-making structures. Although in some communities, women are now allowed to attend, participate and speak at public meetings. However observations noted by an NGO working with rural women indicate that women bear the legacy of entrenched traditional values that make it difficult for them to speak freely in the presence of men (Hargreaves, 1999). And (3) widespread ignorance among women of their rights to land from the provisions of the constitution due to factors such as illiteracy, and lack of dissemination of the legislation to grassroots levels.

Zambia

108. Women's rights to land under customary tenure depend on the type of marriage. If the marriage is uxori-local (where the husband settles in the wife's village), land rights are vested in wholly the woman. If the marriage is viri-local (where the wife settles in the husband's village) and is dissolved, the land rights are vested wholly in the man. A divorced woman loses the right to cultivate her fields and has to return to her own village. Viri-local marriage is the most dominant type of marriage in the rural areas, so overall more women than men experience land tenure insecurity. Key informants also indicated that women do not own land because traditional chiefs with patriarchal inclinations do not allocate land to women in their own right. District council officials, who act as agents of the Commissioner for Lands in processing applications, are usually biased as they regard women to be subordinate to men in executing their responsibilities. For instance, until very recently it was common to ask a married woman to present evidence of her husband's consent when she applied for land.

109. Under statutory tenure, the law does not discriminate against women in terms of obtaining land rights. In practice, women do not have land rights because of socio-economic obstacles. Illiteracy and lack of capital make it difficult for a woman to apply for title deeds. Councils advertise vacant plots in the newspapers, but very few women apply to either lease or own land.

5.3 Summary of the barriers that prohibit women from acquiring land rights

110. The major obstacle facing women in owning and controlling land is customary law. Some legal clauses do not allow joint ownership of land by married couples under statutory tenure and there is no synchronisation of the inheritance and marriage laws with the Land law. In situations where women can own and control land, such as where they can buy the land on the market, women are constrained by socio-economic factors. These constraints include illiteracy, lack of capital and implements, lack of collateral, lack of farm management experience, training and advice. In all the study countries, women were unable to get credit either because they did not have collateral or because the banks would not authorise their loans without their husbands' signature.

111. One disturbing comment which was repeated by a number of key informants was that some women have internalised the discrimination experienced in land ownership: "ironically, society has made women the custodians of the very cultural values that lead to their oppression." It is tempting to conclude that politically, socially and culturally, society has encouraged women to become their own oppressors, as women tend to accept that men are better leaders than they are.

Table 6: Overview of barriers to women acquiring land rights under customary and statutory land tenure systems

Barriers linked to the Socio-economic well being of women	Barriers linked to Custom/Traditional Law	Barriers related to statutory law
<ul style="list-style-type: none"> ▪ High female illiteracy rates ▪ Ignorant of land rights ▪ Lack of resources to claim their rights ▪ Internalized discrimination ▪ Limited participation of women in decision-making bodies on land tenure issues 	<ul style="list-style-type: none"> ▪ Limited rights of women to own land due to patriarchy ▪ Land allocation administered by traditional leaders ▪ Traditional leaders do not know about land laws that provide for women's rights ▪ Matrilineal societies of Zambia, Malawi Mozambique some men experience tenure insecurity ▪ Daughters cannot inherit land ▪ Limited participation of women in traditional community decision-making 	<ul style="list-style-type: none"> ▪ Land law does not have a clause that promotes the land rights of women ▪ Land law is non-discriminatory but is not harmonised with other laws in the system ▪ Lack of capacity/ knowledge by implementers ▪ 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 Botswana, Lesotho, South Africa

Source: Interviews by author and discussions in the Expert Group Meeting

5.4 Initiatives being implemented to improve the land rights of women

112. All the study countries are undertaking reforms to amend the laws that discriminate against women. The following section highlights initiatives to improve the land rights of women, summarised in *Table 8*.

Botswana

113. The Deeds Registry Act was amended in 1996. The amendment removed the discriminatory provision, which stated that only husbands could deal with the Registrar where spouses were married in community of property. It enabled women to acquire property for their sole use and deal with immovable property bequeathed or donated to them even when they were married in community of property. Amended in 1993, the Tribal Land Act allows all adult citizens the right to use and occupy tribal land anywhere in the country. Adult citizens of either sex are eligible to receive customary land grants and common law leases on tribal land. The National Policy aims to promote gender equality and the empowerment of women. By means of the current National Development Plan, the government has committed itself to

increasing the proportion of women represented in parliament and councils to 30% by the end of 2008/9.

