

Gender and Law

Gender and Law Eastern Africa Speaks

Proceedings of the Conference Organized by the World Bank and the Economic Commission for Africa

DIRECTIONS IN DEVELOPMENT

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OVERVIEW

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Foreword

In order to initiate dialogue and discourse on gender and law issues in Eastern Africa, and within the region, the World Bank, in collaboration with the Economic Commission for Africa (ECA), convened a conference for six countries in Eastern Africa to deliberate on gender and the law and to identify areas of critical importance that they would wish to address as priority issues. The Conference on Gender and Law: Eastern Africa Speaks was held in Addis Ababa, Ethiopia, in October 1997. The participant countries were Eritrea, Ethiopia, Kenya, Tanzania, Uganda, and Zimbabwe. The delegations consisted of 7 government ministers, 3 senior judges, and many senior policymakers of the high court (as listed in the appendixes), as well as representatives from universities and NGOs.

The conference aimed to strengthen knowledge of legal constraints to gender-sensitive human development by providing a forum for key decisionmakers in neighboring countries to debate common problems and identify solutions. It was expected to enhance appreciation and knowledge among senior policymakers of experiences in the region that have used the law to enhance gender-sensitive human development, by introducing new laws, amending restrictive laws, and formalizing customary laws where appropriate. Second, it would provide donors with an opportunity to listen to participants and obtain information that will contribute to achieving better practical results in donor-financed projects targeted at poor women in East Africa.

The underlying principle of the conference was that African policymakers would speak on their priorities and concerns, and the Bank, the ECA, and other donors would listen. Consistent with this, each participating country was responsible for selecting its topic for discussion or presentation at the conference. Therefore, the Bank and the ECA did not preselect issues and priorities but merely established a facilitating and enabling process for the effective participation of the six countries. The Bank and the ECA provided a broad framework or some stated principles that would be applicable in selecting topics or subjects.

This was a unique conference in that the agenda was set and articulated by country practitioners and policymakers. This conference illustrated a definite shift in the paradigm for discussion of gender

issues—Eastern Africa spoke, and we listened. Each country articulated its issues of concern, which seemed different on the surface: Tanzania chose land-related issues; Ethiopia focused, inter alia, on violence against

women; Kenya opted for a discussion of family laws; Uganda selected issues related to implementation in decentralized administrative arrangements; and Zimbabwe emphasized the economic rights of women. But as these issues were laid out, the differences soon diminished, and the strong underlying commonality of issues and experiences became apparent. Customary laws and their conflict with statutory laws were invariably found to be at the root of many of the substantive legal issues related to women's economic rights in all countries. Given the increasing decentralization of administrative powers and responsibilities and the privatization of the economy, the inadequacy of existing legal regimes governing women's socioeconomic rights was another obvious issue in all countries. The wide divergence between de jure laws and actual practice was evident—making implementation and related issues a matter of universal concern. As the conference ended, it was clear that greater sharing of experience and knowledge could only enrich and facilitate the process of addressing these issues more effectively

The achievement of this objective will depend on the follow-up actions on the part of both bilateral and multilateral donors to help these stakeholders address the priority issues that they have identified through a national process of discussion and debate. A number of discussions are ongoing with the different governments and stakeholders.

As an initial step, we have published the proceedings of this conference. The chapters of this book reflect the papers presented by the country delegations at the conference, and have been edited to suit a book format. The key theme of the conference is respected. It is Eastern Africa that speaks, that has identified the issues, not the donors. The overview is a thematic paper prepared by the Bank that pulls together the main issues highlighted at the conference. The appendixes provide a brief summary of the proceedings.

A few things are clear to us. Governments are committed to ensuring equitable legal regimes that will facilitate the development of both men and women. We have come a long way in understanding and appreciating the complexity of gender issues. But at the same time some of the issues that need to be addressed are still basic and urgent. Broadbased support is needed from external partners for education, articulation of constraints, and funding that enables gender issues to become critical elements. So even if there are areas where some of the countries have done well in terms of legal reform, there is no time for complacency. The challenge is before us, and we have to act or we stand

the risk of losing another generation of girls to a life of inequity and powerlessness.

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Overview

In October 1997, lawyers, academics, civil society leaders, and government representatives from five Eastern African Countries—Ethiopia, Kenya, Tanzania, Uganda, and Zimbabwe—gathered at a Regional Conference on Gender and Law: Eastern Africa Speaks in Addis Ababa, Ethiopia, to discuss and exchange experiences on gender and law.¹ Discussions centered on themes identified and selected by country representatives as being of importance to women: land–related issues, family law, violence against women, employment and labor, and implementation in decentralized governance frameworks. Country issue papers were prepared, discussed at national workshops, and finalized for presentation at the Regional Conference.

In all these countries, policymakers acknowledge that addressing gender issues in the legal framework is important for sustainable development. Strong constituencies and lobbies are being built to this end. Special administrative mechanisms have been established in all the countries, including ministerial offices responsible for women's affairs, and to varying degrees legal issues related to women are on the countries' agendas. A number of legislative measures to address gender equity have been implemented. New constitutions have introduced principles of gender equality; statutory laws have aimed to reform customary practices; and judicial activism is evident in the protection of economic and social rights of women.

Out of the five themes discussed, the conference deliberations crystallized two key themes: the impact of customary laws and practices and effective implementation. Customary practices, with or without the status of law, play a significant role in determining women's rights, whatever the sphere of activity. For example, customary laws and practices, most often applied in the division of household property, do not provide women adequate security.² Or land allocation, for the most part, is based on customary practices that deny women control over land, despite the fact that women now play a critical role in the agricultural sectors of all these countries. The second common theme is the need to find mechanisms for better implementation of equitable laws. In countries where the majority of women are illiterate and work in the informal sectors of the economy, the challenge of implementation is daunting, particularly when laws are seeking to change behavior and attitudes.

This overview aims to present a panoramic and comparative view of these two themes and the key issues that emanated from the conference deliberations. It, then, concludes with some broad messages that emerge for gender-sensitive reform in Eastern Africa.

Impact of Customary Practices and Laws

Despite legal reform in all the countries, women's social and economic status continues to be largely defined by customary rules that are deeply rooted in country-specific historical, economic, and social factors.

Ethiopia.

In Ethiopia the issues are unique. In 1960 the Civil Code of the Empire of Ethiopia (the Civil Code) called for a uniform legal provisions that would govern all personal matters, including marriage, divorce, adoption, and so on. The Civil Code invalidated all customary laws on matters it regulated. It recognizes the concept of matrimonial property, giving women equal rights to common property of a household.³ Upon divorce a woman is entitled to her personal property and half of any property considered to be common. Inheritance rules are not discriminatory.⁴ On paper, Ethiopian women enjoy rights that are greater than those of women in any of the other countries.

Although the Civil Code initiated extensive reform of customary laws, two significant issues remain and are identified in the chapter on Ethiopia: women's ability to control and manage household property and status and prevalence of customary practices.

Despite the equitable rules for division of property, at another level the Civil Code codifies customary practices (see chapter 4). It designates the husband as the head of the family and gives him the authority to administer household property. Reiterating the traditional division of labor in households, it requires the wife to obey the husband in all lawful things, and states that women must take care of all domestic duties, if their husbands cannot afford to hire servants. During marriage, the Civil Code supports the husband's right to control and manage common property; husbands can make all decisions relating to such property, provided they act judiciously and do not alienate property without consent of their wives. The Civil Code permits spouses to agree otherwise through a valid contract of marriage, but given the strong traditional and cultural beliefs and the relative status of women, women do not, and are not encouraged to, use this provision. Therefore,

during marriage, women do not control common household property. They receive this right only when the marriage is terminated by divorce or death.

However, to some extent, the progressive reform of the Civil Code is academic. The Civil Code has had little or no impact in the last 38 years on the majority of Ethiopian women; in rural areas, ethnic groups for the most part continue to apply their own norms and customs.⁵ Enforcement mechanisms are weak because personal disputes are settled by older and respected male members of the community through the traditional Shimalgene system of family arbitration. This permits the continued application of customary laws and for the most part prevents the judiciary from playing an active role in applying the new provisions. During the legislative debates that preceded the 1995 Constitution, the status of customary practices was renewed. As a concession to the varied cultures of the people, the 1995 Constitution, while strongly reiterating the concept of gender equality and nondiscrimination on the basis of gender, reopens the issue. It states that enabling legislation may permit the application of customary laws to disputes related to personal matters, provided that all parties to the dispute agree to such application. The debate in the country now revolves around whether such enabling legislation can permit the application of discriminatory customary laws. The constitution is silent on the specific issue, although it does state that all laws that violate the constitution shall be invalid. However, the issue remains of whether disputants can elect to apply customary laws that discriminate on the basis of gender. The matter is not yet clear; only enabling legislation will clarify the issue. After 38 years of experimenting with a uniform Civil Code that refused to recognize customary rules, the Ethiopians may have come full circle.

There have been far-reaching reform of land-related customary practices in Ethiopia. The 1995 Constitution maintains the principle that land belongs to the state. Federal as well as the regional laws require that the allocation of landholding rights—the responsibility of the village level administrative authorities—be free from any gender bias. The principle of land belonging to the tiller—a principle which had been interpreted to mean that land was to be allocated only to the male farmer—has been discarded. Perhaps, the emergence from a postconflict situation and the role of women during the civil war have created a strong constituency that permitted two of the regional administrations in Ethiopia to forge ahead with gender-equitable land reform. In the process, female-headed households registered as such in the village registers seem to have had greater access to land. It is not yet clear whether unmarried women, single mothers, and divorced women who

are not heads of household have benefited, although the statutes require that the needs of such women also be considered.⁶ As chapter 4 notes, land continues to be registered in the name of the head of the household, irrespective of gender, and this means that married women continue to access land through their husbands.

Kenya

Unlike in Ethiopia, Article 82(4) of the Kenyan Constitution permits the application of customary law to matters related to adoption, marriage, divorce, burial, and demolition of property. At the same time, the constitution does not provide for gender as a basis for nondiscrimination (see chapter 1); therefore, even gender-biased customary practices are valid and constitutional. The issues in Kenya are more fundamental: the constitution recognizes all customary laws resulting in the application of gender-biased customary laws to all personal matters.

Customary laws, therefore, for the most part define women's access to economic resources. Generally, these laws give women ownership rights only to their personal effects and any gifts received by them but only usufructory rights to other property. Inheritance is usually along the male lineage and so women be they wives or daughters do not inherit family property (chapter 1, p. 30). The Kenyan delegation drew attention to an evolving form of cohabitation in which couples do not undergo any marriage rites. With the breakdown of extended families and as a result of urbanization and migration, these types of informal cohabitation have increased significantly. However, such arrangements, even though similar to the institution of marriage, are not recognized by statutory law. In order to protect the legality of cohabitation and to give it the sanctity of marriage, couples utilize affidavits to

certify the marriage, sometimes under the mistaken notion that these can protect the rights of the spouses and the children. However, affidavits for a specific purpose, like receipt of insurance benefits or pensions, are valid only for such purpose. General affidavits under Kenyan law are valid only if renewed annually. Spouses in such marriages are therefore particularly vulnerable. Upon termination of the union, the woman has no access to any household property and is not entitled to maintenance from her partner, although the pending Children's Bill seeks to impose a duty on maintaining children born out of wedlock.

Chapter 1 also highlights the need to reexamine the gender-disaggregated impact of formalizing customary laws relating to land. The registration system was introduced by the colonial powers because it had worked well in legal regimes where land was owned privately by individuals. But in the process, the customary right of the male head of

the household or of the clan leader to allocate land for use was mistakenly understood as a right of ownership, resulting in a reduction of the customary access of women to land.

Tanzania

In Tanzania, the issues are slightly different. For the most part, customary practice has been modified through codification, and customary laws apply to Africans unless the contrary is proved (see chapter 2). The issues are that statutory intervention has stopped short of providing women full access to household property and inconsistencies in access leave women vulnerable when a marriage is terminated.

The Law of Marriage Act of 1971, was regarded as a milestone in integrating personal laws and pioneered a new perspective of gender issues, which were earlier entrenched in customary attitudes. It prohibits alienation of the matrimonial house without the consent of the other spouse. Either spouse may protect it by entry of a caveat in the land registry; in the event of alienation without consent of the other spouse, the latter continues to maintain a right to residence in the house, unless the purchaser can show that he or she did not have knowledge of the spouse's interest and could not by reasonable diligence have identified it. Although the law recognizes matrimonial property as property acquired during marriage, it permits rebuttal that property acquired in the name of one spouse belongs absolutely to that spouse. Thus, property acquired by one spouse entirely through his or her efforts does not constitute part of the matrimonial property.

Paradoxically, the wife who has some degree of protection during marriage, at least so far as the matrimonial house is concerned, loses all such rights if the marriage is terminated either by divorce or death. Upon divorce, as stated earlier, property acquired during the marriage belongs to the spouse in whose name it is registered, unless a wife can prove that such property was either acquired or substantially improved during marriage with her contribution. However, the court may order division of matrimonial assets jointly acquired during the marriage. Thus, in Tanzania the courts have had to use the argument that marriage is an economic venture to provide women upon divorce with some access to matrimonial assets, even if acquired by the husband. Before this, wives had to prove that they made tangible contribution to the acquisition of matrimonial assets. Wives and daughters have little or no inheritance rights when there are male heirs. As a widow, a woman has no right of inheritance; her share is to be cared for by her children just as she cared for them (chapter 2, p. 69). A woman may claim the right to remain with her children in a house of the deceased

or she may choose any relative of the deceased husband as her husband and live with him.

The customary laws related to land were codified by the colonial rulers and by and large continue to apply for the most part in Tanzania. The establishment of patrilineal legal systems over even 20 percent of the country's matrilineal communities led to the erosion of women's access to land. Chapter 2 indicates that in 1991, 46 percent

of all land in the country transferred through inheritance. In this situation the ability to inherit household property becomes critical; yet in Tanzania the laws of inheritance as embedded in different customary laws exclude women from inheriting household property. The Tanzanian experience reiterates the Kenyan position in commenting on the prevalent state of women's access to land.

Uganda

Uganda has adopted a different approach to customary laws and practices. The Ugandan Constitution prohibits laws, cultures, customs, or traditions which are against the dignity, welfare, or interest of women or which undermine their status (see chapter 5 and Article 33(6) of the Uganda Constitution). This approach leaves the determination of whether a particular custom or tradition is offensive to the discretion of an administrator, judge, or magistrate. It also leaves open the possibility that certain laws even though unequal may not be against the dignity or welfare of the woman. The lack of clear rules on what makes a customary practice offensive creates uncertainty, but it also permits Ugandan courts to forge a new equitable direction, consistent with the norms of the people who bring the disputes to the court. This approach is also adopted by the Divorce Act (1964) which provides for equal rights upon divorce but is silent on the issue of division of matrimonial property.

Unfortunately, such provisions are interpreted along traditional patriarchal lines, and courts have held that upon divorce the Ugandan woman has a right only to personal property, unless she can show documented evidence that she has contributed to the purchase of other property. A case is cited where the wife could not lodge a caveat to prevent the sale of the matrimonial home to which she contributed because she was not the registered owner of the property. A preferable approach in this case would have been for the Ugandan court to see itself as guaranteeing the woman's welfare by ensuring that she has adequate pecuniary support. The potential is inherent in the constitutional provision but can be used only if there is a strong and activist lobby or constituency for women and a fairly activist judiciary.⁷

Only 8 percent of Ugandan women have leaseholds, and only 7 percent own land, although they constitute 70 to 80 percent of the agricultural laborforce and account for over 80 percent of the food production. Customary laws govern the transfer of land, and women gain access to land through their husbands, as is the customary practice. Upon widowhood or divorce, the wife is expected to return to her father's village, where she becomes dependent on her male relatives for land. Women rarely inherit land.

Zimbabwe

In Zimbabwe the application of customary laws to personal relationships, except for minor statutory amendments to maintenance and inheritance, results in women being inadequately protected. Most marriages are not registered and are governed by customary rules. Customary laws are rigidly applied by courts on the assumption that customarily a married woman works for her husband, and that all property acquired thereby, except for property categorized as household property such as kitchen vessels, belongs to her husband. In fact, the situation is rather extreme; the chapter on Zimbabwe cites the position of the courts in *Jenah v. Nyemba*: property acquired during a marriage becomes the husband's property whether acquired by him or his wife (chapter 3, p. 130). Upon divorce the division of property depends on whether the marriage is registered or not. If registered, division of property is governed by the Matrimonial Causes Act; if not, it is governed by customary tenets, discussed earlier; the majority of marriages in Zimbabwe are not registered. The Matrimonial Causes Act provides more equitable allocation, but courts are seemingly reluctant to effect radical redistribution of assets unless there are exceptional cases (see p. 106).

In matters of spousal support and inheritance, there has been some attempt at reform through statutory intervention. The Maintenance Amendment Act, which supersedes customary laws, requires a husband to contribute regularly to the maintenance of a spouse after divorce, as well as to that of minor children, whether born in or out of wedlock. Under customary laws, spouses had no rights to inherit property from each other. This

has been amended by the recent Administration of Estates Amendment Act No. 6/97, which gives the surviving spouse and the children of a deceased person the right to inherit property of the deceased. The matrimonial home, whatever the system of tenure, belongs to the surviving spouse.

Talking of women's access to land, the President of the Zimbabwe Farmers Union, Gary Magadzire, is cited: (p. 93):

I could tell you quite categorically that there would be no agriculture in this country without women. The role of women in this country is paramount—in fact it is the central pin to agricultural development. If for any reason women went on strike, agriculture in this country would fall to pieces.

Yet, chapter 3 cites the case of a rural woman who built and maintained communal lands entirely through her own efforts while her husband resided in Bulawayo. Upon divorce, the court denied her any right in the rural matrimonial home, the argument being that because Zimbabwe is a patriarchal society, it would not be appropriate for the divorced woman to reside in the husband's community. The court awarded her the parties' urban home in Bulawayo, in spite of the fact that the woman, a farmer for the last 23 years, could not have pursued any vocation in an urban context.

Implementation of Equitable Legal Provisions

Implementation of laws to protect women's rights is an important issue. As discussed earlier, legal reform of customary rules have been initiated in all these countries. Reform in Ethiopia has been relatively fundamental and bold, cultural and religious difference have been ignored, and a common Civil Code was adopted in 1960. In the other countries, reform has been less strident, and measures have been piecemeal, addressing some aspects, particularly those related to inheritance and access to household property either upon termination of marriage. However, irrespective of the nature of the reform, many of these statutory rights remain on paper because implementation is weak or ineffective, and women continue to be governed by customary rules, irrespective of their legal status.

Low levels of women's education lead to legal illiteracy creating one severe constraint to effective implementation. Unaware of their rights, most women are unable to enjoy the benefits of legal reform. As the chapter on Uganda states, even literate women often do not have access to information in the public sphere that would inform them of their rights and privileges; the chapter recommends that there must be aggressive dissemination of information on positive or beneficial policies and legal provisions, so that women may understand and appreciate the different opportunities available to them and the intent and spirit of legal reform. For example, if Ethiopian women are required to permit the application of customary laws to personal disputes, in the current situation they would do so without full knowledge of their options. The

chapter on Uganda also recommends that legislation should not only be published in a gazette, but that lawmakers should be obliged to properly disseminate beneficial provisions to targeted populations. This is all the more so in Uganda, since the constitution casts a duty on the state to promote public awareness by disseminating laws as widely as possible.

In personal matters, effective implementation results from an ability to enforce one's legal rights or seek remedies for infringement of legal rights. Dispute settlement through the court system, the normal procedure in most of these countries, is not an easy task. Lack of knowledge of rights, the lack of economic resources to hire lawyers or pay court fees, tedious and delaying legal procedures, and social taboos are all factors that prevent women from accessing the courts for legal redress. While it is a general problem affecting both poor men and women, women are relatively at a greater disadvantage given their higher levels of illiteracy, lower levels of independent income,

and being subject to great cultural and societal taboos. This is particularly true in rural areas, where access to courts and administrators is even lower.

In Ethiopia, personal matters are settled through a process of family arbitration. Based on the traditional Ethiopian system of settling disputes, family arbitration involves each party's appointing a respected man in the community to arbitrate the dispute. Arbitrators normally worked without fees and aimed to ensure the welfare of both parties and through that the well-being of the clan or community. Procedures were simple, and remedies were accessible. However, two key issues currently limit women's ability to enforce their rights. Either because of ignorance of the Civil Code of 1960, or because of awareness that some of these provisions could potentially create conflict in the village setting, or because of pure lack of commitment to these modifications, family arbitrators continue to apply customary rules to personal disputes. This effectively reduces women's access to household property. Second, particularly, in urban areas, the process has become commercialized; arbitrators are no more trusted representatives of each party. They serve only for a fee, leaving women, who are relatively poorer, more vulnerable. Surveys indicate that in order to charge higher fees, arbitrators often prolong settlement of disputes (see chapter 5). Despite all this, it would be fair to say that keeping family disputes out of the traditional court systems has provided women with greater access to legal remedies, although in the Ethiopian setting it may have not always led to an equitable resolution. Sensitive reform of the family arbitration system is, therefore, key in Ethiopia to ensure both easy access to remedies for women and to assist in the implementation of the Civil Code's equitable provisions.

Implementation of affirmative action programs is discussed in chapter 5. The Ugandan Constitution and the Local Government's Act

attempt to increase the number of women in decisionmaking positions by reserving one-third of the councilor seats for women. Affirmative action by itself cannot increase women's effective participation in the socioeconomic context of Eastern African countries. There is a need to gender-sensitize even women; otherwise, women councilors may fail in translating their numerical presence into a pressure group that effectively advocates and articulates gender needs and concerns (chapter 5, p. 184). Stereotyped images of women and attitudes, steeped in traditional views of women's role, also affect women's participation. For example, at the local government level in Uganda, each local committee has one seat reserved for women, and the one woman is required to act as secretary of the Committee. It is essential to sensitize not only women, but those who function with these women, to the intent and spirit of the policy, and different elements are indicated in the Ugandan action plan.

Implementing laws in a decentralized governmental framework—as in Uganda and Ethiopia—is also discussed. In Uganda, functions, powers, and services have been decentralized to local governments to increase local democratic control and participation in decisionmaking and to mobilize support for development relevant to local needs. In Ethiopia, administrative powers have shifted to regional governments who may further delegate to subregional entities at the zonal and district levels. Such decentralization of powers provides an excellent framework that facilitates effective implementation of laws to protect women. Delivery of services becomes easier in decentralized administrations. Thus, it would be easier to design legal education programs and activities and have them delivered at the community level. Similarly, dispute-resolution authorities can also be decentralized. For example, the chapter on Uganda suggests that local councils could be strengthened and authorized to settle disputes in accordance with the law and the values of the constitution. In addition, if properly implemented, affirmative action at the lower levels of the decentralized framework helps to strengthen the capacity of grassroots women to participate in legal reform. Although the advantages are many, caution is urged since local councils with judicial powers have tended to reinforce the cultural practices (chapter 5, p. 187). Building capacity and raising awareness on gender issues are essential if laws are to be effectively implemented in a decentralized framework.

Sustainable Legal Reform

Legal reform, however bold, cannot be achieved by merely amending the laws on the books. This will only legitimize the process of reform;

it will have no impact on women. In countries with high levels of illiteracy, scarce resources, and limited access to information, changing the law can only be a first step. It has to be part of a comprehensive and holistic approach; if reform is to be truly effective, a number of other measures must be taken simultaneously.

Gender-sensitive legal reform within the home is not an easy task; there are no simple answers. While statutory laws are open to reform, customary and religious laws are difficult to tackle, are sensitive in nature, and are the least amenable for state reform. Since women's access to property is closely linked to customary and religious laws, addressing the above issues is indeed an intimidating task and must not be underestimated. If reform is to be effective, care must be paid to the issues discussed below.

Customary laws that once provided adequate protection to women as members of large tribes or clans, today do not afford women similar protection in the context of nuclear families and market economies. This is nowhere more evident than in customary laws related to control and allocation of land—the single most important resource for rural women. Traditionally, land was a common resource of closely knit villages; sale of land was unknown. In the interest of protecting communal resources, women were not given independent access to land because in most communities women moved to their husband's village upon marriage. Women could then transfer land to people outside the immediate clan or tribe or could leave the land fallow. In the case of divorced or widowed women, the divorcée was expected to return to her village of birth, because her continued stay in her husband's village would create disharmony for all. As widows, women were permitted to hold the land for their sons, if any, or in some communities a male member of the husband's clan would be responsible for the wife. Given all this, customary wisdom dictated that the male head of the household control the process of land allocation within the household. Women, therefore, had little independent access to land; and women who did not have the support of men, that is, unmarried adult and divorced women, were more vulnerable than the rest. Today the socioeconomic context has changed: women play a significant role in agriculture in Eastern Africa; there is an increase in number of female-headed households; the tight web of clan and tribal relationships has loosened. When the same customary rules are applied in these new contexts, the result is inequitable. It is important that legal reform recognize that customary laws are not static; they were expected to evolve in accordance with the needs of the community. Legal reform must focus not on the content of customary laws but on the underlying premise that they are rules for sharing resources in a sustainable and

harmonious manner. Now that women farm land in large numbers, legal reform of customary laws must aim to protect the rights of these new players.

Also, legal reform must be based on a clear understanding of customary practices. For example, in the area of land rights, statutory law imposed mostly by colonial regimes, unwittingly strengthened the rights of male members by imposing patriarchal rules in social contexts of clans and tribes where, although men held the strings, they did not have ownership rights. Ownership of important resources like land rested with the clan or community. Modern statutory law hit the final nail on the coffin of women's land rights, by equating rights to allocate land to land ownership. The need to understand customary practices and laws is recognized in the country action plans. Tanzania, for example, which includes a legal reform component in its action plan, contains an activity that will collate and analyze all customary laws related to land. The Ugandan Action Plan includes a number of similar elements, and in particular recommends that the capacity of the Law Reform Commission should be strengthened to engage in wide-ranging consultations, particularly with women, before making definite proposals for legal reform.

Just as in other public interventions, there is no ownership of or commitment to legal reform when it is achieved in a nonparticipatory fashion. Beneficiaries, even many rural women, perceive reform of customary laws as a threat to a way of life that has evolved over generations—a perception that is counterproductive and leaves reform merely on the books. Encouraging participation in legal reform could increase ownership and improve effectiveness. Participation should also encourage people to play an active role in determining which practices are salutary and which need to be modified to suit the new ethos as reflected in the country's constitution or the emerging socioeconomic context. Of course, the process may be slow, there may be need to build consensus, but the final result may be more effective and sustainable. This recognition is clear in the country action plans. Zimbabwe talks of attitude surveys, focus group discussions, and campaigns for awareness creation as essential for effective legal reform. The Ethiopian action plan focuses on mechanisms to involve women in the process of legal reform and to strengthen the constituency for such reform.

The intractability of customary practices and its continuing application within the home also indicates the need to simultaneously strengthen women's access to resources outside the home. Given that women, particularly in rural areas, are increasingly the backbone of the agricultural sector, enhancing their productivity and increasing their

ability to receive income from these activities, will in itself be a starting point. Government policy should simultaneously focus on increasing women's opportunity to access resources outside the home. Equitable land policy will go a long way in enhancing the economic status of women. Increasing opportunities for suitable training that would sharpen existing skills, improve their participation in the formal labor markets, facilitate their entry into the informal labor markets, provide support through childcare centers, enhance their access to credit, reduce the arduousness of their daily household tasks, and encourage participation in informal and formal savings groups, will all go a long way in elevating the economic status of women. For it may only be when women are themselves economically independent and are also able to access information that they will be able to cast aside inequitable customary practices, fight violence in their homes, and support the preservation of those practices they believe to be useful. The demand for legal reform will then come from the proper constituency.

This is not to say that the legal reform must stand still till women build their capacity to participate meaningfully in legal reform. Processes must be found to involve women in existing legal reform, to ensure that their voices are heard and considered in legal reform. It must involve women, particularly those affected, be it through affirmative action, participatory appraisals, beneficial assessments, consensus building, public hearings, or stakeholder analysis. Solutions have to be home-grown, otherwise one runs the risk that women will continue to have inequitable access to economic resources, and customary laws and its tenacious hold on people will continue to be blamed for the inequitable and unacceptable situation.

Notes.

In writing this piece the author, Gita Gopal, has relied on country issue papers presented at the Regional Conference in Addis Ababa, Ethiopia, October 1997. Comments are gratefully acknowledged from Elizabeth Adu, Magdalena K. Rwebangira, Theonestina Kaiza-Boshe, and Maryam Salim.

1. Eritrea participated in the conference but did not present an issues paper.

2. Household property refers to any property, both movable and immovable, to which a women has access as a member of the family or household to which she belongs. Thus property rights acquired upon birth, marriage, death of husband or parents would all be considered part of the household property.

3. It even categorizes salaries and income as part of the community property, even though they may be managed by the wage earner.

4. However, customary rules have been codified, and the wife takes her personal property, half of what is considered common or matrimonial property. The personal property of the husband is inherited by his blood relatives.

5. See chapter 4 and also Women's Affairs Office, Government of Ethiopia, and The World Bank. 1998. *Implementing the Ethiopian National Policy for Women: Institutional and Regulatory Constraints*.

6. See *Implementing the Ethiopian National Policy for Women: Institutional and Regulatory Constraints*, op. cit., and chapter 4.

7. In Uganda, the *Succession (Amendment) Decree (1972)* codifies and modifies customary rights of inheritance. This act recognizes the rights of women to inherit and provides a widow with 15 percent of the deceased husband's property and a right to stay in the marital house and use all adjoining land. It also permits her to administer the estate. Children receive up to 75 percent of the property, with both sons and daughters sharing equally. The act provides for additional procedural protection to prevent relatives from grabbing the family property.

1— Kenya

Marriage forms the basis of social relations necessary for the continuation of family ties and involves rights and responsibilities that determine the extent to which an individual fulfills social and personal aspirations. Undoubtedly, therefore, marriage has major implications for women's empowerment. This chapter addresses the implications of marriage for women's legal and economic empowerment in Kenya. It discusses cohabitation unions principally because the practice is increasing and has major implications for the overall empowerment of women. Moreover, the law regulating cohabitation unions is unclear and may potentially contribute to the deteriorating economic status of women and families involved.

The overall argument of this chapter is that a woman's marital status is an important factor in determining her overall economic empowerment. The chapter gives an overview of women's social, legal, and economic status and discusses relevant policies and aspects of Kenyan law on marriage, property, and access to economic resources. It highlights the significance of the colonial factor and its impact on women's land rights and the current marriage laws and the economic relations of spouses, especially those governed by customary law. Implications of cohabitation unions are also analyzed. The chapter concludes by providing a sample of emerging issues and recommendations on policy and legal interventions.¹

Country Background

Kenya is a country of great physical and ecological diversity; most of the country falls within the arid and semiarid zones. Kenya borders with five other nations and the Indian Ocean, with 400 km of coastline in the south-eastern part of the country. The country's diverse landscape—the low-lying coastal area; the extensive plateaus to the east, north, and south; the spectacular highlands associated with the rift valley system in the central

region; and Lake Victoria to the west, the largest freshwater lake in Africa, surrounded by the western highlands—creates very different climatic conditions, resulting in distinct agroecological zones.

Kenya's economic potential and human settlement patterns are closely related to these zones. Given that about 80 percent of the coun—

try falls within the arid and semiarid zones, where the extent of aridity ranges between 30 and 100 percent, most of the country is characterized by water scarcity and is suitable for pastoralism and ranching. Intensive smallholder agricultural activities are limited to the central and western highlands.

The population of Kenya is estimated to have reached 29 million by mid-1997—it was 21.4 million in 1989—assuming moderate decline in fertility and mortality rates. A time-series analysis of the census results indicates that Kenya's national population increase accelerated from 3.0 percent in 1962 to 3.3 percent and 3.8 percent in 1969 and 1979, respectively. The analysis also indicates that Kenya's rate of population growth declined from 3.8 percent in 1979 to 3.3 percent in 1989 and was projected at 2.5 percent by mid-1997 (see table 1.1). While the acceleration in growth rate during the 1962-85 period was due to a combination of increases in fertility levels and decreases in mortality attributed to improvements in health and socioeconomic status, the decline in the growth rate during the 1990s is mainly due to fertility decline.

Rapid growth of population and its pressure on the limited agricultural land coupled with search for employment opportunities have led to migration from rural to urban areas, especially from highly populated districts in Central Province, Western Province, and Kisii to districts in the fertile Rift Valley Province. In 1989, for example, urban population was 18 percent of the total population; 60 percent of the total urban population lives in Nairobi and other six major towns. The major forces contributing to migration to urban areas are employment opportunities and better services such as schools, hospitals, and recreation facilities, among others.

Table 1.1 Population Projections, by Region and Gender, Kenya, Selected years
(percent)

Province	1992			1995		
	Men	Women	Total (thousand)	Men	Women	Total (thousand)
Nairobi	56.7	43.3	1,636	56.4	43.6	1,857
Central	49.4	50.6	3,483	49.5	50.5	3,711
Coast	50.6	49.4	2,087	50.6	49.4	2,249
Eastern	48.7	51.3	4,298	48.8	51.2	4,653
North-Eastern	52.1	47.9	603	51.9	48.1	657
Nyanza	48.0	52.0	4,427	48.0	52.0	4,766
Rift Valley	50.6	49.4	5,764	50.6	49.4	6,405
Western	47.9	52.1	2,943	47.9	52.1	3,220
Kenya (total)	49.8	50.2	24,477	49.8	50.2	27,518

Source: Central Bureau of Statistics 1989.

The Status of Women in Kenya

Women constitute more than half of the total population (50.2 percent in 1997) of Kenya, which makes their development and levels of productivity vital to the country's economic development. Currently, women in rural areas account for over 68 percent of labor input in agriculture as either unpaid family workers or poorly remunerated ones. Women dominate the sector because they are often left behind in the rural areas while their husbands move to the urban centers in search of better-paying employment opportunities. Women are left to suffer since the remittances from their husbands may not be adequate and may not come regularly. Therefore, the transformation of the economy depends very much on the quality of women's contribution. Empowering rural women so that they get engaged in income-generating activities is an essential strategy for improving their status. Similarly, the quality of the entire laborforce is also completely dependent on women's performance as mothers, the custodians of family health and welfare, especially those of children. The improvement of women's status has direct relevance to the status and welfare of the family and the nation.

The Social Status of Women

Kenya has been working toward recognizing the important role women play in the socioeconomic life of the nation. To this end there have been various deliberate attempts at improving the status of women.

1997			2000		
<i>Men</i>	<i>Women</i>	<i>Total (thousand)</i>	<i>Men</i>	<i>Women</i>	<i>Total (thousand)</i>
56.3	43.7	2,008	56.0	44.0	2,243
49.6	50.4	3,852	49.5	50.5	4,044
50.6	49.4	2,353	50.6	49.4	2,501
48.9	51.1	4,882	49.0	51.0	5,212
51.9	48.1	692	51.8	48.2	742
48.0	52.0	4,982	48.0	52.0	5,288
50.6	49.4	6,838	50.6	49.4	7,490
47.9	52.1	3,402	48.0	52.0	3,670
49.8	50.2	29,011	49.9	50.1	31,190

Women's quality of life, as measured by such indicators as health, education, employment, and incomes has improved to a large extent since independence. For example, with regard to education, in 1963 a total of 892,000 students attended primary schools in Kenya, 34 percent of whom were girls. By 1973, total enrollment had doubled, and the proportion of girls had increased to 43 percent, rising further to 48 percent in 1987. In 1996, primary school enrollment for girls had increased to 49.2 percent (Government of Kenya, various years, a). In

1964, female representation in modern sector employment accounted for only 12.2 percent; by 1989 it had risen to 21 percent and to 28.6 percent in 1996. Since 1992, women have been appointed to key positions in the public and private sectors, offering a role model for other women. Indeed, women are increasingly joining modern employment, leading to increased incomes at family levels. As more women join wage employment, children get better care in terms of education, health, and food.

Despite the recognition of women and the attempts at encouraging their participation in the development process, quite a number of constraints still exist at various levels. For instance, in 1995 it was estimated that of all girls who entered standard 1, only an estimated 34 percent completed primary school. At secondary school level, the dropout rate is even higher. Poverty is a major cause of school dropout in the 1990s. In 1994, for example, 47 percent of the population was reported to be living below the poverty line. The implication is, of course, that almost half of the families could not afford to pay school fees even at primary schools level because of cost sharing. The absolute poverty in the rural and urban slums has led to large number of children living under difficult circumstances. In a society like Kenya's, with deeply rooted cultural values, when families are faced with hard choices such as who to educate with scarce resources, girls come second.

Another phenomenon that has led to high dropout rates for girls is adolescent pregnancy. Until 1996 girls who conceived while still at school were expelled. Now girls are permitted to continue their education after giving birth, which has considerably reduced girls' dropout rates. This change will enable women to be self-reliant and take care of their children in the best possible way.

Women's extremely limited capacity to gain access to education, land, and credit is a major contributor to poverty. This cycle begins from childhood. As the Poverty Profiles Assessment (Narayan 1994) reveals, poverty leads to early marriages in the hope that the bride-wealth the bride family receives will enable her siblings to continue their schooling. Furthermore, 83 percent of those interviewed in this assessment indicated that they would discontinue education for a girl in favor of a boy if resources did not permit both to be in school.

Economic Status of Women

Studies on poverty in Kenya (Narayan 1994) indicate that poverty is a major factor affecting the social, legal, and economic status of women and children. The World Social Summit held in Copenhagen in March 1995 recognized that

Poverty has various manifestations, including lack of income and productive resources sufficient to ensure sustainable livelihoods; hunger and malnutrition; ill health; limited or lack of access to education and other basic services; increased morbidity and mortality from illness; homelessness and inadequate housing; unsafe environments; and social discrimination and exclusion. It is also characterized by lack of participation in decision-making and in civil, social and cultural life.

According to World Bank (1997), Kenya ranks among the 22 poorest countries in the world. Other studies have estimated that between 30 and 50 percent of Kenyans live below the poverty line. In many areas the intensity of poverty is much worse because of either seasonal variations or structural causes.

The Kenya government is sensitive to these issues and remains committed to allocating adequate resources to basic social services and ensuring that in particular the poorest and most vulnerable enjoy access to these services. The government policies on poverty are spelled out in Government of Kenya (various years, b), based on Sessional Paper. No. 10 of 1965 on African Socialism and its Application to Planning in Kenya. The major goals specified in this paper include political equality, social justice, high and growing per capita income equitably distributed, and freedom from want, disease, and exploitation.

Following the Third United Nations Women's Decade Conference in Nairobi in 1985, efforts aimed at improving the status of women were initiated and implemented. These included the strengthening of women groups and of the Women's Bureau and promotion of economic and social activities targeting women. The Fifth Development Plan (1984/88) emphasized the mainstreaming of women into the national development process.

The 1986 Sessional Paper on Economic Management for Renewed Growth introduced structural adjustment programs that radically redefined existing approaches to economic development. Economic reform programs based on this sessional paper were further articulated in the 1989/93 development plan. The immediate impact of economic reform programs was an unprecedented rise in inflation, which heavily affected poor women in the informal sector and their ability to meet

their families' subsistence needs. In addition, the share of government expenditure disproportionately fell on the social sector and reduced subsidies in the health, education, and agricultural sectors; lack of formal social security; high market prices and increased inaccessibility to basic services for poor women especially. A large part of the population has thus been excluded from participation in the formal economy and now operates in the informal sector—where basic services are scanty and poor—mainly as hawkers. The need to provide safety nets to protect the poor, especially after introduction of structural adjustment programs became the focus of the 1994/96 Development Plan, which emphasized resources and sustainable development. It also marked the introduction of the Structural Dimensions of Development Programme to deal with poverty in the country.

Poverty has not declined since 1992; if anything, it has been on the increase in recent years (Narayan and Nyamwaya 1995). Women and children continue to dominate the poor population groups. The most current information on poverty levels data indicates that one-third of rural households are female-headed, and one-fifth of all households have no male support. Female-headed households account for 44 percent of households categorized as poor, and 80 percent of female-headed households are either poor or very poor (see table 1.2) (Narayan 1994).

The dominant causes of poverty among female-headed households are illiteracy, negative cultural attitudes and practices, and lack of ownership and access to land or to other sources of production. These are further compounded by a complex interplay of patriarchal customary norms, statutory land legislation (World Bank 1995), and family disputes resulting in the migration of abandoned rural women to the urban slums where these women live in very poor conditions (Narayan 1994). The 1995 World Social Summit recognized these aspects and recommended the removal of negative or backward sociocultural prac-

Table 1.2 Male- and Female-Headed Households, by Poverty Ranking, Kenya, 1997

<i>Entire sample</i>	<i>Male-headed</i>		<i>Female-headed</i>		<i>Total</i>	
	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>	<i>Number</i>	<i>Percent</i>
Very poor	594	20.8	293	44.1	887	25.2
Poor	1,083	37.9	235	35.4	1,318	37.4
Medium	889	31.4	118	17.8	1,017	28.9
Rich	283	9.9	18	2.7	301	8.5

Gender and Law

Total	2,859	100.0	663	100.0	3,523	100.0
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Source: Government of Kenya: Economic Survey 1997.

tices that put women and their children at a disadvantage. It was further agreed that on average 20 percent of Kenya's budgetary expenditure and 20 percent of the aid flows should be allocated to basic social services, such as basic education, primary health care, and water and environmental sanitation.

Lack of employment opportunities has also been a major contributing factor to women's low economic and social status. This has in turn affected their welfare and sustenance and those of their families and eventually the communities they come from. Some changes have started to take place. The number of female wage employees in the modern sector rose from 407,700 in 1995 to 459,300 in 1996, raising women's share of total wage employment from 26.2 to 28.6 percent, although during the same period the public sector registered a zero growth in wage employment. The increased participation of women in the laborforce is mainly due to the opening-up of opportunities caused by the improved access of women to education, from 30 percent in the early 1980s to 56 percent in 1995 (Government of Kenya various years, b). However, women are more visible in the informal sectors, particularly in small-scale agricultural sector and small-scale businesses such as hawking.

Kenya's unemployment rates are on the increase especially among youth and women. Working-age women who are able and willing to work often find no work. Consequently, society loses the goods and services that these women would be able to produce if employed, and the economic and social well-being of these women's families is affected.

In the rural economy about 96.1 percent of women and 80.4 percent of men are engaged in household and farming activities. Despite women's high participation in the rural economy, they remain disadvantaged because they are unable to secure loans, have little access to the farm income, and remain generally unaware of their legal rights. In the urban economy the informal sector popularly known as Jua Kali provides an important entry point for many women who produce a variety of affordable goods and provide services in a highly competitive and dynamic environment. This sector developed mainly as a result of the economic reforms of the 1990s, and most of the activities take place in markets, backyards, vacant plots, and side-street structures. By 1992 the informal sector consisted of approximately 910,000 enterprises, employing more than 2 million individuals. Thus the importance of this sector to the overall economy cannot be doubted, and it was recognized by the 1992 Sessional Paper No. 2 on Small Enterprise and Jua Kali Development in Kenya, which was adopted in the National Development Plan 1994/1996.

The Jua Kali sector continues to be a significant entry point for many women entrepreneurs, who make up about 30 percent of the laborforce in a traditionally male domain. They, however, continue to face problems of inaccessibility to business premises and credit, illiteracy, and negative social attitudes. For example, it is common to find women entrepreneurs operating from their homes or backyards, or participating in merry-go-round credit arrangements because they lack credit to set up their businesses. Few women are involved in metallurgy, construction, carpentry, and electrical trades because of difficulties in acquiring the necessary skills. However, women dominate the textile industry where they constitute 62 percent of the proprietors and 60 percent of the workers.

The economic disempowerment of women has very far-reaching implications for aged women, a majority of whom are engaged in either the agricultural or informal sectors. These women have no social security to rely on in old age because social security pension benefits are available only to workers in the formal sector. More often than not the products of women's labor during their productive years are either consumed by their families or

taken over entirely by their husbands. This situation is exacerbated by the ambiguity in the current legislation and policy on women's rights to use their husbands' property, such as land. Moreover, whereas a man in old age may marry a younger woman to care for him and continue to produce for him, a woman in old age cannot do the same and is therefore left to depend on her children, husband, or family, who become a form of social security.

Women's Access to Land

Land is Kenya's most important natural resource. Almost all economic activities revolve around agriculture. Access to and control over land therefore have a definitive impact on a family's socioeconomic status, particularly in rural areas, where 80 percent of the population live. Although women continue to play the leading role of food producers and make up more than 80 percent of the laborforce in the rural agricultural sector (Were 1990), they are still denied the opportunity to make crucial decisions affecting farm production. For example, in agricultural cooperatives the criteria for membership emphasize land ownership, which more often than not is held by men. This means that a woman who is not a registered member cannot take part in the decisionmaking processes of the cooperative even when decisions have a direct impact on her efficiency as a producer.

A study conducted by Women and Law in East Africa between 1994 and 1995 revealed that in Kajiado, Kisumu, Mombasa, and Muranga

districts, a majority of women do not own any immovable property or productive resources. That is, they do not control or make any crucial decisions affecting household property. There have been cases where men have used land or other forms of property to secure loans without involving or informing their families. Women are therefore placed at risk regarding shelter, food, clothing, and other needs. Clearly the insecure position of women with respect to land has major implications for their economic empowerment.

Women's lack of access to land is historically grounded in the colonial era. In the precolonial economy many tribes were agriculturists who practiced a mixed economy mainly for subsistence. The population to be fed was quite low, and the abundance of land, which enabled shifting cultivation, helped to keep the structure quite constant. The division of labor between sexes was an important indication of the type of social relations existing within the various communities. Women charged with the duty of maintaining the community took to exploiting the land. In agricultural communities, women monopolized both the process of production and agricultural skills. This meant that they controlled the agricultural surpluses. Although women controlled the means of production, the power of allocating land was, in most communities, retained by men. In this arrangement, security of tenure was based on rights of use, which were mainly enjoyed by women. Power of allocation by men was derived from the fact that most of the societies were patrilineal. This fact was also reflected in the various rules of succession under which women, in most communities, did not inherit land.

European colonialism drastically altered this economic structure in the early part of the twentieth century. The changes introduced by the colonial regime fundamentally shaped the pattern of land ownership and use in Kenya. They also created pressures and problems that the independent government was to inherit decades later. Many legal and administrative changes were introduced with far-reaching consequences, including scarcity and fragmentation of land; individualism, especially where the demand for land was high because of increased population; migration; and social deterioration, which affected important family institutions. An important change was the introduction of individual ownership of land as part of far-reaching land tenure reforms.

The reforms had a very significant impact on the family economy and property relations. To start, there was a notable shift in the security of tenure because tenureship was now based on an indefeasible title and not on use. Registration gave individual title holders the security and power to deal with their land as they deemed fit. It also meant that those members of the family whose rights were not registered would

be excluded from the land. It so happened that only rights of allocation were recognized as registrable interests; since men retained these, a large proportion of men were registered as owners. The effect was that user rights enjoyed by women were subordinate to those of the registered owners, which greatly diminished the economic power that women had enjoyed in the precolonial times. Registration also gave the owner power to alienate strangers from use of the registered land, which meant that women (who were not the registered owners) could not interfere with dispositions that affected their traditional interests. Besides, in the colonial economy the title holder was the one entitled to the surplus obtained from his land. This was disastrous for women because it meant that although women continued to provide the necessary labor for the subsistence and the emerging commercial economies, they could no longer exercise control over distribution of the proceeds generated from their agricultural activity.

Further changes in land tenure also led to a shift in the system of succession. Scarcity of land prompted by the colonial economy meant that some members would be disinherited. The traditional rules of inheritance, which favored men, continued, and women could in no way be aided to acquire property. It is no wonder therefore that few women own land. Yet ownership and control of land resources are crucial in accessing other resources, including good health, nutrition, housing, and education for children. Lack of control of this important resource puts women in a precarious position, especially in view of their increased responsibilities in child care and family management. The importance of the role of women as food producers is further diminished by their minimal participation in making decisions pertaining to use of proceeds accruing from sale of crops.

Constraints arising from lack of title to land. Minimal control or lack of control over land means that women have little access to credit facilities, which are provided on the basis of land as security. This means that many women cannot obtain loans from commercial institutions for various investment opportunities that can benefit them and their families. The net result is that many women continue to depend on their husbands for maintenance and a variety of needs. Furthermore, their contribution to matrimonial property remains invisible. In any case, even where the banking legislation appears to have provided a gender-neutral environment for lending, the practices of lending institutions are not gender-neutral. For instance, even where women have title to property, some financial institutions require a woman to get her spouse's consent before obtaining a loan (Ayako 1996). Alternatives to commercial lending institutions, such as the Investment Promotion

Centre and the Industrial Development Bank, present similar constraints for women. They too demand high capital outlays and too many procedural requirements that many women find prohibitive (Ayako 1996; Gichira and Onyango, 1990).

Women's inability to access credit for economic empowerment does not result only from historical factors but also from other factors, including lack of confidence in venturing into large commercial enterprises or in dealing with banks and finance institutions; unfavorable customs and practices relating to inheritance; lack of regular and sustainable income from employment; and general negative attitudes in the commercial circles that see women as bad risk or as consumers rather than producers (Ayako 1996). Thus meaningful and effective solutions may lie in addressing women's land and property rights, the above factors, and others.

Women are indirectly excluded from other institutional mechanisms of land control and distribution. Women's minimal participation in Land Control Boards, which vet transactions in agricultural land, further undermines their position regarding family property. However, important administrative developments may enhance women's position. It is now practice that whenever a married man intends to sell agricultural land the relevant Land Control Board cannot sanction the sale without the approval of family members, especially his wife. This is, however, an administrative directive that has no force of law and can easily be ignored. It ought to be translated into legislation to be enforced. Unfortunately, empirical data are not sufficient to assess the frequency of this practice and its impact on land transactions involving family land. Research may be necessary to establish, principally, the value of this practice to the family and also the extent to which women are involved in decisions that affect land

transfers for personal and public use. Furthermore, the scarcity of women in local authority committees either as councilors or professionals, means that few women participate in the local authority committees that allocate land in certain urban centers. This also means that women exercise little control over decisions relating to allocation and utilization of land resource for public and private purposes.

