

Enhancing Legal Empowerment Through Engagement with Customary Justice Systems

SMALL GRANTS PROGRAM
Strengthening Land Tenure
Security for Women: Overcoming
Customary Barriers to Gender Equality

Amrita Kapur



International Development Law Organization
Organisation Internationale de Droit du Développement

STRENGTHENING LAND TENURE SECURITY FOR WOMEN: OVERCOMING CUSTOMARY BARRIERS TO GENDER EQUALITY

Copyright © International Development Law Organization 2010

International Development Law Organization (IDLO)

IDLO is an intergovernmental organization that promotes legal, regulatory and institutional reform to advance economic and social development in transitional and developing countries.

Founded in 1983 and one of the leaders in rule of law assistance, IDLO's comprehensive approach achieves enduring results by mobilizing stakeholders at all levels of society to drive institutional change. Because IDLO wields no political agenda and has deep expertise in different legal systems and emerging global issues, people and interest groups of diverse backgrounds trust IDLO. It has direct access to government leaders, institutions and multilateral organizations in developing countries, including lawyers, jurists, policymakers, advocates, academics and civil society representatives.

Among its activities, IDLO conducts timely, focused and comprehensive research in areas related to sustainable development in the legal, regulatory, and justice sectors. Through such research, IDLO seeks to contribute to existing practice and scholarship on priority legal issues, and to serve as a conduit for the global exchange of ideas, best practices and lessons learned.

IDLO produces a variety of professional legal tools covering interdisciplinary thematic and regional issues; these include book series, country studies, research reports, policy papers, training handbooks, glossaries and benchbooks. Research for these publications is conducted independently with the support of its country offices and in cooperation with international and national partner organizations.

Images: © Amrita Kapur

Author: Amrita Kapur

Published by:

International Development Law Organization in conjunction with the Van Vollenhoven Institute, Leiden University.

International Development Law Organization

Viale Vaticano, 106
00165 Rome, Italy
Tel: +39 06 4040 3200
Fax: +39 06 4040 3232
Email: idlo@idlo.int
www.idlo.int



Disclaimer

IDLO is an intergovernmental organization and its publications are intended to expand legal knowledge, disseminate diverse viewpoints and spark discussion on issues related to law and development. The views expressed in this publication are the views of the authors and do not necessarily reflect the views or policies of IDLO or its Member States. IDLO does not guarantee the accuracy of the data included in this publication and accepts no responsibility for any consequence of its use. IDLO welcomes any feedback or comments regarding the information contained in the publication.

All rights reserved. This material is copyrighted but may be reproduced by any method without fee for any educational purposes, provided that the source is acknowledged. Formal permission is required for all such uses. For copying in other circumstances or for reproduction in other publications, prior written permission must be granted from the copyright owner and a fee may be charged. Requests for commercial reproduction should be directed to the International Development Law Organization.

ABOUT THE PROGRAM

This program aims to expand the knowledge base regarding the relationship between the operation of customary justice systems and the legal empowerment of poor and marginalized populations, and identify entry points and tools of engagement for working with customary justice systems to strengthen legal empowerment. Such knowledge will be generated through a number of individual research projects based in Namibia, Rwanda, Somalia, Tanzania, Mozambique, Papua New Guinea, Liberia and Uganda. These research projects seek to evaluate programmatic interventions designed to enhance legal empowerment through improved operation of customary justice systems with a view to collecting empirical data on the effectiveness of such approaches, lessons learned and best practices. The results will be brought together in two publications that will be disseminated among international and national legal practitioners, country specialists and development actors working in the areas of customary justice and/or legal empowerment.

PARTNERSHIPS

This program is being implemented by IDLO in partnership with the Van Vollenhoven Institute for Law, Governance and development, Leiden University (<http://law.leiden.edu/organization/metajuridica/vvi/>).

The Van Vollenhoven Institute collects, produces, stores, and disseminates knowledge on the processes of and relationships between law, governance and development, particularly in Asia, Africa, and the Islamic Middle East. Through research and teaching, the Van Vollenhoven Institute seeks to contribute to a better understanding of the formation and functioning of legal systems in developing countries and their effectiveness in contributing to good governance and development. The Van Vollenhoven Institute's research employs a socio-legal approach to develop insights into the workings of national legal systems in their historical, social and political contexts. It includes both state law and legal institutions, as well as customary and religious normative systems, with a special focus on access to justice. In their research projects the processes of law-making, administrative implementation, enforcement and dispute resolution have a prominent place. Local case studies help us to find out how law functions in society.

DONOR SUPPORT

This research is being supported by the Bill and Melinda Gates Foundation (www.gatesfoundation.org) as part of IDLO's broader research program: *Supporting the Legal Empowerment of the Poor for Development*.

ABOUT THE AUTHOR

Amrita Kapur is the International Advisor for the Women's Justice Unit in the Judicial System Monitoring Programme (JSMP), Dili, Timor-Leste and Consultant for International Development Law Organization (IDLO), with previous experience at the International Center for Transitional Justice (ICTJ), New York, the International Criminal Court (ICC) and as a domestic prosecutor and Legal Aid criminal defense lawyer, Sydney, Australia.

ACKNOWLEDGEMENTS

The information forming the basis for the analysis and recommendations was only obtained through the assistance of several organizations and individuals. In Mozambique, the following organizations and individuals (in no particular order) provided valuable insights and assistance: Elsa Alfa, Adviser to the Minister for Women and Social Action; Clara Oliveira, Carmen Munhequete, Alberto Fumo, Alberto Guimas and Eduardo Costa (ActionAid); Terezinha de Silva, Women and Law in Southern Africa (WLSA); Ivete Mafundza, Mozambican Association of Women Lawyers (AMMCJ); Rafa Valente (MULEIDE); Isabel Casimiro, Cruzeiro do Sul; Unaiti Jaime, Oxfam Mozambique; Janet Duffield, HelpAge International, Mozambique.

In Tanzania, the following organizations and individuals (in no particular order) were particularly helpful: Yefred Myenzi (HAKIARDI); Pascal Gamaya (National Organization of Legal Assistance – NOLA); Scholastica Jullu and Juvenal Rwegasira (WLAC); Anna Maria Mavunjina, Tike Mwambipile and Stahmili Goma (TAWLA).

Contents

Contents.....	III
Executive summary.....	IV
1. Introduction.....	1
2. Background.....	2
2.1 Regional context.....	2
2.2 Pluralistic systems and the operation of customary law.....	3
2.3 The significance of women’s right to development.....	5
2.4 Law reform as a mechanism to enhance women’s land rights.....	7
3. Country case studies.....	10
3.1 Mozambique context.....	10
3.1.1 Formal and customary legal framework.....	10
3.1.2 Current practices and challenges.....	12
3.2 Tanzania context.....	14
3.2.1 Formal and customary legal framework.....	14
3.2.2 Current practices and challenges.....	16
4. Methodology.....	18
4.1 Research intention.....	18
4.1.1 Central research question.....	18
4.1.2 Subsidiary research questions.....	18
4.1.3 Research hypothesis.....	18
4.2 Research Design.....	18
4.2.1 Sources of information.....	18
4.2.2 Nature of information.....	19
4.2.3 Time period of interest.....	19
4.3 Partner organizations and due diligence.....	19
4.3.1 Mozambique.....	19
4.3.2 Tanzania.....	20
4.4 Monitoring and evaluation.....	21
4.5 Logistics, challenges and constraints.....	22
4.5.1 Communication.....	22
4.5.2 Consent.....	22
4.5.3 Security Assessment.....	22
4.5.4 Limitations and challenges.....	23
5. Results and analysis.....	25
5.1 Interpretation.....	25
5.2 Mozambique.....	26
5.2.1 Women in Mozambique.....	29
5.2.2 Community leaders in Mozambique.....	31
5.3 Tanzania.....	32
5.3.1 Women in Tanzania.....	35
5.3.2 Community leaders in Tanzania.....	37
5.4 Comparison between Mozambique and Tanzania.....	37
6. Conclusions and recommendations.....	40
Draft survey.....	42
ORAM brochure.....	43
AMMCJ brochure.....	45

Executive summary

The complex relationship between law, land rights and customary practices is increasingly recognized as foundational to formulating successful development policies. Similarly, the essential role of women's economic participation to development and the current trend of gender discriminatory land and inheritance customary practices have prompted domestic civil society organizations in developing countries to use statutory provisions guaranteeing gender equality to improve women's land tenure security.

Premised on women's need for secure land rights to enable their economic participation, this research focused on women who were most vulnerable to dispossession under customary law – divorcees and widows. By targeting two countries with progressive legislation articulating gender equality both generally and with respect to land, Mozambique and Tanzania, surveys administered to women and community leaders identified current land practices and attitudes, and knowledge of formal land law. Within each country, surveys were conducted in rural communities which generally apply customary norms in distributing land following divorce or the death of a husband. The overall intention was to determine whether and how laws enshrining gender equality with respect to land are more effectively applied and enforced when combined with legal empowerment programs comprising education and the provision of legal services.

Through partnerships formed with domestic organizations, relevant community members were identified for survey distribution to assess whether and what kind of change NGO legal empowerment strategies have encouraged. Surveys were conducted in villages without any NGO services as a control condition, villages in which paralegals conducted legal dissemination and provided legal support, and villages in which NGOs had established paralegal offices to assist women file land rights claims in formal courts. The expectation was: statutory (top-down) interventions aimed at enhancing women's tenure security have greater impact in modifying customary norms and practices when they are complemented with (bottom-up) legal empowerment programs to improve legal awareness and accessibility to legal remedies.

Central conclusions stemming from the results include: firstly, that formal court decisions are made pursuant to statutory law in favour of women's land rights claims following dispossession upon divorce or widowhood. Secondly, that compliance with court orders remains a challenge in rural communities where customary law continues to create uncertainty in land tenure for vulnerable women such as divorcees and widows. Thirdly, that without legal and material assistance in taking claims to court, legal knowledge alone cannot be assumed to encourage women to challenge their dispossession. Tanzania emerged as more developed than Mozambique with respect to knowledge of formal law and the likelihood that gender discriminatory dispossession will be questioned and/or challenged.

Based on the survey findings, key recommendations include:

- Directing resources (financial, human, material and intellectual) towards developing effective enforcement mechanisms is critical to increasing adherence to statutory law in rural communities traditionally governed by customary law.
- An increased focus on establishing paralegal offices and permanent staff to assist in drafting and filing claims in court will improve women's likelihood of challenging dispossession, approaching a legal service, taking their claim to court, and thereby (given the likely judgment in their favour) succeeding in having their rights recognized.
- Dissemination to the broader population, including community leaders, needs to explicitly disentangle the individual rights widows and divorced women possess under law from their status and relationships within their family.

1. Introduction

This report is based on field research conducted pursuant to a “Legal Empowerment and Customary Law” research grant funded by the International Development Law Organization (IDLO). Customary law in this context is understood as the law consisting of “customs and practices of local ethnic communities which are accepted by them as binding”.¹ The grant was precipitated by emerging evidence from several developing countries in which formal legal frameworks are evolving to promote legal empowerment of the poor, but remain largely unknown and irrelevant to a large proportion of the population which respects, applies and obeys customary law in preference to or in ignorance of formal law.

In recognition of the continuing prevalence of customary law in communities that are the target of legal empowerment policies and the current lack of understanding of customary law mechanisms, the original call for proposals focused on one key research question: “[h]ow and to what extent can legal empowerment be achieved through engagement with customary legal systems?”² From the outset, it was acknowledged that “[c]ustomary law, as applied by the local chiefs or community leaders and courts, has evolved over time in response to changing social, environmental and political circumstances to increasingly discriminate against women, migrants and youth in its practice”.³ The focus of this grant was the application of customary law to women, particularly with respect to inheritance and property rights involving land after divorce or the death of a husband. However, research into and interviews with numerous domestic NGOs⁴ confirmed that they are more successfully utilizing statutory law, rather than customary law, to promote the legal empowerment of women in terms of access and control over land. In light of IDLO’s purpose to contribute knowledge useful and relevant to practitioners and policy makers formulating interventions, the scope of this grant was shifted to evaluating the impact of existing initiatives implemented by domestic NGOs in Mozambique and Tanzania.

Mozambique and Tanzania were selected as target countries because the land reforms process in both have been progressive in promoting gender equality: for example, a 2005 study of five countries (Tanzania, Mozambique, South Africa, Zimbabwe and Kenya) found Mozambique and Tanzania’s land legislation were closest to meeting human rights-based approach standards.⁵ Accordingly, this grant investigates the relationship between formal and customary law in these two countries with respect to improving land tenure security for divorced or widowed women, who are particularly vulnerable to dispossession.

Part 1 provides the historical context of the region and the operation of customary law, outlines the significance of women’s economic participation to development, and the use of law reform to enhance women’s rights. Part 2 narrows the focus to Mozambique and Tanzania as the two target countries, outlining their respective legal frameworks and current practices and challenges. Part 3 describes the intention of the research, its design and its methodology. Part 4 details and analyses the results and provides an analytical comparison between the two countries. Part 5 articulates the conclusions from this research and provides recommendations for local, national and international actors to promote women’s economic participation in developing countries.

¹ I G Shivji (ed), *Constitutional and Legal System of Tanzania: A Civics Source Book* (2004) 18.

² IDLO, *Terms of Reference* <<http://www.idlo.int/DOCNews/378DOC.pdf>> at 22 July 2010.

³ *Ibid.*

⁴ See Section 4: Methodology, Part 2: Research Design below.

⁵ I Ik Dahl, A Hellum, R Kaarhus, T A Benjaminsen, P Kameri-Mbote, *Human rights, formalization and women’s land rights in southern and eastern Africa* (2005) xiv.

2. Background

2.1 Regional context

The significance of this research on women's land rights in a pluralistic context to development is most striking when considering the relationships between land rights and women's participation in the economy. In the African context, the following concepts are particularly critical: the importance of land to development, the operation of customary law in a pluralistic legal system, the impact of gender discriminatory law on development, and the impact of legal reform on the practical empowerment of women.

Land rights, customary or formal, act both as a form of economic access to key markets and as a form of social access to nonmarket institutions, such as the household and community-level governance structures.⁶ "The institutional arrangements under which a person gains access to land largely determines, among other things, what crops he can grow, how long he can till a particular piece of land, his rights over the fruits of his labor and his ability to undertake long term improvements on the land."⁷ In economic terms, an effective system of property rights is a public good as it encourages investment by property-holders and acts as a central element of capital and credit markets. State intervention is typically necessary to establish national systems of land administration to enforce property rights and bear the costs of providing a standardized property system.⁸ To that extent, establishing and enforcing property rights is linked to social order, and importantly, also to the perception of social order. Without a legitimate and capable government, the allocation and enforcement of rights may cause conflict when different claimants resort to competing legal, normative and coalitional enforcement mechanisms.⁹

A complete understanding of the relationship between property rights and economic development is especially critical in the context of Africa. Firstly, in most African countries, agriculture supports the survival and well-being of up to 70 percent of the population,¹⁰ employs some 60 percent of the labor, and accounts for 20 percent of merchandise exports.¹¹ Agriculture represents 33 percent of gross domestic product (GDP) in sub-Saharan countries, and up to 76 percent of GDP in some states.¹² The family farm is central to the agricultural economies of most African nations; it is still regarded as highly productive and responsive to new markets and opportunities when conditions are right.¹³ Africa's private sector is largely composed of family farms, and small to medium sized enterprises; in sub-Saharan Africa, over 96 percent of incomes are from a range of small-scale domestic entrepreneurial activity on family farms.¹⁴ Thus, the effects of any property rights regime are far-reaching and foundational for economic prosperity.

⁶ World Bank, *Gender Issues and Best Practices in Land Administration Projects: A Synthesis Report*, Gender and Rural Development Thematic Group and the Land Policy and Administration Thematic Group of the World Bank (2005) 3, <http://siteresources.worldbank.org/INTARD/Resources/Gender_land_fulltxt.pdf> at 21 July 2010.

⁷ G Benneh, 'Land tenure and agroforestry land use systems in Ghana', in J B Raintree (ed), *Land, Trees and Tenure: Proceedings of an international workshop on tenure issues in agroforestry* (1987).

⁸ See K Deininger, *Land Policies for Growth and Poverty Reduction* (2003) 57, 117.

⁹ D Fitzpatrick, Evolution and chaos in property rights systems: the Third World tragedy of contested access (2006) 115 *Yale Law Journal*, 1010.

¹⁰ R Gawayana, Investing in women farmers to eliminate food insecurity in southern Africa: policy-related research from Mozambique (2008) 16(1) *Gender and Development* 147.

¹¹ FAO Technical Cooperation Department, *FAO and the New Partnership for Africa's Development (NEPAD): A Partnership for Africa's Agriculture* <<http://www.fao.org/docrep/005/AC735E/AC735E00.HTM>> at 21 July 2010.

¹² J Diouf, 'The Challenge of Agricultural Development in Africa' (Sir John Crawford Memorial Lecture delivered at CGIAR Secretariat, Washington DC, 2 November 1989).

¹³ C Toulmin, Securing Land and Property Rights in sub-Saharan Africa: The Role of Local Institutions (2009) 26(1) *Land Use Policy* 10, 11.