114. Although the existing legal and policy land and property reforms are progressive, they do not empower women fully. Because of “marital powers” under the Married Persons Property Act, a woman cannot apply for credit or a mortgage or to sell property without the written consent of her husband. Secure title, theoretically enabling the holder to enjoy wide ranging credit facilities, can only be given by ensuring that married women can apply for land and credit without the consent of their husbands (Kalabamu, 1998). To empower women in land and related matters, they must be able to acquire credit independently. According to discussions with key informants, this can only be done if a husband’s marital powers are reviewed or abolished.

Lesotho

115. In Lesotho, a number of legislative reforms are underway, as shown in *Table 7*. As noted in section 5.2, the legislation that discriminates against women owning land are the Deeds Registry Act, the constitution and the Marriage law. All these laws are being reviewed to support women’s land rights.

Table 7: Legislative reforms in Lesotho

Legislative changes underway	Progress made
Deeds Registry Act 1967 to allow women to own land on merit and to register in their own names	Reform is underway
Section 18(4) (c) of the Constitution needs amending since it justifies the discrimination against women under the guise of customary law	Reform is underway
Amendments to the Married Persons Equality Bill	Approved as a Bill, but is not yet an Act
Gender development policy	Approved and adopted
Draft Land Bill that will allow women to have the right to own land	Still in zero draft

Malawi

116. Malawi’s Constitution of 1995, Chapter 24, includes a Bill of Rights, which promotes gender equality and provides for the protection of both men and women. The Malawi Gender Policy, developed for implementation between 2000 and 2005, promotes non-discriminatory cultural practices against women’s property rights including land. The Malawi National Land Policy of 2002 promotes the registration of individual and family title to customary land and takes care of the land tenure insecurity associated with matrilineal or patrilineal marriages, by registering household land in the names of all the members of a nuclear family. In the event of death, the spouse inherits the land – customary rules will cease to apply. However, while proposed joint registration is seen as a way of ensuring land tenure security of the surviving spouse, key informants indicated that conflicts are likely to arise with in-laws and children

about inheritance if the surviving spouse remarries. Key informants suggest that children, who might lose the land altogether, should inherit rather than the surviving spouse.

Mozambique

117. The government passed a new Land Law in 1997. The Bill clearly recognizes the right of the women to land by stating that both men and women have the right to use and benefit from land and inherit it. Where the New Land Law sensitisation campaigns have been delivered, women have become familiar with their legal rights. The campaigns specifically targeted women whose rights had already been violated, advising them to apply for an individual title deed or to combine with others in similar situations and obtain a collective title deed. Efforts were particularly successful where Land Bill dissemination was integrated into literacy programmes and where the NGOs responsible for the Land Bill dissemination had been working in the area for a long time. Since the new law came into effect, the government department responsible for processing land application for statutory tenure has been handling an increased number of applications from women⁵.

118. Early this year a new family law was passed that married women have the right to register property jointly. All major legislation relating to land (i.e. Constitution, Land law of 1997 and the Family Law of 2003) support women's land rights. The main challenge is to make sure they are properly applied. Because Mozambique is such a large country, the campaigns alerting women about the new law and their land rights did not reach all communities. Everyone concerned - the public, the relevant land allocations officers and the administration - needs to know about new laws that do not discriminate against women in land ownership and control. A strong extension service should be tasked to increase public awareness about women's land rights. Rural radio programmes have wide coverage even in very remote areas and might be effective in a country the size of Mozambique.

South Africa

119. Since 1996, the South African constitution has upheld the principle of gender equality. The Bill of Rights states that everyone is equal before the law, and has the right to equal protection and benefit of the law. Equality is defined to include the full and equal enjoyment of all rights and freedoms, and the state is prohibited from discriminating unfairly, either directly or indirectly, against anyone on grounds including gender, sex, pregnancy and marital status.

120. Since 1995, South Africa has been a signatory to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Even though the constitution of South Africa is non-discriminatory, women are discriminated against in both customary and statutory tenure systems (Mann, 2000, Cross et al, 2001, Cousins, 1997).

121. In 1998, the government passed the Customary Marriages Act. The Act states that a wife in a customary marriage has full status and capacity, based on equality with her husband and subject to the matrimonial property system governing the marriage. This includes the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in

⁵ Interview with Mr. Samuel Joao Rovicene Dambiane, National Directorate of Geography and Cadastre, Ministry of Agriculture and Rural development.

addition to any rights and powers that she might have under customary law (Mann, 2000). A woman entering into customary marriage subsequent to the enactment of this legislation has property rights upon dissolution of the marriage.