In recent years however, there have been serious attempts at addressing some of the above constraints encountered by women and poor communities as a whole. For example, a number of commercial banks, jointly with the government or individually, are operating special lending schemes that target small-scale entrepreneurs. Some of these cover individuals or groups of business women operating small but profitable enterprises in urban and rural areas on a full-time basis. A number of NGOs such as FAULU Kenya, the Kenya-Rural Enterprises Programme,

and the Kenya Women's Finance Trust have started lending schemes for small-scale entrepreneurs who have no tangible security. The strength of the lending policies of these organizations lies in the friendship and trust that exists among the groups which are given loans. In other words, individual members of the groups guarantee each other.²

The above organizations have reported high repayment rates. The potential of these organizations in poverty alleviation specifically in the economic advancement of women. It also implies the need for a reorientation of the laws governing financial institutions and reform of family law that has relevance to property rights with specific reference to tension points, namely separation, divorce, and inheritance.

Legal Status of Women.

The legal status of women plays a significant role in shaping women's socioeconomic position of women in Kenyan society. However, it is widely recognized that, legally, in Kenya, women are less privileged than men are. This imbalance is evident in social, economic, and political spheres. Gender-based discriminatory laws are few, and in some cases their content and application are ambiguous. An overview of the existing law discloses women's inferior status in spite of their unquestionable and immeasurable contribution to the progress of the nation. For the purposes of this chapter the indicators for the legal status of women are the Constitution, civil rights, family rights, property rights, and rights under customary law.

Gender bias and the Constitution. The Constitution of Kenya, which is the supreme law of the land, includes the Bill of Rights, whose Section 70 guarantees fundamental rights and freedoms to all regardless of race, tribe, place of origin or residence or other local connection, political opinion color, creed, or sex. Section 82 of the Constitution expressly forbids discrimination. Section 82(1) and (2) prohibits discrimination in the law or in the performance of public office or public authority functions. The definition of discrimination is given in Section 82(3), but it excludes sex as ground for discrimination.

The Constitution recognizes the diverse and heterogeneous nature of the Kenyan people and allows different personal laws and religious laws in matters of adoption, marriage, divorce, burial, and demolition of property. Section 82(4) allows the application of customary law—to the exclusion of any other law—to any matter. The recognition of personal laws in the constitution was important because customary practices played a central role in the lives of many Kenyans at independence. However, upon scrutiny, it can be said that this section

has contributed to the almost selective perpetuation of practices that hinder women's progress as well as discriminate against them (Task Force special report to the A.G. 1997). The Kenyan Parliament is currently debating on minimal constitutional changes, one of which is the amendment of Section 82 to include sex as a ground for discrimination.

In the meantime, the Constitution of Kenya, in spite of its apparent gender–neutrality, accords men certain rights that it denies women. The following provisions are relevant in this regard.

Citizenship and immigration rights. Section 90 of the constitution confers citizenship on any one born outside Kenya after independence if the father of such a person is a citizen of Kenya. This section denies women equal citizenship rights because a child born outside Kenya to a Kenyan woman and a non–Kenyan father will not automatically become a Kenyan citizen. Kenyan citizenship laws require certain procedures to be followed before a foreign spouse can acquire citizenship. In reality these rules affect men and women differently. Section 91 entitles a foreign wife to a dependent's pass, allowing her to stay in Kenya and probably undertake employment. A foreign husband, however, is not entitled to a dependent's pass, on the presumption that being a man he is the provider and therefore cannot be a dependent, unless the contrary can be proven. Thus a foreign husband has to be resident for a period of at least seven years and then apply for naturalization after meeting all the requirements (Section 93), a process that may take longer than for a foreign wife. The effect of these rules is that a foreign woman married to a Kenyan man stands a better chance of acquiring Kenyan citizenship than does a foreign husband. The same discriminatory treatment can be discerned in the regulations, both written and unwritten, that the Department of Immigration applies when dealing with women.

Political and civil rights. Both the constitution and statutory laws are written in gender–neutral language, probably because of the tenet of equality before the law. In principle, therefore, Kenyan legislation does not discriminate against women. Every person aged 18 and over has the right to vote and to be elected to any public office under both the constitution and electoral law. It would seem that women, constituting about 50 percent of the electorate, could make or unmake a government. However, because of demographics and women's limited educational and civil awareness, few women occupy important official positions in Kenya's public life.

Rights to education, training, and employment. There are no discernible discriminatory legal provisions pertaining to women's rights to educa–

tion, training, and employment. However, because of historical and traditional disadvantages women suffered over the years, the percentage of women who compete for top–level jobs in the marketplace is still lower than that of men. The discrimination that women face in the job marketplace arises more from cultural attitudes—which are ingrained in regulations and policies—than discrimination in the law.

In 1993 the attorney general appointed the Task Force to Review Laws Relating to Women. The overall mandate of the Task Force is to review existing laws, regulations, practices, customs, and policies that may impair or nullify women's recognition, enjoyment, or exercise of human rights in all fields, irrespective of women's marital status. The appointment of the Task Force is part and parcel of government policy to expeditiously reform existing laws to meet the needs and aspirations of a modern Kenyan society. The Task Force is preparing its report.

Nature of Kenyan Family Law

Four systems of family laws exist in Kenya, due to the difference in cultural and religious backgrounds of both indigenous and foreign people in Kenya. Initially, African customary family law catered to Africans who did not convert to Christianity or Islam; Islam laws catered to Muslims living in the coastal areas; Hindu laws to Indian immigrants; and English family law to the English settlers and Africans who converted to Christianity. Legislation was thus enacted to regulate unions between members of different religious groups. Again with the imposition of English colonial rule, statutory marriage, divorce laws, and concepts of family life and Christianity were introduced. Four systems of family law resulted: Hindu law, Islamic law, statutory and civil law, and customary law. The present family law legislation consists of the Marriage Act (Cap. 150), the African Christian Marriage and Divorce Act (Cap. 151), the Subordinate Courts, Separation and Maintenance Act (Cap. 153), the

Mohammedan Marriage and Divorce Act (Cap. 156), and the Hindu Marriage and Divorce Act (Cap. 157).

The recognition and application of customary law and other personal law systems in the area of marriage and divorce has its basis on Section 82(4) of the constitution and section 3 of the Judicature Act (Cap. 8) respectively. Marriage celebrated under customary law is essentially an alliance between two families, creating new reciprocal rights and obligations for the spouses; new relationships between the spouses and their relatives and between the spouses' relatives. Dowry is an essential element in a customary law marriage, which vests a husband with rights over his wife's productive and reproductive capacity and the custody

and control of the children from the marriage. Marriages under customary law are not required by law to be registered.

All customary law marriages are potentially polygynous; therefore a man can only celebrate one marriage at a time. Unlike previously, when polygyny contributed to a family's economic advancement by providing more women and children for labor, polygyny now poses serious economic challenges because wives and children compete for scarce resources within the home. The entry of a new wife inevitably causes redistribution of existing resources. Serious property disputes often erupt after the husband's death. The 1969 Commission on Marriage and Divorce recognized that polygyny fundamentally creates inequality because the first wife runs the risk of being neglected while the husband lavishes his attention on the younger woman, particularly in those cases where the first wife is left to look after the shamba while the young wife is kept in a town house (Para. 74).

The four systems of marriage embody considerably different values. Apart from customary law, the other three systems are rooted in values of communities outside the country. Indeed, uncertainty has prevailed regarding the type of law applicable to the portion of the population falling under these regimes. This uncertainty may bring rise to differences of opinion, on issues affecting the communities concerned. The result is that Kenyan people's personal relationships continue to be regulated either by religious, customary, or civil laws. For most Kenyans, their customary law continues to govern their personal relationship despite their religious affiliation. For example, it is common to find among African Muslims the combined application of African customary law and Islam law to regulate personal relationships. It is only in the cases of strictly practicing Muslims that customary personal law does not apply.

Marriage and Ownership of Property

Despite women's important role in food production and in the informal sector in general, it is not clear how much control women have over the basic means of production, mainly land. In examining the proprietary status of married women in Kenya, the provisions of four family law systems and those of the general property law have to be taken into account. Quite apart from the constraints found in ordinary law, the distribution of property rights within marriage prevents women from fully participating in the economy on an equal basis with men.

The general laws affecting women's property rights have to be read in the context of Section 82 of the constitution, which recognizes the various communities' personal law. Under general law, a woman may

acquire and hold property and dispose of it as she likes. Under the Contract Act (Cap. 23) a woman can acquire property and deal with it in any manner. The Registered Land Act (Cap. 300) does not exclude women from acquiring property, registering it under the act, and exercising powers conferred to the title holder. The English Married Women's Property Act (1882) is a statute of general application. According to this act, a married woman can acquire and own separate property and exercise rights accruing from such ownership. Under the Bankruptcy Act (Cap. 53) a married woman is subject to the bankruptcy law as is an unmarried woman. Under Section 41 of this act a wife has a claim against the estate of her bankrupt husband. However, the Indian Transfer of Property

Act (1882), which still applies to some property in the country, provides that a transfer of property to or for the benefit of a woman (who is not a Hindu, Muslim, or Buddhist) may contain a provision prohibiting her, during marriage, from transferring or charging the property. This provision is illustrative of the uncertainty surrounding the extent to which a married woman can hold and deal with property.

The current position of women married under customary law presents peculiar concerns, which are critical to our discussions. An understanding of the property arrangements under the customary law marriage, however, must take into account the effect of colonialism on precolonial property ownership and user rights (as discussed in the first part of this chapter). On the whole, women's position under customary law is far from satisfactory, and its implications are crucial for future planning.

Within marriage, women under customary law have only user rights over the family property. Inheritance is usually along the male lineage, and so women, be they wives or daughters, do not inherit family property. Although the statutory law of succession allows daughters to inherit property, its enforcement is still very much dictated by customary law and practices. Kenyans are still largely controlled by traditional attitudes, which vest the husband with proprietary rights. As one family law researcher has noted, even where there are fundamental changes and mechanisms of property ownership like the holding of shares in cooperative societies, the man's unchallengeable position as the head of the family still militates against the woman's complete freedom in property matters (Wanjala 1994).

Distribution of property under customary law upon separation or dissolution generally depends on whether the property is land and whether it was acquired before or after marriage. Generally a divorced wife has a right to take her personal effects and presents given to her by her husband or her family but no other property. Land given by the

husband or his family remains with the husband. In some communities the woman may take away with her a share of the property if it was acquired before her marriage.

The matrimonial property rights of women married under Hindu and Islamic law systems have not been investigated extensively, and the number of related matrimonial disputes has been negligible in comparison with disputes emerging from situations regulated by customary law or a combination of customary law and another system, for example, statutory law. For this reason it may be assumed that the rules within the Hindu and Islamic systems are reasonable and have secured a certain amount of satisfaction among women. On the whole, despite the statutory provisions discussed above, the actual property rights available to a married woman tend to vary with the rules of the particular personal law to which she is subject. This means that we cannot state with certainty what the property rights of a Kenyan woman are, and it also implies that we are unable to respond fully to the needs of all women, irrespective of their cultural background, during periods of tension in marriage, such as separation, divorce, and a husband's death.

Cohabitation Outside Marriage

Marriage, because of its centrality in social relations, offers an excellent setting for the assessment of the status of Kenyan women. Clearly it has important effects on women's economic status. As observed earlier, the multiplicity of family laws makes it impossible to assess the exact quantity of the property rights of a Kenyan woman. The complexities arising from multiple family laws are compounded by the emergence of a marriage-like relationship, cohabitation, which involves a couple's living together without undergoing formal legal marriage requirements. This form of marriage affects a woman's legal stand in a number of negative ways that the law has not addressed. Its implications for women's economic status, although not fully investigated, cannot be doubted. We, however, underscore that, because cohabitants come from all social economic strata, the levels of women's disempowerment may differ according to women's economic class.

Nature of Law on Cohabitation

Kenyan family law remains silent on the issue of cohabitation unions. Couples living together without having complied with formal legal marriage requirements are not considered married. Often, where the domestic law is lacking, Kenyan courts look to English decisions before

deciding on their own cases. Case law from England, however, indicates that in a cohabitation situation (especially when one member of the couple was previously married) a woman has no claim on her partner—as a wife does—and cannot claim maintenance for herself and any children from the union.

The lack of law regularizing cohabitation has led to Kenyan courts' reliance on the English common law principle of presumption of marriage after a reasonable period of cohabitation. In so doing, the court declares that for all intents and purposes the cohabitation is a marriage. The common law presumption of marriage is applicable in Kenya by virtue of Section 3 of the Judicature Act, which allows for the application of the common law of England and the doctrines of equity as far as they are relevant and suitable to the conditions of Kenya and its inhabitants. The presumption of marriage has been held to apply generally to Kenya, irrespective of the family law system of the parties involved. Justice Wambuzi in *Yawe v. Public Trustee* (Civil Appeal No. 13, 1976) held that

The presumption has nothing to do with the law of marriage as such, whether this be ecclesiastical, statutory or customary; this must be proved. The presumption is nothing more than an assumption arising out of long cohabitation and general repute that the parties must be married irrespective of the nature of the marriage actually contracted.

When Kenyan courts deal with family law cases involving cohabiting partners, the courts have to first determine whether a marriage exists. This requires that the court address a number of issues such as the length of cohabitation. However, the acceptable length to justify calling the union a marriage differs and depends on the judge's interpretation of the presumption of marriage rule. A long cohabitation as man and wife often gives rise to a presumption of marriage in favor of the party making the claim. Again the court looks at the intention of the parties to determine whether they did in fact intend to be married to each other and whether they were reputed to be married. The latter is based on the notion that marriage is a (public) matter of status (rather than contract), and therefore marriage has a lot to do with external perceptions rather than internal intentions of the parties. Thus the party alleging that a marriage exists only needs to establish these factors to trigger the application of the presumption of marriage rule. The other party has the burden to disprove it.

In the Kenyan context the presumption of marriage has been invoked mostly in cases where the existence of customary marriage is asserted by one party and denied by the other. Other cases, however, show that

even if proper rituals were not carried out, this fact alone does not invalidate a marriage. This was not the case in *Mary Njoki v John Kinyanjui* (Civil Appeal No. 71 of 1984) in which in finding for the respondents, Justice Kneller pointed out that

Assuming, however, it [the presumption of marriage] was part of the common law of England on August 12, 1897 [reception date], there is nothing in the evidence before the learned Judge on which he could also find that the circumstances of Kenya and its inhabitants permitted it to be applied here today and if the circumstances rendered it necessary to qualify it today.

Types of Cohabitation Unions

More than 50 percent of the cases collected by the International Federation of Women Lawyers and Kituo cha Sheria and analyzed were of persons who had cohabited for a period of between 1 and 15 years. Although we can only speculate about the reasons for the high percentage, it is true that cohabitation unions present themselves in different forms depending on the parties' intentions and their capacity to enter into a legally recognized marriage. Furthermore, the manner in which the relationship is described is crucial for securing the interests of a party when the relation is terminated.

One of the main reasons for cohabitation arrangements, as discerned from the majority of cases, is economic dependence or financial insecurity, particularly of the female cohabitant. This point was illustrated by the cases of women who sought divorce or judicial separation but asked for custody of the children, perhaps assuming that they would be paid a greater allowance if awarded custody. Economic dependence as the main force behind such cohabitation arrangement is also demonstrated by the fact that the cohabiting man's cruelty and economic neglect of both his partner and their children featured very prominently as the major reasons for the breakdown of the relationships.

Affidavit marriages. The lack of a law recognizing and validating cohabitation unions has caused many couples to sign affidavits, for example when a man and a woman wish to try out living together before formalizing their union.³

Affidavits to validate an otherwise invalid marriage, however, are used by those who have access to and can afford the services of a lawyer to draw the affidavit. This removes a majority of women who live in poverty and therefore do not attempt to regularize their unions.

Originally, couples swore affidavits to prove the existence of a marriage performed under customary law. The reason being that under

Kenyan marriage laws a marriage certificate is not issued for a marriage performed under customary law. Thus whenever a couple married under customary law is required to produce proof of their marriage, they swear an affidavit under the Oaths and Statutory Declarations Act (Cap. 19) to that effect. A common use is in employment situations where proof of status may be critical for enjoying certain economic benefits. In addition, affidavits are required for a wife to change her maiden name on her identity card to her husband's name; for including a wife's name on income tax returns; for receiving health insurance cover or pension benefits; or for applying for a joint passport. Such an affidavit presumes that the marriage did in fact take place, especially if it was originally celebrated under customary law; that is, the parties involved have complied with their community's marriage requirements, which may include marriage payments and agreements between the two families. However, more often than not it is women who have to swear these affidavits because they need to change their identities; very few men swear the affidavits jointly with their partners.

A couple may swear a general affidavit stating that they are married to each other and under which law. However, many couples wrongly assume that by cohabiting without undergoing a formal marriage ceremony their union automatically falls under customary law. Thus it is common to find in most cohabitation affidavits reference to a particular customary law (normally that of the man's). General affidavits are valid for one year, but those sworn for a particular purpose are valid for the purposes they were sworn. Therefore, a couple, most often women, have to swear a general affidavit every year to prove that they are married. In reality, many swear only one affidavit and fail to renew it, believing that the original affidavit is still valid. Thus in absence of an affidavit presuming a marriage, a cohabitation union is neither officially recognized nor recorded.

Gender and Law

An affidavit swearing that a customary law marriage exists is widely accepted in official circles. A union by cohabitation, however, can only gain official recognition if a court decides to apply the presumption of marriage rule. The line between customary law marriage and cohabitation is rather thin and largely artificial in the contemporary setting. Those in cohabitation unions have therefore figured out a way of getting around both systems. Whenever they want their union to be treated as a marriage, they use the affidavit. The affidavit usually serves the particular purpose for which it is intended; for instance, for immigration purpose, because officials will not investigate further to determine whether the formalities of a customary marriage were complied with.

From a pragmatic standpoint, therefore, swearing an affidavit is a good practice: it helps couples gain access to benefits that would oth-

erwise be available only to those whose union has been recognized by law without having to comply with the requirements of a valid marriage under both statute and customary laws. The possibility that cohabitation unions exist among Hindus and Muslims has not yet been investigated.

In principle, however, the increasing resort to affidavits to validate cohabitation unions begs a broader definition of marriage, especially as far as financial benefits are concerned: the state will give certain benefits to some couples but not to others solely on the basis of their type of union. Moral considerations arise as well, especially those relating to the preservation of the sanctity of marriage. Such a situation calls for public debate to obtain balanced views from every interested party of Kenyan society.

Cohabiting for survival. As indicated earlier, swearing an affidavit is a luxury available to those who are financially able to afford legal services. The majority of women are therefore left out and adopt a wait-and-see attitude, hoping that their unions will one day be recognized. During its provincial tours the Task Force to Review Laws Relating to Women in Kenya was informed of the different mechanisms women have adopted to cope with the uncertainty of their relationships. In one slum area of Nairobi, for example, women indicated that they would be married to more than one man at the same time but for different reasons; that is, there was Baba Mkate (father who provides the food) and Baba Nyumba (father who provided the rent). In this scenario it is difficult to validate the unions, especially since polyandry is not allowed in Kenya. These women indicated that they were very sure that the men were in similar relationships with other women elsewhere. It was also reported that in the slum areas cohabitation unions were casually started and casually left and a man could have at least one family in each slum area without validating any of the unions. The impact of these unions, especially from an economic perspective, has however not been fully determined.

Likening cohabitation union to customary law marriage. Most cohabiting couples believe that they are married under customary law even though they have neither undergone the formal customary marriage ceremonies nor fulfilled any of the requirements. Often the party relying on this belief is the one who stands to lose if marriage is not presumed. In most cases, it is the woman.⁴

The administrative machinery, especially chiefs, have become instrumental in validating cohabitation unions by insisting that the parties undergo customary law ceremonies. The chief plays a role only when a

dispute has arisen, and the couple has gone to him to resolve the dispute.⁵

Unions in which one party cannot marry the other. The two cases below illustrate the practice of bigamy, which, although illegal under the Marriage Act (Cap. 150) and the Penal Code (Cap. 63), continues under the guise of culture and tradition.

Case A. A married man is living with a young woman, and a child is born. The relationship falls apart, and the woman seeks a divorce and maintenance under customary law. The law does not recognize the relationship as a marriage because the man was already married and therefore could not contract another marriage.

Case B. A married man is living with a woman and has bought property for her after his family approved of his taking a second wife. Although his first marriage is under statutory law, he believes that his family's consenting to the second woman weighs more than the law (Muigai 1997).

The problems emanating from these kinds of relationship—at times referred to as modern polygamy, where a couple cannot legalize their union because one of the partners was previously married—often come to light where the man dies and the inheritance has to be distributed among his dependents. Interestingly enough, although the law did not recognize the new relationship during the man's lifetime, it does so after his death under Section 3(5) of the Law of Succession Act, which states that

Notwithstanding the provisions of any other written law, a woman married under a system of law which permits polygamy is, where her husband has contracted a previous or subsequent marriage to another woman, nevertheless a wife for the purpose of this Act and her children are accordingly children within the meaning of this Act.

Section 3(5) contrasts with the provisions of the Marriage Act and the African Christian Marriage and Divorce Act, which nullify marriages occurring while a previous monogamous marriage still exists, and with the Penal Code provisions relating to bigamy. The Court of Appeal has reaffirmed this section in *Irene Macharia v. Margaret Wairimu Njomo* (Civil Appeal No. 139 of 1994). Section 3(5) of the Law of Succession Act recognizes that a woman who contracts a marriage with a man who is already married either under customary or statutory law, is (despite his lack of capacity to marry) a wife for purposes of succession and is therefore entitled to a share of his estate. The possible effect

of the Court of Appeal decision is that there will be a flood of cases brought by women claiming to be wives within the definition of section 3(5), which may result in economic and emotional battles between legal wives and concubines and their children.

The Implications of Cohabitation Unions

Most of the issues raised in the previous section manifest themselves when the relationship breaks down, as a result of either separation or death of one of the partners.

Gender implications.

Women from all economic strata face differing forms of disempowerment caused by their marital status. It is often wrongly assumed that career women are empowered and therefore are not victims of gender discrimination. But empowerment is the ability to influence change for the better. Women's decisions to swear affidavits or rely on customary law to validate their cohabitation unions should be seen as decisions by women to make a change since the law is entirely unresponsive to their situations. It is women who stand to lose if the union is not recognized. Using marriage as a starting point to understand the gender dimensions of economic and legal empowerment requires formulation of a framework of gender analysis to identify gender gaps, discrimination, and oppression.

Misconceptions about the Affidavit

After couples secure—through an affidavit—benefits to which they would be entitled only if they were officially married, even those couples who were planning to eventually formalize their union become complacent and do not feel the need for further documentation. They then proceed to live a normal married life, and the woman takes the man's name and bears him children. The issue of their irregular union does not arise until the union begins to crumble. When the relationship falls apart, the parties attempt to avail themselves of remedies, such as legal divorce, that are available in the case of official marriages.

In all the cases that we analyzed, the issue of formal validity of the cohabitation union did not worry the clients because they all believed, or wanted to believe, that they were legally married because they had sworn an affidavit drawn by a lawyer. Even though most affidavits alleged customary marriage, in many cases the formalities were not complied with, and the parties know that they could never prove the

existence of customary marriage to the satisfaction of the court. However, they do not divulge the fact until the time of the trial, as the International Federation of Women Lawyers legal clinic staff has often found out.

In most cases presented by female clients to the International Federation of Women Lawyers, men were often accused of having failed to support their families. In their defense, most men deny the existence of a marriage. Some men go to the extent of denying ever having known the woman. Often clients claim that they are married under a certain customary law, but no such marriage took place. Instead the lawyers have to petition the court to presume a marriage and rely on factors such as length of cohabitation, reputation, or birth of children. Where an affidavit exists (even after it has expired), it is relied on to show a couple's intention to get married to each other.

The manner in which a relationship is described matters the most at the time of terminating the relationship. It is therefore common for a woman to claim maintenance and for a man to argue that she was his girlfriend, they simply lived together, this union had no legal status, and therefore she was not entitled to any support. To counteract such an argument, lawyers seek proof that a marriage has in fact taken place or that the two parties involved have cohabited for a considerable length of time. Some role reversal occurs, however, in some cases in which a woman is claiming custody of children born from the relationship. She argues that no marriage existed and therefore the man has no legal rights over the children. This argument is common in cases where the cohabitation was relatively brief, the children are young, and the woman is either not dependent on the man or no longer wishes to depend on him for the children's support.

Position of Children

In the case of cohabitation the status of the children is especially unclear. They are usually caught up in the middle of a fight in which each party tries to define the relationship to his or her own advantage. The International Federation of Women Lawyers records show how several children were sent away from school because their fees were not paid while the parents battled it out. Nevertheless, such cases of neglect of children are not limited to cohabitation relationships. Similar problems occur even within formalized unions, as well as during the enforcement of child support orders after a couple's separation or divorce.

The Marriage Act, Subordinate Courts and Maintenance Act, and Matrimonial Causes Act provide for the support of children born within a recognized marriage union. In different times the law has catered to

the protection of children born out of wedlock or within cohabitation unions. The first attempt was the now repealed Affiliation Act, which required a man who fathered a child out of wedlock to support such child if the man was proved to be his father. The mother in this case was required to apply for an order from the court for the

father to provide child support. The primary concern of this act was to provide child support for a child born out of wedlock, not for recognizing the relationship between the child's parents. The act applied to all children born out of wedlock whether or not the parents were cohabiting. The act was repealed in 1969 and has not been replaced to date. Another attempt is the Law of Succession Act, which interestingly and ironically requires a father to support his children born out of wedlock after his death. Section 3(2) of the Law of Succession Act defines a child of a deceased female (for purposes of succession) as born in or out of wedlock, or in the case of a male person, a child explicitly recognized by the man as his, accepted as his, or for whom the man has voluntarily assumed permanent responsibility.⁶ The problem with section 3(2) is that the child born out of wedlock shall only be entitled to inherit his or her father's estate if the father acknowledged or undertook responsibility of the child during his lifetime. An example is the case of *Irene Wayua Katua v. James Mutonga Mulege* (Nairobi HCCC No. 3415 of 1988), in which the respondent refused to support his two children born from his cohabitation union with their mother. Justice Akiwumi stated:

There is a substantial question involved in this case and that is whether a father should during his life time be responsible for the maintenance of his infant children (albeit illegitimate) which he has had with his mistress. Whereas the Law of Succession Act safeguards the position of such children after the death of their father, ironically no legislation exists to cover the former contingency (maintenance while the father is alive). Justice in my view requires that the children of a mistress should be maintained by their father during his lifetime and not have to wait until his death before being protected by the Law of Succession Act.

The Children Bill offers a glimmer of hope for children born out of wedlock but it does not recognize the union between cohabiting parents. Section 81 of this bill places an obligation on each parent to support their child, by providing or paying for such accommodation, food, clothing, health care, and education commensurate with the parents' means and standard of living. A court (see Sections 82 and 83) may enforce these duties and obligations should the parents fail to maintain their child. The duty to support one's child is however placed on all parents whether married, single, or cohabiting.

Ownership of Property

Questions of property in a cohabitation union often arise either on termination of cohabitation or on the death of one cohabitant party. In some cases the courts have ruled that such cohabitation does not provide any legal rights, including rights to property.⁷ In others the courts have applied the presumption of marriage rule to declare that, even in the absence of official registration or formal marriage under any recognized system of law, the parties may be considered as having been married. Such a decision is based on two conditions: the length of the period of cohabitation must be considerable, and the parties must have held themselves out as married, and the community must have regarded them as such. If these conditions are met, the courts may grant legal rights, including property rights.

With regard to the specific issue of property, two positions have emerged from judicial pronouncements, both within the context of succession rather than in that of dissolution of the union. The court's position on property is really determined by whether the court is prepared to apply the presumption of marriage rule to the relationship, which carries with it legal rights as an official marriage does. In one case the court has denied the existence of any property rights.⁸ In another case the court has held that where there has been long cohabitation, giving rise to a presumption of marriage, the surviving party is entitled to a share of the deceased party's estate.⁹ The important element should not be whether marriage can be presumed, but whether property was acquired with contribution, monetary or nonmonetary, from both parties or for the joint benefit of the parties. The court's role should be simply to determine each party's share. It appears that there is no Kenyan case in which the Married Women's Property Act (MWPA) has been applied to parties cohabiting outside formal marriage. In England the MWPA has been applied to couples cohabiting outside marriage.¹⁰

Emerging Issues

Despite various positive attempts at improving the quality of life of Kenyan women, more needs to be done, especially since women's improved status has a direct and positive bearing on the status and welfare of the family and the nation as a whole. Again it is clear that notwithstanding a woman's marital status, efforts aimed at broadening her economic opportunities should be developed and encouraged.

The present position of Kenyan women cannot be understood without reference to colonialism, which introduced changes that irreversibly

affected the institution of marriage and other socioeconomic relations. These changes may be observed at two levels. First, the accommodation of values of migrant and indigenous communities in the legal system has resulted in multiple systems of family law. Many complexities arise from intercultural marriages. Second, changes in the traditional economy interfered with the secure position of women in regard to family property. Efforts to provide uniformity in family law have stalled, and the issue of women's land rights has not been tackled. To move forward, strategies adopted to bring about change, such as better lobbying mechanisms to ensure that the Marriage Bill becomes law, need to be revisited.

The misconception inherent in the land registration system introduced by the colonial regime robbed women of their control and influence in land matters because their traditional right of use of land was not recognized. Instead, men's right of allocation was considered synonymous with ownership and therefore registrable. The result is that women cannot benefit from credit facilities, which require land to be provided as collateral. Furthermore, women have little influence in the decisionmaking involving land transfers and allocation. By the same token, they have little say in institutions such as agricultural cooperatives that affect them as producers. However, this weakness is being addressed by credit schemes that do not depend on tangible securities. The success of these schemes offers sufficient incentive for strengthening and increasing similar schemes. There is a need to specifically recognize that traditional land rights of women still exist and should be registrable. Guaranteeing the participation of women in institutions that deal with land allocations and transfers—such as local authorities and Land Control Boards—is just as important.

Poverty remains a major constraint to women's socio-legal and economic status of women and needs to be addressed consistently and innovatively. The main causes of poverty among women, especially female heads of households, are illiteracy, negative cultural attitudes and practices, lack of ownership and access to sources of production, a complex interplay of patriarchal customary practices and laws, rural urban migration, unemployment, and ignorance of legal rights. Efforts to address these causes should be intensified.

The government has clearly spelled out policies on poverty, which are found in various policy papers and development plans. A large measure of affirmative action has been targeted at women, such as strengthening of women's groups and the Women's Bureau and support of organizations targeting women and poor communities as a whole. In order to accelerate positive results, it may be necessary to lay more emphasis on women specific projects in view of the magnitude of deprivation among women.

Several measures have been taken to provide safety nets to protect the poor from the effects of structural adjustment programs. Women and other vulnerable groups have been targeted. The implementation of relevant government policies needs to be monitored to ensure that women benefit from the good intentions. The donor community has a stake in some of the programs initiated to deal with poverty, and it should devise or strengthen monitoring and evaluation mechanisms and encourage the government to institute similar measures to ensure that women benefit fully.

The emergence of the informal sector as a way of coping with poverty has attracted many female entrepreneurs. Unfortunately this sector continues to suffer from lack of an appropriate legal framework and other services that can contribute to its success. The most critical constraints in obtaining a loan include cumbersome and centralized registration requirements, multiple and expensive licenses, and general harassment by local authorities. However, other constraints—such as poor provision of physical infrastructure, poor access to technology, poor access to lending facilities and markets for finished goods—are just as critical and should therefore be addressed. It may be time to pursue and implement the idea of a community-based and –managed credit institutions similar to the Grameen Bank's model, which has proved successful in parts of Asia. This may enable women to increase their informal financial networks and mobilize local savings for credit. Alternatively, banking legislation could be amended to allow for exceptions in already-existing financial schemes so as to benefit women. Thus, ongoing law reform exercises and gender-neutral programs that target the informal sector should examine these possibilities and develop effective, in-built measures to ensure that women benefit fully.

Although the law has been known to achieve a large measure of gender equity in emotionally neutral areas of activity, it may present difficulties in institutions such as marriage, which are deeply rooted in tradition and religious values. This is certainly the case in Kenya where modernity has failed to replace certain traditional customs and practices.

Generally speaking Kenyan women enjoy a less privileged position in the eyes of the law. The institution of marriage presents a prism through which some gender imbalances can be observed. It also provides an opportunity to observe the general uncertainty surrounding the property rights of women and the complexities that arise from the application of different systems of law. Reliance on English law, unsatisfactory as it may seem, is sometimes the only way out. Obviously this is a source of tension that should be countered by comprehensive legal reforms with the potential to advance gender equity in Kenya.

Reform of family law is urgent not only because its present state undermines the property rights of married women but also because of the emergence of cohabitation unions or marriage by affidavits, which further weakens the position of women. The case in favor of developing definite criteria for the recognition of cohabitation unions is strong but requires further research and analysis to determine the prevalence of these unions. The absence of sufficient data on the extent of this phenomenon, as well as of its impact on the impoverishment of women, means that only preliminary conclusions and observations can be made. The existing data, however, clearly show that this problem can no longer be ignored. The following reforms should be considered after conducting a nationwide survey:

Establishment of a rule whereby after a specified period of cohabitation between two parties, the presumption of marriage rule applies automatically. This approach is potentially protective of the interests of third parties, such as children.

Removal of compliance with formalities, where customary marriage is alleged, as pivotal factor in the court's decision of whether to apply the presumption of marriage rule. The court's insistence on maintaining rigidity and artificial distinction between customary marriage and informal cohabitation seems to have forced parties to resort to unsatisfactory self-help mechanisms such as the affidavit.

Development of a criterion whereby marriages are recognized only for a specified purpose, for example, to legitimize children born from a cohabitation union so as to ensure and safeguard their interests. Similarly, settling a dispute between cohabiting parties concerning property acquired jointly during the period of cohabitation should rest not on a judicial declaration that a marriage existed for all intents and purposes but on whether the property could be treated as having been acquired for their joint use, as in the case of marital property.

Notes

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1. Both primary and secondary sources were used for this chapter. Information was collected from libraries of the High Court of Kenya, University

of Nairobi (Faculty of Law) and the Task Force to Review Laws Relating to Women. In addition, information was sought and collected from nongovernmental organizations (NGOs) providing support to poor communities and small scale entrepreneurs such as the Kenya Rural Enterprises Programme and the Kenya Women Finance Trust. Reported cases and complaints were collected from the International Federation of Women Lawyers and Kituo cha Sheria, which are legal aid clinics in Nairobi offering legal aid and assistance to women and the public, respectively. The purpose of this exercise was to investigate the trends of cohabitation marriages, attempts at legalizing such unions, and implications of marriage and cohabitation unions for the economic and social status of Kenyan women. Case studies based on informal interviews and court cases are used to highlight a number of issues related to cohabitation outside marriage. A workshop was held on October 3, 1997, to discuss the topic of this chapter. Comments and suggestions from that workshop have been integrated into the paper.

2. The Kenya Women's Finance Trust (KWFT) founded in 1981 by women professional bankers and lawyers is affiliated to the Women's World Banking. The overall and initial objective of the KWFT is to advance and promote the direct participation of economically active women in viable businesses, to improve their economic and social status, by providing sustainable financial and nonfinancial services. The KWFT, which operates several credit schemes through branch offices nationwide, has since 1992 accessed credit (totaling 2.2 million shillings) to over 12,000 women, and so far no loan has been written off.

3. J and K are a young couple (both lawyers) who decided to cohabit so as to test the waters, and in the process two children were born. Last year J swore an affidavit stating that she is the legal wife of K so as to get the children an identity card. The relationship fell apart this year, and J is seeking maintenance for herself and the children. K adamantly stated that she is not entitled to any maintenance since she was his girlfriend, they have children together, and no marriage. He is also challenging her claim to a share of property that they have acquired together on the grounds that she is not a wife and therefore she is outside the protection of the Married Women's Property Act. The law is not responsive to J's predicament but only to that of the children. The likelihood of a court accepting the affidavit to prove a marriage is small (Muigai 1997).

4. For example, two university graduates live together for a period of 15 years, after which the man tells the woman to leave the home. The woman believed all along that she was married to the man under customary law even though they had no certificate. Since the law does not recognise her alone, that is, for maintenance, she has no recourse; only her children, if any, are entitled to their father's maintenance (Muigai 1997).

5. N, who works as a cleaner in a law firm, has been living with O in Kibera, Nairobi. No efforts have ever been made to validate their union although they have two infant children. According to N, her husband began having

affairs with other women in the area, and because of her fear of AIDS she moved out of his house together with their children. She also took with her all the household items, which she claimed were rightfully hers since she had custody of the children. O was furious and proceeded to report N to the local NDP office, who fol-

lowed N to where she had moved and promptly took back all the items she had taken, claiming that they rightfully belonged to O because N was not his wife and did not purchase the items in the first place. N then reported the matter to the local chief who sent summons to O to appear before him to show cause why he should not be prosecuted. O claimed that N was his wife but they had fallen out and he wanted his children and things back, but not N because he no longer loved her. The chief in mediating told him that in order for him [the chief] to award him custody of the children, O had to go and first pay dowry to N's father and only then could he claim the children. There was no mention of the effect of this on the relationship between N and O, especially since payment of dowry would mean that O has agreed to marry N. If he were to claim custody he would thereafter have to divorce N under customary law. Now N's mission is to convince her father not to accept the dowry and also to ensure that the International Federation of Women Lawyers can get a restraining order to prevent O from coming near her and the children (interview carried out in July 1997).

6. See *Virginia Wairimu Wanjui v. James Mbatia Wanjui* (Nairobi HC Misc. CC No. 215 of 1979).

7. *Mary Njoki v. John Kinyanjui* (Court of Appeal at Nairobi, Civil Appeal No. 71 of 1984).

8. *Mary Njoki v. John Kinyanjui* (Court of Appeal at Nairobi, Civil Appeal No. 71 of 1984).

9. *Yawe v. Public Trustee* (Court of Appeal for East Africa, Civil Appeal No. 13 of 1976).

10. *Cooke v. Head* (1972) 1 W.L.R. 518.

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2— Tanzania.

This chapter looks at the land question from a gender perspective. It examines the position of women under the present legal framework and places it in the context of current government efforts to enact a basic land act.¹ The main purpose of the chapter is to provide information that would enhance knowledge about the impediments to gender-sensitive human development in Tanzania in the context of a chosen topic—in this case women's access to land—and chart out a plan for overcoming them. The specific purpose of this exercise is to discuss the plan of action and strategies that the Government of Tanzania either intends to or might adopt in tackling the development challenge of women's access to land as part of its development strategy.

Land is a major and basic resource on which the majority of Tanzanians depend for their sustenance. The land tenure system has undergone some changes since colonial times, the most profound of which included the declaration that all land was to be publicly owned by the head of state in trust for the whole nation with different legal regimes applying to rural and urban areas. Partly because of the latter provision, Tanzania's land policy has been in a state of a crisis for quite some time.

In 1991 a Presidential Commission on Land Matters was appointed to study and report on the land problem. Following submission of the commission's report and recommendations, the Ministry of Lands and Human Settlements prepared a National Land Policy in June 1995. On the basis of this policy, a team of consultants has been working on drafting the bill for a basic land law and has produced a draft of the bill. This bill is technically the report of the drafting committee because a bill under Tanzania's law and legislative practice is drafted and approved by the Chief Parliamentary Draftsman under the Ministry of Justice and Constitutional Affairs. However, for the sake of convenience, the report of the drafting committee is referred to as the draft bill in this chapter.

The Presidential Commission's report and the report of the drafting committee have generated a vigorous debate over land and gender issues. At the heart of the ongoing debate is the proper balance among security of tenure through titling to attract foreign investment, protection of rural communities from landlessness, and equitable, gendersensitive allocation and management of land. There is no consensus

over the method of reforming discriminatory customary law rules, whether this should be done democratically by community initiatives or from above by the state through affirmative action. Likewise, there is also no consensus over the method of reforming overcentralized, bureaucratic land allocation, and over the impact of individual title registration on communities, especially on women who stand to lose the limited, albeit discriminatory, protection of customary law of inheritance.

The Government of Tanzania has risen to the occasion in the ongoing process of land tenure reform by trying to combine women's equitable access to land with the broader issue of human development.

The Setting

Although rural women in Tanzania are the backbone of agriculture and food production, they lack secure title to the land they till and have little control over the proceeds of sale of its products. The causes for this situation are complex, but the underlying one is the customary law of inheritance, whose discriminatory rules favor men. The economic and social impact of legal constraints to women's access to land both in inheritance and marriage laws have been stifling women's initiatives in accessing and managing land and, therefore, economic development.

Smallholder farmers and pastoralists form the bulk of land users who have the keen goal of sustaining life, and the majority of them live in rural areas. In the gender-based division of labor prevalent in most ethnic groups in Tanzania, the bulk of agricultural production work is done by women in agricultural communities. There is evidence that even in pastoral communities women have taken to farming in order to enhance their families' food security. Gender studies have long established that in rural areas in Africa in general, and Tanzania in particular, women spend more time on agricultural and other family survival activities than men (Rald and Rald 1975; Swantz 1985; Boserup 1970; Mascarenhas and Mbilinyi 1982). These studies have also established that women have little or no control over the proceeds of agricultural produce. Consequently, in areas where food crops, such as maize, are also sold as cash crops, food is normally insufficient because whatever small crop is produced must be divided between cash and food needs to the detriment of food needs.

The impact of such a land tenure system is that women, who are the mainstay of agricultural production, have minimal land rights, and are often dependent on the rights of men as wives, daughters, widows, or

mothers. As a result, women's use of land is limited to suit the interest of the land holder, which causes several problems. One such problem is women's inability to grow permanent crops. Another is that women may be allocated infertile land with low yields and far away from the village, in which case women have to expend much more time and energy to walk to and from the land in addition to farming it (Swantz 1985). Moreover, the crops from far away fields may fall prey to wild animals and stray (crop) thieves. The manifestation of these problems may differ from one geographical area to another, depending on the level of population density and resultant land scarcity. Yet women farmers invariably face all or some of these problems whether before or during marriage or at divorce or widowhood. The crux of the problem is that the tiller does not have decisionmaking powers on the use and management of the land, as well as on control and utilization of the proceeds. Lack of tangible rights in the land also results in difficulty in obtaining labor, especially in old age, because the tiller fails to attract young dependents.

A progressive marriage legislation gave women important property rights. The law, however, did not address women's unequal property rights under customary law. Earlier government policies aimed at addressing the land issue often failed to incorporate the gender perspective. An example is the now defunct Villagization Programme and the Agricultural and Food and Nutrition Policies.

The scope of this chapter is to discuss the problem of women's lack or inadequate access to land in its social and economic context with an overview of the various causes and with recommendations for strategies to rectify the

situation focusing on legal or regulatory interventions. This chapter four specific objectives are to provide information that would improve understanding of the legal system of the country; contribute to the development of practical solutions that would improve the delivery of services to women and enhance women's capacity to help themselves; raise issues that can enhance women's active participation in civil society and in the development process; propose a plan of action or specific legal or regulatory interventions that could be implemented by the government.

This chapter addresses the land question from a gender perspectives with a legal touch. It shows that women's land rights by (colonial) patriarchal legal system, the advent of cash economy, the contemporary globalization of the economy coupled with structural adjustment programs supported by international financial institutions, and above all an inheritance law that has outlived its usefulness, create serious impediments to women's access to land.² Women form the largest single group of willing investors the country has and they should there—

fore be encouraged by removing unproductive legal and other regulatory constraints.

Legal Framework

Tanzania's legal framework is characterized by a pluralistic legal system bearing testimony to Tanzania's triple heritage, including its ancient traditions, Islamic penetration, and colonial rule. Customary, Islamic, and statutory laws operate side by side in many facets of life against the backdrop of changing socioeconomic conditions. These changes have given rise to a transitional state in which community practice rather than a specific legal system is applied to real life; the legal system is invoked in conflict situations mostly to rationalize chosen actions, especially in interpersonal relations. Nevertheless, the major laws governing gender relations in Tanzania can be said to be three: the Law of Marriage Act 1971, the Law of Inheritance, and various land laws, some of which are listed below.³

A Historical Perspective of Land Laws

Tanzania's land tenure and policy have gone through a profound transformation since the country's colonization. Outstanding among these changes were the alienation of tribal lands for the benefit of immigrants and settlers, the establishment of a dual land tenure system to be applied in rural and urban areas, and the declaration of the head of state as owner of all land, effectively nationalizing all land, which was effected by the German and British colonial governments. For its part the independence government mostly adopted the colonial legal legacy and in the mid–1970s introduced the operation *vijiji* program, whose effect has partly given rise to current policy challenges. None of these changes were strong enough to reverse the trend of erosion of women's rights, which began and was sharpened in the colonial period. However, the Tanzanian women have not been passive in their pursuit of landrights. Rather, they are on record as having taken every opportunity to access land in their own right for themselves and for their families.

Precolonial Land Use and Practice

Accounts of land tenure before the advent of colonialism indicate that land was abundant and was occupied by families within an extended

group known as a clan. Land was used for subsistence farming. As household heads, men were often the administrators of land but not its owners. Those who needed more land than their family allocation could borrow from their neighbors under agreed community arrangements. Women of certain ethnic groups, such as the Pare of Kilimanjaro (Koda 1995) and the Haya of Kagera, were able to get land on which to grow crops of their personal liking under this arrangement.

Gender and Law

Conflicts over land in some areas gave rise to emergence of authority in land matters, which authority determined accepted ways of acquiring, using, disposing, and settling disputes over land (Cory 1945; James 1977). Shifting agriculture was practiced to curb land exhaustion; this type of extensive cultivation was viable under conditions of low population densities, abundance of land, and subsistence agriculture.

Colonial Period

The Germans were the first to colonize Tanzania at the end of last century. They introduced and promoted plantation agriculture, whereby prime agricultural land was allocated in freeholds, mostly to settlers. In 1895 the Germans passed the imperial decree regarding creation, acquisition, and conveyance of Crown Land. By that decree all land was declared Crown Land vested in the German Empire, save that which was owned privately or by chiefs or indigenous communities. This was the beginning of the nationalization of land, which successive governments have since adopted. Transfer of Crown Land could only be effected through the governor either by conveyance of ownership or lease. In effect this meant that individual rights were recognized through a permit from the commission. This favored settlers and upper class people. At the end of the German colonial period in 1918, 1.3 million acres of land on the coast and highland were alienated to settlers.

After its defeat in World War I in 1918, Germany renounced all rights over its colonial possessions, including German East Africa.⁴ While Rwanda and Burundi went to Belgium, Tanganyika went to Britain under the supervision of the League of Nations.

The alienation of land continued under the British. All German titles (plantation estates) were sold. The Germans repurchased their previously occupied land through Greeks and Asians. Under the League of Nations' Trusteeship Agreement with Britain, Britain had to safeguard the rights of the natives. A native or community lawfully using or occupying land in accordance with customary law was eligible for title. The B Mandates, as the Trusteeship Agreements applicable to Tanganyika, the Cameroon, and Togoland were known, provided as follows: In forming laws relating to the holding or transfer of land and natural

resources the administering authority should take into consideration native laws and customs, and should respect the rights and safeguard the interests both present and future of the native population (Art. 8).

In order to fulfill their obligation under this agreement, the British introduced a legislation based on the Land and Native Rights Ordinance of Northern Nigeria (James 1977, p. 18). The local statute came to be known in Tanganyika as the Land Ordinance, Cap. 113. The effect of the Land Ordinance was to declare the whole of the land, whether occupied or unoccupied, to be public lands. This practice continues today.

Therefore, no freehold form of land tenure exists in Tanzania. Holders of land can only have leaseholds of a specified duration, and compensation is limited to unexhausted improvements effected on the land. This is different from Tanzania's East African neighbors, Kenya and Uganda.

Moreover, statutory rights of occupancy are governed by the Land Ordinance, Cap. 113; the Land Acquisition Act, 1967; the constitution; the Land Registration Ordinance, Cap. 334; as well as a host of other laws listed earlier. Customary and traditional land tenure, however, were preserved under the Order-in-Council, and the definition of a right of occupation of land in accordance with customary law was recognized (James 1977, pp. 62, 97). Urban lands ceased to be subject to native law and custom upon payment of compensation to the former holders. This land was surveyed and held under either Caps. 113 or 334.

Section 3 of the Land Ordinance declared all occupied or unoccupied land to be public lands. The governor controlled public land, which could be held and disposed off to colony subjects under a grant of a Right of Occupancy of a maximum term of 99 years (Sec. 2). Customary title was recognized and included in the

definition of a right of occupancy, which was defined as title of native community lawfully using or occupying land in accordance with customary law. This was an attempt by the colonial government to incorporate peasant farming into colonial state planning along with plantation farming. In an apparent effort to protect the landrights of the indigenous population, the definition of a native was narrowed down to any native of Africa not being of European, Asian origin or descent and includes a Swahili but not a Somali. Moreover, customary law was not applicable in urban areas (Para. 12, government circular, 1953). However, in reality the Land Ordinance failed to protect native land rights because it could not prevent compulsory acquisition of native lands by the colonial state for the benefit of immigrants.⁵

The change in the farming system from shifting to permanent cultivation led to de facto privatization of property in land. Where land is scarce this has resulted in women's loss of rights to land. Boserup chron-

icles the various land reforms in Malaysia, Mexico, Rhodesia (now Zimbabwe), and South Africa mirrored in the European type of tenure, which allocated women's actual land rights to men (Boserup (1970). In most cases women lost inheritance rights, which went from father to son (a typical pattern in Europe at the time).

The establishment of patrilineal legal systems over matrilineal ones led to women's further loss of land rights in the later years. The matrilineal land tenure established that both men and women inherited land equally by descent, and it is believed that women were the administrators of land because they did not move out to follow their husbands at marriage. Instead, it was husbands who moved. Thus one of the consequences of colonialism on land tenure was the diminishing of women's land rights.

Postcolonial Era

At independence in December 1961, Tanganyika embraced both peasant and plantation agricultural policies. It also accepted the legal framework that had been put in place to facilitate implementation of the land policies it had adopted. Despite policy statements on land policy, very few legal changes were made. These changes included the abolition of freehold titles under the Freehold Titles (Conversion) and Government Leases Act, No. 55 of 1963, enfranchisement of Nyarubanja tenants under the Nyarubanja Enfranchisement Act, 1968—an act that gradually ended the obnoxious semifeudal system of land tenure prevalent in what was then the West Lake region in Northwestern Tanzania. Another significant legal change was the Villagization Act of 1975, now repealed, which will be discussed later.