¹⁴ D Spencer, Will They Survive? Prospects for Small Farmers in Sub-Saharan Africa (paper presented at the Sustainable Food Security For All By 2020 Conference, Bonn, Germany, 4-6 September 2001) <http://www.ifpri.org/2020conference/PDF/summary_spencer.pdf> at 21 July 2010.

Secondly, the importance of land is heightened by the explosive population growth and market development across the continent. Africa's urban population increased nine-fold between 1950 and 2000, while its rural population increased by 265 percent—it is the fastest urbanizing continent in the world.¹⁵ Moreover, this growth has manifested in the form of informal settlements where land ownership is unclear.¹⁶ Consequently, competition over land has increased, fostering conflict between classes, neighbors and within tightly-knit communities and families.¹⁷ Clarifying and enforcing these rights is therefore critical not only because urban tenure issues are extremely complex and contestable, but also because of the broader implications for social harmony.¹⁸

In the context of African dependence on agriculture, increasing demand for land and post-conflict development, the effective legal enforcement of rights is paramount. This is particularly so because rights to land in Africa stem from several different sources, including settlement, long occupation, government allocation, inheritance, through a gift process, and market transaction.¹⁹

Similarly, property rights can be registered in various ways and at different levels, dependent on different systems of authority for their validation. Community councils, patrilineal hierarchy, local government, traditional leadership, irrigation authorities, city councils and land agencies comprise a multiplicity of structures that may give rise to inconsistencies and ambiguity of title.²⁰ Non-state governance mechanisms, commonly in the form of close-knit kinship networks applying customary traditions, predate the creation of many African states, and have evolved independently from, and often in contradiction to, state institutions.²¹ Thus, security of property rights depends on recognition of validity both by the state and the local community. Compounding this plurality of authority is the fact that most African central governments have neither the capacity nor the local knowledge to implement a fair, national land registration system,²² resulting in only 2-10 percent of land in Africa being covered by formal tenure.²³ Navigating the gap between legality and legitimacy is crucial to effectively enforcing land rights in rural areas where women are least likely to benefit from gender equality as provided by formal law.

2.2 Pluralistic systems and the operation of customary law

The colonial legacy of 'plural systems of law' comprising plural customary, religious and statutory systems within one state legal system continues today across several African countries. The role of customary laws varies between and within countries in its content and form, regulating diverse aspects of life, including family relations and property distribution. Customary rules are not static but continually evolving in response to cultural interactions, population pressures, socio-economic change and political processes.²⁴ With respect to land, one universal underlying distinction is between control of land based on some type of recognized possession (customary or formal, temporary or permanent), and access to land, which usually includes some decision-making power over the production

¹⁵ United Nations Population Division, *World Urbanization Prospects: the 2003 Revision*, ST/ESA/SER.A/237, 28 <<http://www.un.org/esa/population/publications/wup2003/WUP2003Report.pdf>> at 21 July 2010.

¹⁶ T Bigg and D Satterthwaite (eds), *How to Make Poverty History: the Central Role of Local Organizations in Meeting the MDGs* (2005) 21.

¹⁷ S Berry, *No Condition is Permanent: the Social Dynamics of Agrarian Change in Sub-Saharan Africa* (1993) 639.

¹⁸ A K Tibaijuka, Conference on Land in Africa: Market Asset or Secure Livelihood (14 January 2005) <http://www.unhabitat.org/content.asp?cid=1220&catid=14&typeid=8&subMenuId=0#> at 21 July 21, 2010.

¹⁹ S Lastarria-Cornhiel, Impact of Privatization on Gender and Property Rights in Africa (1997) 25 *World Development* 1322.

²⁰ Toulmin, above note 13, 13.

²¹ Fitzpatrick, above note 9, 1011.

²² Toulmin, above note 13, 10.

²³ Deininger, above note 6, xxi.

²⁴ Toulmin, above note 13, 14.

process, products and use of land, but not ownership or possession.²⁵ Another general difference in land distribution trends is that resources (forests, water, and grazing land) are allocated to the community, and agricultural land to individual households.²⁶ Since there is generally no further unclaimed land around inhabited areas, agricultural land is now acquired through inter-household (sale or borrowing) or inter-generational (inheritance or gift) transfers, inheritance being the most common type of transfer.²⁷

Customarily, control of land is determined largely by gender and class dynamics within the community: for instance, inheritance transfers generally preclude allocation and transfer of land to women, whether they occur within a patrilineal or matrilineal system. In patrilineal communities property devolves through the male line from father to son; in matrilineal communities, property devolves through the mother's line and is generally owned and controlled by men, but women tend to have greater rights than under patrilineal societies.²⁸

For example, there are typically no inheritance rights for women in either system but a daughter who stays in her birth matrilineal community can receive a small piece of family land as a gift from her father, to bequeath it to whomever she wishes. Additionally, women in matrilineal societies retain cultivation rights on their birth family's land after marriage, provided they remain in their community. If a woman marries outside the community, upon return to her birth community she is able to reclaim her cultivation rights: these rights are not granted in patrilineal societies.²⁹ Both systems require the husband to provide arable land to his wife to farm, which is generally used to grow food crops for the family in contrast to the husband's cash crops. Importantly, upon divorce or separation a woman loses cultivation rights to her husband's land, and can only reclaim cultivation rights in a matrilineal system if she returns to her birth community.³⁰ Both tenure systems are structured to enable communities to take care of themselves; while women possess only secondary rights, in circumstances of sufficient land supply they nonetheless retain the means and access to land to maintain their family.

While formal laws are prone to being ignored or conspicuously unenforced in African communities relying on a parallel customary system, customary laws are particularly susceptible to contested interpretations in situations of increased land scarcity leading to conflict, discrepancies with formal systems, and weak state enforcement capacity.³¹ The commercialization of agriculture and land, restructuring programs, urbanization and AIDS have further weakened customary systems, increased individualization of rights, and released the family and community from traditional obligations to certain members, such as women.³²

Contemporary deprivation of women's land rights results from the current land scarcity, conflict-driven and socially-transformative challenges facing traditional communities. The typical response of customary leaders to these existential threats to traditional structures has been to tighten customary governance mechanisms or enhance exclusionary rights through a process of collective consensus—which typically excludes women.³³ Indeed, mounting pressures to protect the clan system attributable to increased land scarcity have caused local leaders to further constrain women's access to land through renegotiation of both formal and informal traditional relationships.³⁴ Many customary systems have come to entrench discrimination and exclusion along status, age or gender

²⁵ Lastarria-Cornhiel, above note 19, 1318.

²⁶ C Toulmin and J Quan, *Evolving Land Rights, Tenure and Policy in Sub-Saharan Africa* in C Toulmin and J Quan (eds) (2000) *Evolving Land Rights, Policy and Tenure*, 21-22.

²⁷ Lastarria-Cornhiel, above note 19, 1319, 1322.

²⁸ L Cotula (ed), *Changes in 'customary' land tenure systems in Africa* (2007), 11.

²⁹ Lastarria-Cornhiel, above n 19, 1324.

³⁰ *Ibid* 1321.

³¹ Deininger, above n 8, 35.

³² See T Nhlapo, *Law versus culture: Ownership of freehold land in Swaziland*, in A Armstrong (ed) *Women and Law in Southern Africa* (1987) 35-55.

³³ Fitzpatrick, above n 9, 1029.

³⁴ M Tripp, *Women's Movements, Customary Law, and Land Rights in Uganda* (2004)7 *African Studies Quarterly* 1, 2.

lines, or worse, have manipulated traditional rules to consolidate legal entitlements and the subsequent economic advantages in the hands of a few customary chiefs.³⁵

For example, Tanzanian widows who had historically been allowed to stay on their husbands' land were, immediately prior to the introduction of the Land Laws,³⁶ increasingly dispossessed of that land as it increased in value.³⁷ In Kenya, loss of property after a husband's death is reported to be frequent, and in Uganda, widows often experience harassment and property grabbing attempts by their husband's relatives.³⁸ Current rates of land ownership by women reflect these disturbing trends: for example, only 5 percent of Kenyan women own land in their own names, in Cameroon the figure is less than 10 percent, in Ghana women hold 10 percent; in Lesotho and Swaziland women were considered legal minors until 2006 and 2005, respectively.³⁹

2.3 The significance of women's right to development

Such systemic disempowerment matters because of the symbiotic relationship between the advancement of women and development. This, in turn, derives from the gendered discrepancy in poverty rates, the benefits flowing from increased economic participation by women, and in Africa, the dominant role women play in food production; each aspect improves only if women enjoy security in their control over and access to land used to produce food.

In the first instance, strategies for economic development and the eradication of poverty must focus on women simply because women comprise the majority of those in poverty, suffering not only from an income of less than \$1.25⁴⁰ a day, but also inadequate health, nutrition, education and lifestyle.⁴¹ This "feminization of poverty" is characterized by higher numbers of women in more severe poverty than men, and the association of these trends with rising rates of female-headed households.⁴² This phenomenon has been variously ascribed to limits placed on female labor force participation including gender differences in access to formal employment, lack of access to credit and wage discrepancies;⁴³ several of the identified factors relate back to lack of access to land.⁴⁴

Even with significantly deficient data,⁴⁵ it is still clear that the gender discrepancy of the extremely poor has deepened across decades. A study by the International Fund for Agricultural Development across 41 developing countries accounting for 84 percent of the rural developing population found that over approximately 20 years, the gender discrepancy in the increase of the number of people below the poverty line was 17 percent; that is, there was a 47 percent increase in poverty for women compared to 30 percent for men.⁴⁶ In 2004, women still comprised 60 percent of those below the poverty

³⁵ Toulmin, above n 13, 14.

³⁶ Please see Part 3C(1) for a comprehensive description of the Land Laws enacted in 1999.

³⁷ K Izumi, Liberalisation, Gender and the Land Question in Sub-Saharan Africa (1999)7(3) *Gender and Development* 9-18.

³⁸ See W Bikaako and J Ssenkumba, Gender, Land and Rights: Contemporary contestations in law, policy and practice in Uganda in (L M Wanyeki ed) *Women and Land in Africa* (2003) 233-277; Human Rights Watch, *Double Standards: Women's property violations in Kenya* (2003) <<http://www.hrw.org/en/news/2003/04/29/womens-property-rights-violations-kenya>> at 21 July 2010.

³⁹ J Mulama, *Women hold the key to food security*, *Development Africa*, 3 April 2004 <<http://ipsnews.net/africa/interna.asp?idnews=23170>> at 21 July 2010.

⁴⁰ The World Bank altered the benchmark figure from \$1 to \$1.25 to more accurately reflect the cost of living; see M Ravallion et. al. *Dollar a day revisited*, *World Bank Policy Research Working Paper* (2008).

⁴¹ See generally, United Nations International Research and Training Institute for the Advancement of Women, *Progress Report* (2004).

⁴² J Devaki, *Women, Development and the UN: A Sixty-Year Quest for Equality and Justice* (2005) 107.

⁴³ *Ibid* 111.

⁴⁴ C Deere and C Ross, *Gender and the Distribution of Wealth in Developing Countries*, Research Paper 2006/115 (2006) 17.

⁴⁵ Deininger, above n 8, 38 (acknowledging that poverty measured by household systematically ignores individual women, and unpaid domestic work, and that poverty is not disaggregated according to sex).

⁴⁶ M Buvinic, *Women in Poverty: A New Global Underclass* (1997) 108 *Foreign Policy* 6.

line.⁴⁷ Compounding this disproportionate poverty is the disempowerment experienced by the combination of precarious and underpaid work, caring for children, and other unpaid household responsibilities. Women's lack of access to land, credit and better employment opportunities handicaps their ability to fend off poverty for themselves and their families, or to rise out of it.⁴⁸

Secondly, the logical corollary to the above is that the economic, political and social participation of and leadership by women is essential to development. There is growing evidence that suggests a more equal distribution of assets, including land, leads to faster growth.⁴⁹ Indeed, development organizations credit the World Bank's realization of this truth as expressed in the World Development Report 2008: Oxfam notes the critical message emerging from the report is that "gendered inequalities in access to, and participation in, markets, represent a significant constraint on increasing agricultural productivity and growth; [...] improving the terms on which women engage in markets could have significant effects on economic growth and poverty reduction."⁵⁰ As Muhammad Yunus found, this could be attributed to the fact that, "compared to men who spent money more freely, women benefited their families much more. Women wanted to save and invest and create assets, unlike men who wanted to enjoy right away. Women are more self-sacrificing, they want to see their children better fed, better dressed and, as a result, the conditions of the entire community improved."⁵¹

In Africa, the contribution of women's labor to the economy is already obvious—they provide up to 70 percent of agricultural labor and produce up to 90 percent of the food crops.⁵² If economic growth depends on broad-based participation, and secure access to natural resources is a pre-requisite for women's active participation,⁵³ it follows that articulating well-defined property rights that enhance women's capacity to contribute to the national economy is essential for economic development. Access to land facilitates women's bargaining power within their household, as well as their representation and participation in decision making processes at the community level.⁵⁴ Agarwal posits that women's ownership of land leads to improvements in women's welfare, productivity, equality, and empowerment.⁵⁵ That is, women's right to have control over land and what it produces: diminishes the household's risk of poverty,⁵⁶ increases agricultural productivity because women can be more secure that their investment in the land will be returned, is necessary for justice for women, and enhances the ability of disadvantaged women to challenge and change existing power relationships.⁵⁷

These conclusions are borne out by the research: for example, a comparative analysis of Honduras and Nicaragua suggests a positive correlation between women's property rights and their overall role in the household economy: greater control over agricultural income, higher shares of business and labor market earnings, and more frequent receipt of credit.

⁴⁷ International Labor Organization, 'More women are entering the global labour force than ever before, but job equality, poverty reduction remain elusive' (Press Release, 5 March 2004), <http://www.ilo.org/public/english/region/eurpro/moscow/news/2004/womendayeng.pdf> at 21 July 2010.

⁴⁸ UNDP, *Human Development to Eradicate Poverty*, Human Development Report (1997) 6 <http://hdr.undp.org/en/media/hdr_1997_en_overview.pdf> at 21 July 2010.

⁴⁹ K Deininger and L Squire, *Economic Growth and Income Inequality: Re-examining the Links* (1997) *Finance and Development* 40-41, noting a possible explanation for this phenomenon is that the effects of inequality in asset ownership are transmitted through financial markets.

⁵⁰ R Holmes and R Slater, *Measuring progress on gender and agriculture in the 1982 and 2008 World Development Reports* (2008) 16(1) *Gender & Development* 37.

⁵¹ ⁵¹ I Tharoor, interview with Muhammed Yunus, *Time.com* (13 October 2006), <<http://www.time.com/time/world/article/0,8599,1546100,00.html>> at 21 July 2010.

⁵² FAO, *Gender and Access to Land* (2002) §No.4 *FAO Land Tenure Studies* <<http://www.fao.org/DOCREP/005/Y4308E/Y4308E00.HTM>> at 21 July 2010.

⁵³ P Koskinen, *To own or to be owned; women and Land rights in Rural Tanzania* (2002) *Human Rights and Development Yale Book* 145, 149.

⁵⁴ FAO, *A Gender Perspective on Land Rights*, <<ftp://ftp.fao.org/docrep/fao/007/y3495e/y3495e00.pdf>> at 21 July 2010; Deere & Ross, above, n 44, 3.

⁵⁵ See generally, B Agarwal, *Bargaining and Gender Relations: Within and Beyond the Household* (1997) 3(1) *Feminist Economics*.

⁵⁶ B Agarwal, 'Gender, Property and Land Rights: Bridging a Critical Gap in Economic Analysis and Policy' in K D Askin and D M Koenig (eds) *Women and International Human Rights Law* (1999), 854.

⁵⁷ B Agarwal, *A Field of One's Own* (1994), 39.

In Honduras, women with land rights in male-headed households produced higher incomes through their own 'microenterprises' than women without land rights. In Nicaragua, the share of crop and livestock income was higher for women with land rights in male-headed households compared to wives with no land rights.⁵⁸ Given the above conclusions, it is self-evident that the enjoyment of secure property rights by women is essential for development, and a necessary focus for any broad development strategy. Conversely, the endemic gender discrimination in customary practices relating to control over land precludes the broader society's enjoyment of the benefits flowing from women's economic participation through the secure cultivation of their land.

2.4 Law reform as a mechanism to enhance women's land rights

The effectiveness of statutory law in African pluralist legal systems commonly suffers from some obvious shortcomings: lack of knowledge, lack of application and lack of enforcement. The first two obstacles are attributable to socio-economic and logistical factors affecting numbers of lawyers, levels of legal training, levels of community legal education, and community perceptions of the relevance and authority of statutory law. Lack of enforcement is an unfortunate reflection of the lack of financial, human and logistical resources required for a central government to effectively guarantee rights in practice in rural areas. Indeed, the World Bank has conceded "formal law that requires gender equity in property rights is mostly ineffective in the face of customary law that does not recognize equitable property rights for men and women" and that "land legislation may conflict with family or personal law".⁵⁹

Nevertheless, both colonial and post-colonial government interventions have concentrated on legislative reform to shape land management practices, including efforts to codify customs. Regrettably, the customs, sourced from the local elites in communities, tended to distort the content of customary law and create a gap between customary practices on the ground and in the courts,⁶⁰ which typically entrenched gender discriminatory practices into formal law. One example, discussed further in Part 2.2 below, is the Tanzanian Customary Law (Declaration) Order of 1963, which completely precludes females from inheriting property.⁶¹

Against this backdrop, many African governments have subsequently enshrined gender equality, or prohibited gender discrimination, in their Constitutions, and passed legislation relating to land and other socio-economic opportunities explicitly protecting women's rights. For example, the Constitutions of Burkina Faso, Ghana, Mozambique, Rwanda, South Africa, Tanzania and Uganda all explicitly prohibit discrimination on the basis of sex.⁶² All of these countries have also passed legislation protecting gender equality across a range of activities, including political participation, property ownership, education and employment opportunities. More importantly, the Constitutions generally stipulate that in the case of contradictory provisions between any other laws and the Constitution, the Constitution prevails.