122. The government also passed the Promotion of Equality and Prevention of Unfair Discrimination Act in 2000. The objectives of the Act are to prevent, prohibit and eliminate unfair discrimination as contemplated in the Constitution and to promote equality (Mann, 2000). Section 8 of the Act States: "All forms of gender discrimination, including the following are prohibited: (1) The system of preventing women from inheriting family property; (2) Any practice, including traditional, customary or religious practice, which unfairly violates the dignity of women and undermines equality between women and men, including the undermining of the dignity and well-being of the girl child; (3) Any policy that unfairly or unreasonably limits access of women to land, finance and other resources."

123. However in South Africa, no law provides for women's independent access to land. A woman's access and security of tenure depends on whether she is able to persuade the traditional authorities of her need. The Draft Communal Land Bill does not ensure that women are not discriminated against. Key informants indicated that they thought that the Bill should explicitly state that women can own land in their own right.

Zambia

124. The Zambian draft Land Policy has a clause that states that 30% of all statutory land would be reserved for women. This recommendation followed the Gender Policy, which was accepted in 2000, but does not indicate the need to shorten the bureaucratic procedures associated with the acquisition of land, especially with the conversion of title from customary to leasehold. To improve the land rights of women, transfer fees and ground rents must be charged according to the income status of those who are poor.

Table 8: Summary of initiatives to improve land rights of women in study countries

Country	Initiative	Purpose
Botswana	<ul style="list-style-type: none"> ▪ Raising women's representation in parliament and councils to 30%, and in other land related decision-making bodies. ▪ Draft National land policy, 2003 	<ul style="list-style-type: none"> ▪ Increase women's representation in land related decision-making bodies ▪ Policy is addressing tenure insecurity of women, minority groups and the poor
Lesotho	<ul style="list-style-type: none"> ▪ Amending Deeds Registry Act ▪ Draft Land Bill 	<ul style="list-style-type: none"> ▪ To allow women to own land ▪ Allows a woman to have right to own land
Malawi	<ul style="list-style-type: none"> ▪ National Land Policy 2002 	<ul style="list-style-type: none"> ▪ Promote registration of individual and family title
Mozambique	<ul style="list-style-type: none"> ▪ Passed New Family law 2003 ▪ Land Law of 1997 	<ul style="list-style-type: none"> ▪ Allow joint registration of property ▪ To clearly recognize the right of women to own land

South Africa	<ul style="list-style-type: none"> ▪ Customary Marriages Act, 1998 ▪ Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 	<ul style="list-style-type: none"> ▪ Woman entering into customary marriage has property rights upon dissolution of the marriage ▪ To prevent, prohibit and eliminate unfair discrimination
Zambia	<ul style="list-style-type: none"> ▪ Setting a quota of 30% for land that will be allocated to women 	<ul style="list-style-type: none"> ▪ Allows a woman to have access and right to own land

5.5 Major shortcomings that need to be addressed on land rights of women in Southern Africa

125. From the foregoing analysis, all six countries still have some elements of discrimination against women in land ownership and control. The main sources of discrimination are patriarchal customary law and discriminatory statutory laws. For example, all countries reported discrimination against women owning land under customary tenure due to patriarchal attitudes. In Lesotho, statutory laws are still discriminatory against women owning land. Where statutory laws are non-discriminatory, such as in Zambia, women may not own and control land simply because they are unaware of their rights, and are subject to socio-economic constraints such as lack of capital and illiteracy. In some countries, such as Botswana, there is no harmonization of the non-discriminatory land laws with marriage and inheritance laws.

126. The most important element of a human rights approach is analysing whether or not countries are addressing every source of discrimination against women in land ownership. Such an analysis shows that although the initiatives being undertaken are very progressive, they still fall short of addressing all the major sources of discrimination as summarized in *Table 9*. Some countries may have made progress in one area, but inaction in others can slow the process down.