As far as women's access to land was concerned, the independence government—having largely adopted the colonial pluralistic legal system with its new version of custom in the form of customary law—did little to reverse the trend. The Arusha Declaration of 1967 put emphasis on agriculture and collective production but did not take on women's land rights. Most land remained, and is still, in men's hands. There has been a number of policies and programs on agriculture. The first initiatives did not directly concern themselves with women but were development programs based on high capital inputs, which most women, and rural women in particular, did not have. Furthermore, the predominantly customary land tenure did not give women the right to own or inherit land (see *customary law* Declaration Order, 1963, G.N. 436/63). Given that the predominant mode of acquisition of land in rural areas is through inheritance, women are denied meaningful access to this all-important resource. A study conducted in 1991 revealed that 46 percent of all land in the country is acquired through inheritance.

Women are on record as making efforts to acquire land of their own, outside the kinship system. One such example is the Haya women of Bukoba, in Kagera Region, who migrated to cities along the coast and in neighboring Kenya in the 1920s and 1930s, went into prostitution, and utilized the proceeds to purchase land in their home areas on their return (White 1980; Larson 1991; Swantz 1985).

Today an increasing number of women are able to purchase their own farms. However, such women are still very few because of the low income of most women. In a study conducted in Bukoba in early 1966, only 34 percent of women had access to land of their own, and the rest tilled the land owned and directed by men. In a countrywide study conducted in 1990/91, it was found that women's farms are on average smaller than those of men; for example, women's farms were 0.73 hectares and those of men were 0.89 hectares (Koda 1995).

Initiatives by Various Actors to Promote Gender Equity.

This session discusses the various initiatives that both the government—in the form of legislation, courts' decisions, and policies—and civil society—in the form of support programs—have undertaken to promote gender equity.

Government Initiatives

Right after independence the Government of Tanzania recognized the significance of gender equity and named it as one of the menaces that needed to be fought (Nyerere 1962). Although not many laws were enacted to back up these good policy intentions, some bold steps were taken in the area of legislation, particularly with regard to married women's property rights.

The Law of Marriage Act of 1971

The Law of Marriage Act of 1971, which was hailed as a milestone in integrating personal laws and set Tanzania as a pioneer in Commonwealth Africa in gender rights (Rend 1972; Mwaikasu 1982), gives women some civil rights in marriage and divorce. As far as property ownership is concerned, this law leans toward egalitarian principles. A wife has the same rights as her husband to acquire, hold, and dispose of property (Sec. 56).

In a polygamous marriage, all wives are equal in status and liability; marriage will have no effect upon property rights existing before entering into marriage. It is presumed that property acquired during marriage in the name of one spouse belongs absolutely to that spouse to the exclusion of the other. Gifts given to a spouse during the subsistence of marriage belong absolutely to that spouse. A spouse has no liability for the antecedent debts of the other spouse, subject to the provisions of the Bankruptcy Ordinance. It is the husband's duty to maintain his wife, or wives, and, if the wife is able, it is her duty to maintain her husband if he is incapacitated. A wife has presumed authority to pledge her husband's credit, to borrow money in his name, to use any of his money in her possession or under her control, or to convert his immovable property into money and use the same—as long as such credit or money is required for the purchase of necessities for herself and the infant children from the marriage, as appropriate to the husband's means and way of life. Finally, husband and wife shall have the same liability in tort toward each other, as if they were not married; the husband shall not be liable for the torts of his wife only because he is her husband, and neither spouse is entitled to claim damages arising from the loss of impairment of consortium. Nonetheless, spouses are not to be compelled to live with each other.

Special provision is made regarding the rights of a spouse in the home owned by the other spouse. Alienation without the consent of the other spouse is forbidden, and the interest of the nonowner spouse is deemed capable of protection by caveat or caution on the land register. In the event of alienation without consent, the right of the nonowner spouse to continue to reside in the home is an overriding interest unless the purchaser can show that he or she had no notice of the spouse's interest and could not, by the exercise of reasonable diligence, have become aware of it. Only a court order can evict a deserted spouse from the matrimonial home by sale or in execution of a decree against the spouse or by a trustee in bankruptcy of the husband or the wife as the case may be. On end of marriage by divorce or separation, this law provides for division of matrimonial assets acquired by the parties' joint efforts during marriage.

As far as landed property is concerned, the concept of separate property encourages married women to acquire landed property on their own, especially in urban areas where land plots are allocated by the respective land authorities. In appreciation of the fact that in practice properties are acquired by the family through the husband, the so-called head of household, this law vests the court with power to order division of property acquired by the spouses through joint efforts during subsistence of marriage.

The Local Government Act of 1982

The act provided that the membership of the Village Council shall consist of no less than a quarter of the total members besides the chairman and all the chairmen of the Vitongoji within the village. Although this amendment was enacted fairly recently in 1992, and as such its impact has yet to be evaluated, there is no doubt that it will enhance women's political participation, especially at village level. Such participation is vital in putting women's issues on the agenda.⁶

Ratification of CEDAW

Tanzania ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in August 1985. This treaty, which has been dubbed as the International Bill of Rights for Women, establishes a comprehensive rights framework on which states can progressively measure themselves and be measured by others on their successes in advancing toward gender equality. Although under the laws of Tanzania ratification does not mean automatic applicability in domestic courts, the convention is already being cited as authority for broadening women's human rights in court litigation and was one of the international human rights instruments on which the High Court relied in one of the landmark cases of *Holaria Pastory* cited later.

Division of Matrimonial Property

Gradually the courts have come to accept that the term joint efforts of the spouses includes domestic services, often performed by the wife. This acknowledgment by the Court of Appeal in the now famous case of *Bi Hawa Mohamed v. Ally Sefu* (Civil Appeal No. 19 of 1983) was a significant landmark in matrimonial property relations in Tanzania. First, it acknowledged that housework and child care amounted to contributions entitling a spouse to division of matrimonial assets. Second, the court recognized that marriage is an economic venture in which spouses invest for their current and future needs (Rwezaura 1982).

The courts have shown willingness to direct sale of matrimonial homes so that each spouse is entitled to up to 50 percent of the value of the house with an open offer to any of the spouses to buy out the other spouse, if the couple owns one house only.⁷ In some situations where the spouses own more than one house the courts have ordered dividing up the houses between them. This judicial disposition regarding division of property between spouses on separation or divorce has relatively improved the position of women from the traditional one in

which a divorced woman was expected to leave the matrimonial home empty handed and start all over.

The Constitution and Customary Law of Inheritance

In 1990 the High Court ruled that customary law Rule 20, barring women heirs from disposing of clan land by sale while men could, was discriminatory and therefore unconstitutional.⁸ The judge not only relied on the Bill of Rights included in the country's constitution in 1984 but also sought recourse to international human rights instruments that Tanzania has ratified, including the Civil and Political Rights Covenants and CEDAW.

Policies.

The Government of Tanzania has initiated a number of policies related to land use and management in the areas of agriculture, village settlement, and administration, as well as community development. Some of these enhanced women's access to land, but others were gender-neutral or -blind and consequently failed to have an impact in gender relations regarding access, control, management, and ownership of this important resource. The villagization program of the 1970s was one such policy to which we now turn.

Women and the Villagization Programme. One of the major policy initiatives of the postindependence government was the villagization program of 1973/76. Although the program gave rise to other land-related problems, it registered some positive gains for the women involved, especially single women who were allocated land in their own rights. This policy was later embodied in the villages and Ujamaa Villages, (Registration, Designation, and Administration) Act No. 21 of 1975. It provided for the registration of villages, the administration of registered villages, and designation of Ujamaa villages. Moreover, each person of age 18 or above ordinarily resident in the village was eligible for membership in the all powerful Village Assembly. This meant that women, irrespective of their marital status were automatically members of their respective villages if they resided in designated villages. Work in these villages was to be on the basis of both communal and private farming. Both men and women were eligible to work on communal farms and receive remuneration according to their labor inputs. However, in a study carried out in 1976 in one of the villages in Kagera Region, women still carried the responsibility of cultivating and caring for the private (family) farm, which reduced the time they could spend on the communal farms and hence the income they could derive from it. They were not paid for their work on the pri-

vate plots. However, in another study carried out in another village in the same region (Swantz 1985), it was found that more women than men participated actively in communal work. Swantz concludes that the reason was because women were less used to private ownership and also welcomed the opportunity to earn cash on their own. She notes that in this respect single women were more active than married women, who were frequently interrupted by their husbands, who objected to communal work because it required wives to work.

Women and Development Policy. In March 1992 the government launched the Policy on Women and Development in Tanzania to be implemented concurrently with other sectoral policies and government decisions. The policy has five goals:

To define the meaning of the concept of women in development;

To identify problems arising from planning without gender focus and to give guidelines in planning with a gender focus;

To identify obstacles hindering the participation of women in development and direct ways of removing these obstacles;

To initiate strategies and establish a system to reduce women's workload;

To expound on ways that will be used in coordinating women in development programs.

The policy identifies, among others, inequitable distribution of resources between men and women due to laws, traditions and customs as one of the major shortcomings of the country's planning process. In conclusion, the policy document hopes that its implementation would, among others, enable women to have their legitimate rights and ownership and use property and wealth (United Republic of Tanzania 1992b, p. 82).

Tanzania is one of the poorest countries of the south, and to reduce women's workload it has to modernize technology and tools as well as provide equitable access to resources and democratization of decisionmaking, which are key elements in the poverty eradication campaign. Poverty eradication has been at the core of Tanzania's leadership development planning, and the present policy arises from the realization that identifying obstacles impeding women's full participation in development and using the political will to make it happen, are important contributions to that effort.

In implementing this policy, the Government of Tanzania did make a commitment to women at the Fourth World Conference in Beijing to put in place and promote programs aimed at women's economic empowerment and poverty eradication among women as a specific cat-

egory and at the community level in general. The program is already under way under the auspices of the Planning Commission. Addressing the land question with a gender perspective is a very important step in the right direction.

These goals and objectives have been integrated in the Community Development Policy of June 1996, in which poverty eradication takes a prominent place, with specific recommendations on activating, animating, and involving the community from the household level to the national level to promote a holistic development of communities with full participation of both men and women (United Republic of Tanzania 1996).

The Food and Nutrition Policy. In July 1992 the Government of Tanzania through its Ministry of Health prepared and adopted the Food and Nutrition Policy (United Republic of Tanzania 1992a). Although the policy does not directly address the land question, it has significant relevance to it. The policy identifies bad traditions and customs as two of the basic causes that adversely affect the state of nutrition in Tanzania, particularly of women and children. Other causes identified are inadequate distribution and utilization of resources. Thus one of the objectives of the policy is to improve the nutritional situation of the Tanzanian community, especially children and women. Others are to strengthen the procedures of obtaining and supplying food within the household, villages and towns by utilizing locally produced foods and to enable Tanzanians to produce and use food which can adequately meet their nutritional needs. To achieve these objectives the root causes of women's lack of autonomous access to land, especially for the poor majority living in rural areas, need to be addressed.

As regards food security, the policy notes that food crop production is generally still inadequate. It identifies low food production as partly caused by the fact that men let women take care of all food production activities without realizing that women already have a very heavy workload.

However, in recommending measures to redress the situation, the policy fails to make a single recommendation pertaining to gender relations, such as autonomous accessibility to land, including management and ownership by women—which entails effective decisionmaking as to what to grow, where, and when. This is a typical gender-blind policy, common in earlier government policies, which sets out good goals, collects the evidence, but fails to make a gender analysis of it and therefore make gender-sensitive recommendations.

The Agricultural Policy. Earlier in March 1983 the Government of Tanzania through its Ministry of Agriculture had completed and

adopted the Agricultural Policy. Again, typical of earlier government policies, this policy not only was gender-neutral on a subject that is overly gender specific in terms of division of labor, decisionmaking, marketing, and production incentives, but also failed to identify women as a category of actors in the production process or beneficiaries of agricultural services or victims of the obtaining agricultural system (United Republic of Tanzania 1983). This policy is now under revision, and it is expected that the new policy will be

gender-sensitive.

Youth Development Policy. In 1996 the Government of Tanzania through the Ministry of Labour and Youth Development prepared and adopted the Youth and Development Policy (Jamhuri ya Muungano 1996). The policy sets out the real-life situation of the youth in the different sectors of the community, the significance of having a youth policy, as well as the objectives and strategies for achieving youth development. Finally, the policy identifies the actors in different sectors, including government ministries, private sector, donors, and young people themselves. Regarding gender, the policy recognizes young women as a specific category needing special attention in certain circumstances. Regarding access to land, the policy enjoins the Ministry for Lands to streamline plans that would enable young people to acquire land without discrimination.

Law Reform Commission of Tanzania. The Government of Tanzania, like many other governments in the region, has set in place an institutional framework to constantly revise the laws to suit changing real-life situations of Tanzanians and government policies. This institution is the Law Reform Commission of Tanzania, under the Ministry of Justice and Constitutional Affairs, and has completed several projects and made proposals for law reform to the central government, including the Law of Succession Project discussed later in this chapter.⁹

Initiatives of the Civil Society

Community-based and nongovernmental organizations (NGOs) are members of civil society that have a stake in land rights.

Community-Based Organizations

Community-based organizations and tribal societies have always taken a keen interest in protecting their land rights as soon as these rights appeared to be threatened. Historical accounts of these organizations' actions are to be found in the Maji Maji Uprising of the coastal people

against the German colonial government to protest the alienation of their tribal lands to the settlers. Another example was the famous Meru Land Case in which the Meru people of Arusha in north-east Tanzania took the British colonial government to the League of Nations for breach of the Trusteeship Agreement, again to protest the alienation of their community land to the settlers. In recent years, the postcolonial government has been taken to court by tribal communities for alienation of their village land to parastatals or reallocation in the villagization program.¹⁰

Nongovernmental Organizations (NGOs)

Members of society have been discussing and debating land since the first draft of the National Land Policy was issued in 1994 and gained steam with the appearance of the first draft of the Land Bill. In May 1997 a coalition of NGOs and interested persons met under the auspices of HAKIARDHI (Land Rights Research Institute) and agreed to voice their concerns regarding the proposed new land law.

The need for a national debate on land; the views and recommendations emerging from the debate should form the basis of the new Land Law and not otherwise.

Insufficient protection to village land. The draft bill gives the president power to transfer village land to the general or reserved lands, which in turn can be allocated to companies, parastatals, and even in some situations to outsiders, without effective consultation with the village organs.

Insufficient protection of families in regard of adjudication, titling, and registration. The owners of certificates

Gender and Law

will be in a position of disposing of land through sale or otherwise without regard to the interests of and/or consultation with their families. Poor peasants and pastoralists may be in a position to sell off their land in hard times and render themselves and their families landless and therefore destitute. The rich and powerful will be in a position to manipulate bureaucratic procedures to get certificates in their favor, which would allow them to appropriate land from the poor and ignorant.

Subordination of all officials and organs on categorization or classification of land, from village to national levels, to the Commissioner for Lands, who is not accountable to the Village Assembly. Moreover, village land can be transferred to general land and allocated or sold without the villagers' consent or transferred to reserved land and later given to an investor under any excuse.

Retention of the ultimate ownership and control (radical title) of land in the office of the president. This retention is seen as being in con-

formity with the old tenure whereby the executive arm of the state monopolizes all control and the ultimate decisionmaking on land matters, a system that has been abused in the past.¹¹ Another concern here is the undemocratic nature related to the state monopoly of land such as creating conditions for continued abuse of power, corruption, and lack of transparency and accountability to the citizenry.

Consequently, the coalition recommended that ultimate ownership of village land should be vested in the Village Assembly (as opposed to the Village Council in the draft bill) as the most democratic organ at village level, and that the title over general and reserved lands be vested in an independent land commission that would be accountable to the National Assembly, which is a representative body and is geared toward transparency.

One of the earliest groups to organize around the land question were the gender rights advocates seeking primarily specific landrights for women, in particular in the land reform process. Some gender-based NGOs have been critically involved in lobbying and closely following up the formulation of the National Land Policy to ensure that women's rights to land would not be sidelined, as is often the case with many pieces of legislation. As soon as the first draft bill appeared, the gender-based NGOs got hold of it, distributed it, and began to organize.

The first national consultative workshop was held in Dar es Salaam, March 35, 1997. At the end of that workshop, a task force comprised of eight gender-based NGOs was formed with two main objectives: one was to work on the recommendations of the consultative workshop; the other was to articulate the gender perspective and lobby toward the enactment of a gender-sensitive Land Law. The Women's Ministry is working with this task force at the latter's invitation.

Central among the gender coalition's concerns has been the taming of customary law—based discrimination. Another related concern of gender-based NGOs is the proportionate participation of women and youth in decisionmaking at all levels, that is, allocation committees, dispute settlement, and policymaking bodies regarding land.

There seems to be some soul-searching as to the protection women seem to enjoy under customary law concepts like clan land considering that such concepts are the cradle of customary law-based discrimination in land. Yet admittedly, it does protect women from destitution, at least in theory, albeit in a discriminatory manner.¹²

The Presidential Commission had suggested a way of going around this predicament by combining both the acknowledgment of customary law and the rights-based framework. In that regard, the commission's recommendation was for the Village Assemblies to be vested

with the radical and ultimate title in land and to have an entrenched quorum of women in addition to the following:

The village land certificates should carry the names of both husband and wife or wives.

No transfer of land within the village would be valid without the consent of the *Mabaraza ya wazee*, who, among other things, must ensure that the wife and adult children have consented to the transfer and they would not be left destitute as a result of the proposed transfer.

The local courts and village registration bodies of *Mabaraza ya Wazee* should be elected by Village Assemblies.

Shivji (1997) has since explained that the commission's approach was a way of modernising tradition in a democratic direction rather [than] impose modernisation from above by statutory compulsion. This view has also been criticized as seeking to maintain the status quo, and the debate is still unfolding. Hand in hand with these arguments and counterarguments and soul-searching is the uncontroverted fact that most women spend a large part of their productive life in marriage and working on the land in rural areas. They have neither security of tenure to this land nor control over the proceeds of their labor, and in some cases over their labor as well. Thus a land reform that provides a way out of this cycle is likely to win the support of gender-based NGOs and gain allies in the coalition or National Land Forum.

Successes and Constraints

The following government initiatives have had a positive impact on the country's policy formulation on land tenure.

Successes

Over the last 30 years, there have been a number of positive developments, which are discussed first in the section, before moving on to the analysis of constraints.

Abolition of Freehold Titles

Soon after independence in 1961, the Government of Tanzania abolished freehold titles under the Freehold Titles (Conversion) and

Government Lease Act (Cap. 523) of 1963, which were later to be converted into leaseholds under the Government Leaseholds (Conversion of Rights of Occupancy) Act of 1969. The abolition of freehold titles in 1963 is considered a landmark success of the postcolonial government because it brought into the realm of public control all land within the country's borders for better planning, use, and conservation. It has been generally regarded as having so far spared Tanzania from a situation in which a small landed class develops side by side with a large landless class, as has happened in some of the neighboring countries.¹³ To many people the landless class supports the National Land Policy's proposal to maintain ultimate land title into the presidency in trust for the people of Tanzania as will be discussed later in this chapter.

Presidential Commission on Land Matters.

As a result of the villagization program of the 1970s mentioned earlier, more than 9 million peasants were moved from their homes and resettled in new villages by coercion. Although initially the resettlement schemes had no legal authority, they were politically legitimized by Nyerere's widely popular policy of Ujamaa, his brand of African socialism based on African familyhood, a notion of human equality and social equity. With the economic

liberalization of the 1980s, the abandonment of Ujamaa Policy and the collapse of most Ujamaa villages, many former customary owners of land reclaimed either their former lands or sought to maintain their current rights in the new settlements and took court action. Suddenly, there was such a wave of land disputes in court all over the country that the government found it necessary to enact legislation to minimize law suits arising out of villagization (operation *vijiji*).¹⁴

Another response of the Government was to appoint a commission to thoroughly study land policy and land tenure structure and related problems. This commission, known as the Presidential Commission of Inquiry into Land Matters, was appointed in 1991 (United Republic of Tanzania 1994). It conducted hearings throughout the country, wrote a report and submitted it to the president.

The gender question in the report emerged under chapter 24, entitled Gender Inequality and Problems of Female Succession. This chapter was divided into three sections: The introduction which uncovers the problems; a survey of the law; statutory, Islamic, and customary laws; and recommendations for possible reforms. In its introduction the report revealed that women have unequal access to land and control over it. Acute problems were noted in relation to inheritance of

movable and immovable property, including land. The commission observed that this problem was mainly the result of custom, culture, and certain religious practices, which, combined, give rise to bias against women.

The commission gave the example of 80 percent of the rural population, which is patrilineal, in which succession is reckoned down the male line and the remaining 20 percent which is matrilineal, where heirs are a man's uterine brothers and his sister's sons (James and Fimbo 1973).

At the end of its work, the commission outlined three issues that needed attention. Firstly, it observed that gender inequalities and biases against women, particularly under customary systems, render land inaccessible to women in terms of ownership and control even though they till it. Secondly, that the discriminatory laws of inheritance embedded in custom and culture work against the interests and welfare of widows and daughters.

Third, that because of the traditional male domination and female subservience result in practically all major decisions on land are made by men or an assembly of men.

The commission made three recommendations in relation to gender discrimination in land matters.

The radical (custodial) title should be vested in the village assembly, which would render clan land unnecessary and therefore do away with the basis of some discriminatory rules of succession.

Customary rights should be recorded by entering the names of both spouses appearing in the certificate of title and therefore the person recorded during allocation will be the allocatee, whether a man or woman.

The allocating authority, that is, the elders' council, when disposing of land must satisfy itself that the family (wife and children) will not be left without any means of subsistence as a result of that disposition, and that the wife has been consulted and has consented to the proposed disposition.

The Report of the Law Reform Commission on the Law of Succession

The Law Reform Commission is an institution under the Ministry of Justice and Constitutional Affairs. One of its main functions is to study laws and recommend reforms to the ministry. Between 1987 and 1995 the Commission, on instructions of the Ministry of Justice, studied the laws and practices pertaining to succession and recommended enactment of a unified law. One of the proposals on the Law of Succession is

that a surviving spouse and parents of a deceased person get a specific share of the estate, including immovable property. Moreover, the immovable property would devolve to the children of the couple or polygamous family (Law Reform Commission of Tanzania 1995).

The National Land Policy

Following the report of the Presidential Commission, the Ministry of Lands and Human Settlement (previously known as the Ministry of Lands, Housing and Urban Development) issued its own draft of the National Land Policy. The objective of the National Land Policy was to adopt a coherent land policy that would enable proper management and allocation of land in the urban and rural areas and provide a clear position on customary land tenure. The policy itself in its introduction gives 10 reasons for its creation.

1. Changes in land use and increase in human population.
2. Growth in the already large livestock population, which increases demand for grazing land thus creating serious soil erosion.
3. Problems (1) and (2) have resulted in the extension of cultivation to marginal land areas resulting in a reduction of areas available for pastoralists.
4. Land use conflicts in areas receiving large herds of livestock movement.
5. Increased urbanization requiring land for settlements, industries, and commerce and also a need to preserve valuable agricultural land.
6. Liberalization of the economy, which brings an upsurge of prospective investors who require land.
7. The effect of the villagization program (1973/76) on customary land tenure.
8. Increased demand for land.
9. Adoption of political pluralism.
10. Court decisions affirming customary land tenure rights.

The Ministry of Lands and Human Settlements held several workshops to discuss the policy document with various stakeholders. However, there are complaints that the discussion was insufficient and the document should have been debated nationwide in view of the significance of land to the large majority of the citizens (Shivji 1997). Nonetheless, four major points emerge from the National Land Policy. To centralize land allocation authorities, as opposed to the present system, which has been blamed for double allocations (Fimbo 1992). Unlike the present practice, foreigners are not to be allowed to own

land, except as legally stipulated under the 1990 National Investment Protection Act, for investment purposes. To maintain the present system of vesting the (radical) ultimate title of public land into the President of the United Republic. To have the allocating authorities at all levels issue certificates of title, which must bear both husband's and wife's names.

Constraints

All these Government initiatives have had a positive impact on the country's policy formulation on land tenure. However, some inherent constraints in the legal system and inadequate civic, as well as, legal awareness has tended to limit the effect of such initiatives.

Discriminatory Rules of Inheritance under Customary and Islamic Laws

Inheritance in Tanzania is governed by all the three legal systems mentioned earlier. Customary, Islamic, and statutory laws. All three laws provide for both testate and intestate succession. Two particularly connecting factors in each of these legal systems are ethnicity and religious affinity. Where there is a conflict of law between Customary and Islamic Law, the courts have adopted a mode-of-life test. For Africans in rural areas, it assumed that customary law applies to them unless the contrary is proved.¹⁵

Regarding African Muslims the applicable test is the intention of the deceased. When an African is also a Muslim, there is the problem of determining which law applies between customary and Islamic laws. The test used in making the decision the intention of the deceased.¹⁶ Consequently, the assumption is that Islamic law applies to the distribution of their estates unless a contrary intention is proved.¹⁷

In conclusion therefore it can be said that either customary or Islamic laws apply to the distribution of estates of African Muslims who died intestate, depending on which law dominated their life. In case of testate succession, the will would be followed unless challenged by any of the intended would-be beneficiaries; in which case the mode-of-life test would apply.

Statutory law, that is, law enacted by parliament of either the colonial or post independent state, applies to the rest of the Christians (to whom customary law does not apply) and all those of European origin. Statutory law includes the Indian Succession Act of 1865 and the Non-Christian Asian (Succession) Ordinance, Cap. 112. The Indian

Succession Act may be seen as codified English common law. It is concerned with the immediate dependents of the deceased and it is inclined toward more egalitarian principles of distribution among the survivors, without distinction on the basis of gender among the children, unlike customary and Islamic laws, for example. However, this law is rarely used in the country particularly among Africans.

The Non-Christian Asiatic (Succession) Ordinance, Cap. 112, is applicable to, as its title implies, non-Christian Asians. It provides that the law applicable in these case will be personal laws such as Hindu law, and others. Like the Indian Succession Act, this law is rarely used in the country, even by the community it is intended to serve. The laws that apply to the majority of the people in inheritance matters is customary law and the Probate Administration Ordinance. Of the three system, customary law is the one that disempower women the most.

Customary Law

Customary law rules relating to inheritance are generally contained in the Customary Law (Declaration) Order, 1963 (Government Notice No. 436 of 1963). This is essentially codified customary law, legally applicable mostly to African Christians. However, G.N. 436/63 applies to patrilineal ethnic communities only, which constitute 80 percent of the Tanzania society's ethnic groups. Thus for matrilineal communities, which are the remaining 20 percent, the unmodified customary law rules remain in force and are subject to proof by the party relying on them.

Land governed by the G.N. 436 falls into one of three groups: self-acquired land, family land, and clan land. Certain rights and obligations flow to individuals on the basis of this categorization. Succession and ownership rights depend on the status or category under which that land was held by its previous owner. Women's rights

under these concepts are also variously affected.

In patrilineal communities of Tanzania, as codified in the Customary Law Declaration Order, No. 4 of 1963, clan or family land is protected against alienation outside the clan or family. Daughters are not entitled to inherit land on the assumption that they would marry away from their parental base. An exception is made in default of a male heir, but even then alienation by sale and bequest is restricted (Rule 20). It is feared that women will transfer land outside the clan or family through marriage. Therefore, the need to protect group (clan) land has been unduly applied to the prejudice of women heirs.

In matrilineal communities there is also a main inheritance system. Male heirs inherit the property of their maternal uncles, not the property of their mothers. Daughters are designated to inherit the land of their

uncles, not that of their fathers. Although widows have limited usufruct rights under the Customary Law Declaration Order, in both tradition and current practice they are treated differently in various communities. In some societies (for example, the Haya of Kagera) there is a strong tendency to dispossess widows unless they submit to being inherited along with their late husbands' property by his clansmen or become dependent on her children. In other societies (for example, Chagga and Masai), widows are entitled to the homes of their late husbands for the rest of their lives and to being custodians of the share of inheritance of their sons until the sons grow up and take over their property.

Nonetheless, in mixed marriages, away from centers of customary law practice, widows of propertied husbands are liable to exploitation on the pretext that they have no rights to the property of their late husbands. Relatives of the late husband often confiscate all property in the name of customary law (Women and Law in East Africa 1995).

Thus in contrast to rules for women's full ownership and management rights, inheritance rules continue to discriminate against women. This discrimination manifests itself in the disproportionate shares generally awarded to men and women. As the Law of Marriage Act does not apply to inheritance, it does not supersede customary law in this property regime. Thus the discriminatory customary law continues to apply to succession matters to the detriment of women and the communities that depend on them.

The effect of G.N. 436 on inheritance is that daughters cannot be main heirs unless there are no male offspring. If there are male offspring, daughters can only inherit in the third degree, after the eldest son of the main house and all other sons. In 1990 the High Court ruled that Customary Law Rule 20, barring women heirs from disposing of clan land by sale while men could, was discriminatory and therefore unconstitutional.¹⁸

Constraints for Widows

As widows, women are even more vulnerable. They do not have inheritance rights in their own right except through their children. Rule 27 of the Customary Law Declaration Order, 1963 provides that a widow has no share of the inheritance if the deceased left relatives of his own clan; *her share is to be cared for by her children just as she cared for them*, (italics added). As for the children, their rights depend on the status of their mothers to some degree. The eldest son of the deceased by his most senior wife is heir in the first degree and inherits one-third of the land. All the other sons, regardless of their mother's seniority, are heirs in the second degree, which entitles them to something between one-tenth and one-fifth of the land. All the daughters, their mother's seniority

notwithstanding, are heirs in the third degree and share among themselves whatever remains. The eldest daughter of the first wife will be the main heir if there are no sons. The widow can inherit only when there are no offspring

and no male relatives, but this situation is very rare.

Rule 66A provides as follows: A widow has a right to choose any relative of the deceased and live with him as her husband or she may claim the right to remain with her issue in a house of the deceased, and thus become one of the kinsfolk of the deceased (translated from Kiswahili). Here again we see the law ties women's rights to those of the children. Moreover, this status is rife with more practical problems for widows, as in the case when there is more than one widow, which invariably brings practical conflict. But even more vulnerable are widows who do not have a male offspring or are childless. Tying a widow's rights to the children's brings practical conflicts in real life, such as in the cases of polygamous marriages, childlessness, or when the children are daughters. Children have different rights under the same rules in regard to inheritance. Since these rights are not covered by the Law of Marriage Act, the customary law of the land is applicable.

In a polygamous marriage, a widow is at a disadvantage if she has only daughters. Daughters cannot inherit while other clan members are alive. The widow may have contributed the most to the survival of the family and acquisition of assets, yet her property rights are not secured unless she has a son, or there are no other existing or former wives with sons.

For example, in the case of *Saidi Kasisi v. Melensiana Kasisi* the plaintiff's mother was the most senior wife of his deceased father. His mother died while he was very young, and he was left in the care of his stepmother, the defendant's mother. The stepmother did not bear any sons, but she had three daughters, all of whom were married, including the defendant. At the death of his father, the plaintiff, now heir, moved to evict the defendant's mother who was now very old. There was supposed to be a will protecting the widow's right to remain in the house and use part of the shamba (farmland), but the court found that it had not been sufficiently proved. The defendant's daughter, Melensiana, brought proceedings on behalf of her old mother to resist eviction. The case went on appeal from the primary court, to the district court and to the High Court. It was finally held that the case should be referred back to the clan council as per custom. The appeal was dismissed.

Such a decision has implications for the widow's old age security. Even if the clan council allows her to stay in the matrimonial home for her life time, she would be a dependent of the heir. It would also be difficult for her to attract younger relatives to take care of her (except her daughter's children, if they have not been urbanized and the children as

well as the husband agree to it) because she cannot pass on this property to anyone on her death; even if the plaintiff was not there, the land would revert to the deceased husband's clan. This shows another aspect of widows' old age security: impoverishment. It seems to penalize women for overstaying in marriage until death does them part, denies them retirement benefits, rewards undeserving relatives while at the same time rebuking those who have acquired enough property to attract greedy relatives. In the case discussed above, the plaintiff could make such care arrangements for the widow and her dependents difficult by imposing unreasonable conditions, even if only to scare them away.

We have seen that a widow has a right to choose one of her children and reside with him (or her) in the house of the deceased. In the case of *Scholastica Benedict v. Martin Benedict* the Court of Appeal confirmed the legality and force of this customary law rule.

In that case, a man died intestate leaving 2 wives and 10 children. He had 9 children with his senior wife and 1, a daughter, with his junior wife. At the time of his death he was living with his junior wife in a modern house in Bukoba Township, which he also owned. His senior wife lived in another house in the village.

The deceased left substantial property, including motor vehicles, farmland, cattle, and houses. Three administrators were appointed, and the property distributed in accordance with Haya customary law. The crux of

the case was that the administrators allocated the modern house in which the junior wife had resided with the deceased husband to the senior wife's son. The junior wife refused to hand over the house to her stepson on the ground, among others, that the administrators erred in depriving her of the matrimonial right of residence in the house of her deceased husband. It was held that her claim could not succeed since her matrimonial right of residence was contingent upon her right to live with her children in a house of her deceased husband. Quoting Rule 66A the Chief Justice had this to say: it follows that a widow who elects to reside with her issue, elects where her issues are entitled to reside by the rules of inheritance.

The junior wife was ordered to leave the matrimonial residence and live with her unmarried daughter in the shamba allocated to her. A group of Tanzanian women researchers at the University of Dar es Salaam thought the decision was in line with women's rights because it vindicated the older woman's property rights, albeit through her son. Moreover, the the plaintiff (junior wife) was not a young town woman as such. In fact she had been a widow before, and her child from the last marriage was a daughter. When the case was finally settled by the Court of Appeal of Tanzania, the widows and their children had been in and out of several courts for 17 years over the same house. It is there—

fore not surprising that many women choose not to go to court to access landed property.

Any elderly widow without land or with rights to access land but no rights to depose or bequeath it has problems attracting dependants and therefore the necessary labor for farm work and everyday survival tasks, such as drawing water, washing, collecting firewood, and preparing and preserving food. The majority of widows who face such problems are either childless or have daughters. Moreover, in the current socioeconomic transition, incidents have been reported in which heirs mistreated or evicted their own mothers and stepsons dispossessed their stepmothers of the estate of the deceased.¹⁹

A childless widow is entitled to a twentieth part of one half of movable and immovable property for every year of married life after the property has been divided into two equal parts and the debts of the deceased have been paid. She would enjoy user rights in land, half of the perennial crops, and right of residence until she remarries or dies, in which case all the unmovable property would revert to the deceased husband's family.

Here the share of the childless widow is not counted as part of her husband's estate. This leniency is apparently meant to comfort and protect childless widows. It is probably based on the consideration that it would take a very special marriage relationship to remain monogamous in the face of social pressure to produce a heir. In practice, however, such marriages are very rare. The husband would with or without his wife's consent, beget children through polygamy or adultery. In some communities such as the Bajita, Bakerewe, and Bahaya, a barren wife is likely to bring her sister or niece to the family as cowife, to bear children in order to protect her property interest. Although such children are not technically hers, kinship support here is expected to take care of the childless widow, according to the Kiswahili proverb: The devil that knows you does not eat you whole.

A wife looking after a bed-ridden husband, sometimes with little or no help from his relatives, at his death has to leave everything or rely on the good conscience of her children, if she has any (Rwebangira 1993). Indeed this is bad public policy. How can women give the best of themselves in the family and community if fear being robbed of the fruits of their labor at any time should their husbands die before them?

To underscore the intricacy of the customary law in the entire land question the National Land Policy spells out in Clause 4.2.6 as follows:

In order to enhance and guarantee women's access to land and security of tenure, women will be entitled to acquire land in their own right not only through purchase but also through allocation. However, inheritance of

clan land or family land will continue to be governed by custom and tradition provided they are not contrary to the constitution and principles of natural justice.

Thus the anticipated new land law has to be seen in light of this spirit. Customary law is in fact a legal constraint inhibiting women's access to property within the household. It is a constraint hotly contested by some Parliamentarians and gender-based activist NGOs, as was noted above. The proviso in the last line of the paragraph was added after a member of Parliament put her foot down when the policy was read in Parliament as an annex to the budget estimates of the Lands Ministry. Nevertheless, many citizens think that custom and tradition are the soul of a nation, and customary law is equated with both.

Inadequacy of Legal Services.

It is one thing to have legal rights and another to enjoy them. Legal rights have to be accessible and enforceable to be enjoyed. Enforcement of legal rights is often sought from established institutions such as courts, tribunals, police, clan councils, and others. With the exception of clan councils, which are traditional and tend to enforce traditional values that are sometimes in conflict with women's legal rights as spelled out in statutory and international human rights instruments, all the others are expected to enforce statutory laws where they are applicable. Moreover, accessing formal legal systems is financially costly and time consuming. Negative community attitudes against women who resort to external and particularly state institutions for help discourage women from such actions. In many cases, women who decide to enforce their legal rights and cannot afford the services of a lawyer need legal assistance; unfortunately, such legal services are rare in the country.

At present, legal assistance services, popularly known as Legal Aid are operated on voluntary and part-time bases, and their impact has so far been limited. These services are all based in urban areas and mostly in Dar es Salaam.²⁰ These include the Tanganyika Law Society, which caters to both men and women; the Tanzania Women Lawyers' Association; and the suwata Legal Aid Scheme for Women, which caters to women only.²¹

Policies Prescribed by International Financial Institutions

Recent years have witnessed the globalization of the economy, characterized by increasing poverty and social injustice and a widening gap between the poor and the rich both at the level of individuals and grass-

roots communities and at the level of nations. Consequently, poor nations such as Tanzania have increasingly relied on financial and economic assistance from the rich nations through International Financial Institutions such as the World Bank and the International Monetary Fund (IMF). These institutions have in turn prescribed structural adjustment programs and economic recovery programs, which have had adverse effects on women, already a vulnerable group in society. Such effects have resulted from emphasis on production for exports, often at the expense of food production, as well as from civil service reforms, which have resulted in massive unemployment that has victimized women the most. It is perhaps in light of these consequences and related criticisms and outcries on the role of international financial institutions that the World Bank has for a while now embarked on programs that give policies a human face. The Platform of Action adopted by an overwhelming majority of nations at the Fourth World Conference on Women in Beijing, China, in 1995, declares women's economic participation one of the critical areas of concern. The two actions proposed for implementation by national and international funding and development agencies were to implement policies to provide more resources to rural women and support initiatives to provide resources to small scale women entrepreneurs. In this light, the World Bank's Special Program for Africa not only buffers the harsh economic and social hazards compounded by the policies it supports but also supports the Government in implementing its commitment to the women of Tanzania made in Beijing.

Ignorance and legal illiteracy

One of the main constraints affecting efficient and democratic land use and management in Tanzania is the lack of functional and sufficient knowledge of the relevant laws, particularly of statutory laws. Unawareness of rights is common.

Women especially are illiterate and ignorant of the technical aspects of the legal systems. As such they are often conned by unscrupulous land grabbers even in urban areas where the applicable law is not gender discriminatory. Furthermore, many women are not aware of their rights under the Law of Marriage Act of 1971, such as the right to be consulted and give consent before any disposition involving the matrimonial home becomes effective, otherwise such disposition is null and void. Consequently, many married women who found that their matrimonial homes had been mortgaged or even sold by deserting husbands did not know that they had a right to nullify such actions.

The Draft Land Bill and Women's Rights

Although the Land Bill has yet to be finalized or published for reading, let alone for being discussed in Parliament, a draft has been circulated informally. NGOs and community-based organizations have organized several workshops to discuss the implications of this draft report. Some general trends emerge.²²

One of these trends is the affirmation of women's right to use, deal and transmit land subject to the same restrictions as placed on all men.²³ Furthermore the draft bill declares any rule of law or practice that deviates from the above provision or Article 24 of the constitution to be null and void. These statements, if retained in the text of the anticipated Land Bill, would go a long way in giving statutory backing to the High Court judgment in the case of *Holaria Pastory* stated above. Apart from this, the statements do not add much in substantive rights.

Moreover, given that the main force behind the bill is individualization of land tenure, which entails titling and registration of individual titles, gender implications become of prime importance because, regardless of what the final draft of the bill and eventually the law will spell out, this initiative will change the face of land tenure in Tanzania. Such a change obviously has implications for all sectors of the population and the economy.

Although this chapter is concerned primarily with the gender implications of such a change, women (and youth) rights are part and parcel of their communities, and as such women can only enjoy rights in as far as their communities have those rights. However, this might be the crux of the entire land question today. For the real contestation might be between the market forces and patriarchy and the gender question might just provide the missing link. As Rwebangira (1996, p. 32) puts it:

With the advent of the market economy which now seems irresistible, the Tanzanian community, which is dependent on women and not vice versa, has the most to lose if this issue is not settled now. For patriarchy is in competition with capitalism over women's labor, and the latter being more rational than the former, it is the evident victor. Will women choose to maintain the peasant economy by producing for subsistence or leave their squatter status behind for urban and trading centers to seek income generating activities in the hope of obtaining cash of their own?

Probably also hoping to use the cash to purchase land of their own.

Writing a new basic land law offers an opportunity to overhaul the land tenure system in a way that can put in place a land reform more likely to bring about sustainable development with equitable and prudent utilization of the major resource of most Tanzanians—the land.

Invariably, such a process would bring to light new dilemmas for the people and the policy makers. It has often been said that African land tenure is based on collective organization as opposed to the individualistic tenure typical in a western system, as succinctly put by James and Fimbo (1973, p. 6):

under the western system where land is just property, capable of being owned in much the same way as chairs and tables, the bulk of land tenure rules are concerned with an analysis of rights of individuals in land, the acquisition of rights, their incidents and methods of transferring and extinguishing them. In Africa, and particularly in Tanzania, land is more than just property, and land tenure rules form part of the whole complex of culture.

Part of that culture is the institutionalized discrimination of women in inheritance of land. It has therefore been argued that individualization of tenure could give women an equal opportunity to acquire, manage and own land on an equal basis with men. The dilemma of the security of community rights in comparison with unconditional individual rights is that community rights, in the name of customary law, gives women guarantee of usufruct land rights, albeit in a discriminatory manner; yet individual rights would present an opportunity for women, as well as for men who acquire customary land rights, to own such land free of customary discrimination. There are counterarguments to the effect that the root cause of women's inability to own property, including land, is the patriarchy system permeating both production and distribution of resources. As such, the argument goes, individualization, titling, and registration of tenure, among others, cannot guarantee women more equitable access to land without tackling the broader question of democratization of tenure and the production system (Shivji 1997). These are policy challenges.

The Land Bill has to reflect the policy choice that the government will make. The draft already shows glaring snags such as the enhancement of bureaucracy rather than democratic structures, and vague safeguards of local communities' rights but clearer and emphatic investors' rights; probably because no clear policy choices have been made and adopted.

Recommendations

This section makes specific recommendations for incorporation in the new land law. The objective is to provide an enabling legal and regulatory environment for the economic empowerment of poor women, to whom land is the major and often only tangible resource they can utilize to eradicate their own poverty as well as that of their communities and nation at large. The land reform process should be used to improve women's access to land by providing security for their title.

Individual titling and registration, as envisaged in the National Land Policy, are advantageous to women, and they should be adopted for three reasons: The possession of rights of occupancy gives women who will possess titles the security of tenure that they have never had, which will encourage them to grow permanent crops and achieve more economic security; certificates can be used as collateral to obtain loans from financial institutions and therefore help to economically empower women; and this system of land holding will help reduce conflicts in polygamous marriages.

The vesting of all land into the President of the United Republic in trust for the whole nation should continue. Participants in the consultation for this chapter unanimously viewed the vesting of the ultimate (radical) title into the office of the president as adequate and good because it safeguarded the interests both the legal and natural interests of persons to guard against abuse, provided there is sufficient legal and civic awareness in the community.

Young people also need land in their own rights. The new land law should encourage village authorities to allocate land to young people who are members of their respective villages, regardless of their gender. Such a

practice has the advantage of giving the youth a stake in the development of their villages, which could also encourage them to live and stay in villages and work on the land rather than migrate to urban centers in search of autonomy and employment. The new land law should state categorically that being female will not be a basis for discriminating against allocating land to a youth. Such a move would have at least three advantages for women: village communities and authorities would get used to the idea of women owning land in their own right; peasant girls would have an opportunity to own tangible property before marriage, which is rarely the case now (see *Women and Law in East Africa, Tanzania 1997*); and peasant girls will also have a choice between moving to follow their prospective husbands or invite them to move in onto the girls' own land. Besides, some boys may not have

enough land of their own at marriage and it may therefore be to the couple's advantage for the husband to join the prospective brides on the bride's land.

Diffusion of gender-based constraints. In order for the new land law to have any meaningful effect in gender relations, strategies to diffuse gender-based constraints in the land question should be devised. For example, in monogamous marriages, land titles should be registered jointly in common tenancy; in polygamous marriages, land titles should be registered jointly in the name of each wife and husband, also in common tenancy to help curb the husband's blatant exploitation of senior wives in favor of junior wives—who enjoy equal, and sometimes more, rights than senior wives; landed properties acquired before marriage would be registrable in the name of an individual spouse if she or he is not married. In case such spouse is already married at the time of registration, the law should provide for attestation of the other spouse to the effect that the property sought to be registered is not matrimonial property.

Women's effective participation in land matters should be ingrained in the law. The new land law should provide for women's effective representation at all levels, from village to national bodies, in allocation, dispute settlement, and advisory capacities so as not only to get their invaluable insight as major land users but also to help put gender-related issues on the agenda of bodies dealing with land. The Local Government (District authorities) Act of 1982, already provides for a minimum of 25 percent women representation.²⁴ The new Land Act can provide for more, say 50 percent.

The gender implications of Individual Titling and Registration on inheritance in polygamous marriages should be addressed in the new land law. The Law Reform Commission of Tanzania has completed its study and made recommendations for enactment of the new law of succession. Proposals on safeguarding women's interest in land are among its many recommendations. These include the right of inheritance of land by a surviving spouse for her life time in trust for the children, if any. According to this recommendation, where there are children such right of survivorship for the widow is to cease at remarriage, in which case the landed property shall revert to the children.

Discriminatory laws and practices in land allocation should be amended. These laws provide that land would be allocated to heads of households who are normally husbands. With the prevailing social attitude favoring men, implementors often take such a provision as if it were mandatory to exclude women.

There is need for more research and public education on the social context of community norms, perception, and practical effects of the gender-based constraints in land use, management, and ownership. More research is needed

in order to understand the patterns of land ownership and inheritance patterns in matrilineal communities before the intrusion of foreign religions and colonialism and the proportion of land held under clan land in the country.

Clan land is the cradle of customary law—based discrimination in land matters, and it has proved to be a formidable foe politically. The quantitative significance of discrimination in this category needs to be established to determine whether to change social attitudes is worth the effort it requires as well as the risk of alienating sizable supporters on other issues.

Also considering the significance of land to the lives of the majority of Tanzanians including women, public education on the entire land question is essential especially on the significance of land to women in economic empowerment and decisionmaking at both household and community levels. This should be done by embarking on a strong public campaign involving the Ministries of Lands and Human Settlement and the Community Development, Women Affairs and Children targeting village communities in particular at the level of the ward as shown in the Action Plan (see table 2.1).

Finally, two issues have proved complex and persistently constrained efforts to enlarge women's legal capacity: religious and customary laws.

Of the two complex aspects of our cultural heritage, perhaps religion is the most complex. Although the theology and particularly the practice of most foreign religions have some adverse gender implications, Islamic property regime is the most sensitive to discuss because personal property relations are provided for in the Holy Koran and therefore not given to human revision. It is believed that one of the main reasons behind the delay in implementing the report of the Law Reform Commission on the Law of Succession is the implications of a unified law for the Muslim community, which is believed to be about one-third of the population (Mazrui 1986). One of the options proposed to move out of the present paralysis is to exempt the Muslim community from such unified law. Kenya took this option with the Law of Succession Act of 1972, but more needs to be known about how it has worked out for rural women.

Customary law has no such complexity. As noted earlier, the customary law of patrilineal communities was collected during the colonial period and codified as G.N. 279 and 436/63. Nonetheless, most of these communities often practice their own customs, which emerge from tradition but are also influenced by the changing socioeconomic environment, are not in the codified code and therefore do not have

Table 2.1. Action Plan for Land Education, Tanzania

<i>Objective</i>	<i>Activity</i>
To sensitize the public to new land law	Mobilize all key actors/stakeholders Form public Education Committee
Target group (women and general public)	Prepare action plan for public education Prepare implementation, costs tools executors, etc. (Communication Strategy) Identify trainers and training venue and timetable Committee to submit action pan Conduct Land Education Programs at Ward level, under supervision of district land and community development officers

force of law. Yet both these customs go under the banner of customary law, they are defended as traditional, and therefore protecting them is seen as a patriotic duty. Moreover, the Court of Appeal of Tanzania has in recent years come out in strong defense of the status of customary law as was illustrated in the case of *Scholastica Benedict* discussed earlier.

Gender and Law

The adverse effects of romanticizing customary law on women's legal rights can be seen in some of the following instances. One is the delay in the enactment of the Law of Succession. One of the stumbling blocks is said to be resistance to changing customary law, particularly relating to removing gender discriminatory provisions and broadening women's inheritance rights. Another is the National Land Policy discussed above. We plan to undertake an exercise to study, collect, and document the customs of the various ethnic groups in the country as shown in the Action Plan.

The main purpose of such an exercise would be to support the good customs on the one hand and isolate and campaign against the bad ones on the other. In doing this we are aware of the ongoing debate regarding the politics of customary law as opposed to custom, in which the former is rightly seen as the creation of colonialists in the former colonies (Snyder 1981; Fitzpatrick 1984; WLSA 1992).²⁵ However, considering both the vagueness and romanticism that surrounds custom and customary law, we believe this exercise will give the debate and the politics surrounding it a new momentum.

Notes

1. This paper was written in three stages. The first draft was presented at a Mini Workshop attended by a relatively small group of 15 preselected stake-

<i>Timeframe</i>	<i>Output</i>
November 1997	Public Education Committee
November 1997	Action Plan
November 1997	Training materials (syllabus, summary of subjects, etc.)
November 1997	Mass media, programs (radio, TV, print media, pamphlets)
November 1997	Trained trainers
December 1997	Training manual for local consumption
April 1998	Established Land Education Program at level of ward

holders, including government officials, members of civil society, and individuals. At a second stage, a second draft was presented at a National Workshop attended by a group of 40 various stakeholders, including academicians, judges, magistrates, government officials, and members of Parliament and of civil society. In between these workshops, a process of continuous consultation was set in place with individuals, nongovernmental organizations (NGOs) and community-based organizations at meetings organized to discuss land. At the end of each stage, the comments of the workshop participants were incorporated in the body of the paper to the satisfaction of the Ministry of Community Development, Women Affairs and Children (Women's Ministry). The latter then initiated a vetting process in relevant government institutions before finally submitting the paper for circulation, ready for the Regional Conference.