Given the prevalence of gender discriminatory customary practices in most pluralist countries, it is unsurprising that statutory provisions have limited efficacy at improving the gender equitability of land management practices. *Prima facie*, women have the same

⁵⁸ See generally E Katz and J Chamorro, *Gender, Land rights and the household economy in rural Nicaragua and Honduras*, paper presented at the Annual Conference of the Latin American and Caribbean Economics Association, Puebla, Mexico, 9-11 October 2002.

⁵⁹ World Bank, above n 6, xi.

⁶⁰ Cotula, above n 28, 31; T Bennet, *Human Rights and African Customary Law* (1995), 64.

⁶¹ See Local Customary Law (Declaration) Order, Government Notice (GN) 279/1963, English translation <<http://docs.google.com/Doc?docid=0AdCP5JildqXZZGR6NWdOODIfNjQ2ZjZldGZodA&hl=en&pli=1>> at 21 July 2010; K Rwebangira, *The Legal status of women and poverty in Tanzania*, Research Report 100 (1996), 25.

⁶² Article 1, Constitution of Burkina Faso; Article 34(5) Constitution of the Republic of Ghana; Article 35, Constitution of the Republic of Mozambique; Article 11, Constitution of the Republic of Rwanda, Section 9(3), Constitution of the Republic of South Africa; Article 13, Constitution of the United Republic of Tanzania; Articles 31(2), 32(1), 33, Constitution of the Republic of Uganda.

individual formal land rights as males, but women who separate from husbands or become widows often lose not only their customary but also their statutory access and cultivation rights.⁶³ Moreover, because they enter the system “with no property, little cash income, minimal political power and a family to support”,⁶⁴ women are systematically disempowered in obtaining land rights.

The “catch-22” situation which emerges is one whereby local elites are sufficiently empowered to administer the formal titling regime which protects women’s land rights, but are reluctant to because they perceive it as a system which will erode their land-oriented power base. Put another way, central governments lack the capacity and enforcement mechanisms to fulfill the promises expressed by laws protecting gender equality,⁶⁵ and are therefore reliant on local community structures for the administration of women’s property rights; and yet, the local elites dispensing ‘justice’ rurally are precisely the people (typically older males)⁶⁶ who continue to apply gender discriminatory customary practices in contradiction to the Constitution. Progressive statutory provisions are not enforced because of ‘women’s lack of awareness and power, resistance from male relations, the fear of sanctions and the lack of political will on the part of the government’.⁶⁷

Certainly, national governments often face both a lack of political will and practical capacity in fulfilling their enforcement responsibilities. The World Bank has conceded “formal law that requires gender equity in property rights is mostly ineffective in the face of customary law that does not recognize equitable property rights for men and women” and that “land legislation may conflict with family or personal law”.⁶⁸ Indeed, the 2008 World Bank World Development Report 2008 recognizes that affirmative action may be required to equalize chances to secure women’s property rights, which in turn improves the effectiveness of natural resources management.⁶⁹

Entrenched discriminatory attitudes and practices present continuing challenges to a coherent gender-sensitive legal system in pluralist countries which are only gradually being confronted and navigated. Some of the international literature re-examines customary land tenure institutions in the modern state, concluding that the interactions between different pluralist legal orders are critical for women’s land claims.⁷⁰ This approach acknowledges the continuing failures of formal law to deliver the gender equality it promises, and the social embeddedness of land claims necessitating an engagement with customary structures.⁷¹

In contrast to this mutually constitutive model of legal pluralism,⁷² a burgeoning community of domestic and transnational NGOs is undertaking a range of initiatives promoting women’s awareness and exercise of their rights under statutory law. These lawyers regard statutory law reform as a better avenue for securing women’s land right than allowing and encouraging customary law to evolve.⁷³ Lawyers range in their emphasis on different approaches, which include legal training, land redistribution, titling registration, the education of officials, special loan facilities for women, and quotas to ensure women are represented on decision-making bodies.⁷⁴ Gender specialists have

⁶³ Lastarria-Cornhiel, above n 19, 1325.

⁶⁴ Ibid 1326.

⁶⁵ Toumlin, above n 13, 10.

⁶⁶ P Kameri-Mbote, Gender Considerations in Constitution-Making: engendering Women’s Rights in the Legal Process (2003) *University of Nairobi Law Journal* 1, 16-17.

⁶⁷ F Butegwa, Women’s Legal Right of Access to Agricultural Resources in Africa: A Preliminary Inquiry Women’s Access to Land in Africa, (1991)8 *Third World Legal Studies*, 45, 57.

⁶⁸ World Bank, above n 6, xi.

⁶⁹ World Bank, *Agriculture for Development* (2008), 9, 16.

⁷⁰ A Whitehead and D Tsikata, Policy Discourses on Women’s Land Rights in Sub-Saharan Africa in S Razavi (ed) *Agrarian Change, Gender and Land Rights* (2003) 67, 94-5; H W O Okoth-Ogendo, ‘Legislative approaches to customary tenure and tenure reform in East Africa’ in C Toulmin and J Quan (eds), above n 26.

⁷¹ Whitehead and Tsikata, above n 70, 102.

⁷² Ibid 93.

⁷³ Ibid 92.

⁷⁴ See generally *ibid*.

advocated for the use of paralegals at the local level to promote women's rights with support from the NGO community.⁷⁵

Whatever the focus, there are tangible and continuing positive results flowing from advocacy which utilizes statutory provisions: women have successfully formed informal groups, associations, or cooperatives to secure their rights and protect or acquire more land in various contexts.⁷⁶ For example, in Burkina Faso, Ghana, Mozambique, Uganda, and Tanzania, women lawyers' associations and civil society groups have agitated for women's property rights, educating the populace, bringing test cases to court and promoting the application of laws that protect women's property.⁷⁷ The logical enquiry following these success stories, and the focus of the current research, is: are NGO initiatives which disseminate and utilize statutory law leading to changing practices with respect to women's land tenure security in rural communities? More specifically, returning to the three major obstacles outlined at the start of this section, are these NGO initiatives overcoming the lack of knowledge, lack of application and lack of enforcement which have previously prevented statutory law's efficacy at protecting women's land rights?

To truly evaluate the effect of such initiatives, the following two dimensions were selected; these were not the only valid and available contexts, but served to sufficiently narrow the scope of the research to a comparative study. First, since the present enquiry examines NGO initiatives relying on statutory provisions, the statutory legal framework must be sufficiently progressive and explicit with respect to gender equality, land and/or property ownership, and if possible, family and inheritance law. Mozambique and Tanzania were selected as target countries because the land reforms process in both have been progressive in promoting gender equality: for example, a 2005 study of five countries with progressive land laws (Tanzania, Mozambique, South Africa, Zimbabwe and Kenya) found Mozambique and Tanzania's land legislation were closest to meeting human rights-based approach standards.⁷⁸

Second, the best indicator of the extent of change as a result of statutory law and NGO activities is likely to be the experiences of women most likely to experience gender discriminatory land practices in rural communities. Divorced women and widows are typically the most vulnerable categories of women as their relationship to the man through which access to property is granted under customary law has been severed. For divorced women, the question is one of retaining control over some of the land on account of the marriage partnership, whereas for widows the issue is one of inheritance—both involve practices traditionally considered to be properly administered under customary law.

⁷⁵ See A Varley, *Gender and Property Formalization: Conventional and Alternative Approaches* (2007) 35(10) *World Development* 1739, 1749.

⁷⁶ See Lastarria-Cornhiel, above n 19, 1327.

⁷⁷ See S F Joireman, *The Mystery of Capital Formation in Sub-Saharan Africa: Women, Property Rights and Customary Law* (2008) 36(7) *World Development* 1233, 1241.

⁷⁸ I Ik Dahl, A Hellum, R Kaarhus, T A Benjaminsen, P Kameri-Mbote, *Human rights, formalization and women's land rights in southern and eastern Africa* (2005) xiv.

3. Country case studies

3.1 Mozambique context

3.1.1 Formal and customary legal framework

Mozambique is governed by statutory law, customary law and religious law, overlapping to various degrees. The formal justice system is based on Portuguese civil law and established by the Constitution: it is bifurcated into civil/criminal and military justice systems; both are inferior courts to the Supreme Court, the highest court in the country. In the civilian justice system, there are a number of specialty courts, as well as district courts (which are supposed to cover just under 130 districts), provincial courts (19), and the Court of Appeal, which hears appeals from the provincial courts.

Community courts have existed since colonial times to deal with civil disputes and small crimes, and although they are formally recognized in the Constitution, they are not part of the formal justice system. Accordingly, community courts receive no financial or material assistance from the government or judicial courts, there is no 'right of appeal' from community court decisions to the district courts, and they are not comprised by legally trained individuals bound to apply the law, but rather by local elders elected by the community who generally try mediation/conciliation, and otherwise make decisions according to 'equity, good sense and justice'.⁷⁹

In practice, this equates to the continuing application of customary law, as it is understood by the local leaders at the time, which often focuses on women's duties rather than women's rights.⁸⁰ Customary law in Mozambique is practised in both matrilineal (in the north) and patrilineal (in the south) forms. In recent history, customary practices across both systems have prevented women from owning their own land because control rights are vested with her husband or maternal uncles or nephews.⁸¹ Despite the 1975 government denunciation of customary law as "backward and superstitious", customary norms are still adhered to, particularly in relation to inheritance rights, the division of labor and gender power dynamics.⁸²

After emerging from sixteen years of internal conflict in 1992, Mozambique began reconstructing its institutions and distributing land amongst small-scale farmers, who generate 99 percent of agriculture and are the mainstay of the economy.⁸³ The government's post-conflict policy of encouraging people to 'return to the land' meant many single, divorced and widowed women returned to farm the land, but without any legal protections. Three processes facilitated direct control over land by some women: 1) government redistribution of lands abandoned during the conflict to local families, including those headed solely by women; 2) widowed or abandoned wives have been able to return unchallenged to the land of their former husbands; and 3) returning males migrating to different areas have married local women, a reversal of the previous custom whereby women left their local community upon marriage.⁸⁴

⁷⁹ P Raina, 'Republic of Mozambique – Legal System and Research', *Globalex – Hauser Global Law School Program* <http://www.nyulawglobal.org/globalex/mozambique.htm#_1.3_The_Courts> at 21 July 2010.

⁸⁰ Save the Children, *Denied Our Rights* (2009) 21

<http://www.oxfam.org.uk/resources/learning/landrights/downloads/children_womens_property_inheritance_rights_mozambique.pdf> at 21 July 2010.

⁸¹ R Waterhouse, 'Women's Land Rights in Post-War Mozambique', in(UN Development Fund for Women (UNIFEM)) *Women's Land and Property Rights in Situations of Conflict and Reconstruction* (2001).

⁸² UNIFEM interview with Ismael Ossemame, Vice-President of the National Peasants' Union of Mozambique (UNAC) (1996), cited in *ibid*.

⁸³ Irin News, *Mozambique: women still struggle for land rights despite new law*,

<<http://www.irinnews.org/InDepthMain.aspx?InDepthId=26&ReportId=69845&Country=Yes>> at 21 July 2010: an estimated 68 percent or about 12.5 million people live in rural areas. Rural households are predominantly smallholders who provide about 95 percent of agricultural GDP with the balance from a small number of medium and large commercial farms: World Bank, *Mozambique: Proposed Rural Development Strategy 2005-2010* (2005) 3.

⁸⁴ Waterhouse, above n 81, 48-49.

Prior to 1997, land disputes, which arose frequently in the years immediately after the conflict, required written evidence to substantiate claims of land use. Most rural farmers, especially women, did not have access to written contracts - over 70 percent of women in Mozambique cannot read or write. Moreover, bureaucratic processes and a scarcity of courts and legal advice in the rural areas made access to the justice system difficult and complicated.⁸⁵ Consequently, over 70 percent of the population is governed and administered in accordance with customary law. Although this law varies significantly between and within different areas, in many instances such law is applied in a manner that discriminates against women. In particular, customary law regulating land use and ownership provide that women's access to resources, including land, depends on her relationship by kin or marriage to male relatives. Accordingly, when a married woman's relationship with her husband ends through death or divorce, male relatives acquire control of the land, which increasingly involves dispossessing the women of the land and all its assets.

The formal law has evolved to be explicitly protective of women's rights, and land tenure security specifically. Article 36 of the 1990 Constitution provides that provides that men and women are equal under the law in all aspects of political, economic, social and cultural life. It also provides that the State "shall recognize and guarantee" the rights of private ownership of property (art. 82) and of inheritance (art. 83). The Constitution acknowledges the plurality of legal systems that co-exist in Mozambique, to the extent that they do not conflict with the fundamental values and principles of the Constitution (art. 4). In the event of any conflict, all other law is subordinate to the Constitution (art. 2).

The 1997 Land Law⁸⁶ established women's equal right to land use and benefit (art. 10), and to inherit (art.16):

Chapter III: The Right of Use and Benefit of Land

Article 10(1): National individual and corporate persons, men and women, as well as local communities may be holders of the right of land use and benefit.

Article 16(1): The right of land use and benefit may be transferred by inheritance, without distinction by gender...

This law was considered a major breakthrough because it combined formal and customary law. In addition to the traditional recognition of written documents in land usage cases, it recognized customary tenure systems and the rights of people who had occupied land for over 10 years in good faith.⁸⁷ It also established procedures for delimitation and registration of community land rights, to be implemented through a village lands registration regime with minimal funding because it built on existing village level structures and relied on a large number of volunteers who were trained as paralegal guides.⁸⁸ However, its usefulness to women was severely limited because it only recognized marriages registered within the formal system, estimated to cover only 10 percent of the Mozambican population.

This was subsequently remedied by the 2004 Family Law, which defines three forms of marriage: civil, religious and traditional (art. 16). To be recognized under Mozambican

⁸⁵ L Maveneka, *Mozambique's Family Law Passes* (2004) Oxfam America
<http://www.oxfamamerica.org/newsandpublications/news_updates/archive2004/art6728.html> at 21 July 2010.

⁸⁶ Land Law of 1 October 1997, English translation provided by MozLegal Lda
<http://docs.google.com/viewer?a=v&q=cache:io_9fFMdLdIJ:www.doingbusiness.org/Documents/LawLibrary/Mozambique-Land-Law-Legislation.pdf+mozambique+1997+land+law+English+translation&hl=en&gl=au&pid=bl&srcid=ADGEESgKhflOnVUo_RF1hA3pX3FPooD-iy5MoATuxzCYbFqGpn6KWwR561N4mR3Kn0_JkNwOwA81eVKurnv4uraygf6jC6EtmLfCQwYpwc6-C5UnSGYWz5YZVylZqc6VzuvgawuEdQ-k&sig=AHIEtbSk4Ibfl_6LK6uGPZdfNoVMdlixBA> at 21 July 2010.

⁸⁷ That is, occupation in the belief that no one else had rights to the occupied land could be regarded as legally belonging to the occupier; however, women struggle in practice to enforce this right. Waterhouse, above n 81, 50.

⁸⁸ Toulmin & Quan, above n 26, 15.

law, religious and traditional marriages must also meet the requirements of civil law marriages (arts. 18, 24, 75). The law stipulates that the husband and wife administer the marital property equally and can freely dispose of the property, although disposal of common property requires consent in certain circumstances (arts. 102-103); recognizes cohabitation of a year or longer between a man and a woman as a marriage; provides that wives are entitled to inherit the property of their husbands; and establishes a rebuttable presumption that the wife has contributed (non-monetarily, generally) to the marriage so that upon divorce, marital assets are to be equitably divided between the two parties. One additional issue not dealt with in the scope of this research is that of polygamous marriages, which are not recognized by the Family Law (arts. 16(2), 30(1)(c)) but cover approximately one third of all Mozambican women.⁸⁹

Succession and inheritance are known in Mozambique as descent and distribution; both are governed by the Succession Chapter of the 1966 Portuguese Civil Code, which is based on a patrilineal system of inheritance (eg. arts. 2079 and 2080 preference male heirs over females) and currently under review by the government because of its inconsistency with the Family Law and Constitution. The Committee on the Elimination of Discrimination Against Women (CEDAW) noted in June 2007 that “discriminatory provisions still exist in several areas of Mozambique law including in...laws governing inheritance rights.”⁹⁰

3.1.2 Current practices and challenges

Gender discriminatory customary practices are not constitutionally or statutorily valid, but persist on account of power imbalances between the sexes within communities and ignorance about the legal rights women possess with respect to land. Specifically, inadequate educational initiatives have undermined rural communities’ awareness and exercise of their improved rights, as well as the effectiveness of the institutional processes.⁹¹ Local justice is usually delivered through male elders in forums to which women have no access. Efforts to reconcile the two systems produced provisions permitting, but not requiring, co-titling and women’s recognition as members of rural communities. This perpetuates land security problems faced by widows upon their husband deaths.⁹²

The increasing incidence of HIV/AIDS is an additional complication, causing families to lose land, tenure and employment to medical costs; and disproportionately exacerbating welfare challenges for women because of the stigma and discrimination following the death of a husband to AIDS. The current research did not enquire into these factors, focusing instead on the effect of legal education and exercise of rights in what should be a formal, impersonal venue—the courts. Similarly, the issue of ‘purification’ of a widow, whereby a relative of the husband has sexual intercourse with the widow and then takes on the responsibility of caring for the family, was also not canvassed in this study.