Table 9: Summary of initiatives to improve the position of women in owning and controlling land

Initiatives to improve the Socio-economic well being of women	Initiatives to address barriers linked to Custom/Traditional Law	Initiatives to address barriers related to statutory law
<ul style="list-style-type: none"> ▪ Education / literacy campaigns ▪ Legal education to women ▪ Economic empowerment of women through provision of credit, market access ▪ Affirmative action (waive fees for land registration, land quotas for women) ▪ Improved participation of women in decision-making bodies on land tenure issues 	<ul style="list-style-type: none"> ▪ Limited rights of women to own land due to patriarchy ▪ Disseminate new land laws and build capacity/knowledge of traditional leaders not to discriminate against women ▪ Educate all members of society on women's land rights 	<ul style="list-style-type: none"> ▪ Ensure land law has a clause that promotes the land rights of women. ▪ Harmonize land laws with other laws in the system (marriage laws, inheritance law) ▪ Disseminate new land laws and build capacity or knowledge of implementers ▪ Translate laws into effective programmes for implementation

Cross-cutting initiatives

- Develop Indicators to monitor the progress
- Monitoring and evaluation of progress made on women's land rights – at regional, national and local levels

Source: Analysis by author

127. Law reform giving legal recognition to women's rights to land is often the first step necessary to promote gender parity in land and property rights. The study countries are already implementing changes under their legal frameworks to ensure that the land rights of women are promoted and honoured. All study countries, with the exception of South Africa, have or are going to have, a land law that has a clause that recognizes the independent land rights of women. Legal rights can be beneficial in as much as it changes their bargaining position within both their natal and conjugal households. Some governments - Mozambique stands out as a good example - have harmonised other laws that affect land rights, such as marriage and inheritance laws, so that women can benefit from the right to own land.

128. Law as an instrument of social change must be supported by an efficient law enforcement system and by legal rights awareness campaigns to promote a change of attitudes among both women and men and to enable beneficiaries to pursue land claims. Again Mozambique stands out as a good example. They conducted a massive campaign to disseminate the new land law, but because of the size of the area to cover, they did not reach every community. The public needs to be reminded continuously about new land laws that are supportive of women's land rights. Botswana, Lesotho, Malawi and Zambia, who are currently engaged in drawing up land laws, must develop a dissemination strategy to be implemented simultaneously.

129. A critical determinant factor on whether women get independent land rights is whether or not they are equipped with the economic and social resources to be able to own and meaningfully benefit from land ownership. Agricultural land requires fertilizer, some level of mechanization in the form of efficient equipment, paid labour and access to markets. While women have an excellent reputation when it comes to repaying loans, ironically they have difficulty in securing loans without collaterals and male consent (Fortmann, 2001). In Botswana, key informants indicated that because of their relative poverty, most women opt for land under customary grant of rights, and many fail to utilise the allocated land because of lack of resources. Because the customary grant of rights cannot be registered, most women cannot mortgage them to obtain loans to make agricultural investments that will increase their income. Women must be empowered socially and economically through education, training, health services and credit so they can utilise the land productively. Financial institutions must change their policies to promote women's access to credit. NGOs working with rural women need to undertake training that builds their capacity and improves their awareness and understanding of their rights so that they can benefit from them.

130. Given the widespread acceptability of patriarchy in customary tenure, and that some customary systems are fairly democratic and functional whilst others are conservative, it is important to find ways to support well functioning customary systems and strengthen the channels for change in those that are not. The removal of clauses in legislation that discriminate against women will not change cultural and social behaviour. Long-term

education and sensitisation campaigns are necessary to influence traditional norms, values and laws to allow women to own and control land. Local leaders in particular must be persuaded to abandon traditional beliefs about authority that have been discriminatory towards women and to recognise women's rights of control of land under the new laws. Men need to be enlightened about the importance of women owning land in order to decrease their resistance on women's land rights. Another critical factor in Southern Africa, is whether women are able to participate in local decision-making about land issues in their communities, a role traditionally denied them. Equal representation of men and women in municipal councils, tribal authorities and all decision-making structures related to land must be encouraged.

131. The ideals implicit in policies, constitutions and legal frameworks aimed at facilitating women's land ownership and control, of protecting their human rights and removing restrictions on their ability to improve their standard of living must be translated into action and mechanisms put in place to enforce policy. Research indicates that the ministry or department of gender in each country is mandated to monitor the implementation of the legal framework in the field at the national level. However, because these institutions usually have responsibilities other than women's land rights, a dedicated national task force could be formed made up of government departments, NGOs and women and land lobby groups, with a mandate to monitor the progress of addressing women's land rights more stringently. A similar body at the regional level is necessary to infuse gender sensitivity into land policy planning and implementation in member countries. One such organization has recently been formed in the sub-region, *The Platform on Women's Land Rights in Southern Africa*.