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2. This chapter was commissioned by the Government of Tanzania in the context of the World Bank's Special Program for Africa, which has identified legal and regulatory reforms as essential tools in promoting gender-sensitive and sustainable human development.
3. The others include the Land Survey Ordinance, Cap. 390; Town and Country Planning Ordinance, Cap. 378; the Land Registration Ordinance, Cap. 334; Registration of Documents Ordinance, Cap. 117; the Land Acquisition Act No. 47 of 1967; the National Land Use and Planning Commission Act no. 3 of 1984; Public Recreation Grounds Ordinance, Cap. 320; Nyarubanja Tenure Enfranchisement Act No. 1 of 1965; Land (Law of Property and Conveyancing) Ordinance, Cap. 114.
4. This included today's Mainland Tanzania then known as Burundi, Rwanda, and Tanganyika.
5. This realization may be at the core of the current concern of the civil society over the President's retention of the ultimate (radical) title as the custodian of all a land in trust for the nation.
6. See Sec. 56 as amended by section 13 of the Local Government Laws (Amendment) No. 8, 1992.
7. See, for example, the case of *Abdallah Omari Khamis v. Khadija Issa Shariff* (Civil Appeal No. 39 of 1987; unreported).
8. In *Bernado Ephrahim v. Holaria Pastory and Gervas Kaizilege* (Civil Appeal No. 70 of 1989).
9. Other projects include the proposals for amendment to the Law of Marriage Act of 1971, which, among others, seeks to incorporate into the body of the statute the principle in the case of *Bi Hawa Mohamed v. Ally Sefu's* decision on division of assets acquired by the joint efforts of the spouses on divorce.
10. See, for example, the case of *Nafoc v. Mulbadaw* (Court of Appeal of Tanzania at Arusha, Civil Appeal No. 3 of 1985; unreported).
11. Such as in the villagization scheme and the persistent state disrespect of customary law land titles (Fimbo 1992; Shivji 1997).
12. Is this the case where human rights should prevail over community rights or the best interests of women in conflict with basic principles of human rights? Compare Rwebangira 1997 and Sheikh 1997. See also, Illumoka 1994.
13. See the National Land Policy supra p. 7.

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14. The Regulation of Land Tenure (Established Villages) Act. No. 22 of 1992. See also *The Attorney General v. Akonay and Joseph Lohanay* (Civil Appeal No. 31 of 1994).
15. See the Judicature and Application of Laws Ordinance, 1961, Cap. 453, Section 9(1). Also *Innocent Mbilinyi, Deceased* 1969 (H.C.D) 283; *George Kumwenda v. Fidelis Nyirenda* (1981) T.L.R 211; and *Abdallah Shamte v. Mussa* (1972) H.C.D No. 9.
16. Administration (Small Estates) Ordinance, Cap. 30 Section 19(1)(a) and case law.
17. *Hussein Mbwana vs Amiri Chongwe*, C.A No. 1/1963. Also Re: *The estate of the late Suleiman Kusundwa* (1965) E.A. 24; and *In the matter of the late Salum Omari Mkeremi* (1973) L.R.T No. 30.
18. In *Bernado Ephrahim v. Holaria Pastory and Gervas Kaizilege* (Civil Appeal No. 70 of 1989).
19. *Drosta Francis v. Francis Faiko Katoma* (Primary Court No. 1/1988) and *Paschaziah Bukiyo v. Samuel Daniel* (Bukoba Urban Primary Court, Civil Case No. 43 of 1990), respectively.
20. The exceptions are Kiweko in Kilimanjaro and Muwada in Mwanza. The Tanzania Women Lawyers' Association is currently undertaking a study throughout the country to assess the extent of the services and identify gaps and existing needs.
21. The Legal Aid Committee of the University of Dar es Salaam's Faculty of Law is currently inoperative.
22. From late 1995 to mid-1997 the policy document was translated into a draft Land Bill. A group of consultants under the chairmanship of Mgongo Fimbo—a land law consultant of the University of Dar es Salaam—and Patrick Mc Auslan—another land law consultant based in the United Kingdom—and including a support team of local consultants mainly from the government, made a draft of a Land Bill for the implementation of the National Land Policy.
23. This may be in reference to customary law restrictions, such as Rule 20 of the customary law Declaration Order, which had already been declared unconstitutional in the case of *Bernado Ephrahim Holaria Pastory and Gervas Kaizilege* (Civil Appeal No. 70 of 1989).
24. See Sec. 56(1)(c) Act No. 7 of 1982 as amended by the Local Government Laws Act No. 8 of 1992.
25. Quite often, lay people do not know the difference between customary law and customs.

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3— Zimbabwe.

Zimbabwe is a Southern African country with great potential for sustained economic development and bright prospects for the improvement of its citizens' standard of living. According to the 1992 census report, population was 10,412,548 persons—51 percent females and 49 percent males. The per capita gross national product (GNP) was US\$520 (in 1993). However, like most Sub-Saharan African countries, Zimbabwe has been caught up in an economic crisis and has had to embark on economic adjustment programs to transform the economy and make it competitive.

The economy has been marked by low foreign direct investment, high inflation (28 percent at the beginning of 1996), high unemployment about (35 percent), increasing ecological degradation, and high budget deficit—11.9 percent of gross domestic product (GDP) in 1995/96. The high budget deficit has resulted in high debt service obligations, which have swollen the proportion of nondiscretionary expenditures. The recurrent budget has therefore increasingly taken the lion's share of total government budget (over 80 percent), squeezing the share of the development budget.

The poor performance of the overall economy has been exacerbated by frequent drought, because Zimbabwe is a predominantly agricultural economy. The drought years have been characterized by either negative or very insignificant growth rates. The year 1992 recorded a growth rate of –9 percent, an event that could be repeated because another drought is looming. The negative consequences of drought and the poor performance of the economy have had a different impact on men, women, and young people because of their different roles and responsibilities at the household level. Women—who bear the brunt to make ends meet with very limited resources—have suffered more than men. In the rural areas the situation is worsened by the nearly total dependence on agriculture.

On the legal front the government has enacted laws that seek to undo most of the legally entrenched gender-motivated impediments to achieve equality between men and women. Furthermore, in order to affirm its commitment to gender equality, Zimbabwe has acceded to international conventions that espouse equality of men and women, such as the Convention on the Elimination of All Form of Discrimination Against Rights of Women (CEDAW), and many other

human rights conventions that promote gender equality. The constitution also prohibits discrimination on the grounds of gender. However, a lot more still needs to be done to empower women and men to enable them to access and make use of these progressive laws.

Zimbabwe, like most of the world developing nations, harbors a lot of poverty. In its Five-Year Development Plan (1991/95) the government acknowledged the existence of high poverty levels and committed itself to tackle

poverty, In an effort to reduce poverty [the] government will promote people's participation in economic and social development

Furthermore, in implementing the Global Platform for Action recommendations, the government identified poverty as one of the critical areas of concern that needed urgent attention to achieve gender equality. The other two were women's participation in decisionmaking positions and education and training for women. These are interlinked because it is hoped that the participation of women in decisionmaking positions would bring a different perspective in decisions affecting the economy as a whole and in particular allocation of resources for women's economic empowerment.

The poverty issue is not just a matter of national interest but a global concern; therefore, the General Assembly proclaimed 1996 the International Year for Eradication of Poverty. The complex and multidimensional nature of poverty also calls for an analysis of the existing legal framework, which may inhibit the full participation of women. The globalization of the world's economy presents opportunities and challenges for sustainable economic and social development. Of concern has been the trend of increased poverty among women.

The preliminary report of the 1995 Poverty Assessment Study indicates that 62 percent of the population lives in poverty, that is, in households where the income per person is insufficient to provide basic needs. The study also confirms that more female-headed households are poor than male-headed households, 74 percent and 54 percent, respectively. It can be concluded therefore that the majority of the 62 percent people living in poverty are women.

Bearing in mind that female-headed households are on the increase in both rural and urban areas because of a number of reasons such as long periods of separation, divorce, widowhood, or single parenting, programs aimed at alleviating poverty should address this problem, taking note that men and women experience poverty differently because of their different roles and responsibilities within the household. In addition, the pace in changing legislation and attitudes that deal with issues of access to and control of land, credit, and inheritance needs to be hastened. Women's poverty is further aggravated by gen-

der-differentiated access to resources such as education and training, health, employment, economic infrastructure, credit, and markets.

The HIV/acquired immunodeficiency syndrome (AIDS) pandemic is another dimension that requires urgent attention in the efforts to alleviate poverty. Women bear the brunt of the disease both as victims and caretakers of the sick, AIDS orphans, and the elderly. This lowers their productivity and worsens their already low income status.

Central to the development agenda should be the consideration of the inequities that exist between men's and women's access to resources and the gender impact of various economic policies. The government, financial intermediaries, and donors need to adopt new paradigms and take on new ideas in coming up with financial packages that work for the economic empowerment of the poor. Lessons of experience can be drawn from the Grameen Bank in Bangladesh, which has shown that poverty is not created by the poor nor is it sustained by them. Rather the roots of poverty lie in a country's policies, institutional concepts, and theoretical frameworks.

This chapter aims to improve understanding of the impact of the legal system on poverty and economic empowerment from a gender perspective; identify legal and other forms of impediments to economic empowerment of the disadvantaged; offer (where possible) lessons of experience drawn from Zimbabwe; highlight national initiatives taken for poverty alleviation and women's empowerment; and draw up recommendations for use by policymakers and other stakeholders to improve the situation of women.

Gender Perspective on Property Rights in Zimbabwe: Theory and Practice

Women are economically and socially marginalized from access to enabling resources, with the result that they constitute the majority of the poorest of the poor.¹ Because of lack of access to resources, many women are forced to marry early; live at the margins of their families; take up unskilled, tenuous, and low-paying jobs; or take up commercial sex work.

The law could be a more effective and accessible tool for alleviating women's depressed economic condition and avoiding institutionalized violence and poverty. Accordingly, it is important to focus on an understanding of the content (and implementation) of all forms of law in Zimbabwe, including customary law, to determine the extent to which the law assists or hinders women in escaping the cycles of poverty to which they are so often condemned.

The Law and its Impact

In Zimbabwe the government has made commendable efforts to make legal inroads to improve women's entitlements. Following are some of the laws passed since independence (April 1980):

Legal Age of Majority Act of 1982. This law had a dramatic effect on the status of African women. African women now attain full legal capacity, along with men, on reaching 18 years of age. This means there are no legal impediments to women acquiring property in their own right and disposing of its representation.

Daughters could also inherit, intestate, from their father's estate since they now have the capacity to own and deal with property. However, this right could only be exercised if there were no sons.²

Women became eligible to have guardianship and custody of their children. Before this law, widows had to surrender guardianship of their children to a male relative of their husbands', which meant that the same guardian would take control of the estate of the deceased. In many cases this authority was abused, and the guardian squandered the estate at the expense of the widow and her children.

Much, if not all, of the criticism leveled at this law has to do with the way it was presented to the people through the press and other educational campaigns. Its benefits, with respect to women's status, have been overshadowed by overwhelming concern over the imagined license given to children over 18 years to act irresponsibly and defy their parents. The law should be appreciated for having contributed, in part, to women's emancipation and for the power it gives them to acquire and control property in their own right.

Maintenance laws. The Maintenance Amendment Acts passed since independence have superseded the customary law of maintenance. Instead of the one-time lump sum payment under customary law, the law now requires a negligent noncustodian parent to contribute regularly to the maintenance of minor children in the custody of the other parent. Many women are custodian parents, and because African women are now majors at 18 years of age they can sue the negligent fathers of their children—regardless of whether the children were born in or out of wedlock—for maintenance. The majority of maintenance orders against men formally employed are enforced through garnishee orders. Appeals against maintenance orders no longer have the effect of suspending enforcement thereof, and men who leave their jobs to avoid paying maintenance can have their pension and other terminal benefits attached for maintenance purposes. Maintenance laws also

provide for the maintenance of spouses after divorce, another departure from customary law under which the obligation to maintain a wife ceased with divorce.

Maintenance laws are important because they allow women direct access to resources vital for their own and their children's survival.

Deceased Persons' Family Maintenance Act of 1987. Even before the passing of the new succession law, when surviving spouses had no right under customary law to inherit from each other in the absence of a will, the Deceased Persons' Family Maintenance Act (1987) established the right of a surviving spouse and children to continue to occupy the matrimonial home; use the household goods and effects they were using immediately before the spouse's (parent's) death; and use and enjoy the crops and animals the same way they did before.

The act also made it an offense for anyone to interfere with these rights or the property, thereby reducing the likelihood that greedy relatives would engage in property grabbing.

Equal pay regulations (1980). Before independence, men and women doing the same kind of job, with the same qualifications, were remunerated on different scales, with the men getting a higher wage. The equal pay regulations outlawed this discriminatory practice, and now women and men get equal pay for equal work.

Minimum Wages Act of 1980. This act stipulated a minimum wage for different types of unskilled occupations. Since most women are working in these occupations, this act was regarded as a major stride for women. Seasonal workers such as tobacco, tea, and cotton pickers were also categorized as permanent and are now entitled to pension benefits.

Maternity leave regulations of 1980. Women can now take up to 90 days maternity leave without losing their jobs or jeopardizing their career prospects, as used to happen before independence. The Labour Relations Act (1985) further provided that the leave be paid at up to 75 percent of one's salary. On assumption of duty, nursing mothers are entitled to two half-hour periods or a single hour to feed their babies.

Public service pensions (amendment) regulations of 1985. This amendment allowed women in the public service to contribute to their pension at the same rate as men, that is, at 7.5 percent of their pensionable emoluments. Before the regulations were passed, women civil servants automatically contributed at a lower rate and therefore were not on a par with their male colleagues at retirement or resignation.

Finance Act of 1988 (No. 4 of 1988). This act repealed section 27 of the Income Tax Act (Chapter 181) with effect from April 1, 1988, which required the income of a married woman to be assessed together with that of her husband for tax purposes. The woman's salary was regarded as additional income to that of her husband, and so the bulk of the couple's tax liability was imposed on the woman. Thus the higher a salary the man earned, the less the woman's take-home pay was, leaving the woman in a weak and vulnerable economic position. Since 1988, however, couples are taxed separately.

Deeds Registries Amendment Act of 1991 (No. 2 of 1991). Before the enactment of this Amendment Act, Section 15 of the Deeds Registries Act (Chapter 139) required a married woman to be assisted by her husband in executing any deed or document required or permitted to be registered in the Deeds Registry, unless she could prove to the satisfaction of the Registrar of Deeds that she could sign the document without the assistance of her husband. Thus, a married woman could not, on her own, register any immovable property in her own name. This provision frustrated women's efforts to acquire property in their own right, notwithstanding the Legal Age of Majority Act and the fact that they had been married out of community of property and, accordingly, had full legal capacity to conduct their affairs without the assistance of their husbands.

The provisions of this act only require women who are married in community of property to be assisted by their husbands when executing a deed or document required or permitted to be registered in the deeds registry.

Since marriages in Zimbabwe are automatically out of community of property (unless the parties sign an antenuptial contract to the contrary), many married women now enjoy the same rights as men to acquire and dispose of immovable property in their own right.

Immovable Property (Prevention of Discrimination) Act 19/82. This act prohibits discrimination in the sale, letting, or use of immovable property on the ground, among others, of sex. This law, however, covers only urban and rural commercial land and does not deal with rights in communal land. These continue to be governed by custom and tradition, which are inherently discriminatory against women (discussed later).

Despite the existence of these and other laws, it was clear from WLSA (1997) that families retain and determine control over and access to many resources. Thus until the social frameworks biased against females are altered, women will continue to experience exclusion from necessary resources for self-actualization.

The patriarchal operation of access and occupation rights in communal, resettlement, commercial farming, and urban land—where land allocation is patrilineal—ensures that women have little stake in such areas except in a derivative fashion.

Ownership, Access, and Control of Land

Gary Magadzire, national hero and late president of the Zimbabwe Farmers Union, once said: I could tell you quite categorically that there would be no agriculture in this country without women. The role of women in this country is paramount—in fact it is the central pin to agricultural development. If, for any reason, women went on strike, agriculture in this country would fall to pieces (*Mahogany* June 1997; also quoted in Ncube 1990).

And yet if one looked at the patterns of land ownership and other direct land rights such as tenancy, resettlement, and permits, the most striking feature is that very few women have independent and direct rights of ownership or access or control of land. As Ncube (1990, p. 1) has observed, the laws of land and property ownership are at the core of problems faced by women in agriculture.

In order to fully understand the structural, institutional, and legal barriers excluding women from access to and control of land we have to treat each of the major tenure systems separately.

Communal tenure. The contemporary model of traditional landholding, which supposedly operates in Zimbabwe's communal areas, and its implications for women's access to land in that tenure system are well summarized by Cheater (1990, p. 7):

This model states that the chief holds in trust for the use of his followers all land within his chiefdom or territorial boundaries. Primary rights of usufruct go to married men, and the allocation of his own fields marks the independence of a new head of household within the lineage framework. In this model, secondary rights of usufruct are recognized; married men, especially polygamists, are expected to allocate gardens and fields to each of their wives and to adult sons. Divorced daughters and sisters may cultivate part of their father's/brother's land on returning home when their marriages fail, as may occasional widows refusing to be inherited by their deceased husband's patrikin and instead returning to their natal homes. But according to this model, women are not allocated land rights as primary right holders: they acquire temporary usufruct within the lineage system through their husbands or male patrikin. This model of communal tenure thus reduces women to an agrarian proletariat.

There is ample evidence that the communal tenure system not only is uncustomary but it also is an invention of the colonial settler government. If its basic tenets and premises are an invention, it follows that women's rights

within that tenure system are an invention, as well. Nevertheless, the laws regulating land rights allocations in communal areas are real. First, all land in communal areas is state land vested in the president who shall permit it to be occupied and used in terms of the provisions of the Communal Lands Act, Chapter 20:04. Second, all those with vested rights that accrued before the enactment of the act are automatically entitled to retain and use their land allocations. This means that all land is allocated only to males in terms of customary law—as construed during the colonial period—who are entitled to retain their vested rights to the exclusion of women, who were regarded as having only secondary usufruct rights.

Third, those persons not having vested rights may acquire occupation and use rights on the authority of the relevant Rural District Council, which is empowered to grant occupation and use permits to any person wishing to settle on any communal land. However, this power is qualified in that in granting the permit, a rural district council is required to have regard to customary law relating to the allocation, occupation and use of land in the area concerned, and, having done so, to grant consent only to persons who according to the customary law of the community had traditionally and continuously occupied and used land in the area concerned. This means that the District Council will allocate land in terms of customary law, which excludes women from having direct allocation rights.

Numerous studies have, however, shown that in practice the Rural District Councils hardly ever allocate land in communal areas. Sometimes the allocation is done by the chief or by the headman or by the kraal (village) head. At other times and places it may be done by Village Development Committees or Ward Development Committees or even by the local chairman of the ruling party, ZANU (PF) (Ncube and Nkiwane 1994; Cheater 1990). Clearly, even though legally, land powers are formally vested in Rural District Councils throughout the country, there are grounded institutional struggles over the authority and power to allocate land with rural district councils, chiefs, headmen, kraal heads, village and ward development committees, and ZANU (PF) functionaries all struggling for authority and in fact exercising it. As Ncube and Nkiwane 1994 have pointed out, traditional authorities such as chiefs and headman have asserted authority to allocate land on the basis of their traditional and customary duties, while local government officials have asserted powers deriving from state law. Others, like ruling party functionaries, have asserted authority on the basis of political leadership.

In the areas covered by WLSA 1997, it appeared that the overwhelming authority of traditional leaders has never allowed local government, state functionaries, or ruling party local politicians to assume any authority over land allocation. In this study, divorced women invariably left their marital homes and were reported to have gone back to their natal homes or urban areas. As for widows, it appeared that these retained occupation and use of the homestead and the fields, even though in Matabeleland it was indicated that nominal title was vested in the youngest son who, together with his wife, shared the homestead with the widow.

At the judicial level the precariousness of married women's land rights is exemplified by the judgment in *Khoza v. Khoza* (HC-B-106), in which at divorce the woman was denied the parties' communal lands and the matrimonial home, which had been built and maintained entirely through her efforts while her husband worked and resided in Bulawayo. In denying her any right in the matrimonial home after 23 years of marriage and residence there, the court reasoned that since rural Zimbabweans are patrilocal it would not be appropriate for the divorced woman to remain in residence within and among her former husband's patrikin. It was better, the court reasoned further, for her to be awarded the parties' urban home in Bulawayo where she could do as she pleased. This decision was made despite the fact that the woman was a farmer and earned her living from farming, an activity she could not pursue in urban Bulawayo, where she would be unemployed.

This case demonstrates the risks arising from the derivative nature of women's access to communal land. The woman could not retain her rural home and the right to reside there and cultivate the fields because her right was perceived as derivative and contingent upon her status as wife, and therefore terminated upon divorce.

Married women, even though without direct land rights entitlements on their own account, did have indirect access through their husbands. In many of the families studied, women were the ones actually working on the land while their husbands either commuted to or resided at Bulawayo and other places for purposes of formal employment. The wives remained in the homestead practicing mainly subsistence agriculture to feed and bring up their children and other family members.

Resettlement leasehold tenure. While the Communal Land Act governs tenure issues in communal lands, no specific legislation defines and regulates tenure issues in the resettlement areas. However, the legal instruments empowering settlement of persons in the resettlement areas are the Agricultural Land Settlement Act, Chapter 20:01 (the Land

Settlement Act) and the Rural Land Act, Chapter 20:18 (the Rural Land Act) (Ncube and Nkiwane 1990). In practice the postindependence state has relied on section 6 of the Rural Land Act for the purposes of resettling persons in Resettlement models A and B. Section 5 authorizes the Minister of Lands to acquire and hold land for agricultural and settlement purposes, while Section 6 authorizes the Minister to lease or sell or otherwise dispose of any state land for such purposes and subject to such condition as he may determine.

Using these powers, the government established the resettlement areas, which were the subject of this study. The criteria and principles governing allocation and granting of resettlement land are not specified in any law. Similarly, the rights and obligations of resettled persons are not to be found in any law, but in administrative policy documents and guidelines.³

With respect to access to resettlement land, the policy has not been consistent since independence. In the early and mid-1980s the policy generally gave preference to landless married men with dependents, and the permits were issued in a man's name. Also preferred were refugees from the liberation war with dependents. Women could be allocated resettlement land in their own right and in their names only if they were either widowed with dependents or divorced with dependents or simply unmarried with dependents. There is considerable evidence that the application of this policy resulted in the exclusion of large numbers of women from being allocated land in their own right. Very few women were allocated land as widows, divorcées, or unmarried mothers. In Nyozani, which was one area covered by the study, it was evident that the largest beneficiaries of this policy were married men who worked or had worked as farm laborers in the surrounding commercial farming areas.

Out of some 60 families settled only 3 were widows who were allocated land in their own right. No divorcées or unmarried mothers were allocated any land. Married men held the land allocated to them under the permit system described above. Except in very few cases, at the death of the man the permits passed on to his male heir and not to his widow. Clearly, under this old policy, women did not have direct primary land rights in resettlement areas. Accordingly, their direct access to such land as individuals was extremely limited, although they did enjoy indirect and derivative access through their husbands. This placed them in precarious positions in the event of divorce and their husbands' death.

The policy described above has since been changed with the introduction of the Economic Structural Adjustment Program and its emphasis on productivity. While the previous policy placed greater

emphasis on landlessness and attempted to address the African people's land needs, the new policy—in force since about 1992—has sought to emphasize productivity. Consequently the new policy, which is based on a fairly complicated score system, has placed greater emphasis on farming skills as evidenced by possession of a master farmer certificate and secondary level education. Clearly, the emphasis on secondary education will operate to the prejudice of many rural women, who only have the minimum primary school education and yet bear the brunt of rural agriculture. It remains to be seen how the emphasis on possession of a master farmer certificate will affect

women's access to resettlement land.

In theory, since women are the primary farmers, it appears they would have easy access to these certificates. However, these certificates are granted by the Department of Agritex on the basis of attendance at their training workshops and not on farming competence demonstrated by concrete production. It appears that many women do not attend these training workshops because they are engaged in their endless agricultural and family chores.

In terms of use and access, married women seem to have unlimited access to resettlement land, which, while the marriage continues, is regarded as a family asset to which all family members, particularly wives, have access.

Rural freehold tenure land. Freehold tenure land is all the land that individuals hold and own under a title deed. The underlying philosophy behind the freehold tenure system is that all individuals with full legal capacity can acquire and hold in their own names any land falling within the freehold tenure system. The principal method of acquiring land in the freehold tenure system is through land sales. Thus every individual who has the necessary finance, either personal or supplied by a lending institution, may at any time acquire rural land falling within the freehold tenure system. Accordingly, as Ncube 1990 has pointed out access to this category of land is entirely dependent on a person's economic resources (p. 8). This means that women's access to ownership of freehold tenure land would be affected by their capacity to mobilize or access credit facilities that allow them to purchase such land. It is well known that women have limited access to money and to credit, and this limitation affects their ability to own freehold land tenure. Furthermore, before it was amended, section 15(1)(b) of the Deeds Registries Act, Chapter 139 (as it then was), used to inhibit women's access to freehold tenure land by requiring that every married woman prove that she had capacity to execute a deed of transfer without her husband's assistance. This legal impediment has been

removed, and married women are no longer presumed to lack capacity to deal with freehold tenure land or immovable property.

Another way of accessing rural freehold tenure land is through the provisions of the Land Settlement Act under which terms the State may lease state land to individuals under the leasehold system with or without an option to purchase the land. Until the option to purchase matures, all this type of leased state land may properly be described as the leasehold tenure system. Strictly speaking the leasehold tenure system falls into two broad categories, commercial leasehold tenure of private land and commercial leasehold of state or public land. We are here concerned mainly with the leasehold tenure system of state land and women's access to that type of land.

The legal framework of leasehold tenure of state land is, as already pointed out, governed by the provisions of the Agricultural Settlement Act, whose main purposes are to provide for the settlement of persons on and the alienation of agricultural land belonging to the state. It was mainly under the provisions of this act that the colonial governments created much of the present day white commercial farming sector by first leasing and then alienating state land to individual white farmers. In the postindependence period the act has also been used in attempts to create a black commercial farming sector. However, these attempts have been dogged by persistent accusations that the main, if not exclusive, beneficiaries have been well-connected male politicians and their friends and families. It would appear that very few, if any, women have been able to access commercial leasehold tenure state land in their own right, other than as wives of powerful politicians and others who have benefited.

In terms of the legal framework for accessing this type of land, the provisions of the relevant statute are fairly gender neutral. The act creates an Agricultural Settlement Board, which is empowered to consider and report on all applications for leases of state land (Ncube 1996). In considering applications for leases of state land the board is required to take into account the age of applicants; their character; their legal competence to hold, acquire, and utilize the land concerned; their qualifications; and their possession or access to capital and other resources necessary to make proper use of the land they are applying for (WLSA study). On the recommendations of the

board the Minister of Lands and Water is authorized to issue leases to applicants with or without an option to purchase the land.⁴

Even though the legal regulatory framework appears to be gender neutral, in practice it is often elite males who first are aware of the possibilities of leasing state land and second are in fact granted such leases. In study virtually all the women asked expressed ignorance of the option of leasing state land. Also large numbers of ordinary males were

equally ignorant of such an option. The reality is that the great majority of women were not aware not only of the possibility of applying to lease commercial farming state land but were also ignorant of the procedures and processes of the application. Because of ignorance, the gateways to this land tenure system are effectively closed to women even before one factors in the inherent bureaucratic gender biases of the system, which over the years have produced a virtually exclusively male (mainly white) commercial farming sector. This is one sector where the need for affirmative action to create, support, and develop women farmers is clearly self-evident.

The rural freehold tenure system is divided into the small-scale and large-scale commercial farming sectors. In both sectors the registered owner of the land has full title and use rights over it, except to the extent that he or she may enter into a contract leasing out the land. In Matabeleland all the large-scale commercial farms on which the WLSA study was conducted were owned by men. Their wives had derivative access as wives and often had very little, if anything, to do with the management of the farms, which seemed to be the exclusive preserve of their husbands and male children. The hiring of workers, crop planning, marketing of the produce, and indeed all functions relating to the administration and management of the farms seemed to be a male preserve. In one white family, the wife's involvement was limited to receiving a housekeeping allowance, while her husband and male children managed the farming activities.

In a few instances the wives would be involved in the accounting aspects of the farming business. All this suggests that women not only have limited independent individual access to large-scale commercial farm land but that even as wives of males who have gained access their roles are extremely limited.

Women and exclusion from land. Whether one looks at women's access to land from a historical perspective or simply from present-day configurations, one point emerges most clearly: women, both in the past and at present, have had limited rights of access to land. In the traditional setting where land was supposedly collectively owned, men still not only controlled decisions relating to land use but also controlled the processes by which women accessed land. In virtually all of Africa, customary rights have traditionally granted women indirect access through their relationship—by blood ties or marriage—with men. (Youssef 1995). In contemporary Africa, customary law has been repeatedly invoked to continue to exclude women from direct access to land.

The Land Tenure Commission missed a great opportunity to get to the root causes of the exclusion of women from access to all rural land

tenure systems by choosing to focus only on aspects relating to how inheritance laws and customs affected widows after the death of the male landholder. Although the Commission generally identified the same constraints as those identified by WLSA 1997 in relation to women's access to rural land, it failed to come up with clear and unambiguous recommendations to ensure that the gender disparities identified be removed so as to enable women to have the same direct rights of access to land in all tenure systems as men have.

Accordingly, it is clear that the issue of women's direct primary land rights in communal areas, resettlement areas, and within the freehold tenure system needs to be revisited. In the communal areas, land allocated to a married couple must be held by both on the basis of equal rights, and all unmarried persons must have same rights and

opportunities to be allocated land. The same principles must apply in resettlement areas where the permits granted in favor of a married couple must be in their joint names, and all unmarried applicants must be treated equally. Respect to intestate inheritance rights, the surviving spouse should have exclusive rights to take over the land regardless of whether it is situated in a communal or resettlement area.

As for leasehold state land, the legal framework for the implementation of a systematic and planned program of affirmative action in favor of women farmers should be put in place. Training, educational, financial, logistical, planning, and marketing strategies to empower women farmers identified under the affirmative action program would be essential to the success of such a scheme. Similar strategies are necessary to open up the rest of the freehold tenure farming systems to women farmers. A transparent legal regulatory framework should be put in place based on the above principles.

Urban land and housing. As in the case of rural freehold tenure land, access to urban freehold tenure land in the open market is entirely dependent on an individual's capacity to command the necessary money and loan facilities to acquire such land. Because of poverty and economic constraints, women's capacity to acquire urban houses on the open market in their own right is extremely limited. The only women who qualify for allocation of municipal land and housing in their own right are female heads of households with dependents. In the majority of cases encountered during the WLSA study, married women combined their incomes with those of their husbands first to raise the required deposit and second to qualify for mortgage facilities. However, in the majority of cases where a woman either had no job or her income was not necessary to qualify for mortgage bond registration, the property would be registered in the husband's sole name—

even if she made direct contributions to the deposit and even if her income was necessary to support the subsistence needs of the family. Such a situation can cause many of the potential problems women face either at divorce or at the death of their husbands.

In those families in which the matrimonial home was registered in the husband's sole name and the wife was in paid employment or engaged in some other income-generating activities, her income was often devoted to the subsistence needs of the family (purchase of food, clothing, and other necessities and the payment of school fees) while that of the husband was reserved mainly for the payment of the mortgage and sometimes for the acquisition of household goods and effects. While the family remained intact, this practice did not appear to create any problems. However, at divorce the wife's contributions tended to be undervalued, with the result that many women often come out of the marriage with less than a 50 percent share of the immovable property of the spouses, which negatively affects their access to resources.

As for municipal houses allocated on a rent-to-buy basis, the policy is to give first priority to married couples whose lease agreement is in the name of the husband. Therefore, the house is registered in the husband's sole name, and when the lease matures the same problems described above may occur.

Even though formal policy suggests that single, divorced, or widowed women have independent access, in practice rarely does municipal housing get allocated to such women, with the result that only married men have direct and assured access to municipal housing.

Movable Property

Movable property takes various forms, including money or cash either in hand or in bank accounts; livestock—which can be further subdivided into cattle, goats, donkeys, sheep, poultry, and so on; agricultural produce—which includes cash crops, such as cotton and tobacco, and those crops that may be both cash crops and subsistence crops, such as maize, vegetables, groundnuts, and others; agricultural implements, such as tractors, plows, and hoes; and household goods and effects, such as motor vehicles and furniture.

Agricultural produce. In terms of the written customary laws as contained in court judgments and textbooks, a married woman works for her husband, and all the property she acquires, other than property falling within certain recognized categories, belongs to her husband. This means that when a woman works on the fields she works for her husband and not for herself, and hence, by law, the husband becomes

the owner and therefore has legal control over the agricultural produce his wife worked for.

Grain Marketing Board and Cotton Marketing Board cards. In an attempt to address the problem of being denied direct access to the fruits of their agricultural labor, some women thought that obtaining their own agricultural marketing cards might increase their capacity to control the money realized from the sale of agricultural produce.

Agricultural produce is a major resource and source of income in rural areas. Closely linked to agricultural produce are the GMB (Grain Marketing Board) and CMB (Cotton Marketing Board) cards which determine in whose name the check from these buying authorities is issued. WLSA 1997 established that while in many cases the GMB and CMB cards are issued in the names of husbands or fathers, a relaxation of the rule now allows adult children and wives to apply for, and be granted, GMB cards in their own names. However, there is doubt as to the effectiveness of GMB cards in ensuring that women obtain direct access to agricultural proceeds, because even when women receive the money, some husbands still take it away from them.

The central problem appears to be women's lack of direct access to land rights. The husband—in whose name the land is registered by virtue of a permit, title deed, or lease agreement—regards himself as having a proprietary right over any part or all of the agricultural produce from that land regardless of who worked for it. Having paid *lobola* (a bride price) for his wife and being regarded as the head of the household, he owns and controls not only the labor of his wife and others toiling on his land but the fruits of such labor as well. Hence the issue of a GMB and CMB card to the wife may, in the view of such a man, be nothing more than a minor inconvenience to be overcome easily and at will. Like the *tseu* or special field that a husband allocates to his wife for her exclusive use, the income gained through GMB cards can be taken away at the husband's whim. The wife in such a situation has no recourse at both customary and general law against a husband who appropriates the income from her agricultural card for his own use, which proves the emptiness of any victory women may have won through the issuance of GMB and CMB cards in their names. While a wife may not like to hand the money over, she may find she has little or no choice in the matter.

Women's Earnings

The law has persistently perceived the earning capacity of black Zimbabwean women as belonging to their husbands; as such, women

are inclined to be regarded, by law, as a mere contributor to the husbands' patrimony. Gubbay expressed the perceived position under customary law in *Jenah v. Nyemba*: property acquired during a marriage becomes the husband's property whether acquired by him or his wife.⁵

Exceptions to this rule were recognized in relation to the motherhood beast, (*mombe yeumai/inkomo yohlanga*, Shona and Sindebele terms for the cow that is given to a woman when her daughter marries, and *mavoko/impahla yezanhla zakhe*, property such as income a woman earns from being a midwife or an herbalist or obtains through what might be termed as private labor rather than the general work for the family in the fields (Story 1979, Ncube 1990). Women's formal legal position as conceived by the colonial courts and perpetuated by postcolonial courts was that of a secondary party in the marriage relationship.

There seems to be an almost impenetrable mental barrier grounded in gender socialization that precludes even seemingly liberal male judges from stepping outside the ingrained notions of male superiority and female subservience in marriage (Stewart and Ncube 1997).

Cattle. Because cattle are the most valuable and valued type of livestock in the rural areas, the number of heads of cattle a family has is often an indication of that family's economic well-being. Access to and control over this resource is largely a male preserve. Men have more opportunities to acquire cattle in their own right than women do. Even cattle acquired directly from the sale of crops produced by a married woman are made to belong to the husband. Intrafamily allocation of cattle is influenced by social and cultural beliefs and expectations based on gender.

The husband or father, as the overall overseer and manager of the family herd, has the power to allocate cattle to various members of the family as he sees fit or according to common family practice. Boys are given preference over girls, in keeping with the cultural expectations that the former will be providers and the latter the provided for.

Some husbands allocate cattle to their wives in appreciation for their services. In the WLSA study, one woman was given cattle, which had multiplied to nine, for bearing many children, and another had been given cattle for helping her husband in the home. Two other women were given cattle for accepting and receiving their respective husbands' new wives, while yet another was thanked with a gift of cattle for looking after and caring for her husband's parents.

The access and control of family cattle places the man in a position where he can thank his wife for fulfilling the roles expected of her while at the same time demonstrating his manhood by being a provider. The irony is lost that women generally contribute to the accumulation of

family resources, including the very cows that they may magnanimously be given by the husband for services rendered.

Lobola. The institution and practice of lobola is a means through which families acquire cattle and money. While the one cow given to the girl's mother may of course be unavailable to women whose daughters are still to be married, WLSA 1997 established that the marriage of daughters did not always guarantee payment of this cow, *mombe yeumai*. In the case of Ambuya Kanyemba, all her four daughters had been married for many years, and yet the *mombe dzeumai* were still to come.

To have *mombe yeumai* a woman must not only have a daughter, but one who gets married and has lobola cattle paid for her, which must include one cow for the mother. If the daughter does not get married, or the *mombe yeumai* is paid in cash, the woman may never own cattle through this source. For example, a woman received only Z\$20 as *mombe yeumai* when her daughter got married. Her husband received six head of cattle.

It was evident that access to cattle either as roora (bride price) cattle or just cattle acquired in the ordinary manner is highly dependent on gender. For example, sons are allocated cattle just for being born male but daughters are denied the same privilege. Cattle acquired utilizing resources earned through the labor of both husband and wife are regarded as belonging to the husband who is then free to give some of them to his wife as some kind of thank-you gift for services well done. Furthermore, only one animal of the lobola cattle belongs to the woman, and the man receive the rest.

It is evident that women's access to cattle largely depends not only on the generosity of their husbands but also on compliance with certain traditional obligations expected of them as wives. Clearly such access not only is gendered but also tends to be conditional or temporary for women while it is more direct for men.

Household goods. In both urban and rural areas, household goods are regarded as women's property. Every woman interviewed in WLSA 1997 made reference to having invested, one way or the other, in some household property. This is perhaps not surprising since the home is regarded worldwide as a woman's domain and household goods as her tools of trade.

Women seem to feel so strongly about buying household effects appears that many exhausted all the cash they earned through various means toward this enterprise. As a result, most of the female respondents had little money saved.⁶

Women believe that acquisition, maintenance, and disposal of household effects, especially in marriage situations, is largely a woman's responsibility. It is the one category of property many are assured of controlling and keeping, whatever happens. This attitude is so internalized that the first thing a woman considers spending money on are household effects, irrespective of the source of such money. Where the sacred *mombe yeumai* come in the form of money, such money is not saved.

In keeping with their socially ascribed role as mothers and homemakers, women regard the acquisition of household effects as their main priority; not only a source of pride and joy but also a worthy cause on which to expend all their cash. This attitude reflects the socialization most women are given as girls, that is, to be a perfect wife and mother. However, given the generally meager economic resources women have, it could be argued that household goods, are in any event, the most they can afford.

Farming equipment. The general perception is that farming implements—plows, cultivators, mills, wheelbarrows, carts, and others—belong to the father or husband, mostly because such items are usually bought with the proceeds from agricultural produce regarded as belonging to the father or husband. Farming equipment is regarded as family property, as distinct from minor household items like plates and pots, which are regarded as a woman's property. Although both men and women contribute their labor to agricultural efforts, which ultimately results in the produce and income to buy such implements, this factor is seemingly disregarded.

Farming equipment is regarded as the major means of working the land to produce the wherewithal for survival. In that respect it cannot be separated from the land on which it is used. It is mainly for this reason that like land, farming implements belong to men. Women are thus excluded from direct access to this type of resource.

Property Division at Divorce

The reallocation of property at divorce depends on whether the law regards the parties as being married. Those regarded as married have to have registered marriages, in which case their matrimonial property may be reallocated equitably by the courts in terms of the provisions of Section 7 of the Matrimonial Causes Act. Those without registered marriages, but who have contracted customary unions through traditional procedures, are regarded as not validly married; the proprietary aspects of their relationship are governed by customary tenets. The over—

whelming majority of marriages in Zimbabwe are unregistered customary unions. Thus the proprietary regime applying to these marriages is the customary law, in terms of which all the property acquired by the woman belongs to the husband, except for property falling within specific and recognized categories, which are *mombe yeumai/inkomo yohlanga* (motherhood beast) and *mavoko* (literally, hands property).

Generally, when both husband and wife are working outside the home, the wife's contribution to the support of the family is usually swallowed up in consumables such as food, clothing, and daily expenses, whereas the husband's contribution tends to be used to acquire tangible assets in his name. Consequently, at the dissolution of

the marriage—whether by divorce or death—the husband or his estate normally has a greater tangible stake. Courts are seemingly reluctant to effect radical redistribution of assets unless quite exceptional circumstances exist between the spouses. This is the case despite the provisions of Section 7 of the Matrimonial Causes Act, Chapter 5:13, and Section 7 of the Deceased Person's Family Maintenance Act, Chapter 6:03, which establish that in the postdivorce allocation of matrimonial property the direct or indirect contributions made by each spouse to the family—including contributions such as looking after the home and caring for the family and any other domestic duties—must be taken into consideration. Likewise in the provision of maintenance from the estate of a deceased to a spouse the court shall, among others, consider the contribution made by the applicant to the welfare of the family of the deceased, including any contribution made by looking after the home or caring for the family.

As both Ncube (1990) and Stewart (198990) have observed, courts are seemingly reluctant to give full rein to the possibilities that both these provisions offer in relation to the reallocation of resources so as to provide gender equity between spouses in relation to property issues. Likewise, WLSA's research on inheritance research underlines the reluctance of the courts to make significant encroachments into the relative gendered values of traditional male and female roles.

As Ncube has strongly argued, part of the problem is that housework produces use value rather exchange value and thus it is inherently difficult to put a proper value on domestic work. He argues that the correct approach is to assume that in the majority of marriages the spouses assume equivalent duties that are equally beneficial to the family (Ncube 1990). These gendered roles, which seem to predominate even in the determination of how to use resources, leave women without equity and forced to rely on formal legal challenges or the goodwill of family and spouses to recognize that they are entitled to a share in the family resources. Women's multiple roles in families led Stewart to

argue that in those cases in which a wife carries out both the tasks of homemaking and a career, her entitlement to a share in the jointly generated estate could well be in excess of 50 percent by a realistic appraisal of the relative contributions of the spouses (Stewart 198990).

Women remain locked into male control paradigms, as evidenced by the fact that women leave their natal families at marriage and give up nascent career opportunities to join their new husbands on communal land allocations, resettlement schemes, large—or small—scale commercial farms, and urban areas. In so doing, they directly contribute to their husband's or their husband's family's patrimony while building up little equity for themselves (WLSA 1997).

It can also be concluded that women's contributions to the joint estate at divorce or at the husband's death are likely to be subsumed within assumptions of male ownership and control. Yet farming wives invariably contribute by laboring in the fields in communal, resettlement, and small—scale commercial farms and by bookkeeping, managing the farm store and crops on large—scale commercial farms. At the same time these women carry out a full range of domestic chores, as well as the reproduction and nurturing of children. Although men often value their wives as irreplaceable, these women are not seen as equal stakeholders in the rights to the land farmed.

This was the situation encountered during the WLSA study. In Mashonaland women are not regarded as owning large items of property they have directly or indirectly contributed to accumulate.

Such property as cattle, plows, other farming equipment, and major items of furniture were regarded as belonging to the husband. The only exception was *mombe yeumai*, which all agreed belonged to the wife. Men in the rural areas regarded themselves as having the power to either give or deny a woman a share of matrimonial assets at divorce.

Kraalhead Zendamako was of the view that a wife would be allowed a share of property at divorce only if she was blameless. As a traditional leader to whom divorcing couples may bring property disputes, his attitude did not augur well for those women in his constituency who may be judged as being to blame for the breakup of the marriage.

Thus both the law and practice collude to deny women direct rights to property in their own right, a situation that not only reinforces their economic dependence but also places women in a vulnerable position in the event of divorce or death of their husband.

Inheritance Rights.

The law of intestate succession in Zimbabwe is characterized by its multiple duality. While some cases are subject only to general law and

others to the (state's) customary law, there are cases where the estate of a deceased African is governed by both systems of law in relation to different categories of property. In addition to this, there are many cases where the distribution of the estate is determined and implemented at the family level, according to the family's perceived customary law and practice. While in some instances such distribution can be prejudicial to the widow and the children, there is evidence that some families make better provision for the surviving family of the deceased than the law does.

Since general law regards the surviving spouse and children as the major beneficiaries, not many problems are encountered in this respect. It is the application of different and sometimes contradictory rules of customary law that result in the current hardships widows suffer. As a group, widows constitute one of the most economically disadvantaged groups in society. Thus the creation of a legal environment conducive to the protection and promotion of their economic well-being is crucial.

Until the end of July, 1997, according to the state's customary law, a wife did not qualify to inherit any of her husband's property in the sense of acquiring ownership and having the right to deal with it in the way she deems fit. The reason for this practice is that customary law is patrilineal, and if women were allowed to inherit, the estate would be diverted from the patrilineal family. Because daughters, too, were expected to marry and move away from the family, they were largely excluded from the inheritance system of both their fathers' status and property. The eldest daughter only inherited in the absence of a son, who was regarded as the natural heir to his father's estate. He was however expected to hold and administer this estate for the benefit of the deceased father's dependents and generally inherited his father's status within the family.

The narrow interpretation of the rights of women to inherit under customary law, combined with the many distortions and misinterpretations of custom—which were motivated largely by greed on the part of a deceased man's relatives, had resulted in a situation where widowhood for many was synonymous with intimidation, dispossession, and economic hardship.

Recent reforms to the law of succession. In response to these realities, the government took steps to reform the law of intestate succession, particularly that pertaining to customary law. About three years ago the government published a White Paper on Inheritance and Marriage which contained proposals for changing the laws relating to these two areas. Comments, suggestions, and views on the proposals were invited from the public, with the idea that the government would eventually

pass a law that represented the people's wishes. Notable among the proposals in the paper was the intention to extend inheritance rights to surviving spouses who were subject to customary law and therefore excluded from

direct inheritance.

These efforts culminated in a draft bill that successfully passed through Parliament and, at the time this report was written, had just received the presidential stamp of approval and become law. By seeking to address the major problems brought about by the existing inheritance laws, the Administration of Estates Amendment Act No. 6\97 goes a long way toward alleviating the economic hardships suffered by widows and dependent children. Major changes include the following:

The surviving spouse(s) and the children of a deceased person are his or her major beneficiaries. The heir has therefore been done away with.

The matrimonial home, whatever the system of tenure under which it was held and wherever it may be situated, remains with the surviving spouse(s). The same goes for household goods and effects.

The surviving spouse, or spouses, subject to customary law has a direct right to inherit from the intestate estate of the deceased spouse.

These changes are truly revolutionary and are in keeping with the dictates of modern day life. They also ensure the security of surviving spouses and children, especially widows. However, one needs to bear in mind that the widespread poverty of large sections of society may in fact minimize the benefits women can achieve because, in the final analysis, there has to be meaningful property to be inherited.

It cannot be denied that that the law and practice relating to property rights in Zimbabwe are fraught with gender disparities that can only serve to exacerbate women's economically disadvantaged position in society. The continued exclusion of women from the right to exercise control over resources, such as land and cattle perpetuates their apparent dependence on men, when the reality is that men are often dependent on women's labor for their survival. Whether the female family members are sisters, mothers, or wives, their labor is undervalued and regarded as purely contributory rather than as a selfactualizing resource.

Much therefore remains to be done if women are to fully enjoy the advantages of economic empowerment. Among other strategies, state laws and policies need to be revised in order to accord women, whatever their marital status, access to land on equal terms with men. Although laws may exist to ensure, at the formal level, equitable rights to access and control over family resources, there is ample evidence that the law has little practical relevance in the daily lives of many women.

It is therefore crucial that mechanisms be devised to really apply the law so that it can play a role in women's economic empowerment.

Women are often treated as appendages to men. Legally and socially, entitlements for women are assumed to be predicated on male rights, and women are treated as having to access them through men. Men are regarded as the primary wage earners, the citizens and sources of family status, the heads of households, the primary guardians of children, the farmers and controllers of land, and, perhaps most important, the public face of the family. The maleness of the public world and its ordering is the predominant social and legal image that influences and shapes gender relations. Thus, although women might be able to access resources, the reality is that all too often, men are the gateways to those resources.

The Gender Dimension of Poverty

In assessing how gender is related or connected to poverty analysis, the Gender and Development approach, unlike earlier approaches such as the Women in Development approach, looks at the relationships of both males

and females in the development process. The Gender and Development approach calls for full and equal participation by both men and women (children, adults, elderly) in development. Both males and females should enjoy equal access, control, and benefits of national resources.

Women's poverty is directly related to the absence of economic opportunities, lack of access to economic resources, including credit, land ownership and inheritance, lack of access to education and support services, and minimal participation in the decisionmaking process. Analytical frameworks need to be developed for integrating a gender dimension in the design of macropolicies, to assist in the monitoring of management of social transformation and provide new insight in how to tackle the root causes of discrimination, exclusion, and marginalization of women.

Perceptions on Causes of Poverty

Unemployment, retrenchments, and high commodity prices were cited as some of the major causes of poverty (Government of Zimbabwe 1995a.).⁷ There are distinct gender disparities in the perceptions of causes of poverty. More males than females perceived unemployment, retrenchments, and high prices as the causes of poverty probably because male heads of households are involved in wage employment.

In rural areas, compared with the national population, there were wider gender disparities in the perception of unemployment or retrenchments as a cause of poverty. More men than women perceived this factor as causes of poverty because the majority of rural men are involved in wage employment while the majority of rural women are engaged in agriculture.

In urban locations, more women than men perceived employment or retrenchments as causes of poverty. In urban locations, incomes are the major sources of livelihoods for both men and women. The burden of retrenchments affects urban women more than it does rural ones because women have to take over the heavy burden of looking after their households probably by engaging in informal sector activities.