In 2007, the United Nations Commission on Legal Empowerment of the Poor organized a survey of 15 institutions involved in providing legal support to the poor, and 104 individuals across various districts, to contribute to a national consultation process, which was to have a specific focus on property rights.⁹³ It identified a number of difficulties encountered by the poor, particularly related to the defence of their property rights including: weak access to justice due to lack of legal knowledge and culture; low level of schooling and literacy; difficult access to institutions defending the poor and their property; cultural habits negatively influencing property transfer rights upon death; and

⁸⁹ Schroth & Martinez, ‘The Law on Property Grabbing 3: Property and Inheritance Rights of HIV/AIDS Widows and Orphans – The Law of Mozambique and the Standards of International Law’, *Proceedings of 10th Annual IAABD Conference* (2009) 519.

⁹⁰ CEDAW Committee, *Concluding Comments on Thirty-eighth Session*, 11 June 2007. CEDAW/C/MAOZ/CO/2, ¶ 12.

⁹¹ Sjaastad & Cousins, *Formalisation of land rights in the South: An overview* (2008) 26 *Land Use Policy* 3, 7.

⁹² Joireman, above n 77, 1240.

⁹³ Elsa Alfai, ‘Legal Empowerment of the Poor: Defending Property Rights’ (2007) 1 <www.undp.org/legalempowerment/reports/.../19_4_Property_Rights.pdf> at 22 July 2010.

weak institutional capacity to deal with legal support for the poor.⁹⁴ The study confirmed that many widows and their children are dispossessed of their inheritances; that 95 percent of interviewees resort first to neighborhood, district and traditional leaders, and in rare instances in which the conflict is not resolved, would take the case to court (92 percent in rural areas stated they would comply with the decision made by local structures).⁹⁵ Ninety-seven percent of the people interviewed stated they would resort to community courts for the resolution of conflicts.⁹⁶ The report concluded by highlighting four areas of change to overcome the obstacles faced by the poor in protecting property rights: education in and dissemination of property rights; facilitating access to registration; intersectoral strengthening and coordination; and reinforcement of policies.⁹⁷

Another survey of 384 individuals⁹⁸ across 6 provinces by Save the Children in April 2007 found that, according to 79.8 percent of the interviewees, land would be inherited according to the gender of the heir. This was despite the fact that some 52 percent of widows and women heads-of-households knew about the laws establishing gender equality, as did 48 percent of the men, and 68 percent of the justice officials.⁹⁹ The report identified the central problem regarding inheritance as:

[W]idows and orphans do not have easy access to the existing institutions and instruments of justice or to the support of law enforcement agencies and officers to protect them and their rights. This problem is particularly acute in rural areas because of inadequate judicial infrastructure, lack of information, poor levels of literacy and stronger, more rigid community traditions. The Government acknowledges this and continues to encourage community leaders to understand civil and legal issues that may arise in the communities. Local government officials concede that it is a difficult process.¹⁰⁰

Consequently, the recommendations included sensitization of the community, coordination and strengthening of NGOs, other key supporting activities (literacy classes, paralegal training, and support for income-generating activities), law enforcement and victim support, documentation and advocacy.¹⁰¹

Accordingly, to convert this legislative change into the practical realization of rights, several organizations are providing legal assistance and legal education on women's rights, including the Association for Women in Legal Careers (AMMCJ), the Rural Association for Mutual Assistance (ORAM), and the Association of Women, Law and Development (MULEIDE). Several of them provide paralegal and legal services to assist women claiming land rights under formal law.

ActionAid is one organization targeting rural women farmers in Malawi, Mozambique, South Africa, Zambia and Zimbabwe through the Women's Land Rights in Southern Africa Project (WOLAR). Its baseline research conducted in the second quarter of 2009 revealed that the progressive statutory law in Mozambique has not translated into gender equality in practice because of power imbalances in the family, and constraints related to dissemination and implementation of the laws.¹⁰² The WOLAR project aims to raise awareness of women's land rights, mobilize political support at community level, assist women claiming and obtaining land rights and improve access to support for sustainable farming. The baseline data did not identify how land complaints taken to traditional leaders are dealt with.¹⁰³ As part of its project, ActionAid is providing paralegal and legal

⁹⁴ Ibid 5.

⁹⁵ Ibid 14.

⁹⁶ Ibid 17.

⁹⁷ Ibid 25.

⁹⁸ The survey pool comprised 40% orphans and vulnerable children, 20% widows and/or women heads of households, 15% individuals from among the general population, 15% people caring for orphans, 10% justice officials. Save the Children (2007) *Denied Our Rights: Children, Women and Inheritance in Mozambique* 14 <<http://www.savethechildren.org.uk/en/docs/denied-our-rights.pdf>> at 21 July 2010.

⁹⁹ Ibid 8.

¹⁰⁰ Ibid 14.

¹⁰¹ Ibid 17-19.

¹⁰² Ibid 14.

¹⁰³ Ibid 35.

services as well as dissemination seminars about the two relevant laws, the Land Law and Family Law, in six provinces.

AMMCJ and ActionAid in conjunction with Oxfam, emerged as the most prominent organizations providing dissemination and legal representation services to women in land rights disputes. No evaluation has been done to determine whether their approaches are yielding positive outcomes for individual cases compared to communities where there is no education or legal services provided.

3.2 Tanzania context

3.2.1 Formal and customary legal framework

The United Republic of Tanzania comprises the constitutional monarchy of Zanzibar and mainland Tanganyika, each with a distinct court system. The Court of Appeal and the Constitutional Court are the two all-inclusive venues: the Court of Appeal of Tanzania is the highest court in the Republic, hearing appeals only from the High Court and subordinate courts with special jurisdiction. Religious diversity and colonial influences combined are responsible for a multiplicity of legal structures, which inter-relate with each other to varying degrees but not within an explicitly regulated system. Consequently, issues such as inheritance are traditionally governed by religious or customary law, while other areas are explicitly governed by statute law.

Customary law was formally recognized as a source of law in 1961 by the Judicature and Application of Laws Act (JALA), but only to the extent it does not conflict with statutory law (Section 9, JALA). Unfortunately, the codification of customary law in the Customary Law (Declaration) Order of 1963¹⁰⁴ prevents women and girls from being granted any right of inheritance to clan property, and stipulates that all immovable property shall revert to a deceased husband's family when the widow dies or remarries.¹⁰⁵ Patrilineal customary law governs 80 percent of the population, with the remaining 20 percent comprising matrilineal communities. Neither permits women to inherit land, and tendencies allowing widows to remain on their family land vary across communities.¹⁰⁶ Right to occupancy is generally through 'family transfers' or direct allocations by the state.¹⁰⁷

Certain parts of Tanzania are also subject to Islamic law, which articulates rights differently to both customary or formal law, and which empowers courts to apply Islamic law (over customary law) to matters of succession in communities that generally follow Islamic law in matters of personal status and inheritance.¹⁰⁸ The interaction between Islamic and statutory law is not explicitly explored in this research; however, since the relevant rights are guaranteed by the Constitution (which trumps gender discriminatory Islamic law) and the focus is the extent to which these are successfully exercised, this is not as significant an issue as it may otherwise be.

Rights granted under formal law are far more progressive: the Constitution accords equal opportunities to men and women alike (art. 9(g)), but in a part of the Constitution which is not enforceable at law. However, pursuant to an amendment passed in 2000, sex or gender as grounds for discrimination were included in article 13(1), which outlines the principles of equality applicable to all citizens. There is no explicit guarantee that women have a right to property; instead, every person is entitled to own property (art.24), which constructively includes women. Importantly, any law conflicting with provisions of the Constitution are void (art.64(5)).

¹⁰⁴ The Local Customary Law Declaration Order of 1963, Government Notice No. 436, 1963.

¹⁰⁵ Rwebangira, above n 61, 25.

¹⁰⁶ Ibid.

¹⁰⁷ Koskinen, above n 53, 175.

¹⁰⁸ B T Nyanduga and C Manning, *Guide to Tanzanian Legal System and Legal Research* 28 <<http://www.nyulawglobal.org/globalex/tanzania.htm>> at 21 July 2010.

Legislation regarding property ownership was passed in 1999: the Land Act governs land other than village land, the management of land, settlement of disputes and related matters,¹⁰⁹ and the Village Land Act¹¹⁰ provides for the management and administration of land in villages. This continues the dual system of land tenure developed under colonial rule, whereby there are statutory or granted rights as well as customary rights of occupancy: the difference being that customary land rights are no longer “deemed” but are now also granted.¹¹¹ The intentional consequence of this arrangement is that, since most land is “village land”, much authority over land tenure continues to be vested in the existing and well-established village governance machinery at the grassroots level.¹¹² This is reflected in the venues for resolving local land conflicts: village land is vested in the Village Assembly, and the Village Council administers the land through the authority of the Village Assembly.¹¹³

Both Acts explicitly articulate women’s rights “to acquire, hold, use, deal with and transmit land” are identical to men’s rights.¹¹⁴ Section 3(2) of the Land Act provides women with the same rights to land as men and requires land co-ownership by married couples.¹¹⁵ Similarly, registration of matrimonial land is presumed to be as occupiers in common,¹¹⁶ with land security guaranteed by his/her contribution or labor in the productivity, upkeep and improvement of the land (even if land is registered to only one of the spouses).¹¹⁷ In addition, a spouse cannot transfer, mortgage, sell, lease or give away land that is under co-occupancy without the other spouse’s explicit consent, even if the land is registered in only one spouse’s name.¹¹⁸ The Village Land Act protects existing rights in land, which *de facto*, excludes women, who never owned land under customary law.¹¹⁹ However, it also prohibits discrimination against women in the application of customary law.¹²⁰

A third critical piece of legislation affecting women’s ability to own and inherit land is the Law of Marriage Act 1971 (LMA) (applicable only in mainland Tanganyika),¹²¹ which attempted to integrate existing marriage laws under Muslim, Christian, Hindu and customary law, while retaining religious solemnization and the legality of polygamy. The LMA explicitly supersedes Islamic and customary laws,¹²² and grants women the enjoyment of equal rights to acquire, hold and dispose of property (section 56). However, if property is acquired in the name of one spouse, it is assumed to belong to that person only (section 60(a)); if it is both names, the assumption is that they have an equal interest in the property (section 60(b)). Section 114 requires the court to have regard for whether the spouse’s domestic service amount to such efforts and contributions which entitle her (invariably) to a share of the property upon divorce (not inheritance). Neither the husband nor wife may unilaterally transfer rights in the matrimonial home without the other person’s consent.¹²³ Controversially, the LMA also creates a rebuttable presumption of marriage if a couple has cohabited for a period of two years “in such circumstances as to have acquired the reputation of being husband and wife”.¹²⁴

¹⁰⁹ Act No. 4 of 1999.

¹¹⁰ Act No. 5 of 1999.

¹¹¹ M Benschop, *Rights and Reality: Are Women’s Equal Rights to Land, Housing and Property Implemented in East Africa?* (2002) 99.

¹¹² Koskinen, above n 53, 176 .

¹¹³ G Sundet, *The 1999 Land Act and the Village Land Act: A technical analysis of the practical implications of the Acts*, 28 February 2005
<http://www.fao.org/fileadmin/templates/nr/images/resources/pdf_documents/kagera/tanzania/1999_land_act_and_village_land_act.rtf> at 21 July 2010.

¹¹⁴ Land Act and Village Land Act 1999, section 3(2).

¹¹⁵ Tripp, above n 54, 6.

¹¹⁶ Land Act 1999, section 161(1).

¹¹⁷ Land Act 1999, section 161(2).

¹¹⁸ Land Act 1999.

¹¹⁹ Koskinen, above n 38, 176 (at footnote 176).

¹²⁰ Village Land Act 1999, section 20(2).

¹²¹ J S Read, ‘A Milestone in the Integration of Personal Laws: the New Law of Marriage and Divorce in Tanzania (1972) *Journal of African Law* 16, 19.

¹²² Second schedule of the Law of Marriage Act, 1971.

¹²³ Section 59(2).

¹²⁴ Section 160(1).

With respect to inheritance, Tanzania is also governed by three different bodies of law—customary, statutory and Islamic. Where conflicts arise between the different legal regimes, the courts employ two tests: the "mode of life" and the "intention of the deceased" tests. In deciding whether customary or statutory law should be applied, the "mode of life" test considers whether the deceased was part of a community where the customary law is widely accepted and applied. The "intention of the deceased" test considers statements and deeds of the deceased which could have indicated his/her preference.¹²⁵ In practice, customary law is assumed to apply unless proven otherwise in rural areas; for African Muslims, the intention of the deceased is determinative.

3.2.2 Current practices and challenges

Customary law has evolved over the years, and been shaped by other legal developments, including a Bill of Rights introduced in 1988. Despite the progressive and explicit statutory provisions, it remains the only law nearest to the people especially in rural Tanzania and continues to feature practices, norms and tradition-driven perceptions of rights which hinder women's ability to be allocated land as independent individuals.¹²⁶ Specifically, land rights are still 'viewed in light of a woman's marital status, and women are required to obtain their husband's consent.'¹²⁷ For example, the constitutional prohibition of discrimination based on sex or religion is not enforced in cases of customary inheritance. Similarly, despite the provision in the LMA for property rights for women, application of these provisions depends on the status and wishes of the head of the household:¹²⁸ a reflection of the inconsistent and often ineffective implementation of the LMA.¹²⁹

As described above, in both the patrilineal and matrilineal communities, customary law precludes women from inheriting land, even following their husband's death. Moreover, as the LMA does not cover inheritance, it does not explicitly supersede these practices. Despite their illegality due to their inconsistency with the Constitution, this makes little difference in practice: several cases on appeal to the High Court have simply been referred back to clan councils or local customary elites.¹³⁰ On the other hand, the High Court has also opined that customary laws should be modified in order for them to meet the requirements of equality and the human rights standards of the constitution and international law.¹³¹ It has also determined, "[f]emales, just like males, can now and onwards inherit clan land or self-acquired land of their fathers and dispose of the same when and as they like."¹³² For example, in *Joseph Sindo v. Pasaka Mkondola*,¹³³ the High Court granted a female petitioner an equitable share of the couple's jointly-acquired assets (although they were not married). Of course, the challenge is disseminating such decisions throughout rural communities practicing customary law—which on the factual survey above, has not yet occurred.

The Law Reform Commission subsequently targeted the treatment of marital property as an area of reform. It noted that women are denied shares in properties or blamed for causing marital breakdown and required to repay the dowry under various customary laws, and recommended that the references to customary law be struck from the LMA's

¹²⁵ *George Kumwenda vs. Fidelis Nyirenda* (1981) T.L.R. 22; *Abdullah Shamte v Mussa* (1972) H.D.C 283.

¹²⁶ R Odgaard, 'Scrambling for Land in Tanzania: Process of Formalisation and Legitimation of land Rights', (2002) 14(2) *The European Journal of Development Research* 71, 82.

¹²⁷ Koskinen, above n 53, 177.

¹²⁸ Legalbrief Africa, *Customary & Islamic Law and its Future Development in Tanzania* (2004) 107 ><http://www.legalbrief.co.za/article.php?story=20041128143334824>> at 21 July 2010.

¹²⁹ Benschop, above n 111, 125.

¹³⁰ See e.g., *Saidi Kasisi v Melensiana Kasisi*; cited without further reference in B T Nyanduga and C Manning, *Guide to Tanzanian Legal System and Legal Research* 28 <<http://www.nyulawglobal.org/globalex/tanzania.htm>> at 21 July 2010.

¹³¹ K Tomaševski, *Women and Human Rights* (1993), 132.

¹³² C M Peter, 'Enforcement Fundamental Rights and Freedoms: The Case of Tanzania (1995) 3(1) *African Yearbook of International Law*, 81, 91.

¹³³ *Joseph Sindo v. Pasaka Mkondola*, High Ct. Civ. App. 132 (1991) (Tanz.).

provisions on marital property.¹³⁴ In a similar vein, a study commissioned by the Ministry of Community Development, Women's Affairs and Children, and carried out by the Tanzania Women Lawyer's Association (TWLA), found:

...female-headed households were largely excluded from access to land by customary arrangements. Women were poorly represented in village and district decision-making structures pertaining to land administration and were disadvantaged in dispute resolution institutions because of corruption, prejudice, and poor representation. Women surveyed were enthusiastic about titling because it allowed them the possibility for co-ownership of family land. The survey found that women preferred statutory courts over traditional courts because their decisions were binding. Women favored full land rights, including the right to bequeath land, and demanded greater education in land rights.¹³⁵

Consistent with these results, NGOs in Tanzania are also targeting judicial courts applying statutory law as the preferred venue for improving land tenure security for women, particularly following the death of their husband or divorce. In 2004, a Gender and Poverty Program promoting equal land rights was established across six regions in Tanzania by the Law and Human Rights Centre (LHRC), the Women's Legal Aid Centre (WLAC), the Women Advancement Trust (WAT), the Tanzanian Women Lawyer's Association (TAWLA), and ENVIROCARE. In each region a program comprised of a baseline survey, needs assessment, trainings, workshops/seminars, moot court, and drama, was conducted to identify issues requiring future intervention.