132. Any progress towards equity for women in land rights at national and local levels must be evaluated and monitored using indicators. Indicators to measure performance can include the following: (1) Women achieve independent control over land through joint titling with the issue of separate share certificates for right-holders, (2) Women acquiring rights over land in their own names (3) Marriage, land and other property laws are harmonised, (4) Women are represented on community and landholding structures and are participating actively and vocally in the public forum, and (5) Women are well informed about the options and opportunities open to them with regard to land access and resource utilisation and press for greater autonomy and interest.

133. At the international level, the CEDAW was set up to monitor and encourage compliance with the Women's Convention. Treaty bodies are important mechanisms for making the 11 states comply with international obligations. All the countries that have ratified the Convention on the Elimination of All Forms of Discrimination against Women are legally bound to put its provisions into practice. To fulfil their reporting obligations within Article 18 of the Convention, States that are party to the Convention have to submit an initial report on the legislative, judicial, administrative or other measures that they have adopted to the UN Secretary-General within a year of its entry and submit a periodic up-date at least every four years thereafter. Some countries have fallen behind in their reporting as shown in the table below. The United Nations and civil society have an important role in helping individual countries to promote women's rights in compliance with the Convention and fulfilling their reporting commitments. The Ad hoc Expert Group Meeting reiterated the need for countries to domesticate international human rights instruments that they are party to.

Table 10. Year of ratification of CEDAW and whether national plan of action has been provided to the UN Secretariat

Indicator	Angola	Botswana	Lesotho	Malawi	Mauritius	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
Ratification of CEDAW	1986	1996	1995	1987	1984	1997	1992	1995	*	1985	1991
Plan of action Submitted to CEDAW (2000)	Yes	No	No	Yes	Yes	Yes	Yes	Yes	*	Yes	Yes

Source: United Nations, 2001

CONCLUSIONS AND RECOMMENDATIONS

6.1 Conclusions

134. Land tenure security is central to agricultural production and sustainable use of agricultural resources, and therefore for individual livelihoods and poverty reduction. There are now clear indications that governments are recognizing the enduring importance of improved land tenure security and are making efforts to improve the allocation and management of land rights at local level. The findings of this study reveal that tenure insecurity is still experienced in southern Africa. The main forms of land tenure insecurity include insecurity of minority groups (Botswana and Malawi), unclear or overlapping land rights (South Africa), overcrowding (Lesotho, Malawi and South Africa), land alienation into leasehold (Malawi, Mozambique and Zambia), insecurity of farm workers and farm labour tenants (South Africa), corrupt and exploitative administrative practices, and limited women's land rights (all study countries).

135. All the countries included in the study are at various stages of undergoing land policy and tenure reforms. Most of the tenure reforms being developed or implemented have been able to address some but not all of the identified land tenure insecurity problems. It is clear that secure land rights need to be delivered locally through democratic, transparent and accountable land administration authorities. It is also very clear that tenure reform is not just a matter of changing rules, but of implementing them in an adequately funded programme.

136. Land policy and law within the region are becoming more gender sensitive, but while some comfort can be drawn from more gender conscious reforms, developments on the ground are far from adequate. Addressing the inequalities and disadvantages women face in land ownership is essential to the realisation of their fundamental human right to equality and basic well-being. A time when women, who do most of the farm work own and control land will be a time when there will be more food in each household and more crops for export. These women must be protected from eviction when they are widowed or divorced.

6.2 Recommendations

137. Based on the findings in this study, the following recommendations to help improve land tenure security and reverse the pattern of discrimination against women in land ownership and control are put forward.

General

- Develop strong representative rural land institutions that are transparent and accountable.
- Develop laws that protect the land rights of minority groups.
- Develop clear policies that address land tenure security needs of the minority groups. This may involve use of instruments such as affirmative action or setting of quotas.
- Speed up the process of converting land policies to land laws.
- Translate laws and policies into programmes that are implemented on the ground; prioritise resource allocation to support these activities.
- Design and implement training programmes in new land laws to ensure that change in tenure arrangements does take place on the ground.

- Promote stakeholder participation in all land alienation exercises to prevent land alienation-related tenure insecurity.
- Disseminate new land policies or laws that improve land tenure security to the public.
- Provide smallholder farmers with extension methods that focus on conservation and agricultural technologies that are environmentally friendly.
- Give power to the chiefs or the newly decentralized land administration structures to monitor and enforce sustainable land use. This involves ensuring they receive training in how to manage land in a sustainable way.
- Provide a total package. 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.
- Document customary land tenure systems.
- Draw up legislation that can protect the land rights of women and orphans in the context of the HIV/AIDS epidemic.
- Extend studies to identify the impacts of HIV/AIDS epidemic on land rights in countries where such studies have not been done, such as Botswana, Mozambique and Zambia.