Drought is one of the major causes of poverty in Zimbabwe because Zimbabwe is an agrarian country where as much as 75 percent of the population lives in rural areas. Drought also affects other industries that rely on agrarian inputs. Therefore, in Zimbabwe, drought affects both urban and rural communities although rural communities are affected the most because their livelihood is based on agriculture. According to PASS 1995, more women than men perceived drought as a cause of poverty probably because more women than men rely on farming for their livelihood.

The Gender Dimensions of Causes of Poverty: An Analysis of Selected Indicators

Education. Analysis of the highest educational attainment by gender is based on persons aged 15 years and above. Because the majority of persons below 15 are dependent, their poverty status cannot be easily determined. Figure 3.1 shows the distribution of population, by gender and by levels of education attained across all poverty categories. The majority of the population, both male and female, across all poverty categories had primary or secondary education, and a small proportion of the population, both male and female, had tertiary education. Thus, level of education was vital in determining poverty status.

More women than men had no education. The greater the percentage of population with no education the more severe the poverty status and vice versa. More women than men had primary education in all categories probably because the majority of girls are educated up to primary education but boys receive further education. Zimbabwean cultural practices discourage educating girls further; the saying, Why educate a girl? After all she will get married or fall pregnant is com-

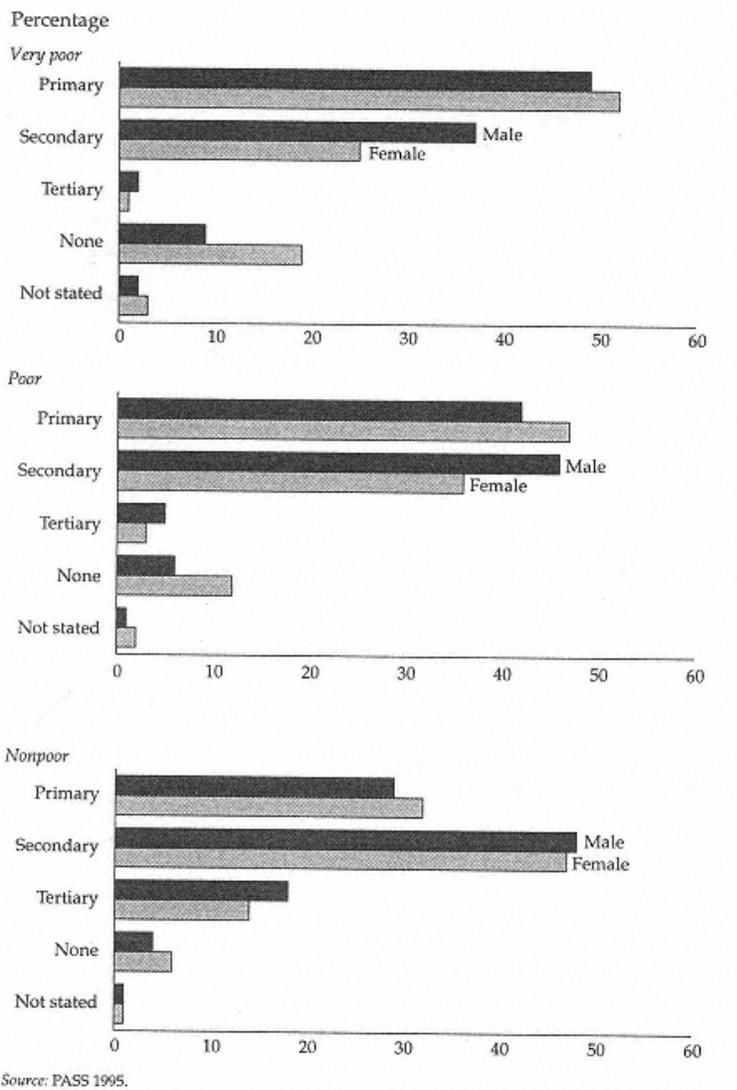


Figure 3.1
Education Levels, by Poverty Categories and Gender, Zimbabwe, 1995

mon among most Zimbabwean families, particularly those in rural areas. Girls have been denied access to education in times of scarcity of resources, for example, during severe droughts and economic structural adjustment programs.

Colonial education policies also denied the majority of females access to higher levels of education. Girls were supposed to be educated at lower levels (particularly the primary level) only to prepare them for their roles as wives, while boys had to pursue higher education to be adequately prepared for the labor market.

The national distribution patterns of the population by gender and education levels repeat themselves in rural or urban locations. The major variation between rural and urban locations was that the quality of education was overall better in urban areas for both males and females, probably because in urban areas, discrimination in access to education of boys and girls is generally limited or absent (Government of Zimbabwe 1995a).

To sum up, education levels partly determine the poverty status by gender. In rural locations, more women than men have lower levels of education and are found among the total poor population. In urban locations, there are minor gender disparities in educational qualifications. However, cases in which people with higher education are found in the ranks of the poor and those with lower education in nonpoor point to the fact that education, although very important, is not the only factor that determines poverty status.

Skills level. Figure 3.2 shows the distribution of the population by skills level and gender across all poverty categories. More men are skilled than women. Skills attainment is closely linked to education, so the explanation for the disparities in skills is basically the same as that for education. The colonial education system was designed so that on average male students acquired specific trade skills to prepare them for their roles in the labor market. In both primary and secondary schools, boys took up subjects such as metalwork, woodwork, carpentry, technical drawing, and building while girls had to focus on subjects such as home economics, cookery, and sewing to prepare them for their roles as housewives. In addition, men could also gain trade skills from their experience in formal sector jobs. If women ever got jobs in the formal sector, these would be lower-level jobs, such as cleaners, where little specific trade skills are acquired.

Overall both men and women in urban locations had qualitatively better skills than those in rural locations. Urban locations provide for a richer environment for the transfer of skills, particularly from formal sector jobs and tertiary technical institutions.

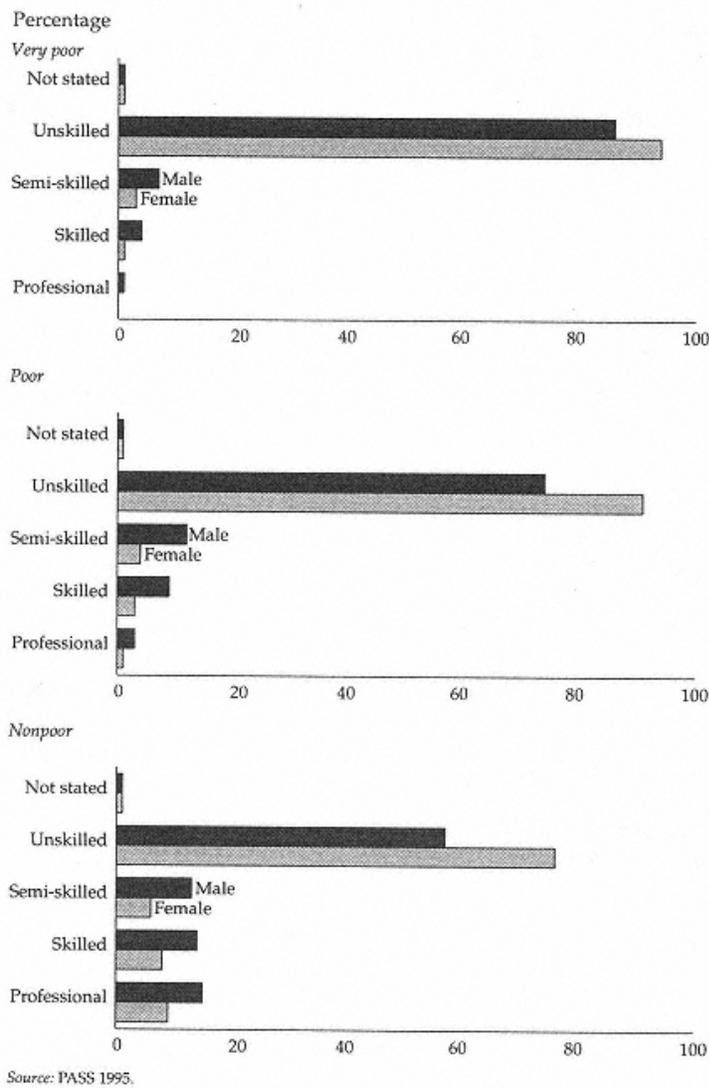


Figure 3.2 Skills Level, by Poverty Categories and Gender, Zimbabwe, 1995

Skill levels determine distribution of population into poverty categories by gender. The colonial educational system and current educational institutions have partly contributed to providing skills to men rather than to women because men are breadwinners and they have to be prepared for the labor market.

Formal and informal employment. Employment trends are crucial in determining poverty status. Figure 3.3 presents the distribution of population employed in the formal sector by poverty categories and gender at national level. Across all poverty categories, more men than women were permanently employed. A combination of factors can explain this pattern: more females than males have less education and fewer skills, which are major prerequisites for formal employment; employers may be culturally biased against employing women because women are seen as an economic liability since they go on maternity leave or take time off for nursing while receiving partial payment; and some husbands do not allow their wives to take up permanent formal sector employment on grounds that they have to take care of the children and other household chores.

The general national patterns apply to the rural and urban areas. The major disparity between rural and urban areas was that overall both more males and females were employed as permanent workers in urban locations. This can be attributed to the greater opportunities for permanent formal sector jobs in urban locations. In addition, overall, the percentage of both men and women employed as nonpermanent

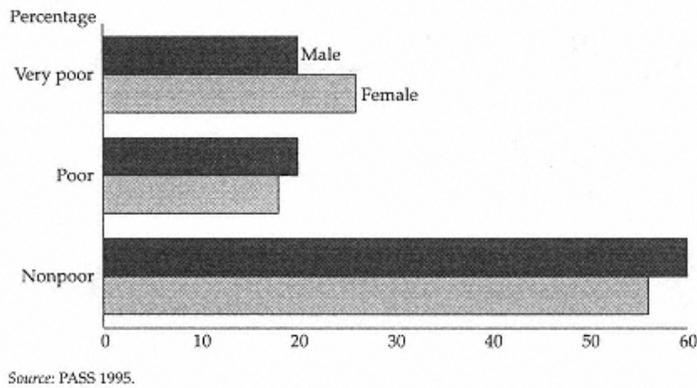


Figure 3.3
Formal Employment, by Poverty Category and Gender, Zimbabwe 1995

workers in urban locations was lower (on average 20 percent) than that in rural locations (on average well above 50 percent). Urban locations offer more stable and permanent types of jobs; rural areas tend to offer more seasonal work.

Figure 3.4 shows the distribution of population employed in the informal sector by poverty category, main activity, and gender. For both males and females, the poverty status was determined by whether the worker is self-employed or permanently or nonpermanently employed. The greater the percentage of self-employed population, the more severe the poverty status. In the very poor and poor categories, 58 percent females and 23 percent males were self-employed; in the nonpoor category, 45 percent females and 15 percent males.

Across all poverty categories, more females than males were self-employed. More than half of the females in the total poor population were self-employed, partly because it is generally more difficult for women to get paid employment in the informal sector. Most self-employed informal sector workers are among the total poor population probably because the bulk of female informal sector workers is concentrated in the flooded, less-remunerating activities such as selling food or fruits and vegetables. Such informal sector activities do not require specific skills or higher levels of education and are therefore easy for women to access.

Overall, more males than females are employed in the formal sector, and more females than males are employed in the informal sector. Formal sector employment provides for more stable incomes. Informal

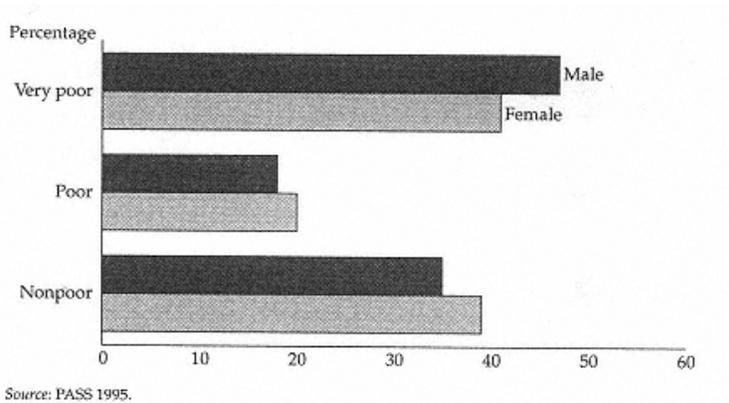


Figure 3.4
Informal Employment, by Poverty Category and Gender, Zimbabwe 1995

sector employment is in most cases characterized by stiff competition, unstable incomes, and relatively low returns for the workers.

Feminization of Poverty

Female-headed households and women in general find themselves in increasing proportions among the poor population. This phenomenon is called feminization of poverty. Besides the factors already discussed in this chapter, other factors also contribute to this phenomenon.

Structural adjustment programs have contributed to feminization of poverty. The international experience suggests that structural adjustment is associated with certain qualitative changes in households and community systems. Generally, women and children are the key groups vulnerable to these programs. Zimbabwe is no exception to this trend. As household income falls and prices of basic commodities and services rise, it is usually the women who have to cope with the situation and devise survival strategies for the household. When the males get retrenched in both public and private sectors as a result of adjustment programs, it is the women who bear the burden of looking after the family.

Cultural factors that cannot be statistically quantified are also some of the reasons for feminization of poverty in Zimbabwe. As discussed earlier, Zimbabwe is a patriarchal society, and this characteristic indirectly affects women's access to resources.

Policy Recommendations

Any policies directed at eradication of poverty should be directed toward women. Policies should include among others:

- reviewing and modifying, with women's full participation, macro-economic and social policies with a view to achieving equality, development, and peace;

- empowering women economically through provision of food security, access to credit, and land use;

- promoting eradication of illiteracy and equal access to education and training for girls and women;

facilitating the provision of special credit facilities for women at concessionaire rates, for example, through revolving funds;

ensuring gender-sensitive budgeting and accounting in resource allocation for specific projects or programs for women or that include women;

promoting agroindustries in rural areas in order to increase employment opportunities for women;

accelerating the provision of small irrigation schemes to increase women's agricultural productivity and provide boreholes so that rural women are within 500 m of clean drinking water;

sensitizing women so that they realize that they no longer have to cling to cultural beliefs that limit them to playing reproductive and caretaker roles. The government and nongovernmental organizations (NGOs) (specifically women's activist groups) could be responsible for women's empowerment;

sensitizing men so that they also realize that women can carry out productive roles as well, given the necessary support and enabling environment, and that men should also take part in the reproductive and caretaker roles.

Finance and the Business Environment

The issue of access to finance and the business environment from a gender perspective does not have a basis in existing legislation; policies have been enunciated for the equal treatment of men and women but in practice have failed to yield the expected results.

Although the Constitution of Zimbabwe does not support discrimination on grounds of color, sex, or creed, it seems that gender discrimination still occurs. This has resulted in gender discrimination on employment, salaries, access to finance, and so on, despite existing legislation to protect women against such discrimination. Women do not, therefore, realize their full potential socially, politically, or economically.

This section shows how the development of women in business is impeded by the disparities of a legal system that has provisions on paper for economic empowerment of women but does not offer a level playing field because of attitudes, cultural reasons, and a business environment that are not conducive to such development. Case studies are presented to show the policy-practice gap within the business environment and the problems encountered by women in trying to access finance, and to support the idea of finding a home-grown credit facility catering to women, who make up the greater percentage of workers in informal and small to medium enterprises.

Legal Situation.

The basic human rights ratified in the Constitution of Zimbabwe, together with other laws enacted and amended by the government, have paved the way for the participation of women in business.

The Immovable Property (Removal of Sex Discrimination Act), the Amendment of Deeds Registration Act, and the Legal Age of Majority Act have been most influential in raising the status of women in Zimbabwe. They have enabled women to buy or rent immovable property and to register any deed in their name. These laws have given women the right to vote, to own property, and to enter into legal contracts. Therefore, as far as legislation is concerned, the legal instruments are all in place.

Government, politicians, and pressure groups, especially women's groups, have lobbied and entreated financial institutions and other organizations for affirmative action to be taken in favor of disadvantaged groups, especially

women, to enable them to participate in the economy. However, these exhortations are not enough because they are not legal instruments. The legal provisions for women's participation in business sharply contrast with the realities on the ground. A policy–practice gap has been created in which legal provisions do not necessarily translate into the expected practice with regard to access to finance, land, and business opportunities.

Constraints

The current business environment is not conducive to women's economic empowerment despite the legal provisions in place. Following are the constraints women face.

Access to finance. Access to credit, with its requirement for collateral, is the major problem women face when they venture into business. Educated or not, because of cultural and historical reasons, women do not own property and, therefore, do not have the collateral banks need. Because of cultural reasons, a woman does not own any property in marriage even if she has paid for it herself; all the property belongs to her husband because he paid lobola for her. Consequently, her husband will claim as his whatever she works for in her marriage. A woman cannot, therefore, use a house she has paid, or partly paid, for as collateral without her husband's consent, although her husband can use the same house as collateral without her consent.

Historically, a woman could not enter into legal contracts to purchase property without a man. She needed a husband, father, brother, or even a son to sign for her. This has meant that most women who are old enough and free to pursue business interests fall in the group that has never legally owned any property, which makes it impossible for them to access funds through financial institutions requiring collateral.

Some banks have responded to the call for indigenization and affirmative action for women, but, according to officials of the Indigenous Business Women's Organisation that were interviewed, banks do not give the required amount of money needed for the projects. The projects are underfunded because they are funded only to the extent that financial institutions deem the risk worthwhile and think they can recover from the borrower. This results in underfunded projects that inevitably fold.

The Indigenous Business Women's Organisation also feels that banks are reluctant to refinance projects; such an attitude is biased against small businesses and therefore affects women more because they are involved mostly in small businesses.

Most financial institutions in Zimbabwe are foreign–owned, and their operations are globally oriented so that it is nearly impossible for them to change their operations to suit the Zimbabwean context. This makes it difficult, if not impossible, for women to access funds under any other conditions except those set up by the parent companies.

National banks like the Commercial Bank of Zimbabwe and Zimbabwe Banking Corporation can cater to special needs but they too are operating in a competitive environment with other banks and are, therefore, forced to operate on the same standards. Zimbabwe Banking Corporation is already fully privatized and so operates in the same manner as other internationally owned banks. However, the Commercial Bank of Zimbabwe, which is still state–owned, can cater to these special needs; women's groups, however, are apprehensive because the bank will soon be privatized. In a bid to cater to the disadvantaged groups, the Commercial Bank of Zimbabwe launched a community banking scheme, which will be fully discussed in the case study.

Lending institutions' negative attitudes toward women constitute a barrier to accessing finance. Women are generally viewed as lacking business skills and expertise and are, therefore, not given the attention and consideration they deserve.

Women's organizations, such as the Indigenous Business Women's Organisation, Women In Business, and Zimbabwe Women's Bureau, strongly feel that the absence of women in high-powered, decisionmaking positions in financial institutions, big business, or politics allows men's biased views against women to dominate since men form the majority in these organizations.

The urban and rural dimensions. Lack of finance for business not only affects the urban would-be-entrepreneur but more so the rural hopeful. The rural woman's woes in business are compounded by the fact that she has no access to the same financial services as her urban counterpart. Only a few financial institutions have branches in rural areas,

which means that the rural would-be-entrepreneur has to incur expenses to go to the nearest town for such services; given the limited funds, this might mean the death of a good business venture. Access to relevant business information and opportunities is very limited or even nonexistent for the rural business woman. Even if she had the funds, it would be impossible for her to get assistance in compiling an acceptable business proposal in her limited environment. This lack of support, coupled with all the other problems women generally face when they try to access finance, makes it difficult for rural business women to participate meaningfully in the economy.

The land issue is of critical concern to rural women, who constitute 70 percent of the rural population. Land is rural women's capital base and the lack of access to this land leaves them economically disadvantaged because they cannot use it as collateral. The land women can use is communally owned, and they do not control the proceeds they might get from the piece of land they have use of. Husbands have the final say on the proceeds, a practice that has led to a lot of suicides in some communal areas like Gokwe and Karoi where the men have sold all the harvest and spent all the money on themselves.

In resettlement schemes, women are not individually considered for resettlement, as one woman from Lower Gweru commented, The Headman won't give women any land. They say we don't have any right to it. (p. 23). Another woman in Mtoko asserts: Why is that only the names of men who have taken courses and have qualifications are being taken for resettlement? We women have also taken some courses, but they [the resettlement officers] are not taking our names. So it means that we women are not counted in any development activities being undertaken in Zimbabwe. We struggled much to win this Zimbabwe, but it seems our Government has forgotten and is not interested in women's development and needs. (p. 23).

The above statements clearly show that for rural women, access to land is access to economic freedom and the lack of it means poverty. Access to land for women should also be critical for the government if there is to be meaningful development in rural areas.

The advancement of rural women in business is also impeded by lack of training. Various women's groups such as Zimbabwe Women's Bureau or other NGOs provide some training for women when resources allow. In addition, the Small Enterprises Development Corporation has a limited participation in project finance and training of rural women.

Culture. Culture continues to be used to blackmail women to accept oppression and allow men and society at large to trivialize women's roles (p. 7). Indeed culture has been used by men and society not only

to trivialize but also to place no value on the roles women play. Culturally, a woman's place is in the kitchen, bare-footed and pregnant. Men do not think that women who venture into business can produce as much as men can, even if women were equally or better educated than men. Men just tolerate women in the business arena, and this attitude leads to the sidelining of women in business.

Culturally, it is unacceptable for women to be aggressive, ambitious, self-confident, firm, independent, or assertive. Men are threatened by such women and, to protect themselves, they sideline them in business and society.

For most women, business is conducted from home, for example, sewing, knitting, hawking and selling, and others, and because women work within their home, their business is not considered as work. They are constantly expected to attend to all home emergencies and duties, which interrupts their businesses and affects them negatively. Women's businesses are considered hobbies rather than serious work.

Attitudes. Attitudes are mainly engendered by cultural values, which are biased against women in business. Women are generally perceived as unable to perform in business, and so their performance is not taken seriously. A woman is not expected to be as good as a man at anything; she has to perform *twice* as well for her to be noticed and taken seriously. Even when she finally penetrates this closed business cocoon, a woman has to contend with her colleagues' attitudes, her husband's, and her relatives'. Her husband might be so jealous of her and the time she takes for business that it might be impossible for her to give her best in the business. Her husband and relatives also usually begrudge a woman the time she spends away from home on business, training, or travel because they fear she might be cavorting with other men. Men, on the other hand, expect to go about their businesses as they please.

Training. Historically, a lot more men are more educated than women, and women have not been exposed to the business environment for any length of time. Therefore, women need training in running businesses. Access to such training is essential; in this regard, NGOs and other organizations offer special skills training for women to equip them for business. Training where women mix with men has given rise to further friction between husbands and wives because men find it unacceptable for their wives to get involved in any way with other men. This attitude has thwarted women's skills development.

The media. The media can be a very influential vehicle for change and, as such, should be gender-sensitive and promote change and

development responsibly. Presently the media are not gender-sensitive and gloss over issues concerning women and gender discrimination. Positive and realistic reporting on women issues can only help the advancement of women and the development of the nation.

The Impact of Women on Poverty and the Development of the Nation

Demographically, women constitute 51 percent of the population; thus it makes good economic sense to educate and economically empower the majority of the population for the development of the nation. However, 62 percent of the population lives under the poverty line, most of whom are women and children. With the present hardships brought on by the economic structural adjustment program, the situation is getting worse. Retrenchments are the order of the day as companies streamline their activities and focus on their core businesses. Women are affected the most because they are viewed as the most expendable workers in the job market. When women are the breadwinners or their husbands do not earn enough to sustain the family, such an attitude puts their families through even more hardship. The result is that families are plunged into poverty when alternative employment is not found.

Women find it difficult to re-enter the job market because officials (mainly male) give preference to retrenched men, who are culturally considered to be the breadwinners. This gender discrimination has brought untold suffering when the woman is the breadwinner. When a woman is retrenched or forced to look for alternative ways to earn money, she must have access to finance. However, this is not easy because she faces insurmountable problems in trying to access funds. Women are usually left with no choice except to engage in marginal projects

like sewing, knitting, or selling tomatoes by the road side in order to sustain their families. Without access to finance that enables women to start a business, poverty is an inevitable end.

The small- and medium-scale enterprises and the informal sectors are the fastest growing sectors of the economy right now. At least 65 percent of these enterprises are made up of women, but this is also the sector to which financial institutions cater the least. The loans available to this sector are only up to a maximum of Z\$5,000, so the projects initiated in this sector do not have enough financial backing to grow and remain marginal, with little impact on the economy.

The alleviation of poverty is also linked to women's economic empowerment through the provision of enough productive land. Access to land for rural people translates to economic empowerment of

women, who constitute about 70 percent of rural people and therefore stand to benefit the most. Land affords women a chance to earn a living, and so its provision is essential to minimize poverty.

It is also important to change cultural attitudes to allow full participation of women in the business arena if development is to be realized and poverty alleviated. The country needs the full participation of all its people if it is to develop, and the development of the nation cannot be divorced from the economic empowerment of women.

Case Studies

The first case study focuses on the community banking scheme introduced into the Zimbabwean market by the Commercial Bank of Zimbabwe in March 1996. The bank was successful in stimulating growth by providing funds to business sectors—the informal sector and the small- and medium-scale enterprises that have not been catered to in a systematic and sustainable manner.

Although the informal sector and the small to medium enterprises have access to small loans provided by organizations such as the Indigenous Business Women's Organisation, the Zimbabwe Women Finance Trust, the Zimbabwe Women's Bureau, Women in Business, and other NGOs, these loans are very limited and are subject to the availability of funds. The community banking scheme, the first in the history of banking in Zimbabwe, has been designed to ensure financial and institutional viability, which refers to the scheme's ability to deliver services on a sustained basis. The sustainability of the scheme means the sustainability of the projects it supports and the growth of the sectors that participate in the scheme.

The Commercial Bank of Zimbabwe community banking scheme draws a lot from the renowned and successful Bangladesh Grameen Bank's community banking scheme. Since the opening of the scheme in March 1996, the bank now has four branches.

To qualify for a loan, applicants are required to open a savings account and maintain Z\$400 minimum balance in it; form a group with other business people in the community; and attend community banking training sessions. This scheme is only open to micro- and small business which have been operating for two to three years.

The scheme operates on group responsibility as in the Grameen Bank, and members can access loans up to a maximum of Z\$35,000, with a repayment period ranging from 3 to 18 months. Under this scheme, collateral is not a prerequisite to obtaining a loan. Other criteria used for the determination of a loan package are client savings; moveable assets, for example, machinery, equipment, or purchase

agreements; personal guarantees; and coguarantees of members of the borrower's business group by mutual pledging of their collective savings.

Gender and Law

This scheme has proved to be very popular, and even in its infancy it has proved to be successful and sustainable. The bank has disbursed 380 loans with a value of Z\$1,736,803 to date from a base of 1,255 clients. The repayment rate, less prepayment, is excellent at 99 percent. The repayment rate, including prepayment, stands at 105 percent and is testimony to the success of the scheme. The scheme has created 187 jobs and sustained 396 others in its one year of operation. It has also recorded success in its accounting savers (savings accounts), numbering 1,255 and totaling Z\$1,302,390.

The Commercial Bank of Zimbabwe, in the one year of existence of the community banking scheme, has 255 women borrowers (67 percent) as compared with 125 men (33 percent). Of a total of Z\$1,736,803 loans disbursed, those to women took up Z\$1,163,658 compared with men's Z\$573,145.

The repayment rate is higher for women than for men. Women's repayment rate is 97.45 percent, and men's rate is 95 percent. However, total recovery rate is very high at an average of 96.22 percent, which shows the success of this scheme.

A local money lending NGO, Zambuko Trust, has also adopted the Grameen Bank's concept of group responsibility. Zambuko Trust's loan program is aimed at unemployed underprivileged entrepreneurs in the informal sector. Its objectives are to facilitate the creation and expansion of microenterprises by providing funds; provide ongoing business with support services for clients; promote transition of successful microenterprises from informal to the formal sector; ensure that women are equal recipients of loans and services provided; create employment and generate income for the underprivileged through microenterprise business activities in Zimbabwe.

Loans are only approved for already-existing projects that require working capital. As in the case of the Grameen Bank, applicants are required to form groups of five members for their loan applications to be processed. Group members identify themselves and select each other on the basis of personal knowledge and trust. Each group member is entitled to a personal loan for his or her project, but the whole group acts as guarantor to payment of all the loans. Group members monitor each other's repayment behaviors; if one member defaults payment, the whole group is held responsible for repayment.

Because of the existing gender disparities in formal employment, women are the majority of informal sector workers. Therefore, by targeting the informal sector, Zambuko Trust has made a deliberate move

to address the needs of women entrepreneurs. Women make up 77.40 percent of the organization's clientele (Zambuko Trust Summary of Loans 1977).

Since women are the majority of Zambuko Trust borrowers, it is important to study the rates at which loans are being repaid so as to determine women's repayment abilities. Table 3.1 shows the Trust Bank statistics for Chitungwiza and Kuwadzana. Given the high repayment rates depicted in the table and considering that the majority of borrowers are women, it can be comfortably concluded that women are capable of managing loans.

These case studies show that the greater number of beneficiaries of such schemes are women and they prove to be sound borrowers. The repayment rates show the success of such schemes and why they should be encouraged from the point of view of both a business and the economic empowerment of women. To quote from the brief on community banking by the Commercial Bank of Zimbabwe, The success after all is dependent on the continuing excellent repayment discipline of the clients; and the clients are mainly women.

The second case study is the Government of Zimbabwe Enterprise Development Project, which is funded through a concessionary loan by the World Bank.⁸

The aim of the Z\$700 million loan facility is to broaden economic participation of small- and medium-scale enterprises and to increase employment through different components such as Business Services, Finance, and Institutional Development that benefit these enterprises.

Small- and medium-scale enterprises are here defined as companies employing up to 50 people and with net assets (excluding land) of up to US\$200,000 equivalent. The maximum amount that can be borrowed is equivalent to US\$75,000, and the borrower has to contribute 20 percent to the total cost of the project in cash or kind.

The government loaned the Z\$700 million to 16 financial institutions at an average cost of 12 percent (as of April 1992) for them to lend to these

Table 3.1 Rates of Repayment of Loans, Zambuko Trust, 1997

<i>Item</i>	<i>Chitungwiza</i>	<i>Kuwadzana</i>
Loans to date (number)	442	215
Amount given to date	\$551,386	\$158,257
Groups (number)	89+	92+
Repayment rate (percent)	89	92
Total loans disbursed (number)	647	
Total amount	\$709,642	

Source: Zambuko Trust News, July 1997.

enterprises at an interest rate of 20 percent or below. The participating financial institutions require collateral, except for those projects that they deem viable enough to be guaranteed by the Credit Guarantee Company at a fee. The repayment period was pegged at between 1 to 5 years with a grace period of 3 to 18 months. No special provisions are made for the informal sector or women, who constitute the majority of those needing financial assistance, except for exhortations to the participating financial institutions to be lenient to these disadvantaged groups.

This case study clearly shows the policy-practice gap within the business environment; government makes no legal or policy provisions for disadvantaged groups to enable them to participate in the economy. This facility is way out of reach for all those groups that constitute small- and medium-scale enterprises in Zimbabwe. For example, its requirement, of a net asset value of US\$200,000 is absurd for these enterprises.

The facility will, therefore, not benefit any group of people discussed in this section of the paper. Women, who lack collateral and could have benefited from the provision of this facility, are ineligible. Women's groups have lobbied for special provisions for their members but to no avail because no other organization or agency has any authority to influence the loan allocation, except the participating financial institutions themselves. Women are, therefore, left at the mercy of financial institutions whose requirements they cannot meet.

Recommendations

All parties involved—women, society, government, and financial institutions—must fulfill their obligations if women's economic empowerment is to be realized.

Women's obligations. It is the duty of women who want to venture into business to seek training in business management and to produce professional and sound business plans that are acceptable to financial institutions. Women should take their businesses seriously and should not view them as an extension of their social roles.

Women should seek to interact with their male business counterparts to take advantage of their knowledge, since men have had more exposure, and start networking. Women need to learn to be assertive without being offensive or apologetic in applying for funds from financial institutions. Women need to know their rights as far as the law is concerned and take full advantage of legislative provisions. Sometimes economic empowerment and development are impeded because women do not know what they are entitled to.

Society's obligations. Cultural barriers need to be broken down. Men need not feel threatened by women's economic empowerment, and women need to be able to be more assertive without having to fear society's judgment.

A gender-balanced leadership needs to be fostered in which men are educated on power sharing and women are empowered by occupying decisionmaking positions. Presently, power is concentrated in the male & if development is to be fully achieved, a gender-sensitive leadership is essential.

Government's and financial institutions' obligations. Government is urged to support small- and medium-scale enterprises through the establishment of guarantee schemes such as the one offered by the Canadian International Development Agency (CIDA) whereby disadvantaged groups borrow money from banks and CIDA guarantees these loans. This would benefit a lot of women who lack the collateral needed to access funds.

Government should devise loan facilities whose conditions can be met by disadvantaged groups, especially women. The operations of the Credit Guarantee Company, which is government-owned, should be expanded and improved to benefit a larger number of borrowers.

Financial institutions should come up with schemes that cater to the specific needs of their disadvantaged groups. Financial institutions should have a more positive attitude toward small loan applicants, especially women. Financial Institutions should raise the amount of money they lend to small- and medium-scale enterprises to allow them to graduate to bigger business.

National Programs for Poverty Reduction and Women's Economic Empowerment

Zimbabwe was one of the first countries in Southern Africa to come up with a plan to reduce poverty, the Poverty Alleviation Action Plan. The overall objective of this plan is the reduction of poverty and unemployment through the implementation of programs that target the poor and vulnerable segments of the population and those affected by structural changes in the economy. The plan does not reinvent the wheel but builds on and strengthens other ongoing initiatives aimed at reducing poverty by various actors such as NGOs and donors.

The Poverty Alleviation Action Plan acknowledges that women, the youth, and the disabled are disadvantaged groups, which require programs specifically targeted at them. Addressing gender issues is indeed

the philosophy behind the plan. Major distinctions between this plan and other ongoing development programs are its focus on the empowerment of disadvantaged communities; a participatory decentralized approach; the targeting of social expenditure, that is, getting resources to the poorest people in the districts in a way that has the highest benefits for them; and the involvement of communities, NGOs, and private sector in partnership with the government.

Among some of its main program activities, this plan began by commissioning a National Poverty Assessment Study, which produced an overall picture of poverty in the country by gender, marital status, headship of household, poverty among the youth, and the extent of poverty in quantitative terms. These data serve as inputs in the formulation of strategies for more focused interventions to reduce poverty.

Governmental Programs to Alleviate Poverty

Numerous programs undertaken by government, NGOs, and donors are ongoing. The following are some of the initiatives undertaken by the government.

Social Dimensions of Adjustment Programme. The Social Safety Net and Training and Employment Programmes are components of the overall Social Dimensions of Adjustment Programme. The issue of social development, particularly with regard to poverty reduction and employment creation has been at the center of development initiatives in Zimbabwe since independence in 1980. Zimbabwe inherited an economy characterized by high degrees of inequalities in the distribution of income, assets, and access to basic social services. The Social Safety Nets Programme was set up to cushion the poor and vulnerable from the transitory effects of the structural adjustment programs and has two major components: education assistance and food security.

Education assistance entails the payment of school fees for those families earning less than Z\$400 who cannot afford the fees that were introduced as recovery measures.

Food security entails direct cash subventions to the urban poor who can no longer afford to pay the new food prices (maize meal) that have been brought about by price decontrol measures and removal of subsidies (1996).

The Training and Employment Programme. This program was meant to benefit persons with disabilities and retrenched from both the government and the private sector. These people were trained in business management skills and would then access small loans to enable them to

generate self-employment by engaging in small businesses. However, those individuals who were still young and wanted to acquire some basic practical skills so that they could be re-employed within the changing and possibly expanding economy could opt for hard-skills training. The focus has now changed; individuals and communities with viable income-generating projects are eligible to apply for financing through this program. Modalities are being worked out to make the financing available through existing financial institutions that will in turn collect the loan repayments on behalf of the Social Dimension Fund (SDF).

The selection of the disbursing financial institution is based on their outreach capacities in rural areas. Because the program envisages full participation of NGOs, the ongoing NGO capacity-building program will enable reputable NGOs to be included in the on-lending program.

Community Action Programme. This program is aimed at capacity building and empowerment of local communities to enable them to mobilize resources available in their communities in order to improve their standard of living. The program is a government initiative with assistance from the World Bank. Currently the program is restricted to rural communities only, which, according to the Poverty Assessment Study, have the highest incidence of poverty.

In order to supplement the grant received, the communities are expected to contribute mainly in kind so that they can take ownership and feel responsible for its sustainability. Some of the specific areas targeted under this project include improving community facilities such as schools, clinics, and road construction and reversing environmental degradation. Communities are expected to identify their priority needs and are empowered through the opportunity afforded to them to manage their own destiny. Communities are assisted in finding what they perceive as the best way to solve problems and to be able to come together for a common purpose, and community members elect a committee to manage the development fund for that specific area.

Studies are undertaken to determine the extent of the problem as seen from the communities' point of view, including identifying the poor in that community and how best they could be helped. In addition, an assessment study is undertaken to learn best practices from other communities, which could be replicated wherever possible.

Women are expected to participate and benefit from the project mainly as users of facilities such as shelters. However, no mention of gender composition is made for the committee that would manage the grant. Women's participation, however, is crucial if their concerns are to be taken seriously in the program. It is recommended that a clause on gender composition be clearly spelled out.

Apiculture Project in Masvingo Province. The erratic rainfall pattern since the early 1980s and the drought period experienced in the country in 1991/92 left most people in the rural communities with virtually no income sources and living mainly on handouts. Assistance from relatives in other towns had also been retrenched because of economic structural adjustment programs. Traditional income-generating projects such as knitting, gardening, and crocheting had saturated the market. No meaningful exchange process was taking place. The ugly face of poverty began to surface; malnutrition was rampant, and the situation got worse every day. The community had to seek alternative means to earn a living.

With the assistance of United Nations Volunteers, the community was mobilized to come up with ideas for projects that were not entirely dependent on rainfall, would make use of available community resources, depended to a large extent on local skills, had economic viability, had potential to empower women economically and socially, and had a potential market in the nearest town.

Further discussions with the community revealed that the area had indigenous trees that were very useful for bee-keeping. The community therefore decided to embark on beekeeping. Initially, only a few people took it up, but their success raised interest in the community. The project received assistance from the United Nations Development Programme and the German Development Services. This assistance was mainly for acquiring working tools for making beehives and for protective clothing. A number of community-based workshops were held to facilitate training in bee-keeping skills.

The community has since formed a Beekeepers Association consisting of 40 women and 30 men. Members pooled resources and opened a community shop where each farmer selling honey combs receives Z\$14 per kilogram. The honey is then strained, bottled, and sold to a supermarket in Masvingo. The profit received is used to pay wages. This project has contributed in employment creation.

To date the project benefits 23 villages, and each family is encouraged to own beehives because the current levels of production cannot meet the local demand for honey. Room for increased production is still available. People from other provinces are also trying to emulate the project. The farmers are clearly benefiting from a steady flow of income generated throughout the year.

Although not all the components of the Poverty Alleviation Action Plan have been fully undertaken, a number of programs are ongoing. Sometimes full national coverage of all programs has not been possible because of limited resources. However, the government remains committed to the process and has several structures that could assist

with

the coordination of activities. A coordinating mechanism is needed to avoid duplication of effort. This mechanism would help create and strengthen links with organization involved in poverty reduction.

Zimbabwe's Action Plan, 1997

<i>Major problem identified</i>	<i>Major intervention</i>
1. Lack of access to information training and education on the existing laws	Develop explicit policy on gender Affirmative action Awareness campaigns
2. Review the communal/resettlement land tenure	Lobby for reform and equal access and control of land
3. Marriage laws/property laws	Lobbying and advocacy for law reform Awareness campaigns
4. Negative cultural practices and attitudes toward gender equality	Education, awareness campaigns, publicity, traditional media
5. Expensive time-consuming legal administrative procedures	Revamp the whole legal system Implementation of the Legal Aid Act National workshops to raise awareness of the Legal Aid facility
6. Lack of access to resources, e.g., finance	Set up women's Bank Law Reform in banking and finance sector Land tenure marriage laws Property laws Training of concerned officials in gender issues

(table continued on next page)

(table continued from previous page)

<i>By whom? For whom?</i>	<i>Evaluation and monitoring</i>
Ministry of Education NGOs, Private Sector, Media, Ministry of National Affairs Employment Creation and Cooperatives (MNAECC), Ministry of Justice Household for every citizen	Benchmarks developed to monitor the status of women. Global Platform for Action National Action Plan Follow-up workshops.
Government, i.e., Ministry of Justice, Ministry of Lands and Agriculture, Ministry of Environment,	Reformed Land Tenure Act

Gender and Law

MNAECC, NGOS

Government, NGOs, dealing with Legal Issues (e.g. Zimbabwe Women Lawyers' Association and Legal Resources Foundation)	More desirable laws place within reasonable period of time
NGOS in the legal sector, government	Attitude surveys
For traditional leaders, churches, education system, communities	Focus group discussions Increased participation in gender issues for targeted groups
Government, Ministry of Justice	Expedite delivery system
Civil society	Accessible Legal Aid
Government banks, NGOS	Specific law In place addressing the issues. Women's bank set up Number of officials trained

Notes.

This chapter was written by a team including Elizabeth Gwaunza, Neddy Rita Matshalaga, and Florence Dangarembizi under the direction of the Ministry of National Affairs, Employment Creation and Cooperation.

1. This section draws from the research done by the Women and Law in Southern Africa Research Trust (WILSA 1997).
2. This has since changed under the new succession law, discussed below.
3. Respect to the rights and obligations of resettled persons, Ncube and Nkiwane 1990 have pointed out that With regard to Model A resettlement schemes, [such as those in Nyozeni and Insiza] access to and use of the land is based on three permits; a permit to reside, a permit to cultivate, and a permit to depasture stock. These permits are characterized by broad statements on the rights and powers of the Minister and a total silence on the rights of the permit holder. For example, the minister may at any time and without notice replace the permits with some other form of agreement on such terms and conditions as he may determine. He may at his sole discretion revoke the permit With regard to Model B schemes, access to and use of land is regulated by two permits the permit to depasture and the permit to cultivate. The Minister has the same sweeping powers as in the permits issued in Model A
4. For a more complete discussion of the leasehold tenure system and the relevant statutory framework, see Ncube 1996,

5. For a detailed discussion of the misconceptions that surround women's legal status under customary law, see, WLSA 1997.

6. The following excerpt illustrates the importance women attach to household goods: Kitchen property that I bought through the labour of my own hands is mine. This is our culture that has been there from time immemorial. It is the law. Our forefathers in their wisdom made this law so that the woman's property is not divided (at her death) lest there is *ngozi* (avenging spirit) (Woman respondent)

7. The 1995 Poverty Assessment Study provides the latest information on poverty. As much as possible the rural/urban dimension of all the aspects discussed is given.

8. This case study is derived from the brochure on the disbursement of the Z\$700 million currently in progress and also from interviews conducted with officials of the administrative secretariat of the project.

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4— Ethiopia

The threshold of the twenty-first century is indeed the most appropriate time to assess the achievements and shortcomings of the past years and to define the awaiting tasks.

Today there is a global consensus that the second half of the twentieth century has, more than any other century, witnessed significant development in the effort to make women and men equal, both de facto and de jure.

The world realizes fully well that the sustainable and all-around development of a society cannot be brought about without the full and unreserved participation of both women and men in the development process, and that such a balanced development calls for the elimination of all forms of discrimination and the provision of protection against all forms of violence against women. Although women constitute 50 percent of the world's population, work about two-thirds of the world's working hours, produce half of the world's food, and, above all, bear and rear children, women continue to suffer from all forms of discrimination and from the absence of adequate protection against violence. On the threshold of the twenty-first century women earn only one-tenth of the world's income, they account for two-thirds of the world's illiterate, they constitute 70 percent of the world's poor (Gross and Rojas 1992), and continue to be subjected to discrimination and violence including child marriage, arranged marriage, abduction, rape, female genital mutilation, and so on.¹

This global recognition of the discrimination and violence to which women, particularly in developing countries, have been subjected led to the adoption of numerous international legal instruments that underscored the importance of women's human rights, defined the characteristics of such rights, and promoted strategies for their realization. Prominent among these instruments is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which was adopted in 1979. This convention became the cornerstone of the human rights of women by incorporating the basic rights proclaimed in other conventions and declarations adopted earlier and adding a new dimension to those rights. It also provided the framework within which to combat the discrimination and violence suffered by women. Today more than three-fourths of the member states of the United Nations (U.N.) are parties to this convention, signaling the importance the world

attaches to women's human rights. The guidelines resulting from this and other U.N. conventions provide a benchmark for the performance of the signatory countries. Accordingly, international and regional conferences have been called to assess the strengths and weaknesses of measures these countries take and to chart out future tasks.

Soon after the Fifth African Regional Conference on Women, held in Dakar, Senegal, November 16 to 23, 1994—which, following the principles of CEDAW, urged African states to, among other things, remove discriminatory and oppressive laws and practices by enacting judicious laws and ensuring their implementation—Ethiopia adopted a new constitution that is thoroughly gender-sensitive. Earlier on, Ethiopia had also enacted two pieces of legislation that met the standards of equality of CEDAW: the Labour Proclamation No. 42/1993 and the Electoral Law of 1993.

However, the challenging task that still lies ahead is the enactment of woman-friendly legislation. Almost all of the Ethiopian legislation needs to be rewritten, and the law enforcement mechanism calls for a total overhauling. Everything will have yet to be looked at through women's eyes.

The purpose of this chapter is to identify the Ethiopian legislation that does not conform to the internationally accepted standards and hence to the Federal Democratic Republic of Ethiopia's Constitution (1995), analyze the legislation's shortcomings, and propose possible remedies, including alternative solutions for law enforcement mechanisms.

How Gender-Sensitive is the Ethiopian Legislation?

Ethiopian women have been found to be most affected in the following areas:

- Civil and political rights
- Personal and family rights
- Protection against violence
- Employment and working conditions
- Pension rights
- Property administration and land use
- Nationality.

Civil and Political Rights

The right to vote and assume public office has been recognized since the days of Emperor Haile Selassie with the 1931 Constitution, revised

in 1955. The essence of those rights was later developed and elaborated on in the 1969 Chamber of Deputies Electoral Proclamation. These laws, however, suffered from the following weaknesses.

The constitution reserved the throne only to male descendants of the Solomonic dynasty. Such a restriction was clearly prejudicial to the civil right of a woman as a citizen and to her political rights as a woman.

Gender and Law

Two of the criteria for candidature to political office defined by the 1969 Electoral Proclamation—ownership of some form of property and literacy—seriously hampered the de facto equality between men and women because it was extremely rare for women to meet both criteria. Therefore, although both criteria applied to men and women alike, as a matter of fact women were at a disadvantage.

The coming to power of the military junta in 1974 marked the demise of the monarchy and of the 1955 Constitution. The People's Democratic Republic of Ethiopia's Constitution of 1987 guaranteed the equality of all Ethiopians irrespective of gender, nationality, color, religion, and creed. For the first time in the constitutional history of the country, particular attention was paid to women's needs and human rights. The electoral law of the time also abolished previous impediments. Thus, in principle, the rights to vote and be elected were fully guaranteed.²

However, those who lived through the turbulent days of the earlier Derg regime recall fully well that those rights were only on paper. The workers party manipulated all votes and determined which person would occupy which public office. Now those days are gone.

The Constitution of 1955, in keeping with CEDAW, guarantees the right to vote, to be elected, and to assume public office as provided in Art. 25:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall guarantee to all persons equal and effective protection without discrimination on grounds of race, nation, nationality or other social origin, color, sex, language, religion, political or other opinion, property, birth or other status.

Electoral Proclamation No. 64/1993, which fully conforms to the principles of CEDAW and of the constitution, prescribes no restrictive criterion to a woman's right to vote and be elected.

Now the challenge is to ensure that people are able to translate these constitutional and de jure rights into actions. The task will be formidable because, despite the constitutional and legal guarantees, the number

of women public officials is extremely low. In the House of Federation only 8 out of 126 members are women; worse still, in the House of Representatives only 13 out of 548 members are women. Similarly, in the Regional Councils only 77 of the 1,432 members are women.

In contrast, for every 100 men voters at the *woreda* (district) level there were 87.7 women voters, while at the *kebele* (village) level the ratio was 100 men to 87.9 women voters (National Election Board 1996).

Measures need to be taken promptly to enhance women's participation in voting and public office, including programs to heighten women's awareness of their civil and political rights and their role in development.

Personal, Matrimonial, and Family Rights

To this day the home is where a woman is oppressed the most: not only does she experience all sorts of violence—including marital rape, female genital mutilation, spousal battering, and others—but as a wife (or a daughter) she also suffers many inequalities before the law, which treats her as inferior to the husband.

The 1955 Constitution made no mention of matrimonial and family rights of wives, leaving women without a clear and strong constitutional framework within which to challenge the unjust and discriminatory provisions of the Civil Code (1960).³

The Civil Code section, which deals with matrimonial and family rights, rests on the premise that the husband is superior to his wife and she is subordinate to him. Thus, according to the code, the husband is the head of the family, and his wife must obey his order—unless he orders her to do something unlawful. Considering that a wife's input into the physical, moral, and material well-being of the family is by no means less than that of her husband—in fact, as seen earlier, in many ways she shoulders greater responsibilities—such a premise is untenable.

A woman's duty to obey her husband reduces her to a subordinate status because her husband can order her to do anything that *he* considers to be lawful. For instance, it would be within the legal right of a husband for him to order his wife to have sexual intercourse even against her wishes. He can legally force her into it. In other countries, the law calls such a behavior marital rape, a form of violence the Civil Code arguably condones. In keeping with this line of thought, the Penal Code of Ethiopia does not outlaw marital rape.

Similarly, a husband has a legal right to expect his wife to attend to household duties if he cannot provide her with servants. A wife cannot legally require her husband to help her with household duties, but the law requires that a wife fill in the servant's role if needed.

The other provisions of the Civil Code on matrimonial and family rights are all logical extensions of the wrong premise of a husband's superiority. Thus Art. 637 (1) stipulates that the husband provides guidance in the spousal joint effort to ensure the moral and material direction of the family, to bring up the children, and to prepare for their establishment. Art. 641 (1) also entitles a husband to choose the common residence. His wife has no right to complain unless the choice is manifestly abusive or violates the contract of marriage.