The subsequent recommendations included: trainings, public education seminars and radio programs to raise awareness of the legislation; adequate distribution of reading and reference material; increased attention on legal education; providing sufficient support to women to allow them to assert their rights; and government follow-up at the village level to ensure implementation of the legislation.¹³⁶ WLAC was the most active of these organizations, implementing the program in three of the six regions and continuing to maintain 22 paralegal units in various regions.¹³⁷ However, to date no evaluation of the effects of legal education and provision of paralegal services has been conducted.

¹³⁴ Tanzanian Law Reform Commission, Report of the Commission on the Law of Succession/Inheritance, (1995) 10 <<http://www.lrc.or.tz/documents/Law%20of%20succession%20prelims.pdf>> at 22 July 2010.; see also M J Calaguas et al., Legal Pluralism and Women's Rights: A study in postcolonial Tanzania, (2007)16 *Columbia Journal of Gender and Law* 471, 507.

¹³⁵ Tripp, above n 54, 10.

¹³⁶ LHRC, WLAC, TAWLA, WAT, ENVIROCARE, *Report on the Facts and Lessons Learnt from the ground* (2004) 6-14.

¹³⁷ Meeting between Amrita Kapur and Scholastica Julu, Executive Director of WLAC, Dar es Salaam, Tanzania, 1 March 2010.

4. Methodology

4.1 Research intention

This research examines whether and how NGO efforts are influencing the application of customary law within communities to women who become dispossessed upon divorce or widowhood. Specifically, the goal of this research is to determine whether and how laws enshrining gender equality with respect to land are more effectively applied and enforced when combined with legal empowerment programs comprising education and the provision of legal services.

4.1.1 Central research question

To what extent and how have statutory provisions recognizing women's rights to land had an impact upon the operation of customary norms and practices that facilitate the dispossession of women's land rights. The impact will be measured by evidence of:

- Awareness of the statutory provisions on the part of women and community leaders;
- Women contesting their position (approaching a community leader or paralegal for advice on their position);
- Cases on behalf of women referred to either a community court (not bound by law and whose decisions are not legally enforceable) or district tribunal (bound by law and whose decisions are legally enforceable); and
- Women receiving a decision at either a community or district tribunal that is accordance with statutory provisions.

4.1.2 Subsidiary research questions

- Was the law by itself sufficient to have an impact on customary norms and practices?
- Was there a significant difference in impact where awareness and paralegal support programs were conducted?
- What conclusions can be drawn, if any, regarding the alternate strategies of targeting community courts versus district courts, in terms of modifying customary norms and practices?

4.1.3 Research hypothesis

Statutory (top-down) interventions aimed at enhancing women's tenure security have greater impact in modifying customary norms and practices when they are complemented with (bottom-up) legal empowerment programs to improve legal awareness and accessibility to legal remedies.

4.2 Research Design

4.2.1 Sources of information

Research was conducted by way of pre-designed surveys comprising approximately a dozen questions, most of which were closed (Y/N).¹³⁸ In each country, surveys were administered in three villages in which paralegals had been trained on legal rights related to land and to help resolve conflicts (but no office or regular 'consultation hours'), three villages in which there was an established paralegal office with trained paralegals under

¹³⁸ All questions asked of all participants are included in the document marked "Annexure A".

the supervision of a qualified lawyer, and in three villages which did not have any legal education or paralegal services.

The surveys were administered to at least ten women in each village who had been divorced or widowed since 2004. If more than ten women participated in any one village, the results were recorded but only the ten women widowed or divorced most recently were included in the analysis. There was no age limit and no restriction as to the years of marriage, although the number of years in marriage was recorded. The surveys were also administered to one community leader in each village. Initially, surveys were prepared for distribution to judicial officers at district courts, however, given the limited time, resources and logistical requirements in gaining approval to distribute the surveys this aspect of the study was abandoned. Similarly, after enquiries with paralegals, it became apparent that in most cases record keeping was not done, or was done without any precision: additionally, because the size of the entire population each paralegal or paralegal office service was difficult to determine, the number of cases received by paralegals was not recorded.

4.2.2 Nature of information

The data collected through the surveys comprised primarily quantitative information, and some qualitative information. The surveys administered to the women comprised 12 questions, ten of which required an affirmative or negative response, one of which required a description of an outcome, and one of which required an answer and its rationale. The survey was designed in such a way that certain answers rendered the one or two questions immediately following redundant: for example, if the woman did not approach a paralegal service, the following questions about whether the service took the case to court and the court outcome became redundant and were not asked. The surveys administered to community leaders contained two questions requiring qualitative answers and four questions about numbers of cases; the remaining questions were closed questions.

4.2.3 Time period of interest

The relevant time period was defined as the years in which women had experienced divorce or their husband's death to be eligible to participate in the study. A balance was struck in defining the time period: since each of the nine samples of population came from one village, it was unlikely there were ten women divorced or widowed in the last two years. On the other hand, it was important that the time period was recent enough to capture the change as a result of the legislation and NGO efforts. 2004—the present was the confirmed time period both as a matter of practicality (in two villages, the sample size of ten was only possible by including those divorced/widowed in 2004) and because it was recent enough that women divorced/widowed that year nevertheless took their case to court.¹³⁹

4.3 Partner organizations and due diligence

4.3.1 Mozambique

A number of preliminary meetings were arranged with prominent organizations dealing with land issues and women's rights. These included: ActionAid, Women and Law in Southern Africa (WLSA), the Association of Mozambican Women in Juridical Careers (AMMCJ), the Association of Women, Law and Development (MULEIDE), Cruzeiro do Sul, Oxfam, the Rural Association for Mutual Assistance (ORAM) and Helpage International. Each of these meetings canvassed the substantive legal issues of interest to the organization, the manner in which these issues were engaged with including research,

¹³⁹ For example, in Marracuene in Mozambique one woman, divorced in 2004, approached AMMCJ who took her case to court and is now awaiting a decision.

legal education and training, provision of legal advice and assistance with taking cases to court.

Of these organizations, those focused on women's rights addressed numerous issues including domestic violence, husband's failure to pay maintenance, sexual assault and land rights. Neither WLSA nor MULEIDE have a substantive client base stemming from land conflict issues; Helpage International's projects were implemented in a northern province of the country, in a less structured program involving training of paralegals but not the establishment of a paralegal office or employees; Oxfam did not have an active land rights program in Mozambique and Cruzeiro do Sul did not have a specific gender focus in its orientation towards research rather than provision of legal services.

AMMCJ and ORAM/ActionAid were the most feasible partners to investigate the effects of NGO initiatives in training paralegals and providing legal services to assist women in claiming their rights under statutory law. In 2009, ActionAid partnered with ORAM in the "Women's Land Rights in Southern Africa Project" (WOLAR) in five countries (Malawi, Mozambique, South Africa, Zambia, and Zimbabwe) to: raise awareness of women's land rights, mobilize political support at a community level, facilitate women claiming and obtaining land rights and improving access to support for sustainable farming. Baseline studies were conducted in each country prior to the implementation of the two-year program. However, ActionAid and ORAM had commenced training paralegals on legal rights surrounding land earlier in 2007.¹⁴⁰ The paralegal training included districts in the Maputo province, Manhiça and Marracuene.

The partner organizations conduct programs in a number of villages and were able to facilitate the assembly of women and translation of the survey and women's answers. AMMCJ was established in 1995 to focus on a number of legal issues confronting women and has partnered with Diakonia, a Swedish organization for international development and cooperation since 2003. AMMCJ has established paralegal offices, conducts dissemination programs and provides legal assistance with taking claims to the district tribunals in a number of provinces, including Maputo.¹⁴¹ ORAM was founded in 1992 to support rural communities, particularly helping peasant farmers to realize their land rights through 140 staff in seven provinces.

Discussions with other NGOs including WLSA, MULEIDE and Helpage confirmed that land rights issues comprised the minority of cases they were involved with, and that ORAM and AMMCJ had greater expertise in assisting women with land rights claims. This, combined with ActionAid's multi-country program, selection of ORAM as a domestic partner organization in the WOLAR project, and AMMCJ's numerous established offices in various districts and within the Maputo province, provided confirmation that the ActionAid, ORAM and AMMCJ were legitimate, nationally recognized organizations with ongoing services facilitating the enforcement of women's land rights.

4.3.2 Tanzania

A number of preliminary meetings were conducted with relevant NGOs including: HAKIARDHI (the Land Rights Research and Resources Institute), WLAC (Women's Legal Aid Centre), TAWLA (Tanzanian Women Lawyer's Association), and NOLA (the National Organization for Legal Assistance). TAWLA and WLAC are the most prominent women-oriented organizations, producing numerous publications independently, together and in collaboration with other organizations. Discussions with NOLA and HAKIARDHI confirmed that these two were the most well-known and longstanding organizations providing legal services to assist women's legal claims across a range of issues. WLAC was registered in 1994, is funded by a number of foreign donors, and maintains 22 trained paralegal units in various regions throughout the country. TAWLA was registered in 1990, has offices in four regions and is also funded by a number of overseas agencies. However, due to the

¹⁴⁰ A copy of a brochure indicating the scope of ORAM's activities is attached to this report and marked, "Annexure B".

¹⁴¹ A copy of a brochure (in Portuguese) describing AMMCJ is attached to this report and marked, "Annexure C".

breakdown of TAWLA's car, logistical issues arranging the appropriate women to gather to be surveyed, and the remote office location, it was impractical to partner with TAWLA on this occasion.

In contrast, the partnership with WLAC offered similar conditions to those present in Mozambique, increasing the applicability of any comparison conducted across the two countries: in the Kibaha region, a trained paralegal organized and facilitated the execution of the surveys, but there was no established paralegal office or WLAC lawyer staff member on location. In the Morogoro region, WLAC has an established office staffed by a number of paralegals with an overall coordinator.

4.4 Monitoring and evaluation

Progressive monitoring by the domestic partner organizations was achieved through initial and ongoing consultation regarding the method accessing respondents, the content and format of the survey questions and results, and feedback on preliminary analysis emerging from survey responses. The partner organizations in both countries facilitated access to respondent women through the local village council/administrative authorities in Control villages, and through their paralegals in the other two conditions. It was raised with and acknowledged by both organizations that this method of identifying women in the Paralegal and Office condition may not result in a representative sample of women from those villages. However, the only way to confirm if this was the case was to identify every divorced or widowed woman in each village, which was impractical; further, the relative difficulty in accessing ten women in each village satisfying the criteria and the spread of results regarding dispossession across the conditions suggest that it's likely the respondents represented the majority of women in each village satisfying the criteria, rather than merely a sample.

The content and format of the questions were reviewed and modified by AMMCJ in Mozambique: the questions were retained in the same form and wording in Tanzania for consistency. For example, the wording in some questions was simplified and an additional question inserted to elicit more complex information.

The feedback from the partner organizations on preliminary results and analysis was not as comprehensive or constructive as desired. Difficulties in obtaining a complete data set from Mozambique limited the quality and opportunity to obtain feedback: AMMCJ paralegals noted during the survey period in Mozambique that the results regarding knowledge of the laws reflected a continuing primary need for civic education on women's rights. AMMCJ did verify orally during and after the surveys were administered: the consistency of court decisions in favor of women claimants reflected and was consistent with judicial training on gender equality and land rights; that preference for community structures was related to lower levels of knowledge about formal laws and institutions; that confidence in the likely adherence to court decisions was also related to levels of knowledge and witnessing or experiencing the effects of court decisions; and that the likelihood of questioning dispossession by seeking advice from the community leader was an expected and welcome difference between the Control and other conditions.

WLAC likewise confirmed orally during the survey period and afterwards by email: the high rates of legal knowledge were expected given the government prioritization of extensive dissemination programs executed after the two relevant laws were passed; that this awareness was consistent with a preference for the formal court across all three conditions; and that court decisions in favor of women were consistent with the general understanding and acceptance of women's land rights within formal institutions. WLAC did not have an explanation as to why Paralegal condition results were better than Office condition results for some questions, particularly with respect to compliance with court orders.

4.5 Logistics, challenges and constraints

4.5.1 Communication

Specific arrangements were made to overcome numerous communication obstacles. First, the interviews were to be conducted in the local dialect, Shangaan, in Mozambique and in Swahili in Tanzania. The survey questions were drafted in English and translated with the assistance of an English-speaking lawyer at AMMCJ in Mozambique and WLAC in Tanzania. The surveys were printed in the local language and asked by paralegals from the partner organizations, and recorded in that language or contemporaneously translated into English and recorded in English. The survey responses in the local language were then translated into English by an English-speaking lawyer from the partner organization.

While this approach was possible because most of the questions were straightforward and required “yes/no” answers, it was critical that the paralegals understood the intent of the question, so that if an elicited answer did not seem to reflect this intent, the paralegal could ask the question in another way. The corollary risk is that there was some variation in the way certain questions were expressed—ie. the wording of the questions was not consistent across villages or even individuals. However, since this approach ensured the paralegals’ understanding of the questions’ meaning, and respondents’ meaningful answers, the variation in wording was considered necessary to obtain useful results.

4.5.2 Consent

The researchers informed the interviewees of the purpose of the study and that they had the right to decide whether they wanted to be interviewed and whether they wanted their names used. The interviewers informed the interviewees they did not need to respond to all the questions if they did not wish to and that they could stop the interview at anytime. The purpose of the study was described as gathering information to help the government and organizations better understand their experiences so programs could be more helpful to them. It was stressed that the results of the study would not be used in any way that could harm them. For practical reasons, including the time allowed by partner organizations in each village, consent was obtained orally: first in the initial introduction conducted by the partner organization lawyer directed towards the group of interviews as a whole, and secondly on an individual basis at the commencement of the survey. Every person surveyed consented to their names and information being included in the report.

4.5.3 Security Assessment

In addition to the legislative framework and NGO activities, the state of security in Mozambique and Tanzania was also considered in the selection of countries within which to conduct the surveys. Maputo is regarded as generally safe according to a number of informative travel websites,¹⁴² and the presence of another IDLO representative conducting a two-year project also confirmed the relative safety of Maputo as a base. Trips were either organized by AMMCJ, or involved visiting ActionAid offices and being accompanied by representatives of the partner organizations, which increased the safety and logistical ease of travelling to the nine villages. All village trips were conducted as day trips, so there was no night-time travel on out-of-city roads.

Tanzania is similarly relatively safe,¹⁴³ and the presence of at least two well-established women’s rights organizations indicated that village trips could be easily and safely co-ordinated. WLAC’s history of activities, previous similar partnerships and co-ordination of

¹⁴² See for example, <<http://www.wordtravels.com/Travelguide/Countries/Mozambique/Basics>>, <<http://www.lonelyplanet.com/mozambique/practical-information/health>> at 22 July 2010.

¹⁴³ See for example, <<http://www.lonelyplanet.com/tanzania/practical-information/health#>>, <<http://www.climbmountkilimanjaro.com/travelling-in-tanzania/security-in-tanzania/index.html>>.

village trips allowed for regions to be visited overnight, with logistics (including transport and accommodation) arranged by WLAC staff.

4.5.4 Limitations and challenges

The initial challenge was two-fold: to identify organizations targeting customary law practices as part of their strategy to improve women's land rights, and to communicate a partnership proposal that would assess the impact of these efforts. Preliminary internet-based research, emails and phone calls (limited by the quantity of information available, and the number of responses) indicated NGOs were not focusing on customary law, but rather on the dissemination and application of progressive statutory provisions. Initial face-to-face meetings in country confirmed this focus, and catalyzed a re-formulated approach to the research project. Consequently, the time period within which to form partnerships, collaboratively confirm the questions and logistics of the project and organize village trips was limited, and inevitably affected the capacity to complete the data collection.

A limitation intrinsic to the study's methodology was its focus on quantitative data, which required much higher numbers of participants to yield meaningful results. This compounded the challenges listed above associated with the limited time to gather data in each country. It also exacerbated any logistical challenges that were encountered by the partner organizations: for example, AMMCJ was not able to organize data collection from a third control village, which undermined the robustness of the statistical analysis and inferences drawn from data in Mozambique. The integrity of the data would not have been as affected if the focus was on qualitative information—while the sample size would have been smaller, conclusions and trends could have been inferred from descriptive answers.

This factor, combined with the large number of surveys to be conducted, created other limitations. Firstly, the sample sizes were small (approximately ten women) because of the logistical challenges in alerting the appropriate women and facilitating their attendance to be surveyed. Since communication is primarily through face-to-face contact, and occasionally by mobile telephone, the time constriction limited the number of women the local paralegal could contact. Similarly, while nine villages were visited in each country, the research and the results would be more robust if more villages had been visited in more remote areas. All of the villages were proximate (less than 2 hours) to city or town centers.