Specific to women's land rights

- Review or repeal all personal, family and customary law, including provisions on inheritance, which discriminate against women, as well as any other legislation that prevents women from owning land or entering into contracts in their own right.
- Disseminate new laws that promote the rights of women to land so that they are widely known among Government officials, NGOs, media, traditional leaders, land allocation committees and the development community working in rural areas.
- Support the training of legal personnel (including those who administer customary law) on women's land rights issues.
- Train and build capacity of both men and women on women's land rights.
- Provide legal processes for joint registration of customary and statutory household land rights for spouses.
- Harmonise land, marriage and inheritance laws.
- Designate a body at sub-regional and national levels that will closely monitor the implementation of the legal framework on the ground to ensure that some progress is made in achieving land rights of women. If such institutions are already in existence, strengthen them to achieve their goals.
- Develop national and local level indicators (gender disaggregated) that would measure progress towards equity for women in land rights.
- Enforce equal representation of men and women in municipal councils, tribal authorities and all decision-making structures related to land.
- Provide education and training for both men and women to counter pre-existing social forces and patriarchal attitudes.
- Raise awareness of women about the land rights provisions of the constitution and law that affect them by integrating land rights issues into existing literacy programmes.
- Empower women socially and economically by increasing their awareness of their rights, provision of credit, waive transaction costs for land registration, and provide market access. This may involve legal literacy campaigns that target rural areas.

- Ensure that the United Nations, other intergovernmental organisations and civil society are helping individual countries to comply with the CEDAW promoting women's rights and fulfilling their reporting requirements.
- Domesticating international laws that promote the land rights of women.

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Annex 1

Selected Socio-economic indicators for countries in Southern Africa

Indicator	Angola	Botswana	Lesotho	Malawi	Mauritius	Mozambique	Namibia	South Africa	Swaziland	Zambia	Zimbabwe
Land area (1000 sq km) (2001)	1,246.7	566.7	30.3	94.1	2.0	784.1	823.3	1,221.0	17.2	743.4	386.8
Land use, arable land (% land area) (2001)	2	1	11	22	49	5	1	12	10	7	8
Total population (millions) (2001)	13.5	1.7	2.1	10.5	1.2	18.1	1.8	43.2	1.1	10.3	12.8
% Total population Rural (2001)	65	51	71	85	58	67	69	42	73	60	64
Population density, (persons/sq km) (2001)	11	3	67	110	585	23	2	35	61	14	33
Population density, Rural (persons/sq km) (2001)	288	231	451	419	697	308	149	125	432	116	254
GDP/capita (constant 1995 US\$) (2000)	524	3931	548	169	4104	191	2366	4020	1538	394	620
%GDP from agriculture (2001)	8	2	16	34	6	22	11	3	17	22	18
Adult female illiteracy rate (2001)	N/A	19	6	52	18	70	18	15	21	27	15
(2001)Tot. adult illiteracy rate	.	22	16	39	15	55	17	14	20	21	11
HIV adult prevalence rate (%) (2002)	5.5	38.8	18.0	15.0	0.1	13.0	22.5	20.1	33.4	21.5	33.7
% Women in Parliament 2000	15	18	11	8	8	28	14	28	4	10	14

Source: World Bank, 2003, UNDP, 2002, UNAIDS, 2002.

Annex 2

Questions guideline for interviews.

Land tenure systems and tenure security:

- Do current tenure systems provide certainty and security of rights and encourage sustainable agricultural production?
- What constraints are being encountered?
- What has the government done to improve tenure security? What have been the successes?
- Suggest other solutions that can be done to solve the problem.
- What amendments can be made to address the land tenure constraints that are not addressed within the current land reform frameworks?
- What implementation lessons do you have for other countries?

Land tenure systems and women's land rights:

- What is the status of women's land rights in the customary and statutory land tenure systems?
- What are the barriers to women acquiring land rights under customary and statutory land tenure systems?
- What has Government and civil society done to improve the land rights of women in the customary and statutory land tenure systems? What have been the successes?
- Suggest other solutions that can be done to improve the tenure systems to ensure women's land rights.