A husband's superiority and a wife's subordinate status have also been further expressed by Art. 644 of the Civil Code, which stipulates that the husband owes protection to his wife, may watch over her relations, and may guide her in her conduct. But why should the man protect the woman and not the woman the man? Why do not they protect each other? And after all, what is he protecting her against? Furthermore, this provision can be stretched to argue that it confers on the husband the authority to check his wife's correspondence. Thus the husband regulates his wife's relationship with others as a guardian does that of a minor.

Consistent with the premise above are the provisions concerning property ownership. Art. 656 (1) of the Civil Code provides that the husband administers the common property of the family, which includes all property other than his wife's earnings, salaries, and income. In managing the common property, all the husband is required to do is inform his wife. Although there are some restrictions regarding the power of the husband to alienate certain properties or enter into loan and donation agreements, there is no clear provision that requires him to account for his management of common property.

The degree of authority that the law vests in the father regarding the upbringing of children is also very high compared with that given to the mother. Art. 276 (1) of the Civil Code stipulates that where the father and mother of the child are both vested with the functions of guardian, the father alone shall exercise such functions. The mother exercises such functions only when the father is not in a position to manifest his will.

Even the right to choose the first name of the child is reserved for the father or, in his default, for his family, as stipulated in Art. 34 (1). A mother may choose only an additional first name, which is not very meaningful because in Ethiopia people bear only one first name.

Following the original premise, the marriageable ages of men and women are different; a higher age has been set for the husband, whom the law considers to be the more responsible of the two, and a lower age for the wife, whose contribution is not as important in the eyes of the law. Thus the marriageable age for the man is 18, while that of the woman is 15 (Art. 581 of the Civil Code). Considering that a person of either sex who is not yet 18

years old cannot legally conclude a contract,

the provision allowing a 15-year-old woman to enter a marriage contract greatly affects the quality of the contract of marriage itself. It conveys the message that, since the husband is the head of the family, the person in charge of common property, and the one responsible for the overall guidance of the conduct and relations of his wife, it is logical to require him to be 18 years old before marriage. As for the wife, since she is subordinate and important decisions are made for her by her husband, any consent is acceptable even if not legally valid. Obviously, the Civil Code could not be any more disdainful of women's rights.

This situation of legal inequality persisted not only through the days of Emperor Haile Selassie but also through the first 13 years of the Derg Rule. In 1987 the military government promulgated the Constitution, the first constitution to address gender issues. The constitution declared men and women to be equal and to have equal rights in their marriage. It also stipulated that marriage may be concluded only by a consenting man and woman who have reached majority. Probably influenced by CEDAW, which Ethiopia signed in 1981, the constitution also provided for affirmative measures to accelerate the de facto equality of women and men.

Although the promulgation of the 1987 Constitution marked a big stride forward in the effort to eliminate discrimination against women, its full impact of the measure could not be felt because the constitution was not supported by implementing legislation. In fact, the constitutionality of the highly discriminatory Civil Code has never been challenged.

The Constitution of 1995 addresses the gender question very thoroughly. It declares that the intending spouses have equal rights when entering into marriage, during marriage, and at the time of divorce. The constitution emphasizes that the marriageable age and the free and full consent of the future spouses are essential requirements for marriage. The constitution further provides that affirmative measures will be taken to hasten the true equality of women and men.

These provisions conform fully well with CEDAW and the other international legal instruments; but there has not been enough time to enact legislation to facilitate the implementation of the constitutional principles. Not all the courts are sufficiently gender-sensitive, and they cannot be expected to carry forward the spirit of the constitution unless and until detailed legislation is enacted.

Art. 34 (5) of the 1995 Constitution is becoming a growing source of concern:

This constitution shall not preclude the adjudication of disputes relating to personal and family laws in accordance with religious and customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law.

This provision has two fundamental components that deserve closer scrutiny: adjudication in accordance with religious or customary laws and the consent of the parties to the dispute.

Rules, both customary and written, except for those provided for in the Civil Code, were repudiated by Art. 3347 (1) of the Civil Code of 1960. Repudiated rules included religious and customary rules governing matrimonial and family rights; nevertheless, the Sharia (Islamic) Courts continued to operate and the Sharia laws (laws according to the Islamic code) to be enforced. Now the 1995 Constitution provides for the resurrection of customary and religious laws and the institutions to enforce them. Why was this reinstatement found to be necessary? Do customary laws meet international standards and norms?

Although studies show that religious and customary rules may have in many ways addressed the problems prevalent at the time the rules were made, and that some of such rules may still be valid, in general these rules fail to meet internationally accepted norms and standards, especially when it comes to gender issues (see, for example, Endris 1992). Since Ethiopia is a party to many of the international conventions on women, including CEDAW, and since it has promulgated a constitution that incorporates human rights provisions that are consistent with such conventions, the inclusion of Art. 34 (5) in the constitution is simply incomprehensible.

It does not matter that the consent of the two parties is a requirement for such adjudication. First of all, certain rights must never be compromised. Gender equality and the protection of women against all forms of violence are rights that neither religion nor custom may be allowed to violate. This must remain true in spite of the consent of the parties. Second, because most religious and customary rules are biased in favor of the husband, naturally, the husband would prefer adjudication in accordance with such rules. In general, therefore, it is the consent of the wife that needs to be sought for such an adjudication. Although one would think that a woman would not consent to such an adjudication unless she is certain to receive a fair treatment, that is not always the case. Indeed, in most cases, a woman is under social pressure, including social ostracization. It is even possible for a woman to be excommunicated for choosing not to be adjudicated in accordance with religious and customary laws. Obviously, a woman's consent influenced by such considerations cannot be considered to be full and free.

Art. 34 (5) is simply out of place and its removal must be seriously considered. As urged by the Fourth World Conference on Women held in Beijing, China, in 1995, a government must ensure that that tradition and religion and their expressions do not become a basis for discrimination against girls, and indeed against women in general.

Protection Against Violence

The absence of effective protection against violence deeply affects women.

Spousal battering. Spousal battering is one of the most common forms of home violence against wives. A man beats his wife when he gets back home drunk. A man beats his wife if he feels that she is having an affair with another person. He beats her whenever he is unhappy with life. She is his scapegoat. He thinks that beating his wife will take his frustration out of him. The results of a recent nationwide study covering 11 major ethnic groups confirm that on average every man beats his wife 7 times in a period of 6 months (CERTWID/IDR, AAU 1997). Evidently, such a situation greatly damages a woman's morale because it makes her submissive rather than challenging, and fearful rather than forthright. Unfortunately, no recorded data exist showing how many of those spousal battering cases are taken to court. Nonetheless, there is a consensus that few, if any, women take such a case to court for fear that their marriage will dissolve. Moreover, because the tradition of spousal battering is deeply entrenched in Ethiopian society, there is social pressure against taking the case to court.

The frequency with and the privacy within which such violence is committed require particular attention, but the Penal Code does not even make a specific reference to the crime. Spousal battering is treated simply as one of the offenses committed by a person against another.⁴ Such a treatment tends to hide the true nature of the crime. Spousal battering is not an agglomeration of isolated instances; it is a system that has been there for ages. It allows the man to beat his wife seven times in a period of six months. And its mechanisms are such as to discourage a woman from voicing her grievances. The law ought to recognize the systematic nature of the crime and treat it accordingly. Because the law has failed to do so, it cannot provide women with the required degree of protection.

The section of the Penal Code dealing with offenses against another person needs to be amended to address spousal battering in clear terms. Its peculiar nature must be carefully studied and addressed accordingly. Simpler procedures will also have to be designed to provide women victims with easy access to the legal system. In addition, specific measures need to be taken to help heighten the awareness of the community on the subject.

Abduction. Like spousal battering, abduction is a deeply entrenched tradition in almost all parts of the country, despite its being punishable

with up to 10 years of imprisonment, depending on the nature of the case (Arts. 558ff of the Penal Code). However, criminal proceedings may not be instituted against the abductor, if the abducted woman freely contracts a valid marriage with the abductor, see Art. 588 (2).

Three observations must be made with regard to abduction. First, as is the case with spousal battering, abduction is rarely reported.⁵ When it is, it is reported by the relatives of the abducted woman who could not trace her whereabouts. As there are no bodies specially organized to attend to such complaints or petitions, such petitions are often presented to the kebele or the police, who may not always be adequately gender-sensitive. After all, like the rest of the law enforcement bodies, they are likely to be influenced by long-standing traditions that tend to look at abduction as something normal. But abduction is a serious crime that must be fought vigorously. And such a fight can be effectively fought only when the community, including the police and the courts, start to perceive the crime as one committed against the personal liberty and the sexual chastity of the abducted and as an act that impairs her psychological makeup. Community awareness must be heightened, clear and simple procedures laid for the lodging of complaints, and a mechanism devised to detect such criminals and bring them before justice.

Second, although the penalty extends to 10 years of imprisonment in exceptionally grave circumstances (Art. 561), the penalty for simple abduction does not exceed 3 years. This penalty is not adequately severe. The fact that abduction has been around for a very long time cannot justify this leniency. A penalty befitting the gravity of the crime will have to be provided. Awareness-heightening measures, coupled with penalties matching the gravity of the crime are likely to prove effective in discouraging further abductions.

Third, the proviso that criminal proceedings may not be instituted against the abductor when the victim voluntarily concludes a valid marriage with the abductor does not help combat abduction. In fact, it allows abductors to escape punishment under the guise of having concluded a valid marriage with the victim.

It is indeed very difficult to imagine a victim of violence consenting fully and freely to marry her abductor. Any such consent could only be given for fear of reprisal. The victim simply is not in a position to negotiate with the abductor on an equal footing. Because the violence is likely to instill fear and emotional distress in her mind, her consent is coerced and cannot be considered the basis for a valid agreement; and an agreement that is only seemingly valid must not be accepted as an excuse for abduction. This provision does not in any manner help the fight against abduction.

Rape. Art. 589 (1) of the Penal Code punishes the act of forcing a woman to submit to sexual intercourse out of wedlock with up to 15 years of rigorous imprisonment, depending on the gravity of the crime. However, as in the case of abduction, the rapist may not be charged if he concludes a valid marriage with his victim.

Rape is one of the most serious violent crimes that can be committed against the sexual liberty of a woman. It is therefore appropriate that a severe penalty, such as the one in the Penal Code, be prescribed. Despite the penalty, however, rape is still widely practiced and continues to pose a serious threat to a woman's freedom for the following reasons:

First, very few women report such incidents because of the stigma attached to such reports. Being a rape victim is likely to leave a mark of shame on a woman. Society is not sympathetic toward her; and a woman is always and invariably blamed for enticing the man to commit rape; and in most cases the police are reluctant to receive such reports unless they are supported by medical reports and other evidence establishing the veracity of the claim. A rape victim who does not possess such evidence will have a hard time winning the cooperation of the police. This

circumstance has helped many rapists escape punishment and encouraged potential rapists to commit the crime.

One exception is the case of virgins. Because this group of victims can produce medical evidence to support their claims, reports are readily accepted by the police, and in most cases the rapists receive appropriate penalties. In general the community is sympathetic toward such victims, who in most cases happen to be minors.

Second, in some cases prosecutors base their charges on less pertinent legal provisions, thereby allowing rapists to get away with lighter sentences.⁶

Third, the Penal Code does not consider as rape the case of a husband's forcing his wife to sexual intercourse—which is consistent with the Civil Code stipulation that a wife must obey her husband in all lawful things he orders. The Penal Code makes it clear that a husband is legally entitled to force his wife to submit to his sexual desires. A woman's feelings are not taken into account. By not punishing marital rape, the Penal Code denies a woman the protection she badly needs against violent crimes committed against her at home.

Fourth, a rapist, as an abductor, may escape punishment by showing that he has concluded a valid marriage with his victim. Measures discussed under abduction are equally pertinent to rape.

Female genital mutilation. It is now quite some time since the concern about female genital mutilation has begun to capture global attention. And recently the Fourth World Conference on Women held in Beijing

(U.N. 1996) called on governments to enact and enforce laws that protect girls from all forms of violence, including female circumcision.

Ethiopia has no law that specifically punishes female genital mutilation. No court decision has ever punished the act either. Female genital mutilation has been around for ages, and it is being widely practiced especially in rural areas. The question is, how may the law be used to combat such practice?

One option is to expand the Penal Code section on offenses against another person to cover female genital mutilation, but doing so is bound to cause problems. When the Penal Code of Ethiopia was drafted 40 years ago, female genital mutilation was so widely practiced and deeply embedded in the country's traditions that it could hardly be perceived as a punishable act; and no language in the code suggests otherwise. Therefore, it would be difficult to fit the practice into a provision for which it was not intended.

The preferable option would be to enact and enforce a new law outlawing the practice, which would allow the prosecution of perpetrators though in many cases these are well-intentioned mothers and grandmothers. While an appropriate legal solution is sought, measures must be taken to generate community awareness of the effects of circumcision on the overall health and morale of the child.

Exploitation of the immorality of others. Prostitution is not punishable under Ethiopian law. It is common knowledge that prostitution cannot be eradicated by penalizing the prostitutes. It can be eliminated only when its root causes are addressed, which falls outside the scope of this chapter.

The Penal Code, however, punishes the exploitation of the immorality of others. Compelling a woman into prostitution is a form of violence that deserves to be punished, as do Arts. 604ff. Unfortunately, however, this law has never been enforced. A short walk through the streets of Addis Ababa would reveal untold stories of prostitution and trafficking in women.

While enforcing the existing law could help combat the problem, finding a lasting solution to the problem remains a serious challenge for the years to come.

Gender and Law

The solution calls for more than enacting a modern piece of legislation; it calls for economic measures that the government can take to provide work alternatives for these women.

Abortion. In Ethiopia, abortion—whether procured by the woman herself or by any other person— is punishable, except when it is carried out to save a pregnant woman's health or life (Penal Code Arts. 528ff).

No exceptions are made in the case of rape and incest. Thus a victim of rape who becomes pregnant has to choose between terminating the pregnancy and facing criminal proceedings or give birth to the child of her rapist.

This is a dilemma which could and ought to be avoided by allowing a woman to choose.

Employment and Working Conditions.

International standards require that national legislation guarantee equal work opportunities and equal pay for equal work for men and women, and that pregnant women and women on maternity leave not be discriminated against and be accorded appropriate working conditions.

A quick survey of the Ethiopian labor legislation shows that only the 1995 Constitution and Labour Proclamation No. 42/1993 fully meet international standards. There is still other legislation, some of which has not yet been annulled, that falls short of such standards. A brief review of labor legislation follows.

Three sets of legislation govern three categories of workers:

Public servants whose relationship with the government is governed by the Public Service Regulations No. 1, 1962.

Workers, other than public servants, who are in managerial positions and whose relationship with their employers is governed by the Civil Code of 1960.

Ordinary workers who are not public servants and who are not managers. The working relationship of this group of workers with their employers has been regulated first by the Civil Code of 1960, supplemented by the Labour Relations Decree No. 49/1962, the Labour Proclamation No. 64/1975, and the Labour Proclamation No. 42/1993.

A woman worker's rights depend on the category to which she belongs.

The public servant. The Public Service Regulations No. 1/1962 guarantees equal opportunities for all Ethiopians, irrespective of gender. These regulations also recognize the principle of equal pay for equal work. However, the following points clearly demonstrate that the Public Service Regulations are not sufficiently gender-sensitive.

Art. 38 declares that maternity leave is granted reckoning against sick leave. Whatever the term reckoning signifies, maternity is improperly and unnecessarily lumped with illness.⁷ Maternity is a

healthy natural phenomenon that should not be classified with illness. Such a classification produces a negative effect on women and undermines their equality with men.

Only postnatal leave is clearly recognized, and the duration of the leave is short by current standards. Art. 38(1) provides for a leave of only six weeks with full pay.

The regulations recognized neither prenatal leave nor the need for medical checkups. Only sick leave days may be taken during the early months of pregnancy. These regulations have not been repealed as yet; however,, the need for change is evident.

Workers, other than public servants, who are in managerial positions. This group of workers has not witnessed any change in its legal status for the last 37 years. It is governed by the Civil Code of 1960, a piece of legislation that is less favorable to employees than the subsequent legislation enacted to regulate labor relations. Thus, the Civil Code of 1960 does not recognize the need for prenatal medical checkups and for prenatal leave. The law does not have any provisions in case such a need arises. However, the experience in some enterprises shows a growing tendency to extend the rights decreed for ordinary workers to those assuming managerial positions. But that practice needs to be endorsed by new legislation. The other problem with the Civil Code is the very short duration of maternity leave: 30 days with half pay. This in effect means a 15–day leave with pay, which falls far too short of accepted standards.

In spite of these shortcomings, women managers continue to be governed by the Civil Code of 1960. This must not be allowed to continue. Equality must be guaranteed not only between men and women but also between women themselves. The assumption of a managerial position must not constitute ground for discrimination.

Ordinary workers who are neither public servants nor managers. These workers were first regulated by the Civil Code of 1960, supplemented by the Labour Relations Decree No. 49/1962, which was later superseded by the Labour Proclamation No. 64/1975. The latter introduced the following changes to a woman's right to maternity leave: the need for and the right to prenatal medical checkups was recognized. the right to prenatal leave was also recognized. the duration of maternity leave was extended to 45 days with full pay. additional protection was extended to pregnant women workers by forbidding the employment of pregnant women after 10 p.m. and for overtime work.

Proclamation No. 64/1975 has now been superseded by the current Labour Proclamation No 42/1993. The current legislation, which is in

full accord not only with the 1995 Constitution but also with the pertinent international legal instruments—including CEDAW, further improved women's working conditions as follows:

A woman worker is not to be assigned a job deemed arduous or harmful to her health.

Pregnant women are not to be assigned to night or overtime work or outside their permanent place of work.

No woman is to be dismissed from work during pregnancy and during the four months following delivery.

Guaranty of follow–up leave, 30 days of prenatal and 60 days of postnatal leave with full pay.

Therefore, while existing legislation for ordinary workers need only to be enforced, new legislation for the other two categories of workers needs to be enacted and enforced.

Pension Rights

This is another area where the full equality of women and men has not been guaranteed. The discriminatory sections of the pension laws of Ethiopia portray men as providers for and supporters of the woman and women as receivers and dependents.⁸ Thus, while the law guarantees the right of a husband to transfer his pension rights to his wife on his death, the same law allows a wife to bequeath such rights to her husband only in those cases in which her husband establishes that his wife used to support him fully or partially (see case studies in Taddesse

1996). Evidently, this law is discriminatory against women. The rationale is that since the wife is the dependent and the receiver, it is right and proper for her to inherit her husband's pension rights; however, since the husband is the producer and the provider, he does not need to inherit such a right from his wife and therefore there is no need for a provision guaranteeing such a right—a logical conclusion from a wrong premise. The importance of restoring gender equality in such matters can hardly be overemphasized.

The other equally discriminatory provision of the law involves the effect of remarriage on a spouse's pension rights. Thus, while a remarried widow loses her own pension, a remarried widower continues to collect his pension. This is a further extension of the very thinking expressed above; that is, when a widow remarries, she is going to a new husband who will be caring for her; whereas when a widower remarries, he will have to care and provide for his new wife. This thinking is wrong because it rests on the assumption that men and women are unequal, men are superior to women.

Such a thinking is unacceptable not only to women but also to all those who believe that gender equality is the basis for the all-around development of Ethiopia. It is encouraging to note that the FDRE Constitution of 1995 has addressed the issue squarely in Art. 35 (8): Women shall have a right to equality in employment, promotion, pay and the transfer of pension entitlements.

Although no new legislation has yet been enacted to implement the constitution, recent studies show that the concerned authorities have already started to read the pension law in light of the constitutional provision (Tadesse 1996).

Property Rights

The Revised Constitution of 1955, the Constitution of 1987, and the Constitution of 1995 all guarantee the rights of every citizen, irrespective of gender, to own and dispose of property. This includes the right to acquire, use, and transfer property. Before 1974, such property included land.

As soon as the Derg assumed power, it nationalized all land. The law, however, reserved user rights for every citizen. Thus the Government Ownership of Urban Land and Extra Houses Proclamation No. 47/1975 guaranteed the right of every family or individual citizen to a plot of land for development purposes— where a plot is assigned either to the family or the individual and not to the head of the family.

This is in sharp contrast with the Public Ownership of Rural Lands Proclamation No. 31/1975, which, among other things stipulates that Without differentiation of the sexes, any person who is willing to personally cultivate land shall be allotted rural land sufficient for his maintenance and that of his family.

According to this provision, any person who has no family could get a plot of land to plow for his own maintenance. In principle, that person could be a man or a woman. In that sense, there is no overt discrimination. But this provision requires that the person to whom land has been allotted must cultivate the land personally. Given the long-standing tradition in most parts of the country that only men cultivate the land personally, especially when cultivation involves the use of an ox plow, it is very difficult to imagine a woman having equal opportunity with a man in using the land.

A closer reading of the proclamation suggests that the above provision was intended to combat the then-prevalent feudal system, a system based on the exploitation of the tenant farmers by absentee landlords. However, as seen above, lack of gender-sensitivity has produced an undesirable effect on women.

Gender and Law

The other problem with Proclamation No. 31/1975 concerns married women. The law assigned land to the head of the family. Both law and tradition recognized the husband as the head of the family. The wife would be recognized as the head of the family only in those cases in which her husband was either dead, incapacitated, or not in a position to exercise the headship functions. These were exceptional cases and very limited in number. Much of the land was therefore bound to be registered in the husband's name.

Although registration in the husband's name did not necessarily preclude the wife's right to her share, that the provision was not sufficiently unambiguous allowed implementing officers to interpret it in a manner that was prejudicial to a woman's rights.

This situation, which affected rural women— about 85 percent of Ethiopian women, has now been addressed by Art. 35 (7) of the 1995 Constitution. Women now have equal rights with respect to use, transfer, administration, and control of land. Specific legislation, however, will have yet to be issued to ensure the proper implementation of this constitutional right.

Meanwhile, the Amhara Regional State has promulgated the Proclamation to Provide for the Redistribution of the Rural Lands Holdings of the Amhara Regional State. Art. 9 of this proclamation makes it clear that rural land shall be redistributed irrespective of gender. Gender consciousness is also manifested in Art. 10, which specifically lists women who make their living by producing and marketing local drinks such as Araki and Tella, by spinning cotton, or other activities among those persons entitled to land holdings. Furthermore, Art 10 (2) states that spouses would receive land jointly.

This proclamation addresses two problems mentioned above: that relating to the head of the family's (that is, the husband's) holding all family land in his name and that relating to land use, by allowing the land holder to either plow the land himself or hire the labor of others.

This proclamation has already been implemented. It has been reported that a total of 129,682 previously landless women have now received land. Women were also reported to have played an active role in the land redistribution process.⁹

It is hoped that the other regional states will soon enact similar laws.

Nationality

The 1930 Ethiopian Nationality Law, amended in 1933 and strictly following the principle of *jus sanguinis* (nationality by birth), makes a woman an appendage of her husband, as the following points show.

A foreign woman married to an Ethiopian man acquires Ethiopian nationality; but when a foreign man marries an Ethiopian woman not only does he not acquire Ethiopian nationality but the Ethiopian woman loses her nationality if by the law of her husband's country she acquires his nationality.

An Ethiopian woman can contract marriage with a foreigner only before the consular authorities of her husband's country in Ethiopia or in accordance with the laws of his country; whereas an Ethiopian man contracts marriage with a foreigner before Ethiopian authorities.

An Ethiopian man transfers his nationality to his child born of a foreigner, but an Ethiopian woman married to a foreigner cannot do so unless her child is born out of wedlock.

The 1995 Constitution has in principle changed these practices. The present constitution, which is in full accord with CEDAW, recognizes the full equality of women and men in matters of nationality. Marriage to a foreigner

cannot annul the nationality of the Ethiopian national, irrespective of sex. However, no legislation has yet been issued to facilitate the implementation of the constitutional provision.

How the Judiciary Reads and Applies the Law

At the High Court and Supreme Court levels relating the facts of a case to the right provision of the law has not been a problem, but the courts do not seem to exercise their judicial discretion so as to discourage violation of women's human rights, as the following cases show.

Public Prosecutor v. Cherinet Ergetu (Sup. Ct. Cr. File No. W/Ch/989/77) In this case the accused was charged with rape. The charge alleged that in violation of Art. 589 (1) of the Penal Code of Ethiopia the accused had taken the victim away to a place of his choice and forced her to submit to sexual intercourse.

The court of first instance, then the High Court, and finally the Supreme Court found the accused guilty of the crime but sentenced him to only one year imprisonment and released him conditionally.

Given the gravity of the crime, no mitigating circumstance could justify the degree of leniency shown by the courts (the penalty under Art. 589 (1) can reach up to 10 years of imprisonment).

A similar attitude was also manifested in the case *Public Prosecutor v. Abate Demisse* Sup. Ct. Cr. File No. W/A932/77),

in which the accused was charged with raping a 9-year-old girl. The High Court sentenced him to three years in prison, which the supreme court confirmed.

The victim's very young age was an aggravating circumstance, which could have warranted up to 15 years imprisonment. A three-year sentence for such a crime is too lenient by any standard.

In yet another case, *Public Prosecutor v. Alemu Kebede*, (Sup. Ct. Cr. File No. 342/79) in which the accused forced his 10-year-old victim into sexual intercourse and gagged her so that she would not cry, both the High Court and the Supreme Court cited Art. 589 (2) (a) and sentenced him to 5 years imprisonment.

The act was brutal, with two aggravating circumstances: the victim's young age and his gagging her. A five-year sentence for such brutality is simply not enough, especially when one considers that the accused could be paroled after serving two-thirds of the sentence.

At the level of first instance court, not only is leniency exercised but the court also seems to have problems in applying the right legal provision.

Thus in *Public Prosecutor v. Abebe Girma* (Federal Court of First Instance; Arada, Cr. C. No. 1938/86) in which the accused was charged with forcing his 16-year-old victim to submit to sexual intercourse, the court found the accused guilty of the crime, but cited Art. 595 of the Penal Code (the provision on sexual outrage) and sentenced him to only one year of imprisonment. The accused was released after serving eight months.

Force is not a factor in Art. 595, and therefore the penalty is a light prison sentence. On the other hand, force is the central element of Art. 589, the provision on rape, and therefore calls for a more severe penalty of up to 15 years in prison. In the case at hand, the crime involved force. Accordingly, the court ought to have based its decision on Art. 589 rather than Art. 595. This error allowed the criminal to get away with a lesser penalty.

Although very rarely, even the prosecution seems to suffer from the similar problem of applying the law as befits the facts. Thus in *Federal Public Prosecutor v. Taddesse Sime* (Fed. Pub. Pros. No. 534/88, Yeka), in which the accused was charged with forcing a young woman into sexual intercourse, the prosecutor's charge was based on Art. 595 (1) rather than on Art 589 (1).

However, a review of recent prosecution files indicates that this seems to be an isolated case.¹⁰

Recently, gender-conscious attitudes are beginning to emerge in the judiciary. Thus, for instance, in *Woreda 10 Police v. Dawit Beyene*

(Criminal Case No. 56/89, Arada), the Federal Court of first instance denied the defendant's request for bail because the accused used a dagger to frighten and force the 10-year-old victim to submit to sexual intercourse. Such an act violates not only Art. 589 of the Penal Code but also the constitution of the land and the UN Convention on the Rights of the Child (1989), to which Ethiopia is a party. The court also emphasized the need to protect the defenseless young girl and the need to combat all forms of discrimination against either sex.

Although the decision of this court was later reversed by the Appellate Court on technical grounds, it does show that courts are beginning to become more and more aware of gender issues and of the pertaining legal instruments.

Challenges and Opportunities

The major challenges are: enacting and enforcing legislation that conforms to the constitution and the international norms and standards and ensuring that the law enforcement offices are sufficiently gender-sensitive and gender-friendly.

As noted earlier, the constitution has annulled past discriminatory laws, but there has not been enough time to enact legislation that would elaborate and implement the constitutional principles. Accordingly, new laws need to be enacted in almost all the areas reviewed. Priority must be given to matrimonial and family relations because those are the areas where a woman is oppressed the most. Legislation must also be promulgated to provide a framework within which violence against women can be effectively combated. Another area of immediate concern is the inequality suffered by women managers and women public servants. Legislation must be enacted to eliminate discriminatory practices. Legislation must also be passed without delay to ensure that women enjoy equal rights with men in the acquisition of user right over land.

Women must take part in the enactment of legislation. They must be encouraged to express their opinion on every issue, and the legislation must be prepared to take into account their needs, concerns, and aspirations. To ensure that women's voices are taken into account, the Women's Affairs Office (WAO) and the Ethiopian Women Lawyers Association should participate in the law-drafting process. Such a participation would also facilitate future efforts to familiarize women with their rights and introduce the law to the public at large. The participation of women groups in the process is also indispensable. Depending on circumstances, women groups may be organized in rural and urban

kebeles, learning institutions, work sites, women development programs organized by governmental and nongovernmental organizations (NGOs), and others.

The enforcement of the law is as important as its enactment. Enforcement involves the following elements:

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Women's full knowledge of their rights and their readiness to challenge any violation of such rights. This is important because, in most cases, legal actions are based on reports and complaints lodged by women victims.

Women's participation in the law-drafting process, which helps them achieve the required degree of preparedness.

Community cooperation in the enforcement process. Enforcement will be effective only if the communities are aware of the issues, participate in the apprehension of those who commit crimes against women, and stand behind the victims.

Generating community awareness involves a concerted action to combat backward traditions that help perpetuate the subordination of women. New traditions will have to be cultivated in place of the old one. Achieving a shift in mentality requires teaching new traditions in schools by including women's human rights courses in school curricula. A greater representation of women in the law faculty could also enhance women's human rights education. NGOs' and the mass media's involvement would also facilitate the implementation of legal literacy programs.

The commitment of the lawmakers, the judiciary, and the police is even more important because they, more than any other, are responsible for the proper enforcement of the law.

Gender-Sensitizing the Legal System

For the purpose at hand, the legal system includes the legislature, the judiciary, and the police. Gender-sensitizing the legal system involves, among other things, ensuring a fairer representation of women in those bodies and generating a high degree of gender awareness among members of the legal system.

The importance of gender-sensitizing the legal system is self-evident. Good laws can be enacted, and enacted within a reasonable period of time, only when the lawmaking body fully understands the nature of the gender problem and the measures that must be taken to solve it. Awareness-creating measures would of course enhance such an understanding, and so would a better representation of women in the law-making body.

The proper interpretation and application of the law in gender-related matters calls for judges who would be gender-conscious in reading the law. Again, the task would be easier if women were better represented in the judiciary. More women should be encouraged to join the judiciary and the office of the public prosecutor.

The police play an equally important role in the defense of women's human rights. Only a thoroughly gender-sensitive police would act quickly and efficiently in apprehending and bringing before justice criminals who violate women's basic rights. The police must be taught the causes, effects, and mechanisms of violence and must understand the essence of women's human rights. Continued efforts must be made to encourage more women to join the police.

Opportunities.

The greatest opportunity to meet these challenges is timing. The circumstances are right in Ethiopia for change. Ethiopia is a party to CEDAW and other international legal instruments pertaining to women's human rights. The country has also promulgated a highly progressive constitution that is in full harmony with the international legal instruments. Furthermore, the government has established a Women's Affairs Office, headed by a woman minister, to concretize the national effort to realize true gender equality in Ethiopia, and it has also issued a women's policy to guide the fight against gender inequalities.

The formation of the Ethiopian Women Lawyers' Association is another positive step forward in the effort to create the right climate to bring about the realization of the intended legal reform.

Above all, most of the concerned government agencies have either completed work or are working on draft legislation in the spirit of the constitution—underway efforts of the Civil Service Commission and the Social Security Authority are the best examples.

Strategies

In enacting new laws and amending existing ones, the following strategies can be used to incorporate women's desires and interests.

Lobbying

The Women's Affairs Office (WAO), the Ethiopian Women Lawyers' Association, and others concerned must lobby the government and

parliamentarians in support of women's participation in discussing and drafting laws that affect the rights and interests of women to ensure the incorporation of women's ideas in such laws.

Strengthening Existing Women's Associations and Creating New Ones

Women's traditional cultural associations, such as *Idirs* and *Mahbers*—could be used as forums to discuss women's affairs and generate women's awareness of their human rights. NGOs should be encouraged to focus on promoting women's human rights. NGOs that concentrate on implementing poverty alleviation programs for women, including the operation of credit and savings programs, could use such forums to create and heighten women's awareness of their human rights and could serve as good entry points to establish relationships with economic associations. WAO could strengthen its role in the following ways:

Building its constituency among the traditional cultural associations.

Establishing strong links with mushrooming women's credit and savings associations, which provide the ground where women's economic interests intertwine with their socio-political interests and civil rights.

Establishing new relations. In such a case, the provision of technical assistance could enhance WAO's performance. WAO's forming women's clubs and forums in schools and other learning institutions in cooperation with the Ministry of Education. Organizing dramas, debates, writing competitions, and discussion programs to enhance women's understanding of issues and their participation.

Lobbying for the incorporation of women's human rights courses in school curricula, especially in law school curriculum to educate the judges, lawmakers, and prosecutors of tomorrow.

Reviving discussion groups in work places as another possible forum. Considering the unimpressive performance of such groups during the Derg days, WAO should pay particular attention to the preparation of the discussion materials. Such materials ought to be brief, clear, simple, pertinent, and attractive.

Encouraging the formation of women groups within religious circles—holding the constitutional principle of the separation between religion and state—to discuss women's human rights. Religious organizations are expected to profess gender equality and to work for the protection of women against all forms of violence.

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Organizing special training programs for those NGOs that are willing and ready to get involved in promoting women's human rights.

Promote Networking among Women Parliamentarians and Peoples' Representatives

Forums need to be organized, with WAO's help, where elected women members of Councils and Houses at all levels may meet periodically to discuss and exchange views on pending legislation that concerns women; such meetings would lead to heightened awareness.

Using the Media

The effectiveness of the media in popularizing issues and reflecting view points that could help the lawmaking process should be used to its full potential. To that end, WAO shall organize training programs for journalists and media personnel in cooperation with the Institute of Journalism.

Training Law Enforcement Bodies

For the laws to be enforced, educated and gender-sensitive personnel is needed.

Judges and prosecutors should be trained—by a concerted effort of WAO, the Ministry of Justice, the Law School, the Ethiopian Women's Lawyers' Association, and other professional associations—focusing on Ethiopian legislation and international legal instruments that concern women's human rights and on how best to enforce such rights and solve women's human rights cases quickly. The Ministry of Justice should also devise mechanisms to encourage women to join the judiciary, so as to increase the percentage of women.

The police should be trained in women's human rights, which should become part of the required academic curriculum for future police agents. The police should also be urged to attract more women into its force.

Kebele personnel should be trained as well focusing on women's fundamental rights and ways of handling women's petitions and complaints regarding the violation of such rights. WAO shall coordinate the organization of such training programs. Women must be encouraged to take part in Kebele elections.

Notes.

This paper was prepared by Ato Tamerat Delelegne under the guidance of the Women's Affairs office.

1. A recent study (CERTWID/IDR) confirms that on average an Ethiopian rural woman works for up to 18 hours a day. However, only 4 percent of women hold land in their name, and 34 percent jointly with their husbands, but 58 per-

cent of the men hold land in their name. In addition, 81 percent of those interviewed for the study responded that bringing up children is mainly the mother's responsibility. The same study also finds that on average men beat their wives seven times in a period of six months.

2. People's Deputies Electoral Procedure No. 23/1988, Art. 2.

3. Art.37 of the constitution only refers to the equal protection of law, and Art. 38 stipulates that there shall be no discrimination in the enjoyment of Civil Rights.

4. In the *Federal Public Prosecutor v. Adane Mekuria* (Federal Public Prosecutor File No. 263/89, Yeka)—in which the accused is charged with stabbing the victim, burning her legs using heated bulbs, and battering her with leather strands and a cane—the prosecutor did not even care to mention in the charge that the victim is the wife of the accused. To him, and indeed to the law, this is nothing more than an ordinary violent crime committed by a person against another. The prosecutor had no choice but to cite Art. 539 (2) (a) of the Penal Code, that is, the provision dealing with common willful injury.

5. Court records do not show any abduction case. In personal communications, public prosecutors do not remember having encountered such a court case either.

6. For instance, in the *Federal Public Prosecutor v. Taddesse Sime* (Federal Public Prosecutor File No. 534/88, Yeka)—in which the accused was charged with forcing the victim, Shiwaye Ararsa, to submit to sexual intercourse—the prosecutor cited Art. 595 (1), which simply prohibits sexual outrage on minors. Because this provision does not consider the element of force, the prosecutor ought to have cited Art. 589 (1) of the Penal Code, which deals with rape and carries a heavier sentence.

7. The Commissioners Council of the civil service commission took the position that the regulations use the term reckoning to reflect the belief of the time that considered maternity more as a sickness than a natural phenomenon; reckoning is not used to signify that maternity leave is calculated on the basis of sick leave. Accordingly, the commission took the position that maternity leave is not and must not be calculated on the basis of sick leave as a standing reference. In practice, therefore, the duration of maternity leave is calculated independently of sick leave—the duration of sick leave is one month with full pay and two additional months with half pay (Art. 34); by contrast the duration of maternity leave is six weeks with full pay. The Amharic version of Art. 38 uses a term that means to compute or calculate. This interpretation means that maternity leave is calculated taking sick leave as a point of reference. This assumes that sick leave is longer than maternity leave, but this is not true (sick leave is one month with full pay; maternity leave is six weeks (45 working days in practice). It would therefore be absurd to adopt this interpretation. The provision remains unclear. The authors discussed the position of the Civil Service Commission on Art. 38 and its application with the Head of the Legal Services and other senior members of the Civil Service Commission.

8. The Public Servants' Pension Decree of 1961 as amended first by the Public Servants' Pension Proclamation No. 209/1963 and later by the Public Servants' Pension (amendment) Proclamation No. 5/1974.

9. Fax written by the Amhara Regional State to the women's Affairs Office in the Prime Minister Office on September 24, 1997.

10. Files reviewed include *Federal Public Prosecutor v. Kiros Etsubneh* (Fed. Pub. Prosecution File No. 290/88, Yeka); *Federal Public Prosecutor v. Tewodros Abayneh*

(Fed. Pub. Prosecution File No. 3487/89, Yeka); *Federal Public Prosecutor v. Tamerat Getachew* (Fed. Pub. Prosecution File No. 251/88, Yeka); *Federal Public Prosecutor v. Molla Gaschaw* (Fed. Pub. Prosecution File No. 371/88, Yeka); and *Federal Public Prosecutor v. Seife Kassa* (Fed. Pub. Prosecution File No. 791/88, Yeka). In all these cases, the accused are charged with forcing their victims to submit to sexual intercourse, and the public prosecutor rightly cited Art. 589 of the Penal Code.

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5— Uganda

This chapter seeks to contribute to the understanding of gender-based legal constraints on women's empowerment within a decentralized framework. The chapter provides a contextual background through a brief socioeconomic profile of Uganda; describes the objectives and features of the decentralization policy (and argues that the policy presents a golden opportunity for gender sensitive human development) as well as the obstacles that must be overcome if the policy is to realize its potential for gender equity; analyzes the role of the law in addressing the previously described challenges; and provides concrete strategies for realizing gender equity through the decentralization policy.

A Country Struggling to Modernize

For many years after its independence in 1962, Uganda suffered from economic decline and political instability. During this period, Uganda became synonymous with economic decay and gross human rights abuses. After a protracted guerrilla warfare, in 1986 the National Resistance Movement took over the government of Uganda. The new government promised to reverse Uganda's path of decay and immediately launched upon a Ten-Point Programme of economic, social, and political reform.

Politically the government set out to eliminate the authoritarianism and sectarianism that had become part and parcel of the politics of former regimes by instituting participatory democracy as a system of governance. In 1988 the government appointed a Constitutional Commission to prepare a draft constitution to be used as a basis for debate in the soon-to-be-elected Constitutional Assembly. The elections for the Constituent Assembly were held in 1993, and work began on the new constitution. On October 8, 1995, Uganda's new constitution was promulgated. In 1996, elections were held for the presidency and Parliament.

In addition to the political reforms, in 1987 the government embarked on the Economic Recovery Programme, which included the promotion of prudent fiscal and monetary management, the improvement of incentives to the private sector, liberalization of the economy,

reformation of the regulatory framework, and development of human capital through investment in education and health (Keller 1996, Mugaju 1996). In addition to creating a conducive environment for private sector investment as a means of promoting economic growth, the government commenced a process of privatizing parastatals, liberalizing control over foreign exchange, and encouraging private participation in infrastructure development.

The government also embarked on a program of public service reform that targeted civil service, public enterprise, and local government. During the 1970s and 1980s, the civil service became bogged down with corruption, public enterprises went bankrupt, and local government practically ceased to exist. In response to the civil service's disintegration, the National Resistance Movement's government created the Civil Service Reform Programme with the following objectives: the rationalization of ministries; the strengthening of capacity to manage change; salary enhancement and the introduction of the minimum living wage; elimination of corruption; and introduction of result-oriented management (Mugaju 1996). With respect to public enterprises, the government sought to reduce its role in commercial ventures through privatization and commercialization of the few enterprises it decided to retain. A majority of the public enterprises have been privatized, however, and the government's focus now is to ensure better management standards to improve profit earnings and reduce costs for those institutions under its control.

The third component of the government's public sector reform was targeted at local government through the process of decentralization. One of the primary objectives of the government's policy was the strengthening of what was effectively a nonexistent local government. It was believed that through decentralization, local communities would be empowered by having the ability to govern themselves and mobilize their own resources. It was also believed that decentralization would contribute to the program of poverty eradication by addressing the lack of self-determination, planning skills, effective leadership, information, gender-sensitivity, accountability, organizing competence, and efficient service delivery systems at local government level (Nsibambi 1997). A detailed discussion of the policy is provided later in the chapter.

More recently the government adopted the National Gender Policy. The policy emphasizes the cross-cutting nature of gender and seeks to integrate gender into development efforts at national, sectoral, district, and local levels. It also seeks to ensure that a gender perspective is integrated at all the levels of planning, resource allocation, and implemen-

tation of development programs. Thus it emphasizes the government's commitment to gender-responsive development. One of the key aspects of the National Gender Policy is that it promotes a Gender and Development approach based on the understanding of gender as roles and social relations of men and women, as opposed to the Women in Development approach, which focuses on women in isolation.¹ The government recognizes the need for both approaches and applies them jointly through the Ministry of Gender.

More recently the government has introduced the National Long-Term Perspective Studies-Uganda Vision 2025 Project, a multidimensional and multidisciplinary exercise aimed at establishing a participatory approach to sustainable development in Uganda. The project is also aimed at achieving a shared vision for long-term development in Uganda through national dialogue between government, the scientific and business communities, nongovernmental organizations (NGOs,) and the public at large.

During the past couple of years the results of the government's efforts have been evident: an average annual economic growth rate of 6.5 percent, a decrease in infant mortality from 122 per 1,000 live births to 97 per 1,000, and a rise in educational enrollment from 60 to more than 80 percent. When the National Resistance Movement came to power, inflation was at 240 percent; in 1996 it was down to less than 10 percent (Mugaju 1996). Government revenue collection has also improved. In 1990/91, when the Uganda Revenue Authority was created, only 135.95 billion Ugandan shillings were collected in taxes. In 1994/95 the Uganda Revenue Authority collected 522.23 billion Ugandan shillings in taxes (Mugaju 1996).

Despite these successes, various factors have had a significant impact on the government's efforts to improve political, social, and economic conditions. For instance, some areas of northern and western Uganda continue to experience insecurity resulting from the existence of elements seeking to challenge the government in power through unconstitutional means. This threat has forced the government to concentrate on securing peace and stability in these areas as a prerequisite to development. The government must also struggle with the Acquired Immune Deficiency Syndrome (AIDS) pandemic, which continues to drain the productive sector of Uganda's population as an increasing number of able-bodied adults die of the disease while still in their prime. The structural adjustment programs, which have been part of the government's economic recovery program, have also had a social cost in that they are based on a long-term perspective of development. The immediate impact, however, has resulted in an exacerbation of poverty of the most vulnerable in society. Despite these challenges,

however, the government continues to work at economic and public sector reform in the hopes that, with time, the quality of life of many Ugandans will be significantly improved.

Decentralization Policy and Program

As previously noted, Uganda's decentralization policy and program have been instituted as part of a larger plan by the government to implement radical and long-lasting reforms to the public sector. The historical basis of decentralization rests on Uganda's experience as a country. In 1962, Uganda gained independence under a constitution that provided for a comparatively strong local government system. The 1962 Constitution devolved significant powers to local authorities, granted them adequate control over their staff under the separate personnel system, and created a meaningful financial resource arrangement that included provisions for substantial locally generated revenues. As a result, during the period from 1962 to 1966 serious efforts at local capacity and infrastructure building were made. Local governments rendered services to the relative satisfaction of their constituents: roads were well maintained, and primary schools were able to provide competitive education (Mugaju 1996).

However, all this changed in 1967. The 1967 Constitution and the Local Administrations Act of 1967 contributed to the weakening of local authorities by subjecting them to absolute centralized control (Mugaju 1996). This led to the degeneration of services, loss of accountability, and loss of popular participation in the development process. The situation was worsened by the takeover of government in 1971. Under the new regime, local government services and infrastructure totally collapsed. Even after the overthrow of that government in 1979, successive governments continued to operate under the heavily centralized system of government set up in 1967. The government monopolized control over the social, economic, and cultural life, and the people were denied any form of participation in determining their own destiny.

Given this historical backdrop, the very first objective of the National Resistance Movement's Ten-Point Programme was the creation of a local government system that would be democratic, participatory, efficient, and development oriented (Decentralization Secretariat 1994). The Resistance Council (now Local Council) system evolved on that basis and formed the required foundation for the policy of decentralization. The policy was later included in the 1995 Constitution, which also provides that one-third of all the councilor's seats in local govern-

ment should be set aside for women—Art. 180(2)(b). This form of affirmative action was later ratified by the Local Government Act of 1997.

Objectives of the Decentralization Policy

The decentralization policy represents the government's effort to establish good governance on the basis of devolution of power from the central government to the local government. In designing the policy the government

sought to achieve the following objectives:

To transfer real power to the districts and thus reduce the workload of remote and underresourced officials.

To bring political and administrative control over services so that they are actually delivered, thereby improving accountability and effectiveness and promoting people's feeling of ownership of programs and projects executed in their districts.

To free local managers from central constraints and, as a long-term goal, to allow them to develop organizational structures tailored to local circumstances.

To improve financial accountability and responsibility by establishing a clear link between the payment of taxes and the provision of services they finance.

To improve the capacity of local councils to plan, finance, and manage the delivery of services to their constituents (Decentralization Secretariat 1994).

The decentralization policy is aimed at empowering local communities through a process whereby they have increased control over their development and growth. The policy is also aimed at eradicating poverty in a country in which 55 percent of the population is below a poverty line drawn at a meager US\$100 per capita per year. In this respect the policy has major gender implications.

Women constitute 51 percent of the Ugandan population and make up the majority of the poor in the country. Indeed the country's gender profile demonstrates a dichotomy between women and men as regards access to productive resources, poverty levels, education, employment opportunities, and participation in the political process. Women perform less lucrative economic roles: 47 percent of the working population (employed, self-employed, and unpaid family workers) is female, 81 percent of whom are agricultural workers. Only 2 percent of the female working population is in administrative, managerial, and professional occupations, and only 0.05 percent of the senior positions in the civil service are held by women (MGCD 1995). The need to raise the socioeconomic status of women is thus pressing. By empowering local

communities to address the causes and symptoms of their poverty, decentralization could provide a powerful tool to empower women to overcome the poverty that has so pervasively characterized their gender.

Key Features and Structures of Local Government

The two primary laws governing the implementation of the decentralization process and its stated objectives are the 1995 Constitution of Uganda and the recently enacted Local Government Act of 1997, which repealed the Local Government (Resistance Councils) Statute of 1993. This statute was enacted to provide for the decentralization of functions, powers, and services to local governments; to increase local democratic control and participation in decisionmaking, and to mobilize support for development that is relevant to local needs. The statute established the current local government system based on Resistance Councils (now Local Councils) in rural areas and City, Municipal, and Town councils in urban areas. The Local Governments Act of 1997 modified local governments as set up by the 1993 statute.²

As stated previously, the 1995 Constitution and the Local Government Act of 1997 require that one-third of the councilor's seats in local government be reserved for women. This affirmative action policy is an attempt of the government to address the lack of women's representation in key decisionmaking organs. A survey at the level of ministers, presidential advisors, permanent secretaries, ambassadors, and the like revealed that rarely more than 20 percent of these positions are held by women (MGCD 1995). Section 118 of the 1997 Local Government Act

also provides for the election of women councilors by universal adult suffrage, unlike the 1993 law under which women had to rely on the votes of a male-dominated electoral college. Section 118 seeks to institute a higher degree of political independence of women candidates by having them directly elected by the population at large and other women in particular.

The 1995 Constitution sets forth the principles under which local governments are expected to operate and establishes the structures of local government at the district, county, sub-county, parish, and village levels. The Constitution provides that decentralization shall be a principle applying to all levels of local government and in particular, from higher to lower local government units, to ensure peoples' participation and democratic control in decisionmaking—Article 176(2)(b). It also confers legislative and executive powers to each local government, stated to be the highest political authority within its area of jurisdiction (Article 180). Finally, reflecting the important roles that local governments are to play in poverty eradication, the consti-

tion gives to local government the responsibility for all functions and services except those relating to defense, foreign relations and trade, and other such national policies that are expressly reserved for central government.

The Local Government Act of 1997 creates bodies to enable the implementation and functioning of services provided at the district level. They include a District Public Service Commission, which has the power to appoint persons holding any office in service of the Commission, and a Chief Administrative Officer, who is responsible for the implementation of the District Council's decisions and other administrative duties. Also included is a Local Government Finance Commission, which advises the president on the appropriate distribution of revenue between the government and local government; a Local Government Public Accounts Committee, which ensures accountability and transparency with respect to local government spending, and a Local Government Tender Board, which coordinates the procurement of goods, services, and works for the District.

Functions and Services of Local Governments.