Relatedly, the data samples are not complete because there were logistical difficulties in ensuring enough women matching the criteria and the community leaders attended the survey sessions. The sample sizes of each group were already too small to conduct statistical analysis that would yield meaningful results. While the smaller numbers of responses in some groups inevitably reduces the robustness of the inferences drawn from the data, the already relatively high number of responses and inclusion of qualitative answers still allows for the identification of trends.

An inevitable challenge, and one that could not be fully overcome in Mozambique, was that of accessing the target group—divorced or widowed women in rural communities of two developing countries. Compounding the customary or traditional disadvantages these women experience are continuing logistical challenges created by their physical circumstances—limited or complete lack of access to electricity, telecommunication services, and other social facilities. Often, the attendance of women for the survey depended on identification of their eligibility by the community leader or another involved woman, and a physical visit to their home to request attendance at a specific place and time. In some villages, specifically those serviced by AMMCJ, it proved difficult to identify and effectively facilitate the attendance of enough women satisfying the eligibility criteria (ie. attending women were often divorced or widowed prior to 2004, had rented property or lived on their husband's family property). Whether this is a result of a lower number of

eligible women in the village, lack of knowledge of the existence of additional eligible women, or inability to facilitate their attendance is difficult to guess.

Also in Mozambique, authorization from the local administration was required to enter and speak to women in the control villages. This proved to be a significant obstacle, as the local administration for a few of the villages approached did not provide permission for AMMCJ (the partner organization facilitating surveys of the control villages) to conduct the surveys. Regrettably, AMMCJ was not able to arrange entry into a third control village in the time period preceding this preparation of this report.

Accuracy in communication and consistency in recording answers was an additional concern, remedied by careful attention to whether the questions asked verbally were the same as the questions included in the written survey, and double-checking or clarifying responses received. Each of these limitations is a reminder of the inherent logistical challenges in obtaining sufficient accurate data in remote communities in a developing country.

5. Results and analysis

5.1 Interpretation

Across both countries, some common baseline interpretations are required for the results to make sense. The first question was asked to determine whether or not women were forced to leave the land; in some cases (in village E in Mozambique, for example) the women did not leave the land, but had faced enough conflict to seek out the community leader for advice and a resolution—therefore, the number of women seeking advice exceeded the number of women who were recorded as ‘staying with the land’. The second part of the first question was not asked uniformly by all the questioning paralegals, so while the answers as to why women stayed with the land provide critical descriptive information, the statistical value is limited. If the recorded response did not include the reason why the woman was allowed to stay on the land, it was not counted in the table.

The value in including these numbers in the table lies in the exposition of whether women are allowed to stay on the land for reasons not related to their rights, and what those reasons are. Likewise, as presented in Tables 1.3 and 2.3, women who stayed with the land, but not because it was their right, were recorded as a percentage of women who stayed on the land, not of the entire sample. Non-rights related reasons included: to look after the children, because the husband abandoned the family, because the family/husband had land elsewhere, and that the husband’s family had died as well. The rationale for these exclusions was on the basis that there was no contest for the land, so relative rights were not invoked. Rights-related reasons included: receiving a letter from the Village Council acknowledging ownership, and respect for a will written by the husband.

Answers to question 4 in the women’s survey were recorded so that “get resolution” was interpreted to mean a resolution consistent with the law. Therefore, a community leader’s decision that the woman would have to continue to work on the land, but not be entitled to any assets was recorded as a negative answer to Question 4. Similarly, if the community referred the situation to the paralegal service, this was also recorded as a negative answer, because the situation was not satisfactorily resolved within the informal community structure.

While Question 8 was relevant only to the women who had received favorable judgments in formal courts, Question 9 elicited the respondent’s opinion about whether the formal court decisions in favor would be obeyed in the village. Accordingly, answers such as, “I don’t know” or “it depends” were recorded as negative responses: they demonstrated a sense that something other than respect for the law influenced whether or not court decisions were regarded as binding, and obeyed.

The surveys for community leaders and paralegals were far more straightforward and self-explanatory: they are not discussed in detail here. However, as a general note, the questions across all respondent groups distinguished between customary structures and formal courts with the following terminology: customary structures were labeled as community courts or village councils, and formal courts were generally described as tribunals. The terms varied slightly across the two countries, but both the questioners and respondents (as demonstrated by their answers) appeared to understand the distinction between the labels and institutions.

The method of presenting data was designed to extract the maximum usefulness for analysis. For that reason, summarized versions of each community leader’s responses were tabulated, rather than summaries across each condition. Raw data was converted to percentage figures, but it is noted that in the Control condition in Mozambique, the raw numbers were significantly lower than in other conditions, so the persuasiveness of the percentage figures is also more limited.

5.2 Mozambique

Table 1 Mozambique: survey numbers

Village Name and Condition	Number of Women Surveyed*	Number of Community Leaders Surveyed
A. Marracuene (office)	6	1
B. Machava (office)	8	1
C. Boane (office)	8	1
D. Marracuene† (paralegal)	10	1
E. Manhiça (paralegal)	10	0
F. Boane† (paralegal)	10	1
G. Namaacha (control)	10	1
H. Distrito Urbano No. 5 (control)	8	1

* This number includes only those women surveyed and satisfying the criteria articulated in Part 3.2 above.

† This was a second village located in the same district as the village surveyed in the “office” condition, but there was no overlap of participants.

^ As described above, because the paralegals provided services and assistance on an informal basis, they did not keep records of the number of cases in which they were involved.

Table 2 Mozambique: consolidated results of women's responses across all villages

Question	Group 1 Paralegal Office				Group 2 Paralegal only				Group 3 Control			
	A	B	C	Total	D	E	F	Total	G	H	I	Total
1. Stay with land?	1 of 6	1 of 8	6 of 8	8	3 of 10	7 of 10	8 of 10	18	7 of 10	4 of 8		11
Articulated reason stayed was not rights-related	-	1	-	1	3	4	1	8	5	0		5
2. Community leader advice?	4	5	1	10	2	2	4	8	0	1		1
3. Ask community leader for resolution?	4	2	1	7	2	2	4	8	0	1		1
4. Community leader get resolution?	0	0	0	0	0	1	3	4	0	0		0
5. Go to legal service?	5	7	2	14	1	0	2	3	-	-		-
6. Go to court?	5	5	2	12	0	0	1,1	2	0	0		0

7. Court decision in your favor/pending?	2, 3	1, 4	1, 1	4,8	0	0	0 - cy, 1 - DT	1	0	0		0
8. Court decision obeyed?	1	1	1	3	0	0	cy - 1	1	0	0		0
9. Do you think court generally obeyed?	3	6	7	16	0	4	5	9	9	5		14
10. Formal court better / both ok?	2,1	2,0	4,1	8,2	1,0	0,3	4,1	5,4	3,7	4,3		7,10
11. Divorce = divide assets?	6	6	5	17	3	6	10	19	7	5		12
12. Widow = inherit?	6	7	8	21	6	8	10	24	10	7		12

Table 3 Mozambique: women's responses across conditions

Questions	Office	Paralegal	Control
1. Stay with land	36%	60%	61%
2. Stay not due to right	13%	27%	45%
3. C'y leader advice	71%	67%	14%
4. Request resolution	50%	67%	14%
5. C'y leader resolved	0%	50%	0%
6. Go to legal service	100%	25%	0%
7. Go to court*	86%	17%	0%
8. % Court decisions in favour	100%	100%	-
9. Court decision obeyed in this case	75%	100%	-
10. Formal court decisions obeyed generally	73%	30%	78%
11. Formal court better	36%	17%	39%
12. Both courts ok	9%	13%	56%
13. C'y court better	55%	70%	6%
14. Divorce = wife entitled to half assets	77%	63%	67%
15. Widow = inherit	95%	80%	67%

* Two of the 14 women who went to the legal service had their dispute successfully settled by the service in accordance with the law.

Table 4 Mozambique: community leader responses by condition

Question to community leader	Office	Paralegal	Control
1. Do customary practices allow women control of the land?	A-Yes	D-Widow=no: divorce=yes	G-Yes
	B-Yes	E-Yes	
	C-Yes		
2. Has this always been allowed?	A-Yes	D-Widow=no: divorce=yes	G-Yes
	B-Yes	E-Yes	
	C-Yes		
3 & 4. What is the proportion of women divorced or widowed who had to leave land?	A-?/15-20	D-0/3	G-A lot
	B-5/5	E-5/20	
	C-1/6		
5. How many of these women came for advice?	A-15-20	D-0	G-A lot
	B-?	E-5	
	C-2		
6. How many of these disputes did you resolve?	A-12	D-N/A	G-3
	B-5	E-3	
	C-1		
7. What was the resolution?	A-3 reunited, 9 separated. I only know about divorced women	D-N/A	G-For all 3 I helped people get the land back
	B-Property divided	E-I returned the land to the women, as per the law	
	C-The widow and son each got half		
8. If a tribunal decision about land is in a woman's favor, is it followed?	A-Yes	D-No	G-Yes
	B-Yes	E-there has been no need as everything is resolved within community	
	C-No		
9. Is good that women can control the land? Why or why not?	A-Yes, because it is her right	D-Yes for family sustainability	G-Yes.
	B-Yes, as a result of being a wife	E-Yes because men work in companies and women work the land.	
	C-Yes, but need social and family harmony		

10. Under statute, can the widow keep land?	A-Yes	D-Yes	G-Yes
	B-Yes	E-Yes, for family sustainability	
	C-Yes		
11. Under statute, upon divorce, is the wife entitled to half?	A-Depends on reason for divorce	D-It's possible to divide assets but land is more difficult	G-Yes
	B-If formally married yes. Otherwise family decides.	E-Yes	
	C-Yes, but ultimately land goes to children.		
12. Are community courts or tribunal better? Why?	A-Both, because they both explain the law	D-Community court, because it is more efficacious, tribunal is more arbitrary	G-District tribunal because they have rules, laws and are more organized
	B-District tribunal, because community leaders do not have official status or knowledge	E-Community court because it's effective and people go there first before the tribunal.	
	C-District tribunal, because they use legislation and respect human rights		

5.2.1 Women in Mozambique

From the outset, it is acknowledged that the robustness of the results and any analysis is negatively impacted by incomplete data, particularly in the Control condition, which comprises two villages rather than three villages. However, the Control condition data is consistent with expectations across the survey questions, and the analysis below limited to a discussion of trends and possible explanations rather than statements of causal relationships.

An important primary observation across the conditions is that while the proportion of women permitted to stay with the land was almost double in the Paralegal and Control conditions compared to the Office condition, 87 percent of women in the Office condition who did stay, did so on the basis of their legal rights rather than their obligations to children or specific factual circumstances. This figure is marginally better than 73 percent in the Paralegal condition and significantly better than the 55 percent of women in the Control condition who stayed for rights-related reasons. There is a need for some caution, however: the recorded proportion of women staying with the land in the Office and Paralegal conditions may not accurately reflect current trends in the village—these women were identified to participate through the paralegal service handling their claims so do not necessarily represent the majority of divorced or widowed women. Therefore, no conclusions about the significance of the low 36 percentage of women staying with the land in the Office condition to village practices are drawn.

Although fewer women in the Office condition were initially allowed to stay with the land they (and those in the Paralegal condition), all of them sought advice about their

dispossession. While 71 percent followed customary norms by approaching the community leader first, none of them received a satisfactory resolution. Four interesting conclusions follow: first and most importantly, every dispossessed woman in these villages challenged their situation. Such action is predicated both on knowledge of rights as well as confidence and determination to see these rights protected.

Second, Mozambican women still tend to resort to community-based methods of resolution, but this method does not yield results consistent with the law; and third, all the dispossessed women in this condition sought out legal advice to take their claim further, which in turn is predicated on awareness and accessibility of the service, and a willingness to approach the service despite lack of support from traditional structures. This is particularly interesting given that those women who sought legal advice after receiving unsatisfactory advice and results from their community leader were direct challenging customary authority. Fourth, there was a trend in the Office condition for women to bypass their community leaders and seek legal advice directly: there were four more women who approached a legal service than who approached their community leader. The reasons for this could be a combination of: perceptions of effectiveness, relevance and legitimacy of the two entities and an assessment of likely outcomes following approach. Also noteworthy is the fact that not all cases with the paralegal service went to court—the only women to experience successful law-based mediated outcomes in lieu of a court case (ie. after taking their claim to a paralegal service) were in the Office condition.

Similarly, all but one woman in the Paralegal condition challenged their dispossession in some way, and approached the community leader for advice and a resolution in similar numbers to their Office condition counterparts. However, a much lower percentage (25 percent) sought legal advice, and even fewer (17 percent) took their claim to court. These figures are perhaps not that surprising: the paralegals in each village trained, educated and provided advice to women, but were extremely limited in their capacity to assist with drafting claim documents to be admitted to courts. Thus, while women's social attitudes and practices have changed in these villages, such that they are aware of and seek to enforce their rights, they did not have the support, expertise and therefore capacity to take their claims to a formal venue. Of the two women who did go to court in the Paralegal condition, one went to the community court, and the other to the district tribunal—both women were from the village with a very pro-gender quality community leader.

In terms of confidence in chances of compliance with formal court decisions, the relatively high percentage of affirmative responses (73 percent) in the Office condition is not surprising; but the low Paralegal result (30 percent) and high Control result (78 percent) are. Respondent answers for this question showed that many women felt they couldn't answer the question or didn't know because they had never heard of tribunal decisions that applied to people in the village. As mentioned above, responses such as "I don't know" did not count as an affirmative response—there were only seven women across the condition whose responses were explicitly negative. While it is possible to draw the inference in the Office condition that legal education and greater exercise of rights has led to greater confidence that court decisions will be obeyed, it is difficult to draw any inferences from the results in the other two conditions—the reluctance to speculate on compliance could be due to any number of reasons.

Women across the Office and Paralegal conditions had a significant preference for community structures (55 percent and 70 percent respectively): their answers included reasons such as accessibility, the respect people have for this venue, and having not witnessed tribunal decisions. In stark contrast, only 6 percent of the women in the Control condition thought community courts were better. This last finding is consistent with negative experiences within community structures women in the Control condition would inevitably have witnessed—knowledge of the failures of the current 'system' understandably leads to hope that another more authoritative system would be more advantageous. The answers in the Office and Paralegal highlight the underlying dilemma

prompting the current study: community structures have greater capacity to be responsive, adaptive and accessible—it is the content of issued decisions that is problematic. All of the reasons cited when preferring community courts relate to the process, not the substance, of the decisions made; and for those who preferred the tribunal, it was on grounds related to rights, enforceability of decisions, and lack of corruption. This combination of answers reinforces the ultimate goal—that land rights conflicts are resolved at the local level consistent with gender-equality legislation.

Finally, knowledge of widow's inheritance rights appears to have been disseminated more successfully than the divorcee rights pursuant to the 2004 Family Law. This could be due to the relative ages of the law, the frequency with which they are relevant to cases in the villages or drawn from observation of community practices. It is unsurprising that the rate of knowledge in the Control condition is the same for both divorce and widowhood situations, and that that rate, 67 percent, is generally lower (the rate of knowledge in the case of divorce in the Paralegal condition being the exception at 63 percent) than knowledge in the other two conditions.

5.2.2 Community leaders in Mozambique

Information gathered from community leaders is presented in a summarized table format to give a description of their answers, as the capacity to make numerical comparisons is limited by whether or not they were able to provide estimates regarding disputes and resolutions of land-related conflicts involving dispossessed women in the last year. Despite the lack of records or clear recollection of relevant cases, the quantitative questions were asked of all leaders and the results recorded both for completeness and to provide a sense of the variation across communities. From the outset, it is acknowledged that having only one community leader in the Control condition complete the survey renders any quantitative comparison or analysis redundant.

While there is one variation to the understanding of the relevant customary practices in the Paralegal condition, which suggests that widow's rights have been eroded over time, community leaders otherwise acknowledged the capacity of these women to retain control over land. Interestingly, the proportion of dispossessed women, and the number of women seeking advice varied within conditions, suggesting the complexity of issues bearing upon land-related conflicts is not necessarily significantly impacted by the presence of paralegals or a paralegal service.

Community leaders' recollections of the number of resolutions they facilitated are clearer, but also at odds with the results generated from the surveys of women, particularly in the Office condition: while leaders in the Office condition reported resolving one, five and 12 conflicts across villages A, B and C, respectively, none of the women recorded a satisfactory resolution consistent with their rights—all of the women who had sought a community-based resolution subsequently took their cases to the legal service. Of course, the women whose conflicts had been resolved may not have participated in the survey, but the women who did participate in the survey and reported approaching their community leader were nonetheless dissatisfied.

In the Paralegal condition, one village (Boane) has a female community leader who was very supporting of widow and divorcee land rights, and successfully resolved all conflicts brought to her, including those which had not yet resulted in dispossession. Only one women subsequently took her case to the paralegal and then court, while four women recounted the community leader resolving the matter or confirming their continuing rights to the land to diffuse conflicts. Such an encouraging example of leadership nonetheless highlights the dependence of customary practices on interpretation by, and opinions of, community leaders—Boane's community leader's attitudes contrast sharply with attitudes and actions expressed by other community leaders.

