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THE DRAFT LAND BILL: WHAT WILL IT MEAN FOR WOMEN?

BY: DIANNE HUBBARD AND RACHEL COOMER

MUCH has been written about the proposed new Land Bill, but the debate has not yet looked at gender issues. The Legal Assistance Centre would like congratulate the Ministry of Lands and Resettlement on initiating a participatory reform process and circulating the draft bill for comment.

We would like to call attention to some concerns about the provisions pertaining to women – and widows in particular. To this end, we have identified five main areas in the draft Land Bill that should be reviewed in order to improve the status of rural women.

(1) The position of widows: Protections for widows, which were one of the key innovations in the 2002 Communal Land Reform Act, have been substantially reduced. Ironically, in the meantime, Namibia has joined the SADC Protocol on Gender and Development which requires States Parties to enact and enforce legislation to ensure that “widows are not subjected to inhuman, humiliating or degrading treatment” and that “a widow shall have the right to continue to live in the matrimonial house after her husband’s death”.

The current law makes it clear that widows and widowers have a right to remain on communal land allocated to their deceased spouse if they wish, with children having second priority – and several studies have indicated that the current law has been successful in making the eviction of widows a thing of the past.

But the draft formulation is less clear. The current draft appears to allow a traditional authority to decide if the land should go the surviving spouse and children, or to someone else, after consulting with the family members of the deceased. The surviving spouse or spouses and children should have a clear first option to remain on the land, as they do under the current law.

Furthermore, the provisions in the 2002 Act which ensured that a surviving spouse did not lose the land should he or she remarry have been removed. We suggest that this protection should be reinstated.

(2) Non-discrimination and affirmative action: We recommend that there should be a general provision stating that men and women shall have equal access to all land rights under the Act, regardless of their marital status. The law should also prohibit discrimination on the basis of sex or marital status with respect to the quality or quantity of land allocated.

This recommendation is in line with provisions in the 1998 Land Policy, which states that “women will be accorded the same status as men with regard to all forms of land rights, either as individuals or as members of land ownership trusts”. It would also give effect to the prohibition on sex discrimination in Article 10 of the Namibian Constitution, and Article 18 of the SADC Protocol on Gender and Development, which requires States Parties to review all policies and laws that determine “access to, control of, and benefit from, productive resources” in order to end all discrimination against women and girls with regard to “property such as land and tenure thereof”.

We also recommend that there should be an affirmative action provision for women, in line with Article 23 of the Namibian Constitution. This would help implement the Traditional Authorities Act’s requirement that traditional authorities must “promote affirmative action amongst the members of that community”, and would give effect to the provision in the Protocol to the African Charter on the Rights of Women in Africa which requires States Parties to “promote women’s access to and control over productive resources such as land”.

(3) Joint registration: As currently drafted, the bill envisages the registration of land in the name of a single individual. We believe that it would make more sense to provide for the option of joint registration by spouses or other family groups, as in the Tanzanian Village Land Act.

Where the land will be occupied or used by married persons, the registration should automatically be in the name of both spouses (or all the spouses if the marriage is polygamous) unless the spouses request a different arrangement and provide information demonstrating the fairness of registering the land in the name of a single individual. An example might be where one spouse is seeking registration of an existing allocation of land which has been utilised for a long period prior to the marriage, or where the land in question is to be used primarily for the benefit of children who are not born of the marriage.

The law should also provide the option of granting land rights jointly to other adults who are the primary users and beneficiaries of the land – such as members of a household made up of parents and their adult children, or adult siblings. This could help protect the rights of divorced and single women.

We also recommend that a procedure whereby spouses (or other family members) who have acquired a valid interest in the customary land, by virtue of a contribution of cash or labour, should be able to apply to have their names added to the registration.

Overall, joint registration would have several advantages. It would acknowledge wives’ contributions (which are often in the form of productive labour rather than cash inputs). It would also protect women when the marital relationship breaks down. For example, if the names of both spouses are registered, one spouse would not be able to evict the other unilaterally if the marriage falls apart – the spouses could rather approach the traditional authority to seek an appropriate reallocation. Joint registration would also simplify matters when one spouse dies.

The name of the other spouse (or spouses) would already be part of the land registration, thus eliminating the need for re-allocation of the land in such an instance. The same principles could be applied to resettlement rights on agricultural land.

Official recognition of women’s rights to land in their own name is crucial to ensuring that women do not have access to land only through a relationship with a man. Otherwise, women remain invisible and permanently dependent on their fathers, brothers, uncles or husbands. Failure to recognise women in their own right could leave them trapped in a violent or unhappy relationship because of fears that leaving a husband could render them landless if their parents do not “take them back”.

(4) Protection against property-grabbing: Our final recommendation is to include a prohibition on property-grabbing into the bill. Study after study has shown that it is not very

useful to secure land rights for widows if they have no assets left with which to make productive use of the land. Since relatives of a deceased husband legitimise their actions by reference to custom, traditional authorities and law enforcement officials find it difficult to provide protection to widows in these circumstances.

We believe that the new law should make it an offence to remove any property of a deceased person from communal land before a competent authority has made or ratified a decision regarding the rights to that property. Such a provision would complete the protection of widows begun by the Communal Land Reform Act.

(5) Putting women in decision-making positions: The proportion of seats reserved for women on key bodies has been reduced in the draft Land Bill. In the current law, there are guaranteed places for four women on Communal Land Boards, which all have at least 11 members. In the draft Land Bill there are still guaranteed places for four women on the analogous Regional Land Boards, but these boards would all have at least 15 members.

Increasing the membership of the Board without increasing the number of women would mean that their proportional representation goes down from 36% to 27%. Because female representation on such bodies is so crucial to the empowerment of rural women, we propose a greater emphasis on gender balance, with a requirement that a minimum of one-third of the board members should be women.

Instead of rolling back hard-won rights for women, the forthcoming Land Act should rather fill in the gaps and take another step forward toward greater gender equality. We urge a re-think of the provision on women before this bill is finalised.

** The authors are with the Gender Research & Advocacy Project of the Legal Assistance Centre. A more detailed set of comments on gender issues in the draft Land Bill is available from the Gender Research and Advocacy Project at the Legal Assistance Centre.*

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