The government's decentralization policy seeks to transfer political, administrative, financial, and planning authority from the center to local government councils (Decentralization Secretariat 1994). The 1995 Constitution and the Local Government Act of 1997 thus give local governments, that is, the District Councils and the Sub-County Councils, the power to be effective centers of local decisionmaking, planning, and development. While devolving significant powers to local governments, the central government retains its power to supervise, coordinate, set quality control standards, and develop policies over functions that have been devolved to local government. Sections 31, 36, and 39 of the Local Government Act of 1997 specifically give the local government the power to:

- provide services deemed fit to the public other than those services especially reserved for the central government;
- ensure implementation and compliance with government policy;
- prepare a comprehensive development plan incorporating plans of lower local governments;
- formulate, approve, and execute their own budgets; and
- draft and enact ordinances in the case of the District Councils and bylaws in the case of the Sub-County Councils.

The Administrative Units, that is, the County, Parish, and Village Councils, were established to provide administrative support to local

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governments. As such, they do not enact legislation or formulate policy. Instead, they are expected to:

draw the attention of the district leaders to any matters that are of concern;

advise the area members of Parliament on all matters pertaining to the county, parish, or village;

resolve problems or disputes, at the County and Parish levels, referred to them by relevant Sub-County or Village Councils;

monitor the delivery of services within their area of jurisdiction;

assist in the maintenance of law, order, and security;

carry out any functions that may be assigned to them by the District Council or lower Local Government councils; and

adjudicate minor disputes involving land, marriage, debts, assault, conversion of property, and paternity at the level of village and parish councils.³

The consequence of this devolution of power is that decisionmaking and governance are as close as possible to the people involved. As such, the decisions regarding the provision of services are made closer to where the services are actually provided. Furthermore, by giving local governments the power to formulate and execute their own budgets, a closer link can be drawn between revenue collection and service provision.

The Local Government Act of 1997 provides that revenue shall be collected in urban areas by the Division Councils, which are expected to retain 50 percent for development purposes, and in rural areas by the Sub-County Councils, which are expected to retain 65 percent of such revenue or higher, if approved by the District Council. In Kotido, for example, the Local Council, in an attempt to ensure that sub-counties were the focal points for development programs, recently agreed that Sub-County Councils in the district would retain 80 percent of the revenue collected from their respective areas.⁴

By giving local governments the power to prepare their own development plans, the policy seeks to strengthen local responsibility and release central government control. It is hoped that in the long run, this should make for more effective planning at the local level and greater degree of political participation (Decentralization Secretariat 1994). The main entity facilitating and overseeing the implementation of the decentralization program is the Decentralization Policy Implementation Committee. The Decentralization Secretariat under the Ministry of Local Government is providing the necessary technical and administrative support.

The decentralization policy seeks to bring decisionmaking closer to the people and to make them agents of their own change, rather than passive recipients of a centrally driven process (Decentralization

Secretariat 1994). This in turn contributes to the process of poverty eradication because it increases the potential of having infrastructure developed and programs implemented that are more responsive to the needs of the community. When the community can see the relationship between the revenue collected and the money spent, it is more willing to contribute to the system in the form of taxes.

The decentralization policy seeks not to concentrate power at the district level. The District, City, and Municipal Councils are obligated to transfer power and the performance of certain tasks to the sub-counties and divisions. It is anticipated that this devolution of power to the grassroots level should increase the access through which women, either as individuals or as members of society, can influence the institutions of resource allocation.

Ultimately, by allowing for a higher representation of women in the local governments, providing for meaningful community participation, and providing for easy access to institutions that allocate goods and services, the constitution establishes a framework for gender-sensitive human development at the local level. This type of development entails the integration of gender perspectives in all policies, planning, and implementation following the different roles ascribed to men and women in society.

Status of Implementation of the Decentralization Programme

In October 1992, President Yoweri K. Museveni launched the Local Government Decentralization Policy. By the end of 1996 all existing districts in Uganda had been financially decentralized, that is, were collecting their own revenues and retaining the specified percentage for local development (Decentralization Secretariat 1997). Technical officers have been recruited to handle the increased responsibility in the local governments. Members of the District Service Commission have been appointed and are operational. Elections for the Local Government Councils and Administrative Units under the Local Government Act of 1997, however, have still not occurred, thus the current local councils in operation are those established under the 1993 Local Government (Resistance Councils) Statute. In addition to collecting their own revenues, the respective local governments have been receiving funds from the central government. During the latter half of 1996, for example, the government released a little over 20 billion Ugandan shillings to then 39 districts in the form of unconditional grants for decentralized services (Decentralization Secretariat 1997). During this same period, the Urban Authorities received a little over 1 billion Ugandan shillings. Most funds, however, have been spent on salaries, leaving little for service delivery. Difficulties faced by local

governments in collecting revenues have resulted in shortages of funds and cash flow problems, which has meant that essential programs are not fully implemented (Decentralization Secretariat 1996).

Since the commencement of the implementation of the decentralization policy, the Decentralization Secretariat has embarked on a fairly comprehensive training program to improve the capacity of local government councilors and employees to handle their increased responsibility and power. During the latter half of 1996, for example, training was conducted in various subjects such as financial management and budgeting of lower local councils. Legal training was also conducted for administrative officers, accounting, film media and script development, human resource management, publications, local government tender boards, and records management.

Additionally, the Secretariat has been providing a decentralization sensitization program organized around four modules: introduction and overview of decentralization; financial decentralization; decentralized development planning; and personnel and institutional arrangements. While the training is doing much to address the need for capacity building at the local government level, the training programs have been found to be lacking in gender sensitivity with respect to both content and participant selection. The details and impact of this assessment will be discussed in further detail later in the chapter.

In addition to training, the government has undertaken decentralization of development funding through projects such as the Poverty Alleviation Programme and the *endantikwa* scheme. Both programs aim to channel funding directly to the rural areas that need it most, the former through support of community-based and -supported activities and the latter through the provisions of small loans for self-help projects. Given that both programs address poverty in the rural areas, the potential benefit to women is strong. By bringing development funding directly to where it is most needed, the likelihood is higher that the interests of women will be addressed, bearing in mind their increased representation in decisionmaking structures such as the local councils.

Constraints on Women's Participation in the Development Process within a Decentralized Uganda

As the Decentralization Secretariat has rightly observed, the process of devolving powers from the center to local areas will not automatically result in the empowerment of the people (Decentralization Secretariat 1994). This statement rings even more true when it comes to the empowerment of women. While the decentralization process presents signifi-

cant opportunities for women to play a greater role in the development of their lives, families, and communities, numerous challenges and obstacles are present. The following are some of the major challenges.

Access to Information Relating to the Public Sphere

For many a woman in Africa, access to information, particularly information relating to what is perceived as the public sphere, is extremely limited. Traditionally, a formal dichotomy has been created between the private and the public spheres. The private sphere, which consists of domestic life, home, and the family, has been considered to be the traditional domain of women, while the public sphere, work and politics, has been considered the sole domain of men. Women have thus been excluded from participating in issues relating to politics and the law, which have culturally been defined as the public sphere. Although the decentralization policy creates significant opportunities for women's empowerment—for instance, increasing the number of women in decisionmaking positions through the reservation of one-third of the councilors seats—the realization of these opportunities must occur in the public sphere, namely the political and legal frameworks. In order to take advantage of these opportunities, however, women must participate in the political process. This means that they must be *aware* of the new political opportunities. The codification of the policy to increase the number of women in decisionmaking positions is set forth in the Constitution and Local Governments Act of 1997. Thus, in order to take advantage of this opportunity, women must be *aware* of their contents.

The reality, however, is that the majority of Ugandan women have little or no access to information relating to politics or the law. Therefore, it is likely that few women are aware that one-third of the seats in the District and Sub-County Councils are reserved for them. While some NGOs such as the Forum for Women in Democracy and the Uganda Women's Network have been conducting civic education in preparation for the upcoming elections, the government has done little to inform voters, let alone women voters, about the changes in the local government structures. Although the Ministry of Gender and Community Development could play a role in the civic education of women voters, civic education for the upcoming elections is exclusively within the mandate of the Electoral Commission. Out of respect for the Electoral Commission's mandate, the ministry has not interfered with the Commission's program and has thus directed its civic education efforts to working with NGOs. Unfortunately, although a few NGOs have attempted to provide legal education to women, inadequate funding has seriously limited these efforts.

Experience has shown that without education and sensitization, women have been unable to fully take advantage of the opportunities presented. Under the previous Resistance Council system, one seat on the council was reserved for women. During the elections, however, this was interpreted as restricting women to running only for the reserved seats. Women did not know, or were discouraged from running for the open seats. Women voters also remain largely ignorant of the power of their vote to influence those in power and lobby for their priorities and their concerns.

The inability of women to gain access to information relating to the public sphere thus presents an obstacle to the realization of the potential benefits of the decentralization policy. Unless a concerted effort is made to provide women with the relevant information regarding the law and the political process, the opportunities offered will

certainly be lost.

Participation in Decisionmaking

The 1995 Constitution provides that the state should ensure gender balance in all constitutional and other bodies. The requirements that one-third of the councilors' seats be reserved for women and that these women be elected by universal adult suffrage are an attempt to fulfill this national objective at the local government level. While these provisions certainly represent a step in the right direction, they might not ensure a qualitative improvement of women's participation in decisionmaking for a number of reasons.

First, past experience has revealed that women have not been sufficiently mobilized or sensitized on the power of their vote. Mobilization would include not just gathering women in one place but galvanizing them through an understanding of how they can make the political process work for them. Mobilization could also occur through the use of community development centers, which exist in all parishes. These facilities could be reinvigorated to facilitate mobilization and sensitization, not just before elections, but also on an ongoing basis. Without the adequate mobilization of the women's vote, many of the women candidates have relied on propertied sponsors for successful campaigning. Although reliance on the political godfather may defray the often prohibitive costs of campaigning and provide access to voters who might not have been otherwise easily reached, the dependence compromises the ability of women candidates to be truly accountable to women's mandate.

Second, women candidates must also contend with negative cultural attitudes toward women in leadership positions. These negative

attitudes, combined with women's subordinate status, often leave women with little confidence to run for the seats reserved for women, let alone the open competitive seats. Women candidates must often seek spousal consent because they are entering a sphere that has been traditionally denied to women. Their new duties could affect a woman's traditional duties as caretaker of the home. Neither the Constitution nor the Local Governments Act of 1997 addresses these issues.

Third, the absence of a minimum educational requirement for the election of local government councilors, while potentially expanding the range of women who can run for these positions, brings into question the women councilors' ability to handle their new and complex responsibilities. The presence of a minimum educational requirement was highly controversial during the debate of the Local Government Act, 1997. Given that the illiteracy level for Ugandan women is quite high at 55.1 percent, compared with men's at 36.5 percent (MGCD 1995), many women's NGOs argued that a minimum educational level for the local government councilors would preclude many capable women from assuming these positions. Although this argument has some merit, given the nature of powers devolved to local government, the implications of having councilors without much formal education should be considered. Even though the districts, cities, and towns will have technocrats to implement the council's decisions, ultimately the council must have the ability to understand and formulate complex economic, social, and political policies. A minimum level of education in women councilors might limit their ability to affect the policymaking process.

Fourth, experience has also shown that it is not enough just to have women in local councils. The women elected must be sensitive to the needs of women, particularly the need to challenge some of the traditional values, practices, and roles that undermine the status and rights of women. The women councilors must also know how to positively affect the decisionmaking process with respect to gender and how to integrate gender issues into development plans. This, however, will be largely determined by the amount of gender training they and the other male councilors get. An analysis of the content of the Secretariat's training program found that insufficient attention was given to gender issues. The participants were not equipped with the gender analysis skills needed to identify gender inequalities, nor were they trained to internalize gender concepts. Without this training, it would

be very difficult for both women and men councilors to mainstream gender into their development policies and programs because policy and planning with an understanding of gender and its role in

development do not come naturally to people, whether women or men (Beall 1996).⁵

In the analysis of the Secretariat's training program, it was also found that women's participation in the sessions was low: only 11 percent were women compared with 89 percent men (Birungi 1996). The limited number of female participants can be attributed to the low number of women in the training target group. For the most part the training has targeted council chairpersons and vice chairpersons, positions that few women hold. The training has also targeted the local government technocrats such as accountants and administrators, again, positions that few women hold. Unless an alternative means of targeting local government women officials and employees is devised, women will continue to be underrepresented in the training program. Ultimately, in the short term, the absence of women in the target group for training can be overcome by including substantive gender analysis in the training program for the male participants.

Finally, the initiation of the decentralization process and its consequent training before Local Council elections also raises the issue of the capacity of new women councilors to effectively participate in the decisionmaking process. While the Decentralization Secretariat states that it plans to continue with training after elections for new councilors, it readily concedes that lack of funding might hamper its ability to actually provide this training. The Secretariat also concedes that even if it provided the training, gender would not be a component of the strictly technical training sessions.

The decentralization policy, as it stands, will not automatically guarantee the strengthening of women's ability to participate in the decisionmaking process at the local government level. In fact, the Decentralization Secretariat recognized that if the role of women is to be strengthened in a decentralized framework, the following elements are needed:

Integration of gender issues into national, district, and sectoral development plans.

Creation of structures and processes to ensure that gender concerns are addressed in future activities.

Commitment to ensure that sectoral development programs address the multiple roles of women and put in place measures to reduce women's workload.

Development of gender awareness among local politicians and staff, in order to enable them to address gender issues.

The statement by the Decentralization Secretariat reflects an appreciation of the necessary inputs to increasing women's participation and

a recognition that more needs to be done if gender is to be fully incorporated in the decentralization process.

Access to Property and Other Resources

The lack of effective access to and control over important resources by the majority of women in Uganda is a major obstacle to women's ability to benefit from the decentralized structures. Land and other economic resources, including credit, information, and skills are crucial to providing options to women by reducing undue dependence on marital partners and male relatives. Only 8 percent of Ugandan women have leaseholds, and only 7 percent own land (MGCD 1995). Instead, they are given access to land through their husbands. If a woman

becomes divorced or widowed, she must return to her father's home area and become dependent on a male relative for use rights to the land. Women rarely inherit land (Keller 1996). Furthermore, although they constitute 70 to 80 percent of the agricultural labor force and account for over 80 percent of food production, women lack meaningful control over productive resources and the crops they produce (Keller 1996).

Property is a status symbol underscoring women's low social and economic status. Access to and control of property, credit, and cash play a key role in political participation. Running for elective office is an expensive venture. Many worthy women are discouraged by their poverty, while others are forced to rely on propertied sponsors who may compromise their principles. Conversely, poor women and men may be easily influenced to vote for an unworthy candidate who gives them small items like soap and salt. Women with no land of their own may find it difficult to benefit from credit schemes and other projects at the local government level. A survey of women's participation in the Uganda Commercial Bank Rural Farmers' Scheme (1989) revealed that only 31.7 percent of the beneficiaries were women. If they do obtain credit, compliance with the project terms may solely depend on the benevolence of the marital partner or male relative who controls the land.

Without access to resources such as land, credit, training, extension services, and equal employment opportunities, it becomes virtually impossible for women to achieve empowerment and self-reliance. These resources, however, have been largely kept from women because of cultural attitudes and existing laws regarding women's subordinate status. Unless local government councilors are trained to recognize and remedy the effects of the cultural attitudes with respect to women and resources, decentralization will have little, if any, effect on women's

access to property and other resources. This is particularly important given that two of the functions over which the local government has responsibility are land administration and land surveying.

Delivering Services: What Programs Get Prioritized?

Because of their reproductive role in society, women more than ever need quality service delivery. According to the Uganda Human Development Report (UNDP 1997), 62 percent of the Ugandan population has no access to safe water, and 51 percent has no access to health services. As caretakers of the children, women are most affected by the absence of health centers, maternity and child welfare services, primary health care services, health education, and water supplies. Access to education is also critical for girls to break the cycle of poverty and the social constraints society imposes on them because of their gender. Given that service delivery will be more effective and responsive if the providers are closer to and more in touch with the communities they serve, local governments have been entrusted with the responsibility of delivering services within their communities. Thus, they have the potential to play a critical role in the development and empowerment of women and girls.

This potential, however, will not be realized unless service delivery is adequately funded.⁶ The central government's requirement that local governments give preferential treatment to expenditures in National Priority Programme Areas, which include primary education, roads maintenance, primary health care, agricultural extension, and rural water supply, partly addresses this problem. However, if there are shortfalls in revenue collection, even preferential spending on service areas might not be sufficient to prevent disruptions in service. Under these circumstances, because of their dependence on the services, women would be hit the hardest.

The provision of education provides a case in point. Women's education level is much lower than men's. In response to Uganda's high level of illiteracy and its consequent negative impact on national development, in 1997 the government instituted a policy of free education called Universal Primary Education. Pursuant to the policy, four children in each family receive free primary education, with at least two of the children being girls. It was hoped that the policy would not only increase the percentage of Ugandan children attending primary schools but also the number of girls attending them. A recent census, however, reveals that many children who enrolled soon

after the launching of the policy are dropping out of school because parents are finding that, although they do not have to pay school fees, the school administration has been levy-

ing some charges to defray the costs of running the school. The inadequacy of funding to the schools has thus been shifted back to the parents, who in many instances cannot afford the added cost. Parents still have to buy uniforms, books, and other school requirements. Research has shown that when a family does not have enough money for schooling for all their children, sons are given preference over daughters.⁷

The provision and adequate funding of service delivery will therefore be critical to the realization of women's empowerment under the decentralized system of governance. Given the enormous time spent working on activities associated with their reproductive role, women have less time to spend in the productive sector, which undermines poverty eradication efforts. The efficient delivery of quality service could potentially address this problem, and women having more time to spend on productive activities. For example, up to two-thirds of families have to walk over 1.5 km to collect safe water, a task traditionally assigned to women. During the dry season, women often have to walk even longer distances (MGCD 1995). If there were more and closer sources of safe water, excessive time spent collecting water could be converted to engaging in other productive activities.

Advocacy Strategies.

It has once been said that: decentralization works best when it encounters a lively civil society (that is, organized interests with some autonomy from the state). If social groups are aware, assertive and well organized for political purposes, they are likely to keep elected representatives well informed of their problems and hard pressed for responses and for effective, honest governance (Beall 1996). If the success of the decentralization policy, that is, its ability to empower local communities to take responsibility for the development of all sections of their societies, is dependent on the presence of a well-organized civil society, then much work needs to be done.

During the last decade, Uganda has witnessed a burgeoning of NGOs and community-based organizations working to promote and advocate for the rights of women. In 1995 the National Association of Women's Organizations in Uganda had on its register 50 NGOs and over 1,000 community-based organizations working with women, and the numbers continue to grow. In the rural areas, the community-based organizations have focused on working with women on small development projects. In the urban areas, the NGOs have worked on skills training, provision of credit, awareness building, provision of legal services, and lobbying, among others. While the efforts of these organizations have had an impact on women in the communities they serve,

their current capacity to lobby local government on the issues of concern to women is not clear.

For instance, many of the urban NGOs that work on lobbying and advocacy have focused their attention on national institutions such as Parliament, the Law Reform Commission, and other policymaking organs of government. Given that important decisions affecting the lives of women will now be made at the local level, these NGOs need to rethink whether they have the capacity to advocate at this level across the country. The community-based organizations working in the rural areas have to also redefine their mandate to include advocacy and to evaluate whether they currently have the skills to effectively lobby and advocate for gender at the local government level.

Although networks have formed between the NGOs working on gender issues, these networks have primarily been limited to NGOs working in urban areas. For the most part, the urban women's NGOs have not forged strong links with their sister community-based organizations working in the rural areas. These networks could address such issues as the most appropriate relationship between urban-based NGOs and community-based organizations, and could include links with the women's councils established by the Women's Council Statute in

1993. For instance, NGOs might impart necessary advocacy skills to community-based organizations to advocate and lobby for the concerns of women. Furthermore, the groups could explore the absence of skills in gender analysis and integration in program development.

Ultimately, those seeking gender equality in this country cannot expect that either the decentralization policy alone or the women councilors single-handedly will ensure that local government policies and actions promote gender-sensitive human development. While central government and local governments have a role to play, civil society must exert pressure by pointing and calling attention to gender issues. Society is also a powerful tool for the mobilization of women to pressure local government to be more responsive to their needs. This mobilization will, however, take serious rethinking on the part of current women's organizations on how to respond to this new devolution of power. Unless this happens, the potential of the decentralization policy to be a powerful catalyst in women's empowerment could well be lost.

The Impact of the Legal System on Women in a Decentralized Uganda

Of late, there has been a growing recognition of the role of the law in legitimizing women's social and economic subordination in the devel-

opment process. The law has been used as an instrument of control by inhibiting women's access to economic and social resources, while supporting attitudes and behaviors that maintain oppressive social structures and relations (Schuler 1986). It has also been used to regulate access to political power, that is, exercise control over the allocation of administration of resources. The legal system's denial to women's access to political power and economic and social resources occurs when the law is skewed in content; applied in a selective or arbitrary manner, or used to reinforce discriminatory attitudes or behaviors (Schuler 1986).

The law has also served to reinforce women's oppression by affirming the formal dichotomy between the private and public spheres. Laws affecting the public sphere have been modernized and reformed with more enlightened values, while the family and personal laws, which perpetuate the oppression of women have been left untouched. In many countries this has resulted in legally sanctioned subordination of women (Schuler 1986).

In recognizing the role of the law in either ensuring or denying access to resources, women activists are beginning to see the law not only as an obstacle to gender equality, but also as a powerful instrument of social transformation to promote nondiscrimination. In using the law as a liberative function at the service of women, activists have had to address the issue of the discriminatory content of many laws, prejudicial application of the laws, and ignorance on the part of women about their legal status and rights. Efforts have been directed at reforming laws, educating women about their rights, and providing representation to secure legal redress. Additionally, efforts have been directed at harnessing political power by women since the character of the law is largely dependent on the political context in which it must operate (Schuler 1986).

The Legal System, Gender, and Decentralization in Uganda

As previously demonstrated, the decentralization policy does not automatically translate into the empowerment of women at the grassroots level. Cultural, social, and economic constraints exist that prevent women from participating in and benefiting from the policy. The legal system could either facilitate women to overcome these challenges, or it could reinforce and thereby legitimize the challenges faced. An analysis of the relevant law reveals that, for the most part, the law plays the latter role. To provide a focused and contextual understanding of the role of the law with respect to gender within the decentralization frame-work, this chapter examines the role of the legal system in addressing

the obstacles identified in the above section. An attempt is made to analyze the current situation and the potential for a different role.

The applicable laws. The 1995 Constitution of Uganda is silent on sources of law in Uganda. Nevertheless, it is clear that in addition to legislation, customary law and certain religious laws are part of the country's law, either generally or for specific groups of people. Article 33(6) of the constitution does prohibit laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status. Although this is a step in the right direction, it leaves to the deciding officer (administrator, judge, or magistrate) to determine whether a particular custom, tradition, or practice is offensive. The lack of a clear definition of what parts of customs and traditional practices are outlawed creates uncertainty and continues generally to undermine the status of women, while reinforcing popular belief in their subordinate position. Even when progressive laws are enacted, they are largely unknown to the populace. The constitution only promotes public awareness about constitutional law, without extending its obligations to other laws. The latter are the responsibility of the Ministry of Justice, the Judicial Service Commission, and the Human Rights Commission. The extent to which these institutions have fulfilled their mandate is not clear.

As a consequence, a perceived low status for women is entrenched, and it is unclear what aspects of customs and traditions continue to be part of the law of the land. These circumstances fail to create a clear and unequivocal legal framework to guide local governments and judicial structures in matters interfacing women's emancipation, culture, and the law.

The law and access to information regarding the public sphere. As stated previously, the law has formalized the dichotomy between the public and private spheres. The law, however, has also included women in the public sphere through the affirmative action and nondiscrimination clauses set forth in constitution and other legislation. Unfortunately, the law does nothing to ensure that women know and are aware of these beneficial provisions. Article 4 of the constitution requires the state to promote public awareness of the constitution by disseminating it as widely as possible. Similarly, the law requires that new statutes, bylaws, ordinances, and so on be published in a gazette, but it does not require that they be published or disseminated in a manner that targets *all* sections of society.

Similarly, no provision exists to ensure that the public is educated and sensitized about the spirit and intent of the law. The need for this

type of education is particularly important when the law is introducing concepts and values that run counter to the culture and values in the community in which the law must be implemented. The treatment of the Local Council Women Secretaries provides a case in point. Given that the Local Councils were never sensitized on how the reserved seat for women was to serve as a means of empowerment for women, they continued to treat the Woman Secretary with the same discrimination and prejudice that the law was intended to eliminate.

A two-pronged approach is thus needed to address women's access to information relating to the public sphere. The first would ensure that *all* sections of society are made aware of the law. This would require a concerted effort to reach out to women who have been traditionally denied access to this kind of information. The second would attempt to sensitize the public on the values behind the law. This would entail educating the relevant authorities on how to implement or interpret the law in a manner that affirms the intent of the law.

The legal system and political participation. Until the present government came to power, the law on political participation fell into the illusory category of gender-neutral laws. Under the previous constitution all Ugandans of mature age had the right to run for elective office and to vote for a candidate of their choice. Like other so-called gender-neutral laws, the constitution ignored the existing gender relations and imbalances in accessing resources and information. It ignored the traditional power and practice of a man who, as head of a household,

would require all members of his household to vote for a candidate of his choice. It ignored the traditional views that politics was for men. The consequences were not surprising. Women were missing in both parliament and local government. Because the law applied to essentially unequal genders, affected differently by circumstances, it had a discriminatory effect. The National Resistance Movement government, using the well-known concept of affirmative action and through law, introduced reserved seats for women at the different levels of elective offices. At the local government level, each local council had 1 seat (out of 9) reserved for a woman, who acted as Secretary for Women's Affairs on the council. At the national level, the National Resistance Council (Parliament) had 39 seats reserved for women, 1 for each district. The system of reserved seats has now been entrenched in the 1995 Constitution of the Republic of Uganda that, as previously described, provides that one-third of the membership to local government councils shall be reserved for women—Art. 180 (2) (b).

Thus, one can clearly see the contrast in the role played by the law—both before and after 1986. By failing to acknowledge and deal with

power imbalances between men and women, the law before 1986 confirmed and reinforced the inequality in political participation between men and women. Subsequent to that, the law has been used to provide a springboard for more women to break into politics. It is playing a facilitative role by creating space, by allowing women politicians to act as peers to others—young and old—who might wish to join politics, and by gradually breaking down the misconception that politics is for men alone.

Although the law attempts to rectify the absence of women in the decisionmaking process at the local government level, it does not address some of the other constraints faced by women wanting to participate in politics, either as voters or as candidates. Gender-sensitive civic and voter education is not one of the functions of local governments listed in the Second Schedule of the Local Government Act of 1997. Although one might argue that it can fall within the general powers of the councils (Para. 16 of Part 2 of Second Schedule), the law would be failing in its facilitative role were it to assume that councils would see the need for such education or that they would deal with it in a gender-sensitive manner. Without voters who are critically aware of gender perspectives of development, the women in the councils may fail in translating their numerical presence into a pressure group that effectively advocates and articulates gender needs and concerns. Similarly, if the law fails to make the integration of gender a central part of the responsibilities of the Decentralization Secretariat, it once again fails in its facilitative role. The consequences are all too clear as already mentioned. Training programs do not adequately address gender issues in planning or implementation. Even the aspects of training being covered are not reaching women.

It can also be argued that the law does not go far enough in its affirmative action given that the one-third requirement is limited to local government councils. The local government councils are not the only critical centers of decisionmaking at the district level. The other district entities such as the District Tender Boards, the District Service Commission, and the Local Governments Accounts Committee are equally important centers of power within the district because they determine the allocation of resources. These are, however, organs in which women have had little access—although the presence of women could influence how these resources are distributed to women. For example, a sensitized woman on the District Tender Board might ensure that some of the tenders are awarded nondiscriminatorily, in which case women-owned businesses might have a competitive chance of winning the tenders. The same argument could be made for the District Service Commission, which is responsible for hiring all District staff.

Having women making at least one-third of the hiring decisions could ensure that jobs are awarded nondiscriminatorily.

The legal system and access to property and other resources. One of the difficulties women face in benefiting from the decentralization policy's aim of eradicating poverty is their failure to access property and resources. Without fair and nondiscriminatory access to property, particularly land, it is very difficult for women to break the cycle of poverty even when power is devolved to the grassroots level. Resources such as land, credit, training and extension services, and equal employment opportunities have been largely kept from women because of cultural attitudes regarding their subordinate status. The result has been that in Uganda, although women constitute 51 percent of the population they own only about 7 percent of the land (Tamale 1993).

Unfortunately, the law has not gone far enough to check these discriminatory cultural practices regarding women's access to property and other resources. The result has been legally sanctioned discrimination. The law governing ownership and inheritance of property in Uganda is illustrative of the discriminatory effect of the law when it fails to recognize prejudicial social realities and practices. The content of the law purports to be nondiscriminatory. The Registration Titles Act (Cap. 205, Laws of Uganda, 1964), for instance, provides that any Ugandan citizen is free to purchase and own land. The Married Women's Property Act of 1882 also gives women full contractual capacity and thus freedom to purchase and own property. The law, however, presupposes that the buyer either has money or is credit-worthy enough to obtain a loan from a financial institution (Butegwa 1991). This totally ignores the social reality in Uganda.

Many women, particularly those in rural areas do not have sufficient money to buy land. While women constitute 80 percent of agricultural labor force, they are most active in producing for household consumption (MGCD 1995). Where they produce for the cash economy, marketing is a man's role, with the result that the man retains control over the money. Women are rarely consulted on how the household income should be spent. In many households this income is not spent on the family and the children's needs, and women are forced to improvise.

Without sufficient cash, the only alternative when purchasing land is to secure a loan from a financial institution. However, without land or other property to serve as collateral this is not a viable solution for most women. Even when collateral is not needed to secure the loan, negative cultural attitudes can work against women. The case of the Rural Farmers Credit Scheme managed by the Uganda Commercial Bank some years back is illustrative. The program was established by

the government as a means to substantially increase production of certain food crops. Women, in particular, were targeted because they traditionally grow food crops. Thus the policy provided that rather than requiring land as collateral, the good character of a farmer—affirmed by the local village officials—was sufficient security. Unfortunately for the women farmers, the village officials insisted on having the application either in the joint names of husband and wife or on the husband's giving written consent for his wife to receive the loan. Since the credit scheme failed to provide the financial independence and autonomy it was supposed to, it was a disappointing program for many women (Butegwa 1991). This case shows that the law governing the acquisition of property, particularly land by purchase, fails to address and therefore perpetuates the social constraints women face in buying land.

The same can be said of the law governing the acquisition of land by inheritance. Before 1972 the inheritance of the property of an Ugandan was governed exclusively by the customary norms of the community from which the deceased hailed. These customary norms for the most part excluded women as heirs to property, especially to land and cattle. Since 1972, however, all testate (the deceased dies with a will) and intestate (the deceased dies without a will) successions are governed by the Succession (Amendment) Decree (No. 22 of 1972). In the case of intestate successions, the Estates or Missing Persons (Management) Decree (1972), the Administrator General's Act, and the Administration of Estates (small estates) (special provisions) Decree of 1972 are also applicable.

These laws have attempted to eradicate some of the customary practices that discriminated against women (Okumu Wengi 1994). The Succession Amendment Act, for instance, recognizes the rights of women to inherit,

entitles a widow to 15 percent of her deceased husband's property, and entitles her to stay in the marital house and to all adjoining land. It also gives her the opportunity to administer the estate (Okumu Wengi 1994). Daughters of the deceased have a right to share equally with their male siblings in the 75 percent of the estate reserved for the children of a deceased person, in case of intestacy. Section 6(1) of the Administrator General's Act expressly exempts a widow from the onerous necessity of applying for a letter of no objection from the Administrator General before she applies for a grant of letters of administration. Additionally, Section 12 of the Administrator General's Act makes it an offense to intermeddle in the property of a deceased person without the authority of Court or the Administrator General. This provision was enacted to protect the widow from her male in-laws' grabbing of the family's property soon after the death of the husband.

Although the content of these laws affirms the right of women to own property and protects their inheritance rights, the application of the laws remains unsatisfactory. For instance, the High Court has made the letter of no objection a mandatory requirement before a widow is granted Letters of Administration, contrary to the spirit of the Administrator General's Act (Okumu Wengi 1994). Additionally, it has been argued that the police have been reluctant to enforce the law against the relatives of a deceased person who grab property (Okumu Wengi 1994).

The low level of legal literacy among the Ugandan population has meant that the majority of people still dispose of a deceased person's estate according to their respective cultures, that is, in favor of male relatives and children. It has also meant that the majority of women do not exercise their inheritance rights. Local councils with judicial powers have tended to reinforce the cultural practice, even though by law they do not have jurisdiction in these matters. Even when women are aware of the succession laws, they might not make use of them because the economic and social costs of exercising their rights are very high.

Divorce or desertion are important life-cycle events in terms of property rights for women (Knowles 1991). The Divorce Act (Cap. 215, Laws of Uganda, 1964) thus has important implications for women with respect to their right to own property. While Article 31 of the 1995 Constitution provides for equal rights upon dissolution of a marriage, both are silent on the issue of the division of matrimonial property. This silence in the law has been interpreted by Courts in a manner that ignores the social realities and thus perpetuates women's failure to own property. The social reality ignored is that cultural attitudes give men precedence in ownership of property and thus the title to the matrimonial home and other properties is often in the man's name. The title being in the man's name, however, does not necessarily mean he is the sole contributor to the purchase and improvement of the property. Very often, women contribute to the family home, either in cash or in kind. Notwithstanding this contribution, unless a woman can produce evidence of what she contributed in the form of receipts and documents, the Courts will not grant her a portion of the matrimonial property. Since contributions are made at a time when divorce is not contemplated, the majority of women do not obtain or keep documentary evidence of the contribution. Even when divorce has not occurred, courts have denied wives the right to object to the sale or mortgage of marital homes unless they can demonstrate a registrable interest through a title deed or other such legal document.⁸

In addition to property, a whole range of important resources are not regulated by law. Information, extension services training, and skills

development are important resources that are often neglected. The law for instance is silent on how these resources are to be distributed to the public. These resources, however, determine the capacity of women to improve and to effectively tap into opportunities and resources (such as the entandikwa scheme). They are also crucial in facilitating the distribution of power between men and women, where such is determined by access to knowledge and skills. Existing local government legislation perhaps assumes that these resources will trickle down to women. Again, when the law wrongly assumes that there is no discrimination, it only perpetuates and legitimizes the discrimination. Thus, the failure to regulate the distribution of these vital resources has the effect

of affirming the existing discrimination.

The legal system has reached an impasse in addressing the discriminatory practices regarding women's access to resources. Unless these discriminatory practices are checked, the eradication of poverty sought by proponents of the decentralization policy will fail because the potential of 51 percent of the population remains unexploited. Women will continue to be trapped in the cycle of poverty by a stratification of society that denies them basic rights and keeps them in a position of dependency.

The legal system and prioritization of service delivery. The gender division of roles in Uganda has resulted in women being largely responsible for feeding families, caring for the young, the aged, and the sick, and for ensuring that families have water for drinking and other domestic purposes. Female children have also tended to be pulled out of schools either because of inadequate funds or because parents do not appreciate the need for girls to receive an education. The constitution and Local Governments Act devolve the power to provide these services, among other functions, to local governments. The Local Government Act of 1997 required local governments to give adequate budgetary allocations to the National Priority Programme Areas, which include primary education, primary health care, and rural water supply. However, it did not require that the design of programs and the planning and provision of these services take into account gender perspectives or involve women as a specific target group. Without such a requirement, services may be provided that do not adequately address women's needs.

In conclusion, the legal system in Uganda has been used to perpetuate the inferior social and economic position of women in society. This reinforcement of women's subordination has occurred through a combination of unjust statutes and an application of the law in a discriminatory manner toward women. Some of the laws are intrinsically

discriminatory; others, however, are discriminatory by their failure to address obvious discriminatory practices. Either way, both perpetuate and legitimize customs and practices that are biased against women.

Strategies for Making Decentralization Work for Gender-Sensitive Development in Uganda

The preceding discussion has demonstrated that by either being skewed in content, being applied in a selective or arbitrary manner, or being used to reinforce discriminatory attitudes or behaviors, the law has perpetuated the cultural and traditional biases against women. Although it is a given that the law cannot be a panacea for all of society's ills, the government in Uganda has not used the legal system enough to address the particular problems associated with gender inequity.

Although the decentralization policy heralds significant changes in the political and economic framework of governance in Uganda, the policy itself does little, if anything, to change gender relations in the communities in which the policy is implemented. Instead, these gender relations continue to be primarily governed by long-held cultural attitudes and traditions that subordinate and oppress women. The process of decentralization has the potential of empowering women through, among others, its goal of eradicating poverty and increasing the number of women in local government. This potential, however, cannot be realized unless the constraints to women's full self-reliance and participation are done away with. While the legal system can go a long way in removing these constraints, past experience has not shown it to play this liberative role. Instead, the law, by purporting to be nondiscriminatory and ignoring the social inequities, has perpetuated and even legitimized the cultural attitudes that create the constraints on women.

In exploring ways to transform the legal system from being an obstacle to gender equity into a powerful instrument for gender equity, there should be an understanding of the different components of a legal system. These include the structural component, which comprises the courts, administration, and law enforcement

agencies; the substantive component, which comprises the content of the law; and the cultural component, which comprises the shared attitudes and behaviors about the law (Schuler 1986). Since all these components play a role in either facilitating or obstructing gender equality before the law, they should all be addressed.

Strategies must be designed to address the problems and inadequacies in each component of the legal system. In order to address the

problems present in the substantive component of the legal system, that is, the discriminatory content of the laws, the law should be reformed through legislative initiatives and research. In order to deal with problems associated with the structural component of the legal system, such as the prohibitive cost of litigation for most women and the discriminatory attitudes held by those working in law enforcement and the court system, there should be advocacy through training, counseling, individual or group advocacy, and legal representation. In order to deal with the cultural component, that is, women's widespread ignorance about their rights and the legal system, there should be education through media campaigns, training of lawyers and paralegals, and the provision of legal education and legal literacy programs (Schuler 1986).

Strategies for the Different Players

For this chapter's purposes, rather than using the division of the legal system into content, structure, and culture, we focus on the remedial action required and the possible main actor(s). What will be needed is a holistic, multisectoral approach to addressing inequity within the context of gender. On the basis of the preceding discussions on the gender implications of decentralization and the role of the law in either promoting or preventing gender equality, the following strategies are recommended. In many instances the government has already committed itself to implementing most of the suggested actions in various forums, including ratified human rights conventions and the Platform for Action adopted at the Fourth World Conference on Women held in Beijing, China, in 1995.

Central government. By devolving powers to local governments, the central government does not absolve itself from the ultimate responsibility for gender-sensitive national development. It is deemed to retain residual powers and functions inherent to its very nature as a national government while routinely exercising supervisory functions over local governments. This is in fact anticipated by the Sixth Schedule to the Constitution, which provides that government is responsible for making national plans for the provision of services and for coordinating plans made by local governments. Within this framework, government can strengthen the capacity of the decentralization policy and structures to work for gender-sensitive development. These action strategies fall into three broad areas: legislative, monitoring, capacity building. Legislative strategies should:

reform or abolish all laws that undermine the status of women and discriminate against women;

strengthen the capacity of the Law Reform Commission to engage in wide-ranging consultations, particularly with women, before making definite proposals for legal reform;

promote and support efforts for legal education at community level;

initiate programs for training key personnel, including judges, magistrates, and local government officials in gender and its role in justice and development;

increase access to courts and administrator general in rural areas;

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build the capacity of local councils to resolve disputes in accordance with the law and the values of the constitution.

Monitoring strategies should:

monitor the implementation of all government policies at the local government level;

review systematically and regularly the extent to which women benefit from local government public expenditures;

provide guidance to local governments to adjust budgets to ensure equality of access to public sector expenditures, both for enhancing productive capacity and for meeting social needs;

review ordinances and bylaws passed by local governments for gender sensitivity in content and impact;

ensure that community development officers and assistants serve as a direct link between local government and the Ministry of Gender or other relevant ministries;

foster a symbiotic relationship between the Women Councils created under the Ministry of Gender and the women councilors in local government.

Capacity–building strategies should:

encourage links between financial institutions and NGOs and support innovative lending practices, including those that integrate credit with women's services and training and provide credit facilities to rural women;

provide training to local government in the development of conceptual and practical methodologies for incorporating gender perspectives into aspects of policymaking, program development, and implementation;

ensure that training is provided, after elections, for the new local government councilors;

encourage individual or groups of local governments to learn from the positive experience of others in the integration of gender in their program activities;

ensure adequate training of local government councilors with respect to their legislative functions.

A final strategy should create an enabling environment for development through the assurance of peace in all parts of the country.

Local governments. Local governments are in a unique position to spearhead gender–sensitive development in Uganda. Not only do they have extensive functions and powers, but they also have the financial and human resources to plan and implement programs that are responsive to the needs of men and women in their jurisdictions. These resources should be devolved not only to the district and cities but also to the lower local governments, that is, the sub–county, municipal, and town councils. The composition of the councils to be elected in the near future will greatly enhance the degree of participation of women and other interest groups in decisionmaking processes at the local government level. Given this background, local governments have to adopt a wide range of action strategies to facilitate the transformation of gender roles and relations for poverty eradication and development.

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These action strategies fall within four broad categories: gender-sensitive planning and implementation of development programs, financial arrangements, capacity building, and public education and involvement. Gender-sensitive planning and implementation strategies should:

conduct gender analyses of current and proposed programs to minimize adverse impacts of programs on women and their capacity to participate and benefit from the development process;

make local governments conscious of the specific needs of women as family caretakers, mothers, and producers and members of the community so as to make service delivery efficient and gender sensitive

ensure that women and men have equal access to resources and opportunities, particularly to credit, training and skills development, and extension services through the local government council's monitoring of the work of technocrats within their jurisdictions; and ensure that girls and boys have equal opportunities to benefit from local government sponsorship and Universal Primary Education;

integrate gender in all programs approved by or implemented by local authorities;

create a mechanism that allows for the input and participation of local communities, particularly women, in the planning of development programs and projects to serve such communities;

ensure the enactment of gender-sensitive ordinances and bylaws.

Financial arrangements strategies should:

allocate sufficient resources to education, quality health care, rural water supplies, and agricultural extension services in the spirit of

the constitution and local government legislation. These areas are crucial to eradicating poverty and enhancing women's capacity to participate in development;

create revolving funds for small-credit schemes that give priority to women (partly because of existing gender imbalances in accessing resources and partly because of a proven record that the rate of women who pay back credit funds is substantially higher than that of men) or encourage NGOs and community-based organizations to do so;

consider allocating a percentage of revenue to women specific development programs.

Capacity-building strategies should:

take seriously the need to build the capacity of officials and employees to spearhead gender-sensitive development in Uganda by prioritizing training and skills development in gender analysis, gender baseline surveys, and monitoring and evaluating impact of programs;

establish and maintain close relationships with the Ministry of Gender and Community Development and relevant NGOs to provide local governments with continued support in the form of expertise, information, and contacts;

maintain close relations with administrative units charged with communicating needs of the communities to local government.

Public education and participation strategies should:

take concrete steps—such as education, awareness campaigns and other mechanisms,—to tackle gender biases that undermine the status and rights of women and girls, thereby undermining development efforts. In particular local governments, working together with religious and traditional leaders, must develop programs to encourage families to send boys and girls to school and to eliminate all forms of violence against girls and women.

initiate and implement functional literacy programs specifically targeted at women;

remove all barriers to women's participation at the different levels of decentralized local government structures by initiating and sustaining civic education programs that urge women and men to vote and develop skills for demanding accountability of elected officials.

Donors. One of the assumptions of the decentralization policy was that donors would become interested in directly supporting individ-

ual local governments. It was hoped that with the donors working directly with district personnel and community representatives the costs of various projects would be reduced and local capacity in project management, monitoring, and evaluation would be increased. Donors will thus have to develop the capacity to deal with both local governments, which use their funds, and central government ministries, which are responsible for general oversight and policy direction (Decentralization Secretariat 1994). In order to avoid regional disparities that might arise from some districts' being more accessible and cooperative than others, it will at some point be necessary to create a coordinating mechanism. Ultimately, however, donors play an important role in ensuring that the decentralization process empowers women at the grassroots level by supporting local government initiatives, NGOs and community-based organizations, and the central government in the following areas:

Local government initiatives in capacity building, particularly with respect to gender training;

Local government projects aimed at increasing women's access to resources such as land, credit, extension services, and information;

Local government projects designed to improve service delivery;

Ways of making gender integration a prerequisite for support of all local government programs.

Increased funding for NGO and community-based projects designed to promote sustainable and productive entrepreneurial activities for income generation among disadvantaged women and women living in poverty;

Capacity building of NGOs and community-based organizations to effectively advocate and lobby local governments;

Capacity of community-based organizations to monitor local government's integration of gender in development plans and policies;

Funding NGOs to conduct ongoing civic education.

Capacity of the central government to implement the strategies previously mentioned.

NGOs and community-based organizations. If decentralization is to benefit local communities and serve as an instrument of poverty eradication, there must be a lively society that is capable of articulating the views of its

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interest groups. The presence of effective NGOs will be particularly critical to the collecting and articulating of women's views and concerns at the grassroots levels. If these organizations are to play this important role, however, the following strategies are suggested in the areas of legal reform, education, and awareness; capacity building; and monitoring, reporting, and advocacy.

Facilitate legal literacy education programs for local government officials and employees and for communities, highlighting women's legal status and rights.

Build the capacities of community-based organizations and women in general to participate in and sustain legal literacy efforts within their communities.

Demystify the legal system through the use of appropriate methods of adult education during legal education programs.

Acknowledge and respect alternative methods of dispute settlement that are more accessible to the majority of women while exploring ways of strengthening these methods and equipping key players with legal knowledge to make just decisions.

Conduct research on the impact of discriminatory laws, which can be used as support for law reform.

Monitor application and enforcement of laws affecting women's ability to participate in the decisionmaking process.

Work with local committees with judicial powers to ensure that their decisions are in accordance with the law and do not undermine the status of women.

Increase availability of legal representation for women.

Strengthen their own capacity for effective advocacy at the local government level.

Support the growth and capacity of community-based organizations, which can be used as a mechanism to collect and articulate women's concerns at the grassroots level.

Establish networks between rural and urban organizations.

Establish ties with Women and Youth Councils and strengthen their capacity to develop into viable vehicles for advocacy on women's issues.

Monitor local government expenditures and the extent to which they benefit women. The monitoring function should extend to assessing the impact of local government initiatives on women.

Provide local government with comprehensive reports on the status of women and gender concerns within the communities in which the respective NGOs work.

Provide gender-sensitive civic education in preparation for the upcoming elections and make it a sustainable activity at local level. This will enhance the capacity of women to demand accountability from their elected leaders and to pressure local governments for quality services.

Lobby local governments to institute gender-sensitive development policies and plans.

A Plan of Action based on the preceding recommended strategies has been devised to promote gender equality within a decentralized Uganda.

Notes

This paper was prepared by Ms. Florence Butegwa, under the guidance of the Ministry of Gender and Community Development.

1. The specific objectives of the National Gender Policy are to provide policymakers and other key actors in the development field with reference guidelines for identifying and addressing gender concerns when taking development policy decisions; to identify and establish an institutional framework with the mandate to initiate, coordinate, implement, monitor and evaluate national gender responsive development plans; to redress imbalances which arise from existing gender inequalities; to ensure the participation of both women and men in all stages of the development process; to promote equal access to and control over economically significant resources and benefits; and (f) to promote recognition and value of women's roles and contributions as agents of change and beneficiaries of the development process.

2. Section 4 of the 1997 statute provides that local governments in a rural area shall be the District Council and the Sub-County Councils, and in a city the City Council and the City Division Councils. In a Municipality the local government shall be the Municipal Council and the Municipal Division Councils and in a Town the Town Council and the Town Division Councils.

3. The judicial powers granted to the village and parish committees to preside over these cases is not conferred by the Local Government Act of 1997 but by the Resistance Committees (Judicial Powers) Statute of 1988. Pursuant to this statute, a case is first brought to the LCI. If the litigant is unhappy with the decision of the LCI, he or she can appeal to the LCII and then to the LCIII. After that, any subsequent appeal would go the Chief Magistrate's court.

4. It has been argued that the dependence of a district's development and service delivery on the revenue raised within the district could lead to differential development. This is because areas whose revenue-base has been eroded by armed conflict or natural disasters might be unable to raise sufficient resources for development and service delivery in their area. In order to address this concern, section 84 of the Local Government Act of 1997, provides that the government shall pay equalization grants to local governments in the least developed districts based on the degree to which the district is lagging behind the natural average standard for a particular service. While, in theory, this could prevent the occurrence of differential development, the reality is that the government, through the Ministry of Planning, is only in the process of establishing national service delivery standards, by which least developed districts can be easily identified. If the equalization grants are to effectively serve the purpose for which they were created, there is, thus, an urgent need to complete the establishment of national service delivery standards, monitor districts carefully to determine whether they are meeting these standards, and quickly identify national disaster zones.

5. It should be noted, however, that the Ministry of Gender and Community Development (MGCD) has been conducting some gender training for local government employees. The training is being conducted as part of the MGCD's training programmes and not as part of the Decentralization Secretariat's training programme. Thus, while the MGCD should be lauded for its attempts to address the absence of gender training at the local government level, its separation from the Secretariat's training programme might perpetuate the conceptualisation

of gender in isolation from other development

6. It has been argued that increased spending on social services by governments with limited resources might preclude sufficient investment in programs that generate revenue. This in turn, could hurt the government's ability to generate sufficient resources for additional spending on social services. But rather than viewing these two kinds of government spending in contradiction with each other, the two should be looked at *interdependently* of each other. Sound policy dictates that government expenditure is spent on both. Accordingly, the government needs to adopt an approach to spending on these sectors in a manner that recognizes this interdependence and balances the needs of each sector.

7. Experience has also shown that the preference to educate boys increases at the higher levels of education, particularly at secondary school and university level. For example, 1990 statistics on the education of girls in Uganda demonstrate that the proportion of girls in schools declined from 46 percent in primary one to 38 percent in primary seven (Tamale 1993). In an effort to increase the number of female university graduates, in 1991, the National Resistance Movement government accorded preferential treatment to all female applicants to the university by awarding them a gratuitous 1.5 points to their Higher School Leaving Examination Scores.

8. See, for example, *Edward Mulindwa v. Sarah Kalanda*, Miscellaneous Application No. 763 of 1996 (Justice C.K. Byamugisha)(19/02/97) in which the court found that a wife could not lodge a caveat to prevent the sale of the matrimonial home, which she contributed to, because she was not the registered proprietor of the property.