Two community leaders did not expect village compliance with court orders in favor of women, indicating a continuing resistance within rural communities. Whether this

resistance is furthered or opposed by leader attitudes is difficult to confirm when the answers provided by the leaders do not reflect answers provided by the women, particularly those who have been successful at court, and those who have found court orders in their favor are ignored.

Community leader opinions on the benefit of women controlling the land also varied: two responses explicitly mentioned the countervailing consideration of the family, suggesting an attitude which balances individual rights against the responsibilities a woman may have (namely, children and not to disturb family harmony), rather than recognizing the right granted is not conditional.

There is a higher level of knowledge of statutory law regarding widow's rights as opposed to divorcee rights. In the latter, family issues are again mentioned as alternative concerns, which may explain the difference in knowledge between the two—widows are not involved in any independent interpersonal conflict giving rise to the issue of land rights, and their rights are generally consistent with those of their children.

Finally, there was a preference of community leaders for formal courts in the Office condition, and community courts in the Paralegal condition. This may be a reflection of the relative levels of exposure, training and integration of legal services and culture into the community; the presence of paralegals is not sufficient to increase the number of tribunal decisions applied to the community or to translate the information in dissemination seminars into practical reality.

5.3 Tanzania

Table 5 Tanzania: survey numbers

Village name and condition	Number of women surveyed*	Number of community leaders surveyed
A. Msamvu (office)	10	1
B. Madizini (office)	10	1
C. Kichangani (office)	10	1
D. Mwanalugali (paralegal)	10	1
E. Boko Timbone (paralegal)	10	1
F. Boko Timiza (paralegal)	10	1
G. Pangani (control)	10	1
H. Mwendapole (control)	10	1
I. Visiga (control)	9	1

Table 6 Tanzania: consolidated answers across all villages

Question	Group 1 Paralegal Office				Group 2 Paralegal only				Group 3 Control			
	A	B	C	Total	D	E	F	Total	G	H	I	Total
1. Stay with land?	6	9	6	21	8	7	6	21	9	5	5	19
Articulated reason stayed was not rights-	3	3	3	9	3	0	1	4	8	2	3	13

related												
2. Community leader advice?	4	1	2	7	1	0	0	1	1	0	1	2
3. Ask community leader for resolution?	4	1	2	7	1	0	0	1	0	0	1	1
4. Community leader get resolution?	0	0	0	0	0	0	0	0	0	0	0	0
5. Go to legal service?	0	0	2	2	1	1	1	3	0	0	0	0
6. Go to court?	1	0	2	3	1	1	1	3	0	0	0	0
7. Court decision in your favor/pending?	0,1	0	2,0	2,1	1,0	1,0	0,1	2,1	0	0	0	0
8. Court decision obeyed?	-	0	1	1	1	1	-	2	0	0	0	0
9. Do you think court generally obeyed?	5	7	5	17	9	10	10	29	7	9	6	22
10. Formal court better / both ok?	6,1	7	6,3	19,4	7, 2	8, 0	8,1	23,3	5,0	7,0	6,0	18,0
11. Divorce = divide assets?	9	9	10	28	10	10	8	28	9	9	9	27
12. Widow = inherit?	9	8	10	27	10	10	10	30	8	7	9	24

Table 7 Tanzania: women's responses across conditions

Questions	Office	Paralegal	Control
1/ Stay with land	70%	70%	66%
1/ Stay not due to right	43%	19%	68%
2/ C'y leader advice	78%	11%	20%
3/ Request resolution	78%	11%	10%
4/ C'y leader resolved	0%	0%	0%
5/ Go to legal service	22%	33%	0%
6/ Go to court*	33%	33%	0%
7/% Court decisions made in favor	100%	100%	0%
8/ Court decision obeyed in this case	50%	100%	0%

9/ Formal court decisions obeyed generally	57%	97%	76%
10/ Formal court better	64%	77%	62%
10/ Both courts ok	13%	10%	0%
10/C'y court better	23%	13%	38%
11/ Divorce = wife entitled to half assets	93%	93%	93%
12/ Widow = inherit	90%	100%	83%

* The statistics from these three rows do not necessarily add to 100% because some women answered "I don't know".

Table 8 Tanzania: community leader responses by condition

Question to community leader	Office	Paralegal	Control
1. Do customary practices allow women control of the land?	A-Yes	D-Yes	G-Yes
	B-Yes	E-Yes	H-Yes
	C-Yes	F-Yes	I-Yes
2. Has this always been allowed?	A-Yes	D-Yes	G-Yes
	B-Yes	E-Yes	H-Yes
	C-Yes	F-Yes	I-Yes
3 & 4. What is the proportion of women divorced or widowed who had to leave land?	A-1 of 10 divorcees, 7 of 8 widows	D-I don't know	G-2 of 2 divorcees, 1 of 1 widow
	B-2 of 5 divorcees, 1 of 7 widows	E-I don't know	H-0 of 1 widow
	C- 0 of 1 divorcee, 3 of 4 widows	F-3 of 3	I-50 of 90 divorcees, 40 of
5. How many of these women came for advice?	A-5	D-I don't know	G-1 divorcee
	B-1	E-0	H-N/A
	C-3	F-0	I-20-30
6. How many of these disputes did you resolve?	A-2	D-I don't know	G-The issue was custody
	B-1	E-N/A	H-N/A
	C-1	F-N/A	I-10 to 12
7. What was the resolution?	A-I advised them to go to court.	D-N/A	G-N/A
	B-I advised them to go to court	E-N/A	H-N/A
	C-3 widows just left, 1 stayed with the land, the divorced case is in court	F-N/A	I- Widows - property to wife and children, Divorcees - distributed matrimonial properties equally if equal

			contribution
8. If a tribunal decision about land is in a woman's favor, is it followed?	A-Yes, the tribunal is respected but the primary court is not	D-Yes	G-Yes
	B-Yes	E-Yes	H-Yes
	C-Yes	F-Yes	I-Yes
9. Is good that women can control the land? Why or why not?	A-Yes, because they are human too.	D-Yes because land is an important asset to earn a living	G-Yes, because it's their right
	B-Yes, it is their right	E-Yes because she can earn a living and help family	H-Yes, because it's their right
	C-Yes, because they use the land for economic purposes and cultivate food	F-Yes because women can then be economically stable	I-Yes, because they have equal rights
10. Under statute, can the widow keep land?	A-Yes	D-Yes	G-Yes
	B-Yes	E-Yes	H-Yes
	C-Yes	F-Yes	I-Yes
11. Under statute, upon divorce, is the wife entitled to half?	A-Yes but it is not always half	D-Yes	G-Yes
	B-Yes	E-Yes	H-Yes
	C-Yes	F-Yes	I-Yes
12. Are community courts or tribunal better? Why?	A- District tribunal because they know the law unlike community leaders, so the judgments will be according to law.	D-District tribunal because there is equality in law on ownership of land	G-District tribunal because they know the laws
	B- District tribunal because it has its own laws which leads to fair judgments	E- District tribunal because it is more effective at respecting gender equality and women's rights	H- District tribunal because they know the laws
	C-District tribunal, because they give more rights to women and empower them to fight for their rights	F- Community structure because they are close to the people and respond faster	I-District tribunal because they have legal knowledge and are educated in law

5.3.1 Women in Tanzania

While the proportion of women who stayed with the land is relatively uniform across villages (only 4 percent, or 2 women less in the Control village), reasons for this were significantly different across villages. Just under 70 percent of the women in the Control condition whose land rights were intact stated non-rights related reasons for this outcome, including children and the husband's family living in another region. The lower comparative figures of 43 percent (Office) and 19 percent (Paralegal) suggest both a higher level of women's land rights awareness and greater respect for these rights. The

difference between Office and Paralegal figures is partly explained in at least one of the village by the attitude of Village Council, which sent letters to at least 3 widows confirming the land would remain with them. Such an explicit affirmation of women's rights is likely to reflect a generally progressive culture of the Village Council, which in turn may shape the community's attitudes and practices. The other explanation is that a number of the women did not articulate the reason they were permitted to stay with the land, and this was not recorded as a non-rights related reason.

The largest difference in responses between groups was the rate of seeking advice and a resolution from the community leader: 78 percent in the Office condition compared to 11 percent in the paralegal condition and 20 percent in the Control condition. The higher rate of refusal to accept dispossession in the Office condition is necessarily predicated on knowledge of rights and a willingness to protect them, preferably by using community structures. A number of women in the Paralegal condition referred to the patriarchal culture in the village as a reason why they did not approach the community leader, and this is reflected in the higher percentage of women in this Condition approaching a legal service instead (33 percent).

Unfortunately, this preference for community structures failed to result in any resolutions—community leaders did not resolve any of the disputes brought to them to the satisfaction of the women claimants. In the Office condition a relatively low proportion (22 percent) of women then sought legal advice. A closer inspection of survey responses reveals this is attributable to cases of drunk and abusive husbands, husbands who sold the land before dying, and husbands' extra-marital affairs. Understandably, these more serious and personally destabilizing social issues overwhelmed land-related concerns and any desire to contest the division of assets which would prolong interpersonal conflict. These figures should be understood in the context of the small sample size: only nine of 30 women in each of the Office and Paralegal condition were dispossessed, so each individual case significantly affects the percentage figures.

Those women who did take their claim to a legal service and subsequently to court succeeded without exception: formal courts consistently and predictably apply the gender-equality provisions to land rights cases. However, enforcement and enforceability of these decisions remains an obstacle: in one case the husband remains with all the property, despite a court order entitling the wife to stay with the land along with her children. The effect of non-compliance is reflected in the lower levels of confidence that court decisions will be followed in the Office condition (57 percent) compared to the Paralegal condition (97 percent) in which there was no defiance of court orders: it is likely within the communities that women know each other or come to know about the experiences of other women, particularly if it involves challenging or circumventing traditional approaches to issues.

Nevertheless, there was a strong preference across the conditions for the formal court. The preference was strongest in the Paralegal condition (77 percent) compared to 63 percent (Office condition) and 62 percent (Control condition), which could again reflect the experiences of compliance or defiance of court orders within the community. The reasons for preferences include the higher authority of the tribunal, its delivery of justice and obedience to the law, and the ability to access rights at tribunals. Interestingly, the highest rate of preference of community courts was in the Control condition (38 percent), on the grounds that community structures are closer and know the people better. This may be related to the relatively high rate of women staying with the land (66 percent) in the Control condition—the inadequacies of customary law are not so pronounced when women stay with the land, even if it is not related to their individual rights.

Finally, there were high rates of knowledge of the law across all conditions: while knowledge was the same with respect to widows and divorcees in the Office condition (90 and 93 percent respectively), more women knew about widow's rights in the Paralegal condition (100 percent compared to 93 percent knowledge of divorcee's rights) and the reverse was true in the Control condition (83 percent knowledge of widow's rights and 93

percent knowledge of divorcee's rights). It is impossible to speculate with accuracy why this is the case; it may be a matter of individual differences across the respondent women.

5.3.2 Community leaders in Tanzania

The community leaders in Tanzania across all conditions clearly understood the customary norms permitting women to retain control over the land and affirmed without exception the constancy of these practices over time. Similarly, across all three conditions, widows and divorced women are still being forced to leave their land. However, some of the community leaders' 'resolutions' was advising women to take their claims to court, which is predicated on a knowledge, acceptance and respect of the court's role and capacity to resolve family and land rights issues. Also interesting, is the leaders' knowledge of conflicts and the fact that they had not been approached for advice, which is consistent with a changing culture of resorting to legal services to resolve legal matters.

All of the leaders knew the relevant statutory laws and expected compliance with tribunal decisions, consistent with a growing culture of respect for formal law and its institutions. Similarly, all leaders approved of the idea of women retaining control of the land—whether or not this is truly reflected in their resolution of conflicts is difficult to say, given women's reports of approaching legal services after their community leader failed to ensure they retained control over the land.

Finally, all but one of the leaders expressed a preference for formal courts over community structures on grounds such as knowledge of law, respect for women's rights, and fair judgments. *Prima facie*, the community leaders across all three conditions appeared to know, support and apply women's land rights. At the very least, this confirms a strong foundational knowledge of applicable laws, and at best, despite individual experiences to the contrary from respondent women, it suggests a local culture that is respectful of women's land rights.

5.4 Comparison between Mozambique and Tanzania

There are some overall trends across both countries worth noting at the outset which provide a general framework and some foundational insights. The first encouraging similarity is that formal court decisions are without exception in favor of women's land rights claims following dispossession upon divorce or widowhood. While a number of court decisions are still pending in Mozambique, those that have been delivered resoundingly reinforce women's rights to inherit land when their husband dies, and presumptively receive half the assets, including land, upon divorce. This not only bodes well for the high number of cases awaiting decisions, but also for the consistency in application of the law in the formal justice system. However, the small sample sizes make it difficult to draw definitive conclusions about whether there is universal judicial endorsement of women's land rights.

Secondly, unfortunately compliance with court orders remains a challenge in rural communities, particularly in villages where there is a paralegal office. Whether the existence of the office, over and above the presence of paralegals, is coincidental or specifically related to resistance to court orders cannot be determined from this data.

Thirdly, there is a strong preference among women in villages without paralegal services for formal courts over community structures, which could be read as an indication of dissatisfaction with customary procedures, and the general knowledge that formal courts are fair and follow the law. Community leaders across the two countries had, to varying degrees, knowledge of the relevant laws and acknowledged the benefit of women controlling land. However, as discussed below there were substantial differences across the countries in this pool of participants.

Finally, and briefly, although paralegal services attempted mediation as the first method for resolution of conflicts brought to them by widows and divorced women, they were generally unsuccessful. Resistance to paralegal mediation by husbands or husbands' families is likely to be a reflection of the prevalence of contemporary practices of customary norms, as reinforced by local community leaders.

Overall, there are a number of significant differences between knowledge, opinions and practices across the two countries. First, Tanzanian women had a markedly higher preference for formal court systems across all three conditions, which implies higher levels of understanding about rights, awareness of the functioning and role of the court, and knowledge of decisions made according to the law. The related issue of faith or confidence that formal court decisions would be obeyed in the village is a little more complex. While levels were comparable across countries in the Control condition, there were differences in opposite directions in the other two conditions. It is difficult to formulate a coherent explanation of these variations, particularly since they reflect speculative opinions, which many of the rural women respondents felt they could not give.

Secondly, women's legal knowledge was consistently higher across all three conditions in Tanzania compared to Mozambique. Even in the Control condition, which is perhaps a litmus test for the general rural population across the country, an overwhelming majority of women knew of land rights of divorcees and widows. By comparison, there were differences in Mozambique both between the Control group and the other two conditions with respect to widow's rights, and greater knowledge of widow rights compared to divorcee rights. Thus, the foundation of knowledge upon which the exercise of land rights is based is significantly stronger in Tanzania.

Thirdly, Mozambican women had a stronger preference for community courts, ie. traditional structures. This may be due to a combination of: ignorance of the formal law, lack of familiarity or understanding of the operation of formal law and courts, lack of faith in formal court efficacy, relevance or wisdom, or merely an attachment to locally applied norms. The cross-country comparison is useful in this case: since Tanzanian women were more likely to be permitted to stay with (some of, in the case of divorcees) the land, it is obvious that the preference of Mozambican women is not due to better, more rights-protective practices with respect to women's control over land. Expanding the scope of the current enquiry to other countries would reveal a better relative understanding of how progressive the cultures of these two countries are in rural communities.

Finally, there are higher levels of legal knowledge, and a greater apparent acceptance of statutory law and formal justice institutions and processes among Tanzanian community leaders. Accepting this at face value, this finding is consistent with more extensive, effective and respected dissemination schemes, greater accessibility to courts such that their role, decisions and value are appreciated, and an understanding of the distinct capacities and expertise of community structures compared to legal structures and professionals.

Consistent with the above differences, it can reasonably be concluded that the project of advancing knowledge, application and compliance with respect to women's land rights is more advanced, or more successful so far, in Tanzania rather than Mozambique. This conclusion is grounded in at least four observations. First, the ability in Tanzania to effectively identify and access eligible women, organize their attendance for survey participation is contrasted sharply with the incomplete data set in Mozambique. The possible reasons for this range from the maturity, scope, resources and experience of the organizations, the scale of established systems and procedures within the communities and perhaps the reputation and community regard for NGOs generally, and the partner organizations specifically. This last in turn may be a reflection of the state of civil society and legal development: as the work, longevity and reputation of legal NGOs becomes more renowned, there is inevitably greater official recognition for the contribution they

make to society, and a greater capacity to reach, service and work with target populations.

Second, the time required to conduct the research is a reflection of differences in access to populations and organizational capacity. The five-week period in Mozambique was not sufficient for the partner organizations to identify and organize the attendance of enough eligible women in each condition to complete the surveys, nor to gain access to the eighth and ninth village. Following this period, surveys were conducted in the eighth (control) village, but only with eight eligible women and without the community leader. In contrast, the Tanzanian partner organization mobilized paralegals and arranged transport, accommodation and visits to the nine villages in less than three weeks; to achieve this, each stage of the project required coordination, access to the villages, community leaders and women as well as efficiency and precision in executing the logistic requirements of the trips.

Third, the higher level of women's knowledge in Tanzania as discussed above suggests broader promulgation of the law, and more developed, effective, and far-reaching dissemination programs. Whether this is attributable to a government focus or well-resourced and well organized NGO legal education programs is not apparent from this data.