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6— Eritrea.

We in Eritrea are indeed eager to see gender and law issues find their rightful place in the World Bank agenda. Eritrea's commitment to transforming gender relations, and in particular to addressing discriminatory laws and customs, predates its liberation and formal independence.

Before the commencement of our armed struggle for independence, most Eritrean women were relegated to domestic responsibilities. In those days the social, economic, and political affairs of our society did not allow women to participate in the decisionmaking process of their own families, let alone of their communities and the nation at large. That is, by tradition, Eritrean women did not have the right to vote or be elected in village council of elders, and were economically marginalized because of lack of access to productive assets.

In conducting the struggle for independence, however, the Eritrean Peoples' Liberation Front consciously created a conducive atmosphere for women to participate actively in the socioeconomic and political matters of our nation. This led to the increased participation of women as full partners in the armed struggle for independence, which, coupled with the crucial role that women played in society, helped bring about positive changes in the status of Eritrean women and enhanced their position and role in the transformation of our society.

In its first congress in 1977, the Eritrean Peoples' Liberation Front enshrined the principles of women's rights in its National Democratic Programme. Immediately after that, it intensified its advocacy for the protection of women's rights, primarily through educational campaigns aimed at changing the traditional notions and practices of women's role in society. In addition, the Eritrean Peoples' Liberation Front enacted laws to prohibit discriminatory and unjust practices and traditions and to promote women's advancement and participation. These new laws ensure women's rights to ownership of land, equal pay for equal work, equal participation in the armed struggle, equal rights in the family, and full participation in village assemblies and councils.

Eritrea was totally liberated in 1991, and officially became an independent nation state in May 1993. From the first day of independence,

the Government of Eritrea started to formulate policies and enact laws aimed at empowering women socially, economically, and politically. In the wake of the total liberation of Eritrea, the then Provisional Government of Eritrea transitionally adopted the laws of Ethiopia with some modifications. Many of the key modifications in the civil code, the penal code, the labor code, and other laws were intended to eliminate discrimination against women.

Postindependence Legislation Against Gender Discrimination

The following are examples of basic laws enacted after 1991 to address issues related to gender discrimination.

Under the Civil Code, women can enter marriage freely, and on the same terms as men; brideprice and dowry are prohibited by law; abduction for marriage is illegal; husband and wife have equal rights as heads of the family; and for a marriage to be legal the free consent of the parties to the marriage is required, with no requirement of parental consent.

Under the Penal Code, capital punishment sentences for pregnant women or women with children under three years of age have been commuted to life imprisonment sentences. Although abortion is a punishable offense, it is permitted in cases where a physician certifies that the woman would otherwise suffer grave and permanent damage due to physical or mental stress, or when the pregnancy is the result of incest or rape. Presently, rape is a serious offense punishable with up to 15 years of imprisonment.

In terms of ownership right and inheritance, traditional land tenure systems in Eritrea generally discriminated against women. Most localities denied women the right to own or inherit land. Under the Land Proclamation of 1994, the state now owns all land, and every citizen who is above the age of 18 years is entitled to use land for housing or farming purposes. This means that the prevailing law recognizes equal access to land for both men and women. The proclamation also entitles women to obtain land for housing in their village of origin, irrespective of their marital status. A woman has also the right to obtain farm land in her village of origin, irrespective of her marital status.

Constraints on Women's Full Equality

Obviously, empowering laws and affirmative action cannot by themselves attain our policy objectives of gender equality. In Eritrea, family,

cultural and social pressures, as well as economic constraints, loom large as barriers to women's full equality. The following examples demonstrate my point:

Various domestic chores and responsibilities leave women little time to actively participate in economic, social, and political activities. Women have less access to education and health resources than men. Heavy domestic workloads, far-away educational and health facilities, and early marriages are some of the major factors that contribute to women's low educational and health status. Stereotypical cultural beliefs about a woman's place in society and the family hinder women from venturing into what is traditionally regarded as male territory.

Outlook for the Future

As enshrined in the newly ratified constitution, the Eritrean Government is committed to ensuring equal opportunities for women in the nation's economic, social, and political life and to work toward greater gender equality.

To this end, the government is implementing various programs that focus on enhancing women's participation at the national, regional, and community levels through training and improved access to public services and productive assets.

In Eritrea, women are among the most economically disadvantaged. A few have succeeded in business despite the odds against them. Lack of capital and technical and management skills are the major obstacles that women in business face. Often, women do not have access to credit because they cannot meet banks' security requirements. The government is trying to respond to this problem in part by establishing a rural credit system that serves the needs of women.

The government assigns priority to increasing women's educational level. We are expanding the number of primary and secondary schools to improve access to education nationwide. The government, in partnership with women's associations, is encouraging parents to send their daughters to school. We also recognize a need to foster gender awareness in our educational institutions.

Although as mentioned earlier, Eritrean society has come a long way in its transformation process, we need to do a great deal more before we attain our goals. Eritrean women still find themselves at the bottom of economic and social structures. I am encouraged by the changes in the law, policies, and the programs that Eritrea is implementing to promote gender equality. But I think that our goals require us to develop a com-

prehensive national program that aims at broadening the participation of women at all levels.

Note

Eritrea did not present an issue paper. This chapter reflects the statement for Eritrea that Minister of Justice H. E. Fawzia Hashim presented at the Conference on Gender and Law: Eastern Africa Speaks, October 1997, Addis Ababa, Ethiopia.

7—

Gender and Islamic Law: Some General Observations

The subject of women's status, their legal position, and their rights and obligations under Islamic law has attracted over the years heated debates and has stirred multiple controversies. These debates manifested in the past, and continue to manifest not infrequently, deep-rooted misunderstanding, confusion, and distortions shared by many Muslims and non-Muslim critics alike.

I wish to share with you only some general observations on a number of preliminary, but basic, issues pertaining to the subject, which I believe need clarification.

A Definition of Islamic Law

When we speak of Islamic law or Sharia, we must understand the precise meaning of the term. Islamic Law or Sharia refers to the total sum of legal rules and injunctions embodied in the Koran, the Holy Book of Islam, and in the Sunnah, or the Traditions of the Prophet of Islam, as well as other legal rules derived from sources complementary to these two principal sources. These include consensus of jurists, analogy, the general interest of the public, juristic preference, and custom and usage.

This mere enumeration makes it abundantly clear that not every rule of Islamic law is of divine origin nor is it necessarily directly or indirectly derived from a divine source. Many rules of Islamic law were developed by jurists in their quest to respond to the changing needs of the time and place. And in developing and formulating such rules jurists were, in many instances, influenced by their respective local environments, by prevailing custom and usage, and by considerations of public interest under the attending conditions.

Take for example a basic issue of the law of marriage, that is, the right of an adult and mentally sound woman to contract marriage. This issue was subject to divergent opinions between the two leading centers of jurisprudence that emerged in the eighth century (second Muslim Century): the school of Medina (in Hijaz, in the Arabian Peninsula)—which later became the Maliki School of jurisprudence, and the School of Kufa in Iraq—which later became the Hanafi School of jurisprudence.

In Medina, society remained strongly attached to the traditional concepts of Arabian tribal law under which male members of the family enjoyed the prerogative of arranging marriage alliances. No woman therefore could contract a marriage on her own behalf but had to be given by her guardian. In Kufa, on the other hand—a town in Iraq that started as a military encampment—diverse ethnic groups existed in a predominantly Persian environment, a cosmopolitan atmosphere, to which the standards of a closely knit tribal society were alien.¹ Women enjoyed a better position and, in particular, had the right to conclude their own marriage contracts without the intervention of their guardians.

The point here is that neither the Medina rule nor the Kufa rule has a divine origin. Nor can any claim to their immutability be made. They were merely a product of the time and place, and as such they can be modified. Legal reformers in some Muslim countries demonstrated healthy awareness of this fact, especially in the area of family law, which had always been the stronghold of the Sharia, where commendable reforms were introduced in the last four decades or so, reflecting the views and approaches of leading Muslim Reformists, voiced as far back as the late nineteenth century by reformists like Jamal ad-Din al-Afghani, Muhammad Abduh, and Rashid Rida, and their disciples.

The primary task of modern jurisprudence, as one learned western authority noted, therefore, [is] to ascertain the precise limits of the original core of the divine revelation. Once the limits have been ascertained, it is axiomatic that these precepts of the divine revelation must form the fundamental and invariable basis of any system of law which purports to be a manifestation of the will of God.²

Generally speaking, the Koranic precepts are broad enough to support modern legal structures capable of varying interpretations to meet the particular needs of the time and place.

The Islamic Approach to the Position of Women.

All issues pertaining to women and their status in an Islamic framework are not conceived or treated on the basis of an assumption of conflict between men and women and of infringements against women's rights. They are to be conceived from the perspective of the family, its internal relationships and inner dynamics, and the respective roles of its members. This reveals two fundamental features of the Islamic approach: first, the early and clear emphasis on the family as a basic social and educational unit, as the repository of love, affection, and compassion, and as the primary and continuous field of experience and interaction with human relationships; second, the mutual relationships

between women and men in the framework of the family are relationships of cooperation, complementarity, and integration and not of conflict, contradictions, and collision.

An Observation on the Word Gender

The word gender as we use it in our present context has no corresponding current and used term in the Arabic language, the language of the Koran. The word gender is general, and reference in the Koran to men and women is made by use of the word sex, which is value free. The Koran bears evidence to the foregoing in its reference to the story of creation where it purposely employs gender-neutral terms: O Mankind! Be conscious of Your Sustainer, who created you out of one living entity, and out of it created its mate, and out of the two spread abroad a multitude of men and women (Al-Nisa [Women], Chapter 4, 1).³

Thus the creation was made out of one living entity, it is neither male nor female. And out of that entity, its mate or spouse was created, who could be either male or female.

Issues of Equality between Men and Women

In prescribing all duties, in enumerating all virtues, and in providing for reward and punishment, the Koran carefully refers to men and women, thereby doubly emphasizing the principle of equality both in value and accountability.

One could appropriately recall here the dialogue that took place in Abyssinia in the court of its Christian King Negus (Najashi) between Jafar b. Abi Talib—the leader of the Muslim migrants from Mecca who were granted asylum—and Amr ibn. Al-As, the then pagan Arab leader who had gone there to demand their return:

Said Jafar: Muhammad teaches us to protect women from misuse. He says God has created women as proper companions to men. Though different from men they are equal to them.

Amr retorted: Equal! We buy them, feed them, clothe them, use them and discard them. Women equal to us?! He laughed!

The Koran repeatedly emphasizes the principle of equality:

I shall not loose sight of the labour of any of you who labours [in My way], be it man or woman: each of you is an issue of the other (Al-Imran (The

House of Imran)– Chapter 3, 195).

Verily, for all men and women who have surrendered themselves unto God, and all believing men and believing women, and all truly devout men and truly devout women, and all men and women who are true to their word, and all men and women who are patient in adversity, and all men and women who humble themselves, [before God], and all men and women who give in charity, and all self-denying men and self-denying women, and all men and women who are mindful of their chastity, and all men and women who remember God unceasingly: for [all of] them has God readied forgiveness of sins and a mighty reward (Al-Ahzab [The Confederates], Chapter 33, 35).

In the framework of the family the Koran establishes the principle that the rights of the wives [with regard to their husbands] are equal to the [husbands'] rights with regard to them (Al-Baqarah [The Cow], Chapter 2, 228). The Koran further emphasizes: Men shall have a benefit from what they earn, and women shall have a benefit from what they earn (Al-Nisa [Women], Chapter 4, 32)

Women were charged just as men with the foremost public duty underlying the very concept of an Islamic state: the duty to enjoin what is right and to forbid what is wrong.

And [as for] the believers, both men and women—they are close to one another [are the protectors [or friends and protectors] of one another], they [all] enjoin the doing of what is right and forbid the doing of what is wrong, and are constant in prayer, and render the purifying dues [Zakat] and pay heed unto God and his Apostle (Al-Tawbah [Repentance], Chapter 9, 71)

Education is not only a right but a duty of both men and women. Women were given full legal capacity to enter into civil transactions, full capacity to own and dispose of property, and so on. Even on the question of dress, both men and women are required to dress modestly.

Islamic Culture and Islamic Legislative Approach

Islamic Culture and Islamic Legislative approach are different from their Western counterparts in that they do not reject the existence or the recognition of differences between men and women based, in some instances, on biological differences, and in others, on differentiation of roles. This does not and should not involve a difference in value. The consequences of these differences should be very carefully and precisely defined without excess. Many Muslim moderate intellectuals therefore

argue that the modern Western vision, which does not recognize these differences, is neither scientific nor objective.

What must be emphasized is that the Islamic approach draws a clear distinction between discrimination and classification, and while the fundamental principles of Islam condemn discrimination against women, they do allow for limited classification based on recognizable differences. (Military service for example is compulsory for men but optional for women.)

This is an issue, however, that I believe modern legislators have to approach with the utmost of caution because the dividing line between discrimination and classification may in some instances be very thin.⁴

Call for Caution

In evaluating the attitude of Islamic law on issues of gender we must not commit one or both of two common gross errors.

The first error is perceiving the existing conditions in some Arab or Muslim countries as the only and the correct expression of the position of Islam and Islamic law. The truth is that the legal and regulatory framework in Muslim countries is primarily an expression of complex political and social circumstances and conditions of the individual country, which may be at variance to a large or small extent with the fundamental directives and guiding principles of the Sharia. More often such laws and regulations are codifications of local customs and traditions which are not based on, or connected with, Islam or Islamic law. In other words, the assumption that religion is the prime determinant in the position of women in a Muslim society is one that I personally find highly questionable. For there are other determinants that are operating, and quite often religion is used to bolster nonreligious arguments and conflicts.

The second error is to select a specific detailed legal rule in isolation from its general context and without the necessary awareness of its connection with the general principles and directives of the legal system, and then to proceed with comparing it with other detailed rules belonging to another legal system with different principles and a different code of values. This error is frequently a product of a condescending approach which is not scientifically warranted nor is it acceptable in the field of comparative legal studies. In an age of globalization and internationalization, such an approach constitutes an obstacle to healthy cultural dialogue. A dialogue that ought to be based on mutual understanding and recognition of others and on cooperation in areas of commonalities

while accepting the differences as a product of pluralism.

Conclusions

A general review of the constitutions of Muslim countries will reveal on the whole an equal treatment between men and women in matters of rights and obligations.

Nevertheless, we still find gaps and deficiencies in employment and labor laws and some family laws as well as other detailed legislation. And equally importantly, we find that women are treated in a variety of respects as second-class citizens suffering de facto discrimination, which frustrates the full exercise of some of their basic human rights whether political, economic, or social. We still find those who use the defense or pretense of tradition and cultural specificity to legitimize the oppression of women. We hear voices rising in the name of Islam to effectively negate the liberating voice of Islam.

Can legal reform rectify the inequities from which women suffer and continue to suffer in Muslim as well as non-Muslim countries? The answer to this question is that legal reform is a necessary first step. But we have to be mindful of the fact that securing full and equal rights for women is a *process and not merely a decision*. The decision is necessary to start the process and to give it the necessary legitimacy. But much more is needed. Faithful and rigorous enforcement is needed. Conscious and persistent efforts are needed to place women in position to enforce their rights. A key to this accomplishment is education and economic empowerment, without which the rights granted by laws and regulations will remain mere theoretical abstractions for to the majority of women. The role of civil society is critical in this respect; it should join forces with modern jurisprudence to restore to Muslim women the rights guaranteed to them by the Koran and the Sunnah of the Prophet.

Notes

This text was presented by Sherif Omar Hassan, Assistant General Counsel, Operations, World Bank Legal Department, at the Regional Conference, October 1997, Addis Ababa, Ethiopia.

1. Coulson, N. J. 1991. *History of Islamic Law*. Edinburgh: Edinburgh University Press (30).
2. Coulson 1991, p. 224
3. All citations of Koranic texts are taken from Muhammad Asad, 1984, *The Message of the Qur'an*. Gibraltar: Dar Al-Andalus.
4. The U.S. Supreme Court noted in this respect although in a different context, that the ultimate test of validity is not whether (there are differences between the different groups classified) but whether the differences between them are pertinent to the subject with respect to which the classification is made (*Metropolitan Casualty Insurance Company v. Brownell* 294 U.S. 580, 1935).

Classification must be reasonable—it must regard real resemblance and real differences between things and persons and class them in accordance with their persistence to the purpose in hand. (*Troux v. Corrigan* 257 U.S.

312, 1921).

Appendix A— Closing Statements.

Ruth Kagia, Sector Manager, Human Development Group I, Africa Region, World Bank

It would be presumptuous of me to try and summarize what has transpired in the last 48 hours because so much has happened that cannot be quantified or listed in terms of specific outcomes. In my view the true value of the last two days lies in the process that has been started. A process of beginning to think about issues, that we know a lot about, but we know little about at the same time. I'm hoping that this is going to be the beginning of many such consultations, not necessarily in a forum this large, but between networks that I hope have been established in the last couple of days. I was struck by the very high quality of the dialogue, the depth of insight that came through in your comments and the level of commitment that I saw as Josephine [Ouedraogo] has said. The level of commitment that I saw in all the participants, particularly some of you that live a very busy life and who would in normal circumstances have taken the time to have a break, but instead you have stayed with us throughout and participated in a very substantive manner. It is that level of commitment and ownership of the issues that affect us all which will ultimately make a change in this continent. And I feel proud to be associated with that.

Something else that struck me at a very general level is just how far we've come in terms of understanding and appreciating the complexity of gender issues. Ten years ago when we had the Nairobi Conference and we thought we had made a lot of progress between the Nairobi Conference and the Mexico Conference, the issues were being scratched very much at the surface, they were being discussed at a very great level of generality and what has been impressive is the attempt at specificity, even as we try to respond at a sub-regional level. But at the same time I was struck by how far we have to go, and that is a real tension one feels here. You know, on one hand you get very excited when you hear some of the exciting things that some of the countries are doing: the registration of all marriages in Tanzania, or the establishment of family-friendly courts in Zimbabwe, or the gender task force in Kenya. They are all very exciting and in some ways very advanced even compared to other countries' that have otherwise made major inroads in

other avenues. And at the same time, and side by side with that, you cannot but notice how basic some of the issues we are dealing with are. I was struck by the Minister for Ethiopia's comment a few minutes ago that it is the first time we are discussing marriage law as a constitutional issue, and it is this tension and contradiction that we are dealing with. In some cases we are further ahead of some of the more advanced industrial countries; and in other cases we are at a very basic level, and we should never lose sight of that contradiction because that is a contradiction and the tension of development. So that even when you feel that as a country you've done very well in a certain area let us not fall into the trap of complacency because we need to look back and see: Is this sufficiently comprehensive? Are there issues that we're leaving behind? It was instructive that perhaps the most troublesome question this afternoon came from a young girl. It is the issue of the girls who are married before they are ten. It is a bit worrisome that none of us, and I blame all of us, that we did not pick up on that. Because we may not have secure access to the land but we are still able to till it, and I'm not minimizing the issue of land. But if we do not arrest the difficulties that the young face, if that young girl is going to be married when she is six years old, we have lost her before we have started. We have not given them a chance, and we need to look at the issues that affect women in that holistic manner from the very young to the very old, so that we don't focus on one issue so much that we lose sight of the broader picture; and this is not a criticism. I'm throwing it to us all as a challenge.

Gender and Law

The four areas that I felt warranted much more work than we can do at a forum like this: one is obviously the issue of culture that cuts across everything we do. And we do not want to underestimate the value, the importance, and the potential constraints that culture places on issues of gender and law, and I think it is Sherif Hassan who put it very well this morning: that when it becomes convenient, some of the Muslims fall back on the Koran because then it becomes an excuse to perpetuate the status quo. And that is what we are seeing more and more, when it becomes convenient, when the status quo is threatened, then culture becomes a convenient vehicle. And we need to sort out when is culture being used as a convenient vehicle and when it is a viable instrument that needs to be preserved as we reform our laws. Ultimately that reconciliation will only come with greater socioeconomic development as our Norwegian colleague said this morning; what made a difference finally in Norway was not so much the lobbying—although that was important, not so much the gender awareness—although that was important, but it was the true and high-level education of women. Once women begin to attend secondary level education and tertiary level education and they get into the labor market, then they become a for-

midable force; and even as we focus on legal issues, we must look at that broader spectrum. How are women creating a ground swell through education in order to change this in a permanent manner?

The second issue is that we found that there are major issues to do with the law itself. There are contradictions in the law, in the various laws that we have. I enjoyed the example that I believe Gladys Mutukwa gave us yesterday that when a woman gets a divorce she is entitled to 50 percent of the family property. But if she waits until the husband dies, she risks losing everything; and obviously there is something very wrong with that because, and I'm sure, whoever put those laws together had not seen the obvious implications with that. And therefore there is a need to look at laws within the same country to avoid those kinds of absurd contradictions, to make sure they are not working against each other. Secondly within the law itself, we found that there are contradictions within the various laws, religious laws, statutory laws, customary laws and therefore a need to reconcile them. Not in a conflictual manner, but in a manner whereby they reinforce each other. And finally with the law, the main bottleneck obviously is the gap between the implementation and the passage of the law, between the implementation and actualization.

The third point I picked up is that we've got to contend with the structural basis for disempowerment. We all, I think without exception, are emerging from a historical situation that is highly patriarchal, where it is assumed, or where the reality is, that the man is the head of the family, the man is the one who holds the resources. And what struck me yesterday afternoon, when we did the plenary, was the passiveness with which we were treating the issue towards, in a polygamous household women are fighting over resources of a man. The man is there holding the bag of money, and all our efforts are aimed at getting our fair share of it. And this is not because we are passive or because it couldn't be done differently, it is simply because of the highly patriarchal nature of the situation that we are all emerging from. And I think a fundamental concern as a follow-up to this has to be how do you empower women as women? Not as wives or daughters, but how do you empower women as women and give them alternative ways of living their lives so that they are not fully dependent? You know in the Zimbabwe paper as you saw—was it the Zimbabwe paper? [no, audience remarks, it was in the Kenya paper]—where you have one husband for bread and one husband for house. I think that's a Freudian slip, I didn't want to admit it was Kenya. But you know what I mean. When a woman has to go the level of having various husbands, for various material reasons, then something is very wrong with the structural basis of our resource allocation. And that needs to be attacked at the

fundamental level. Are we raising our girls as potential wives and daughters-in-law or are we raising them as women who are an integral part of the society, who are an integral part of the economic process? Maybe I'm getting philosophical. But I was disheartened that the whole argument on land, the whole argument on property, was hitching on what do I get out of this from this guy who is polygamous and who has two other wives or three

other wives? And I know it is true, and I know that is the pain that is hurting most women, particularly in the rural areas. But there is something wrong with the structural basis with that.

And finally the issue that also struck me is, how disempowering poverty is, how destabilizing poverty is as a root cause of marital violence. And the point that, as the member of the audience kept reminding us of, when men become threatened because their role has been undermined, mainly because they are not able to be effective economic heads of households, then in response, violence becomes one of the ways of dealing with it, and we should not underestimate that. In the same way, with the issue of land that we are all trying to grapple with, we are not dealing with a static situation. One of the things that struck me from the Zimbabwe presentation this afternoon is that we are talking about reforming the law in order to enable women to access communal land but only this morning on CNN they were talking about the difficulties that Zimbabwe is experiencing with land and how they are attempting to get it from the white farmers because there is not enough communal land to go around. If there is not enough to go around, who is going to give up what in order to accommodate the women to obtain the land? We are dealing with a decreasing cake at a time when women are becoming aware of the need to get a seat at the table, and there are no more seats left. So, we've got to appreciate that because it is a constrained situation. It is not simply speaking loud enough in order to be heard, we've got to find other ways of getting a seat at that table. And I wonder whether I might throw the challenge to the Zimbabwe team to revisit the issue of the communal land and see whether there is not an opportunity, as this land is released from the white farmers, for the women to get more of it since they didn't get it the first time around. So that we deal with an evolving situation.

I know I said it was the last point, but it was only the last point of the key issues; but I will be very quick, Mr. Chairman. I think it was our fault as the organizing committee to expect that you could come up with action plans for issues as complex as we were dealing with, in two hours. And I do not take that what you put around the table this afternoon is the full extent of your thinking. I see that as indicative of your thinking of some of the directions you are going to take as you think more about this. I'm not too worried about the details of the action

plans; what I'm a little bit concerned about is what is going to be the institutional mechanism for following up on this. Many of you are very busy; it is an honor to have you here for two days. But you are all going to go back to your various jobs; who is going to carry this forward in an institutional manner? I suppose in the Kenya case you've got the task force, and that can be used as a machinery. I suppose, perhaps with the Uganda case the decentralization mechanism is in place and you can push that forward through the Ministry. But I'm not clear in my own mind—and I'm not asking for [an] answer, it's just what was going on in my own mind—with the other situations; how are going to deal with issues that are very multifaceted in an institutional manner in a way that carries the momentum forward? And I would like to just put that on the table as something you might want to follow-up because we need more information on some of these issues; clearly, we need some legal reform, some of which was identified; we need to have what was proposed yesterday, a kind of watchdog, that ensures that as new issues emerge—whether it is decentralization or privatization or HIV/AIDS—that wherever there are likely to be gender-related legal issues there is somebody there who is keeping an eye out and is saying: hey, girls, we need to be vigilant about this, we need to do something about this. And I don't get a sense that that institutional mechanism exists. I could be totally wrong; I'm just throwing that to you.

Some of the remaining challenges I see is really working with the full range of issues, from the youth to young women to older women, you know, I mentioned that. Secondly, to keep pace with the evolving situation, we are not dealing with a static situation, particularly with the countries that we are working with here. You know, two years ago Eritrea was not born, three years ago; it is now a country that has made a tremendous amount of progress, and we cannot talk about these issues as if they are static. Even as we talk about land or marriage, or decentralization, or whatever it is, we need to be thinking about it as if the train is moving even as we try to catch up with it. And that is very important to keep in mind.

Finally, I would just like to throw a question to us all and say: Are we being bold enough? Are we shaking the system strongly enough to bring about the change that we require? And I feel that perhaps not. And I don't think it's because we can't do it. I don't think it's because you don't have the ideas; I think we have the highest concentration of ideas on this issue anywhere. I think, because it is such a new issue the tendency is sometimes to bite it in small pieces, and I feel that the countries represented here are evolving so quickly at so many levels [that] we cannot afford to take small baby steps. Let us be bold; let us have others say you are moving too fast rather than giving us token

responses because our requests were not bold enough. We from the Bank are there to assist you, we have two of the country directors here. Oey Meesook, who is the country director for Ethiopia and Eritrea; and please, send any requests big and small to Oey, and she is going to work with the colleagues in the Bank to follow it through. Harold Wackman is here for Kenya. And then Jim Adams—as we were told was not able to come—for Uganda and Tanzania, he is going to be coming to Uganda soon. And he does spend a lot of time in Tanzania and Uganda, as you all know. Get him, write to him, he is very responsive. And then the only one you have not met is the Zimbabwean country director, Barbara Kafka; but the Bank coordinators can give you the name and the contacts of these people. The country directors are our entry points to the programs. They are the ones who take in any new ideas that you have. I'm not absolving myself of responsibility here, but like the true bureaucratic that I am, let's work through the country directors; but of course we all work as a team and we'd be happy to support you and to respond to you. With that, I'd like to thank all of you for making us all proud. I feel with teams such as yours, donors are going to become increasingly more irrelevant or they are going to have to assume a very different role in terms of being responsive as opposed to being dictative as to what happens.

Josephine Ouedraogo, Director, African Center for Women, Economic Commission for Africa

The organization of this meeting was a very good opportunity for ECA, and in particular for the Africa Women's Center, to collaborate closely with the World Bank through the Eastern and Southern Africa Human Development Unit—the unit managed by Ruth [Kagia]. And it was a very good experience because we now know better the concerns of the World Bank in the area of gender, and in particular the area of gender and law. And I think that they also know better the concerns and priorities and the strategies of the African Center for Women. And we are at that occasion starting a way of collaboration.

Secondly, this meeting was very, very good; very important and helpful for us because we have this opportunity to know, to hear, the concerns, the priorities of these six countries and through their action plans—it has been very difficult work. I mean for, during two days, to come out with national action plans in this area of gender and law. But the more interesting thing is that these countries through their policy-makers and other actors have started this process before the meeting, so that there has been, I suppose, a very good exercise for these organi-

zations and public services, I mean ministries to elaborate these situations, these papers/statements and action plans before the meeting.

Third, the African Center for Women, is in the process of strengthening its own capacity. As you heard this morning we are in a process of reorientation, of reform, deep reform within ECA itself and within the Center itself. And we are strengthening our own networks, and we need to build partnerships with all the organizations which can support us, but that we can support also to act, to work in a better-focused way in the field. This meeting has been very beneficial in two areas. We have now have [a] long list, a very good list of organizations, of services, and resource persons, and now I think that we know the situations in these six particular countries. And it is a base, the first step to begin interesting work through partnership with these countries and these organizations. This meeting gave to you the opportunity to know the Center. I know that many of you didn't know what ECA is. Sometimes it is not easy [to] know the situation of an organization like ECA, which is going

through major reform, and the Africa Center for Women, I suppose that you can now know better our priorities and we now what you are expecting from us. It was very interesting this morning to hear your questions and your critiques. It will be helpful for us to better orient our priorities.

I will conclude by saying that the collaboration with the World Bank for this meeting has been very nice. I think that it has been nice because of the sympathetic character of Gita [Gopal], Shu–Shu Tekle–Haimanot, and Sena Gabianu. They were the three people who have worked closely with the Women's Center. I'd like to finish by thanking all of you, but in particular the heads of the delegations. I have been very impressed by their simplicity and the way through which they involved themselves in the discussions. It has been very, very rich and useful. I would like to thank all of you and hoping that it is a start of a process of collaboration and partnership with you.

Appendix B— Summary of the Proceedings

The conference, Gender and Law: Eastern Africa Speaks, took place over a two–day period, October 23–24, 1997. Sixty–one delegates from six countries (Eritrea, Ethiopia, Kenya, Tanzania, Uganda, and Zimbabwe) participated, along with a number of donor and NGO representatives.

The participants were welcomed by H. E. Dr. K. Y. Amoako, Executive Secretary for the Economic Commission for Africa. The conference was inaugurated by H. E. Dr. Kebede Tadesse, Minister in Charge of Social and Administrative Sub–Sectors, Prime Minister's Office, Government of Ethiopia. The opening session was chaired by H. E. Anatole G. Tiendrebeogo, Assistant Secretary–General of the Organization of African Unity, and Sherif Omar Hassan, Assistant General Counsel, made the opening remarks on behalf of the World Bank.

Welcome Address H. E. Dr. K. Y. Amoako

Women's rights, and the discrimination against them that limits the scope of their rights in most countries, is not an accident. The causes of women's subordination and unequal gender relations are deeply rooted in history, religion, culture, legal systems, political institutions, and social attitudes. The solutions, therefore, require a comprehensive approach to address long–term systemic discrimination and oppression.

While the situation of women varies from country to country, there are many commonalities. In many African countries, a multilegal system often creates different classes of women with differing and unequal rights. Custom, interpreted and often misinterpreted or created by men, becomes customary law, governing many women's lives, despite constitutional and statutory provisions that afford them equal rights. In most African countries, women's ability to control resources, make decisions, inherit, and divorce are constrained by the law. Women's participation in and receipt of benefits from the formal and informal economic sectors are impeded by laws and regulations, while their enormous contributions are made invisible by undervaluation and underaccounting. Increasing and pervasive violence against women

reflects, in part, entrenched resistance to changes in the subordinate position of women in society.

Many African women, particularly rural and urban poor women, therefore believe that their countries' legal systems are either irrelevant to their lives or constitute systems that reinforce constraints and inequities. This is because, in many cases, they are not aware of nor do they understand the provisions. In addition, women must have some level of assertiveness and empowerment to be able to pursue judicial remedies. Most critical, even when the provisions are supposed to promote and protect women's rights, there is often a wide gap between de jure and de facto—between passage and implementation. If a woman farmer—newly widowed—has land taken

away from her by her husband's relatives or his community, or a woman entrepreneur seeks credit to begin or expand her productive work and is denied because she is a woman, or if she is beaten at home and is told—by the police—to try not to upset her husband, how much faith can she have in equality before the law?

The political will of policymakers at the highest levels is required to make progress in all these areas and to ensure that the laws are revised or enacted, that there is a deliberate effort to build a social consensus for the laws, and that the application and implementation are done with vigor and impartiality. While legal systems are under the authority of the state, civil society has a critical role to play in asserting rights and influencing policy. Thus it is the countries themselves that must articulate the issues and problems and define the strategies and solutions to reach the goal of gender-equitable and sensitive human development.

Inaugural Address (H. E. Dr. Kebede Tadesse)

The sub-region, particularly the Horn of Africa, is trying very hard to establish peace and a participatory political system so as to concentrate more on development activities, which are crying out for attention. A well-thought out political outlook and socioeconomic strategy implemented in a sustainable way will be very crucial if the subregion is to come out of the miserable economic condition it is in. In this respect, a socioeconomic development endeavor that does not involve the whole gamut of available resources, particularly human, cannot be successful.

Thus, it would be hard to imagine that a truly democratic political setup and a sustainable socioeconomic system can be established without the full participation of half the population, that is, women's participation. It would also be a shaky strategy and can hardly be called a

well-thought out one if it precludes a vast section of the community. Empowering women is thus not only part of a political agenda but also an economic need. Accepting this reality would, of course, require a change in perception and a great leap in attitude. We need to perceive that gender issues are our common problems, which require immediate attention and a concerted effort from all of us. Any change in our thinking and in our social attitude toward women must also be considered for the common good of society, and it would play a vital part in our socioeconomic endeavors.

We must accept that women do not require our pity, neither do they expect us to graciously give them what is rightfully theirs. They have been, and are, urgently demanding equity and they ought to be listened to. It is an undeniable fact that societies throughout the world, ancient or new, big or small, developed or underdeveloped, have made it easier—admittedly to a variable degree, for women not to benefit equitably from common resources and to achieve their full potentials but also have, and still are, precluding them from full participation in the political, social, and economic spheres in a meaningful manner. This situation has not only been irrational and a detriment to women as a group but also to the whole human community. Thus, it would be to our benefit as a society to create, as soon as possible, the environment for equitable sharing of our resources and for utilization of our human capacity to its full extent, lest we continue on the well-trodden and exhausting road to disaster.

Opening Remarks (Mr. Sherif Hassan)

While there is no doubt that much greater understanding has developed around the centrality of empowering women to any effective socioeconomic development and the absolute necessity of addressing gender issues in any development framework, we have only relatively recently started addressing issues related to the effectiveness of the legal enabling framework that is necessary to achieve this desirable goal.

We all want an element of continuity in our culture, in our identity. We need to see sociocultural evolution, not rupture. Sociocultural evolution can be accelerated and can be channeled in desirable ways by the interaction of

the law and society. No law can be dissociated from the cultural milieu from which it springs, tempered by the innate sense of fairness that all people have. History teaches us that laws which do not have wide public support tend to not be obeyed or enforced. Obtaining that wide support is frequently a matter of mobilizing the stakeholders

and educating the public. In the case of gender issues, it already involves all of society, and it is a topic about which few are indifferent.

The key is not to remain locked in abstractions but to move in the domain of the practical everyday manifestations of the needed regulatory changes, confronting the issues of land tenure, inheritance, commercial rights, schooling, labor market, and other topics of immediacy and impact. In addressing such issues, we must recognize the enormous diversity and the wisdom in some of the communal practices and traditional legal frameworks. We must, where possible, build on these cultural foundations, but we must also acknowledge their limitations and their deficiencies, where they are in fact discriminatory against women's rights; because remember, women's rights are human rights. Human rights are indivisible. Only from such a posture can we properly address the needs and the realities. Only thus will the enabling legal frameworks be of the empowering kind; the law seen as those wise constraints that set people free.

Opening Remarks (H. E. Anatole G. Tiendrebeogo).

It should always be recalled that while gender issues focus basically on women, they also and most naturally should focus on men. Viewed in that context, action would need to be targeted in three directions: avoidance of unnecessary conflict-prone competition between men and women or vice versa; identification of the aspects specific to each gender; and development of those aspects that are specific to both genders.

We must be courageous enough to acknowledge that, in several respects, women are and have been at a disadvantage compared with their male counterparts although this is more often than not the outcome of the natural and historical evolution of the two genders. Clearly, such a status and condition must not necessarily be static. This under-privileged status of women is the experience and fate of the over-whelming majority of women in the world and of virtually all the women in Africa. Unfortunately, there is some dissimilarity in the priorities of the women of Africa that requires careful consideration. Consequently, if due care and attention are not taken, the enhancement of the status of women, desired and achievable, might be limited to a minority of women in the world and to a negligible proportion of women in Africa.

No doubt, positive change in the status of women can occur through the agency of the law, as has been verified throughout history in the case of workers. The basic question, which then arises, is one of knowing how the status of the African woman, often maintained by certain

unwritten, but solidly rooted attitudes and mores of society, can be salvaged through a law, which although written, is only accessible to a small minority of educated women whose struggle is not always understood by the huge silent majority of African women in the rural areas.

Exchange of Perspectives on Gender and Law

In an attempt to showcase the views and experiences of other countries and organizations, the morning plenary of the second day of the conference was devoted to the exchange of perspectives on gender and law.

The Norwegian Experience (Kristin Mile)

There are many differences between the Eastern African countries and Norway, yet there is one thing that most countries in the world have in common. The social systems, traditions, and attitudes seem generally to discriminate against women to a greater extent, and different treatment of women and men seems to take place in practice as well as in the legislation, or in the enforcement of it, in most countries.

In Norway great changes have taken place during the last hundred years. The changes in the lives of Norwegian women are partly due to changes in attitudes, but more important are the changes in formal positions written down in legal documents. Equal treatment of women and men, and equal rights for both sexes, are essential in a fully democratic society. Gender equality does not mean that men and women must be similar. It means that the dissimilarity between women and men should not lead to inequality in terms of status or treatment in society.

In 1978 Norway established the Gender Equality Act, which had a twofold aim. On the one hand, it was to ensure substantive gender equality in most areas of society. On the other hand, the Act was intended to influence attitudes toward roles of women and men and to improve the position of women. The Gender Equality Act regulates the rights to equal treatment in the workplace as well as in the other areas of society. Of special importance is the right to equal treatment in employment, equal pay, and education. An important tool for establishing such legislation is the use of existing international commitments. An active use of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and an active use of the Beijing Declaration and the Platform for Action can bring the work on gender and law to a more satisfactory level.

The ECA Experience (Josephine Ouedraogo)

The African Center for Women was created in 1975. It is the oldest regional structure charged with promoting the concerns of women. During its first 10 years, it contributed to a better understanding of the situation of African women through several publications. Today, with the new United Nations strategy to improve African women's social development, ECA's main objectives will be the recognition of the African woman's role and place in rural and urban economies, equitable distribution of resources, and women's involvement at all levels of decisionmaking within the family, the community, and the nation.

Women should be able to participate in the decisionmaking process and the drafting of laws and regulations relating to resource management. The African Center for Women is conducting a study in Burkina Faso, Kenya, Guinea, Senegal, Tanzania, and Uganda on women's access to and control of basic priority resources. This study will define the legal decisionmaking mechanisms that impede women's access to basic priority resources and explore concrete ways and means of eliminating any obstacles.

The African Center for Women has three strategic objectives to improve women's social development:

- formulate analytical methods enabling experts in industry, business, agriculture, forestry, health, law, and finance to observe, in a systematic manner, the inequalities, injustices, and damages that women suffer as a result of the policies, programs, and projects that the experts prepare;

- promote women's participation in decisionmaking on development;

- create forums where women can express their opinions, their concerns, and their desires and where they can be heard and given due consideration.

In the twenty-first century the African Center for Women would like to promote the active participation of both African women and governments in its strategic objectives and help to bring an end to the daily violations of

African women's basic rights.

World Bank Framework for Law, Gender, and Development in Sub-Saharan Africa (Mark Blackden and Doris Martin)

Women have not always realized meaningful benefits from economic development programs that directed increased resources to them; in fact, women have sometimes been left worse off as a result of such programs. Inadequate attention to institutional constraints, such as gender–

biased laws and customs, is the main reason for this. Discriminatory laws and customs create systemic constraints that must be identified and related to economic objectives before responsive strategies can be formulated. The framework given here is proposed as an aid to discern the pattern of appropriate questions needed to draw out the relationship between gender–biased laws and customs and economic capacity.

The framework provides the basis for applying an integrated analysis through a series of inquiries. It has three institutional dimensions: economics, law, and gender. The gender dimension is the prism through which analysis takes place. There is a reciprocal relationship between the law dimension and the economic dimension, for example, the legal rules on property and their administration and enforcement will affect the access, control, and use of resources in the productive economic sectors. Fundamental change in the resource sectors will influence change in the legal system and vice versa.

Application of the framework involves a two–phase process. Phase one, which is within the economic dimension, examines gender–based disparities in the access, control, and exploitation of resources in the agriculture, education, health, or business sectors; and it identifies specific laws and customs that are constraints to women's access, control, and exploitation of resources in these sectors. Phase two, which is within the law dimension, examines the historical rationale underlying the laws and customs identified as constraints, the integrity in applying or interpreting the laws and customs, and the extent to which these are enforced; and it identifies key areas of the legal system that should be considered for reform.

Final Thoughts (Fayez Omar)

Over the last couple of days the participants have raised very important issues, put forward very important proposals. The challenge now is to move to implementation. The World Bank would be looking forward to working with the countries, the NGO community, bilaterals, and so forth and to seeing the participants in future conferences, work–shops, and the like, so that they provide an update as to where they are. The hope was that we would hear many success stories coming out of Africa on gender and law.

Note: This appendix focuses on the opening plenary session and the session on different perspectives concerning gender and law. The summary was prepared by Maryam Salim of the Africa Human Development Department of the World Bank.

Appendix C— Country Delegations

Eritrea.

1. H.E. Fawzia Hashim, Minister of Justice, Head of Delegation
2. Mrs. Askalu Menkerios, President, Nation Union

3. Mr. Eden Fassil, Legal Advisor, Ministry of Justice

Ethiopia

1. H.E. Tadelech Haile–Mikael, Minister of Women's Affairs, Head of Delegation
2. W/ro Anjabebu Belachew, Women's Affairs Standing Committee
3. W/ro Tigist Mekonnen, Member of Parliament, Women's Affairs Standing Committee
4. W/ro Hirut Birassa, Member of Parliament, Women's Affairs Standing Committee, Chairman
5. Dr. Ethiopia Beyene, Member of Parliament, Women's Affairs Standing Committee, Secretary
6. Ato Shifferaw Benti, Member of Parliament, Social Affairs Standing Committee
7. Ato Duguma Daba, Member of Parliament, Legal Affairs Standing Committee
8. Ato Anagaw Wudineh, Member of Parliament, Legal Affairs Standing Committee
9. Ato Adenew Ayno, Member of Parliament, Legal Affairs Standing Committee
10. Ato Lemma Ena, Member of Parliament, Media & Culture Standing Committee
11. W/ro Kebebush, Women's Affairs Department, Ministry of Justice
12. Col. Tefferedegne, Head, Police Academy
13. W/rt. Yeshe Habte Mariam, Women's Affairs Department, CER–TWID, Addis Ababa University
14. W/ro Bogaletch Alemu, Women's Affairs Department, Ministry of Agriculture
15. W/ro Yelfign Worku, Women's Affairs Department, Ministry of Education
16. W/ro Nuria Mohammed, Member of Parliament, Women's Affairs Standing Committee
17. Ms. A. Sena Gabianu, World Bank Resident Mission, Conference Coordinator

Kenya

1. Lady Justice Effie Owuor, High Court of Kenya, Head of Delegation
2. Lady Justice Joyce Aluoch, High Court of Kenya
3. Ms. Victoria Kattambo, Attorney General's Chambers
4. Ms. Roseline Lagat–Korir, Task Force on Women
5. Mr. Gad Otieno Awuonda, Task Force on Women

Gender and Law

6. Dr Janet Kabeberi–Macharia, UNIFEM
7. Ms. Elisabeth Oduor–Noah, UNDP
8. Ms. Jane Weru, Kituo cha Shearia
9. Ms. Raychelle Awuor Omamo, Private Sector Lawyer
10. Dr. Jacqueline Adhiambo Oduol, USIU
11. Ms. Wacuka Ikua, World Bank Resident Mission, Conference Coordinator

Tanzania

1. H.E. Mrs. Mary Nagu, Minister, Ministry of Community Development, Women's Affairs & Children, Head of Delegation
2. H.E. Mrs. Asha Bakari Makame, Minister of State, Zanzibar
3. H.E. Judge Agusta Bubeshi, High Court Judge
4. H.E. Eva Nzaro, Ambassador/Director for Asia and Austrasia in the Ministry of Foreign Affairs and International Relations
5. Dr. Asha Rose Migiro (UDSM, Faculty of Law)
6. Dr. Esther Mkwizu, Equal Opportunity Trust Fund (NGO)
7. Mrs. Magdalena Rwebangira, TAWLA (Tanzania Association for Women Lawyers)
8. Ms. Edda Sanga, Tanzania Association for Media Women (TAMWA)
9. Ms. Fauziyat Aboud, Reporter/Anchor Woman, Independent Television
10. Ms. Fortunata Temu, Lawyer, (MCDWAC)
11. Ms. Theonestina Kaiza–Boshe, World Bank Resident Mission, Conference Coordinator

Uganda

1. H.E. B. Janat Mukwaya, Minister of Gender and Community Development, Head of Delegation
2. Mrs. Jean Lubega–Kyazze, Uganda Law Reform Commission
3. Ms. Dorcas Wagima, Ministry of Local Government, Lawyer
4. Ms. Stella Mukasa Nansikobi, Ministry of Justice/MGCD
5. Mrs. Robina Gureme Rwakoojo, Ministry of Justice/MGCD

Gender and Law

6. Mr. Stephen Kalabira, Chairman LC III, Nakisunga Sub–Country
7. Ms. Hellen Obura, Ministry of Justice & Constitutional Affairs
8. Ms. Miiro Nassanga Hadija, Electoral Commission, Ministry of Gender & Community Development
9. H.E. Bakoru Zoe Bakoko, National Assembly
10. Mrs. Edna Baryaruha, Director of Gender, Ministry of Gender and Community Development
11. Ms. Florence Butegwa, Consultant
12. Ms. Mary Bitekerezozo Kasozi, World Bank Resident Mission, Conference Coordinator

Zimbabwe

1. Mr. J.M. Zamchiya, Permanent Secretary, Ministry of National Affairs, Employment Creation and Cooperation (Head of Delegation)
2. Ms. T. Grace Chiura, Under Secretary, Ministry of National Affairs, Employment Creation and Cooperation
3. Mrs. Florence N. Dangarembizi, Senior Administrative Officer, Ministry of National Affairs, Employment Creation and Cooperation
4. Mrs. Moliche Mandinenya, Deputy Director, National Economic Planning Commission
5. Mrs. Elizabeth Gwaunza, National Coordinator, Women in Law in South Africa Research Trust
6. Ms. Amy S. Tsanga, Lecturer, Department of Law, University of Zimbabwe
7. Mrs. Neddy Rita Matshalaga, Researcher, Institute of Development Studies, University of Zimbabwe
8. Mrs. Betty Flora Mtero, NANGO Women's Forum/Shades of Africa
9. Ms. Josephine Ncube, Chief Law Officer, Ministry of Justice, Legal and Parliamentary Affairs
10. Ms. Francisca Zinyemba, Assistant General Manager, Commercial Bank of Zimbabwe
11. Dr. Ebrahim Jassat, World Bank Resident Mission, Conference Coordinator

Appendix D— Conference Agenda

Thursday, October 23, 1997

8:00 a.m.–8:45 a.m. **Registration**

8:45 a.m.–10:00 a.m. *Opening Plenary*

Welcome Address:

H.E. Dr. K. Y. Amoako, Executive Secretary, ECA

Inaugural Address:

H.E. Dr. Kebede Tadesse, Minister in Charge of Social and Administrative Sub-Sectors

Opening Remarks:

Mr. Sherif Hassan, Assistant General Counsel, World Bank

Chair: H. E. Anatole G. Tiendrebeogo,

Assistant Secretary General, OAU

10:30 a.m.–12:30 p.m. **Overview of Conference Objectives**

Ruth Kagia, Sector Manager, Human Development Group I, World Bank

Presentation of Action Plans/ Address by Five Heads of Delegation & Statement by Eritrean Minister of Justice

(Eritrea, Ethiopia, Kenya, Tanzania, Uganda, and Zimbabwe)

Question and Answer Session

Chair: Harold Wackman, Country Director, Kenya, World Bank

2:00 p.m.–4:00 p.m. **Five Thematic Working Group Sessions**

4:30 p.m.–6:00 p.m. **Presentation of Issues to Plenary by Principal Resource Persons**

Question and Answer Session

Chair: H.E. Dr. K. Y. Amoako, Executive Secretary, ECA

6:15 p.m.–8:15 p.m. Reception (at UNCC-AA; hosted by Oey A. Meesook, Country Director for Eritrea and Ethiopia, World Bank)

Friday, October 24th, 1997

9:00 a.m.–10:30 a.m. **Different Perspectives on Gender and Law**

The Norwegian Experience: K. Mile, Deputy Gender Equality Ombudsman

ECA Experience: J. Ouedraogo, Director, African Center for Women, ECA

Gender and Islamic Law: S. Hassan, Assistant General Counsel, World Bank

Gender and Law

World Bank Framework for Law, Gender and Development in Sub-Saharan Africa: M. Blackden, Gender Specialist, Africa Region World Bank and D. Martin, Consultant, World Bank

Question and Answer Session

Chair: O. Meesook

11:00 a.m.–12:30 p.m. **Discussion of Action Plans—Working Groups**

2:00 p.m.–3:00 p.m. **Discussion of Action Plans (continued)**

3:30 p.m.–5:30 p.m. *Closing Plenary*

Presentation of Final Action Plans

(Five 10 minute presentations by Heads of Delegation)

Question and Answer Session

Closing Remarks: J. Ouedraogo, Director, African Center for Women, ECA, and Ruth Kagia, Sector Manager, Human Development Group I, World Bank

Chair: F. Omar, Resident Representative for Ethiopia, World Bank

7:00 p.m.–10:00 p.m. *Dinner and Ethiopian Cultural Entertainment*