Fourth, in general, higher numbers of widows or divorced women were permitted to retain control over (some, in the case of divorced women) assets including land in Tanzania. There were higher rates of non-rights related reasons provided in both Control groups, as compared to the Office and Paralegal conditions. Accounting for women's answers that did not articulate the reason they stayed with the land reduces the robustness of these results, but the underlying trend of continuing possession is nevertheless stronger in Tanzania. While it is not possible to definitively attribute this to the work of NGOs in the villages, since local NGOs and extensive research first identified dispossession as a disturbing common practice, it is nevertheless clear that the culture and practices are changing.

The reasons for these differences are multiple, complex and interrelated; they are likely to canvas the nature, age and level of dissemination of the laws, differences in customary practices and their development, and the capacity of NGOs and government agencies to educate and facilitate the exercise of women's rights. For example, Tanzania's legislation dates from 1999 and specifically devolves land-related powers to more local structures, necessarily increasing the knowledge levels of a broader proportion of the population. Mozambique's relevant legislation is from 1997 and 2004—2004 being the more relevant date because it ensured gender equality provisions applied to customary marriages - and the land tenure system concentrates authority centrally rather than devolving authority to local authorities.

To fully assess the extent to which these variables contribute to legal knowledge, women's exercise of their land rights, favorable court decisions and levels of compliance, it would be useful to conduct comparable research in other countries with similarly progressive legislative provisions. While Tanzania and Mozambique may have more sophisticated formal institutions and practices, other countries may have more gender equitably customary norms: the extent to which either system is followed or successful in changing discriminatory practices may be a result of the interplay between both. Nonetheless, the established literature and the current research suggests the advantage of formal legal systems for disadvantaged women is its consistent application of statutory provisions in favor of gender equality, its impartiality in deciding land claims, and its increasing accessibility in areas where NGOs provide legal assistance.

6. Conclusions and recommendations

The following are key conclusions common across the countries:

- Customary law, as interpreted and applied by informal community structures, does not universally result in divorcees or widows being entirely dispossessed. Rather, these women are in an inherently precarious situation, in which their ability to continue to control and use the land is entirely dependent on family attitudes and circumstances. The value of replacing customary practices with practices consistent with statutory law is the removal of uncertainty in land tenure for these particularly vulnerable women, the conceptual separation of their individual rights from their relationships to family members, and the impartial consistency with which their rights will be recognized in formal courts.
- Even if it is established that community leaders who have traditionally followed customary law in determining land-related conflicts involving widows or divorced women know the relevant statutory law, it should not be assumed that they will apply the provisions in favor of these women. Conversely, formal courts appear to consistently apply statutory provisions in favor of dispossessed widow and divorcee claimants. Accordingly, for the systematic and impartial application of statutory law which may conflict with customary norms, formal courts are the preferred venue for claims.
- Both legal knowledge and the presence of a paralegal service are necessary for women to challenge their dispossession. That is, there is no established culture, practice of, or capacity for self-represented litigation,¹⁴⁴ so without legal and material assistance in taking claims to court, legal knowledge alone cannot be assumed to encourage women to challenge their dispossession.
- Currently, mediation as an alternative to court-generated resolutions to land-related conflicts is possible but unlikely in these matters.
- Compliance with court orders is a manifest problem that is yet to be satisfactorily overcome by the effective application of enforcement mechanisms.
- Confidence that court orders will be obeyed may accordingly be affected by levels of compliance or defiance of court orders, and may in turn affect the populations' perception of the efficacy and benefit of formal courts as compared to community structures.

The following are key recommendations based on the above analysis and conclusions:

- Directing resources (financial, human, material and intellectual) towards developing effective enforcement mechanisms is critical to increasing adherence to statutory law in rural communities traditionally governed by customary law.
- In recognition of their continuing important role, community leaders must continue to be a focus of dissemination of laws and education seminars on how these laws work in practice, the legal services that exist to help individuals ensure their rights under these laws are protected. They should also be trained on consequences of non-compliance with the law.

¹⁴⁴ There was one exception to this statement: a woman in the Office condition was advised by her community leader to take her case to court, which she did without the assistance of a paralegal service.

- An increased focus on establishing paralegal offices and permanent staff to assist in drafting and filing claims in court will improve women's likelihood of challenging dispossession, approaching a legal service, taking their claim to court, and thereby (given the likely judgment in their favor) succeeding in having their rights recognized.
- Judges of formal courts, while clearly educated and observant of applicable statutory laws, need to continue to be trained on gender-related provisions, the challenges there are in their application in rural communities, and the range of enforcement mechanisms at their disposal in issuing court orders in cases involving dispossessed women.
- Dissemination to the broader population, including community leaders, needs to explicitly disentangle the individual rights widows and divorced women possess under law from their status and relationships within their family. For example, education seminars should emphasize it is not the need to raise and care for children or grandchildren that gives rise to the right to either stay with the land or keep half the land, but the fact that wives, under the law, are also entitled to keep property, including land.

Annex 1

Draft survey

Community leaders

FIRST: Name, how long community leader for

1. Do the customary practices in your community allow widows and divorced women to keep control of marital land? Y/N
2. Have these always been the customary practices? Y/N
3. In your community, how many women have been divorced or widowed in the last year?
4. How many of these divorced or widowed women had to leave their land?
5. How many came to you for advice?
6. In how many of these cases did you help reach a resolution?
7. IF YES, What was the resolution?
8. If a woman took the matter to the district court and the judge found the woman was entitled to some or all of the land, would this decision be applied in the village? Y/N
9. Do you think women keeping control over the land is good? Why or why not?
10. Under statutory law in Tanzania, when her husband dies, can the wife keep control of the land? Y/N
11. Under statutory law in Tanzania, when a couple divorces, should the woman should generally receive half of the marital assets, including land. Y/N
12. Do you think community structures or district tribunals are more effective at promoting women's land rights in your community? Why?

Women (divorced or widowed since 2004)

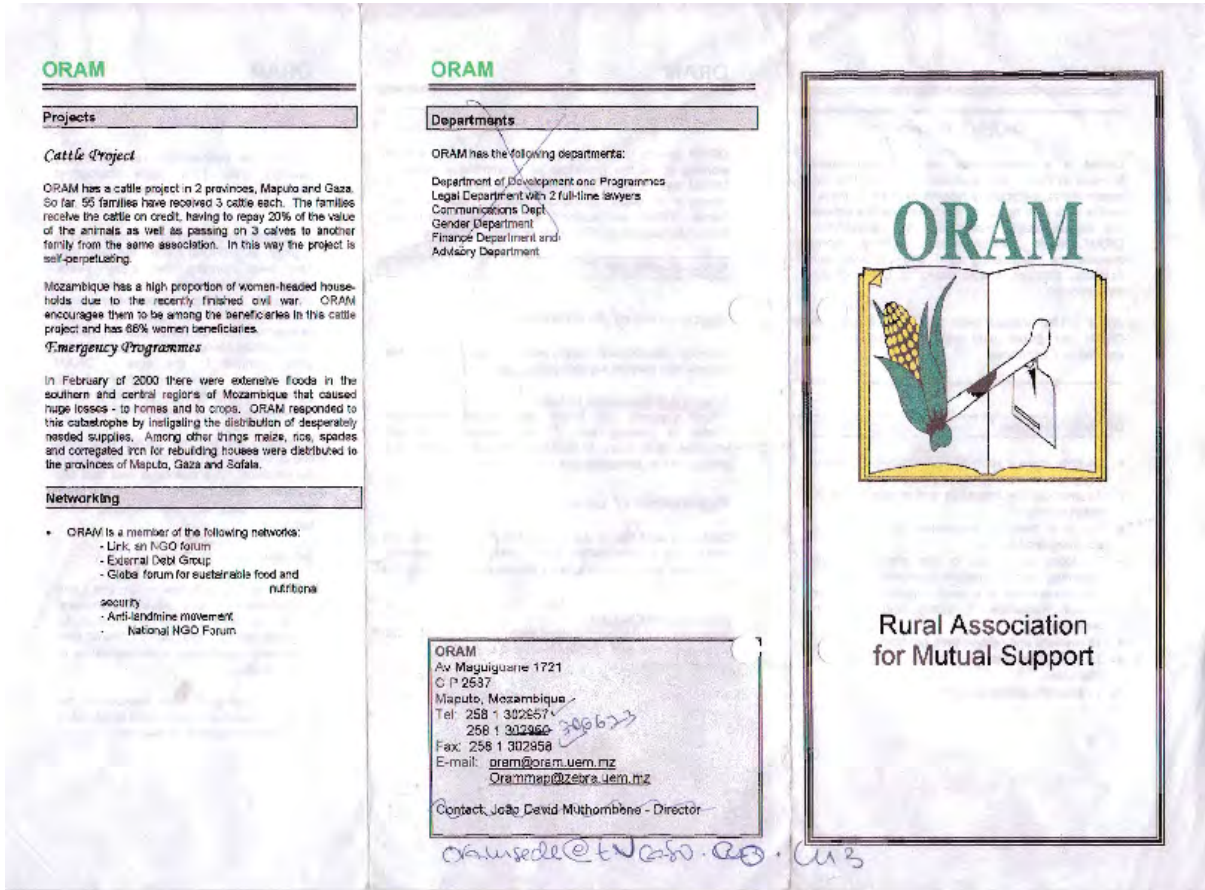
FIRST: Name, whether divorced or widowed, when divorced or widowed, after how many years of marriage?

1. After divorce or your husband's death, did someone else try to take your land?
(If Yes, ask question 2, if No, ask why and skip to question 9)
2. Did you go to community leader for advice when you had to leave your land?
(If Yes, ask question 3, if No, ask why not and skip to question 5)
3. Did you ask community leader to make a resolution?
(If Yes, ask question 5, if No, ask why not and skip to question 5)
4. If yes, what was the resolution?
5. Did you approach a legal service for either advice or action?
(If Yes, ask question 6, if No, ask question 9)
6. Did the legal service take your claim to a court? Which court?
(If Yes, ask question 7, if No, ask what they did and skip to question 8)
7. What was the outcome?
(If good outcome, ask question 8, if bad outcome, skip to question 9)
8. If you received a decision in your favour—did everyone else obey it?
9. If a court made a decision in favour of a widow or divorced woman to stay on the land, would this decision be followed in the village?
10. Are these decisions more acceptable if they come from the community? Why?
11. Under statutory law in Tanzania, when a couple divorces, should the woman should generally receive half of the marital assets, including land. Y/N
12. Under statutory law in Tanzania, when a husband dies, should the woman inherit the land and property? Y/N

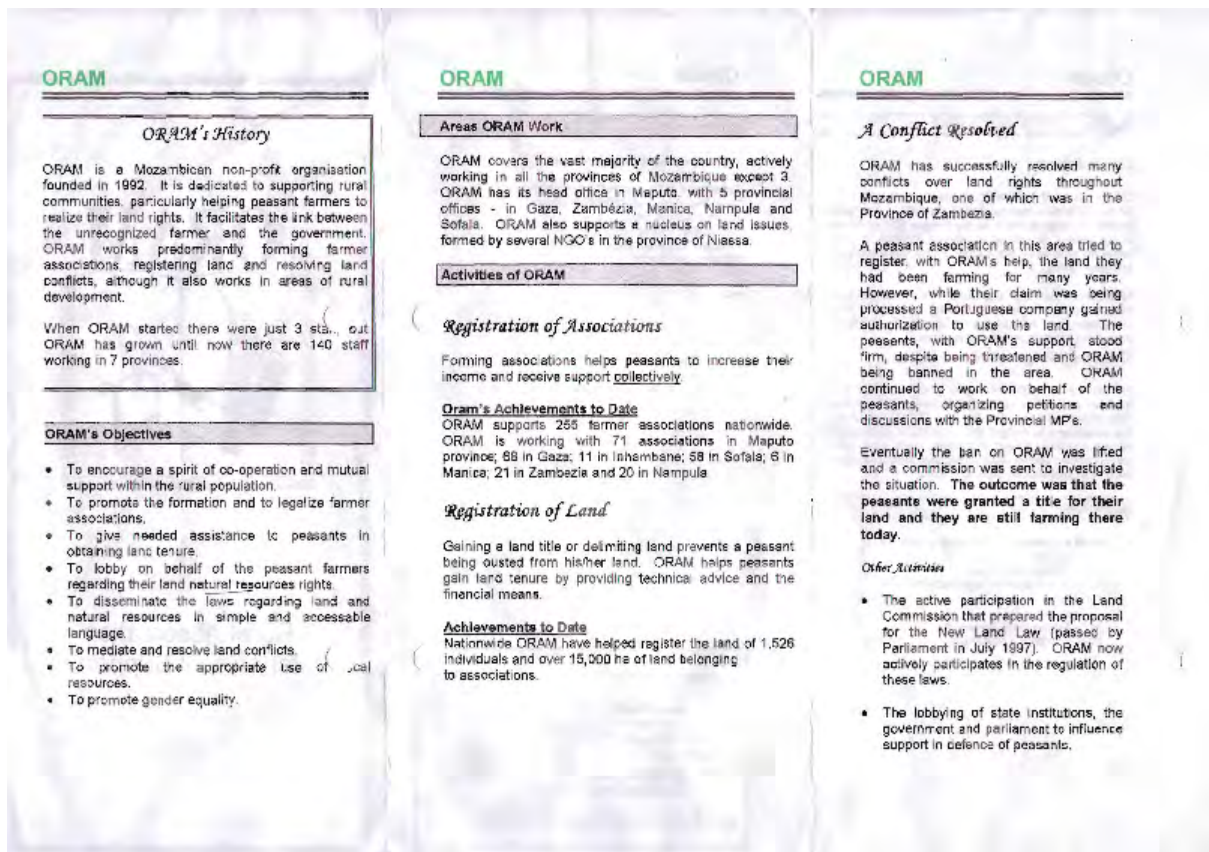
Annex 2

ORAM brochure

Front page:



Back page:



Annex 3

AMMCJ brochure


Front page:

MEMBROS DA AMMCJ

PODEM SER MEMBROS DA AMMCJ:

- Mulheres licenciada em Direito;
- Estudantes do curso de Direito;
- Mulheres que exerçam funções de natureza jurídica;

-Todas as pessoas singulares ou colectivas que se inspirem nos princípios e objectivos da AMMCJ.



SEDE:

Av. Romão Fernandes Farinha nº 567, 1º Andar
Tel/Fax 21408232, Email: ammcjm@tdm.co.mz
- Maputo

DELEGAÇÕES:


Provincia de Manica:
Rua Josina Machel, nº 2119,
Telefone nº 051-22625
Email:

Provincia da Zambézia:
Av. Josina Machel, Edifício da OJM, Telefone
nº 04-214987


Provincia de Nampula:
Av. Eduardo Mondlane, nº 176
Telefone nº 06-218432

Nucleo distritais:

- Machava
- Boane
- Matutine
- Marrácuene
- Chibuto



Associação Moçambicana das Mulheres de Carreira Jurídica



O QUE É A AMMCJ?

A AMMCJ-Associação Moçambicana das Mulheres de Carreira Jurídica, é uma pessoa colectiva de direito privado, sem fins lucrativos, de carácter técnico-profissional e cultural, dotada de personalidade jurídica, administrativa, financeira e patrimonial. Congrega no seu seio Mulheres de Carreira Jurídica nomeadamente, Juizas, Procuradoras, Advogadas, Conservadoras, Técnicas-Jurídicas, e Estudantes do curso de Direito.

Back page:

VISÃO DA AMMCJ

- ✓ Uma sociedade onde homens e mulheres participam de forma equitativa em todos os processos de desenvolvimento da vida do país.

MISSÃO DA AMMCJ

- ✓ Promoção do estatuto da mulher e de uma cultura de direito.


PRINCÍPIOS

A AMMCJ inspira-se nos princípios que promovem a eliminação de todo tipo de discriminação e potenciam a igualdade de direitos e oportunidades entre homens e mulheres e se encontram consagrados:

- na Constituição da República de Moçambique;
- na Declaração Universal dos Direitos do Homem;
- na Carta Africana dos Direitos do Homem e dos Povos;
- na Convenção sobre a Eliminação de todas as Formas de Discriminação contra a Mulher (CEDAW); e
- nos demais instrumentos internacionais.

OBJECTIVOS ESTRATÉGICOS

- ✓ Assegurar que seja conhecido, a nível de base, o conteúdo dos instrumentos legais de protecção dos direitos da mulher e da criança;
- ✓ Adequar à realidade do país, as leis relativas às questões de equidade de género e de protecção da criança;
- ✓ Promover o estatuto da mulher;
- ✓ Alargar o acesso à informação e à assistência jurídica;
- ✓ Tomar as políticas nacionais (do governo), mais acessíveis às questões do género;
- ✓ Elevar a participação da mulher nos lugares públicos de tomada de decisão;
- ✓ Aprofundar a reforma legal em curso, abrangendo (entre outras), a lei das sucessões e a lei do combate à violência doméstica;
- ✓ Ratificar os tratados internacionais



ÁREAS DE INTERVENÇÃO

- ✓ Pesquisa
- ✓ Reforma legal
- ✓ Educação cívico-legal
- ✓ Capacitação e Formação
- ✓ Divulgação de leis
- ✓ Assistência jurídica e patrocínio jurídico;

