

An Ethical Assessment of the Impact of Inequitable Land Ownership Patterns on Women's Economic and Social Rights: A Case Study of Mumbwa District

Shadrack Chembe, Dr. Anthony Musonda

Master of Arts in Applied Ethics, Department of Philosophy and Applied Ethics, School of Humanities and Social Sciences, The University of Zambia

Abstract: The study ethically assessed the impact of inequitable land ownership patterns on women's economic and social rights in Mumbwa district. Despite more women than men being dependent on agriculture for their livelihoods, the majority of women in Zambia do not own land due to inequitable land ownership patterns. The problem is that while it is generally known that inequitable land ownership limits women's access to livelihoods, it is not clear how much this affects their access to economic and social rights. Thus, the specific objectives of the study were: to investigate the current state of land ownership between men and women in Zambia; to establish factors that contribute to the existing land ownership patterns; and to ethically assess the impact of existing land ownership patterns on women's economic and social rights in Mumbwa district.

A case study research design was employed using a qualitative methodology with an ethical component. With a sample size of 78, primary data was collected through in-depth interviews with 37 community members, 4 head persons, 1 government representative and 1 representative from a local Non-Governmental Organisation (NGO) called Women for Change. Four focus group discussions with 35 community members in addition to observations were also used to collect primary data. Secondary data was collected by reviewing books, journals, articles and internet-based materials. Community members and traditional leaders were selected using simple random sampling while representatives from government and NGO were purposively selected based on possession of knowledge about land ownership in the area. Content analysis was used to analyse data followed by an ethical evaluation of the study findings.

The study found that there is inequality in land ownership between men and women. Land is mostly owned by the men who also exercise greater control over its use. The existing unequal land ownership patterns were attributed to five main factors which are power imbalances, culture, land allocation practices, suppression of women and allocation of labour. Unequal land ownership impacts negatively on women and on their ability to earn enough to meet their family basic needs. Consequently, it negatively affects their ability to have adequate food and facilitate their children's access to education.

An ethical evaluation of the findings was guided by rights theory and the ethics of care. As regards rights theory, there was discrimination of women on the basis of gender and marital status. It was observed that such a violation on women's rights should not be tolerated as Zambia is a State Party to many international commitments that affirm equal rights to land.

Using ethics of care, it was observed that land ownership for women is critical to promoting their well-being as care-givers. Compromising women's land rights not only affects them but also affects children and the aged who are mostly under their care.

Among others, recommendations were made that government should conduct ethical awareness raising on equal land ownership rights, should introduce legislation to promote joint land ownership and should effectively enforce statutory law to guarantee equal enjoyment of land ownership rights between men and women under customary law.

I. INTRODUCTION

In principle, men and women should enjoy equal land ownership rights. Article 17 of the 1948 Universal Declaration of Human Rights (UDHR) declares that everyone has the right to own property alone as well as in association with others and that no one shall be arbitrarily deprived of his or her property (Ssenyonjo, 2012). Affirmation of equal rights to land as property is spelt out in Article 16 (1) (h) of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1995 Beijing Declaration and Platform for Action (BPFA) FI – 165, Article 19 c) of the African Protocol on the right to sustainable development and Provision H (iii) of the SADC Declaration on Gender and Development.

In practice, however, there are inequalities between men and women with the latter lacking secure land rights (United Nations Women, 2013). Globally, less than 20% of landholders are women with some parts of Africa recording as low as less than 10% of women landholders (FAO, 2010). Women's land and property rights are routinely violated, denied, and given insufficient protection and enforcement (Gomez and Tran, 2012). The inequitable land ownership patterns stand in stark contrast with agricultural census data which show women's significant involvement in tilling the land and producing food (United Nations Women, 2013). Women constitute on average 43 percent of the agricultural labour force in developing countries (FAO, 2017).

The obstacles which prevent women from effectively enjoying land rights equally with men range from inadequate

legal standards and implementation of laws, to discriminatory social norms, attitudes, and programs at national, regional and local levels. Further, gender inequality patterns are partly attributed to lack of the rights, knowledge or capital by women in many areas in developing countries to secure their land and asset inheritance after being widowed (Fisher and Naidoo, 2016). Gender inequality is entrenched in the cultural, political and market systems that operate at household, community and national levels. It is also observed that land laws of many countries still do not recognize women's inheritance or joint ownership despite decades of constitutional and legal framework modernization support (Global Land Rights Index, 2017). There are still gaps between high-level commitments and implementation practice (Odeny, 2013).

There is an evident link between women's land rights and sustainable human development (Gomez and Tran, 2012). "Women's access to land and property is central to women's economic empowerment, as land can serve as a base for food production and income generation" (Gomez and Tran, 2012: 2). A study by Fisher and Naidoo (2016) shows that male-headed households have, on average, 13% more asset wealth and 303% more land for agriculture than do female-headed households. Women's lack of secure rights over land translates into lower productivity, perpetuating food insecurity, malnutrition and poverty (FAO, 2010). Countries where women lack rights or opportunities to own land are reported to have on average 60% more malnourished children than countries where women have some or equal access to land (Gomez and Tran, 2012). Ssenyonjo, in Chigara (2012: 3), points out that "inequitable land ownership patterns and landlessness give rise to a host of interrelated human rights violations including hunger and inadequate food, inadequate housing, poor health, and extreme poverty." So, the inequality in land rights puts women at a risk of losing their source of food, shelter and income. Such a situation is likely to compromise women's dignity and well-being.

II. LAND OWNERSHIP PATTERNS ON THE AFRICAN CONTINENT

In their paper, Kouamé and Fofana (2015: 5) state:

Although generally full members of the community have direct and secure rights to community land; in the patriarchal structures which dominate social and production relations in Africa, allocation of land is generally given to men, particularly after reaching a certain age or after marriage. Women are denied the rights to have access and control over land, particularly when they get married into the community. The only use-right to land they may have is generally related to the land allocated to them by their husband.

The authors point to inequality in land ownership in Africa as land is mostly allocated to men. Women, irrespective of their

age, are denied land ownership rights based on the expectation that they will access it through their husbands. Those that are not married access some pieces of land through their mothers who in turn are dependent on their husbands. If the marriage relationship ends either through divorce or death of a spouse, women's land rights are severely affected since the person through whom they exercised their rights is no longer there. The inequitable land ownership patterns is partly a reflection of women's prevalent citizenship status where they may be considered as inferior to men (Kouamé and Fofana, 2015).

The situation is worsened by the fact that Africa has more customary land than statutory land. Customary land is always at men's disposal while women access it through male members of the family. Odeny (2013: 7) writes, "the bulk of the land in Africa, about 75%, is under customary tenure, administered by unwritten law based on tradition and cultural norms prevailing in an area for a particular tribe of people". He observes that despite African tribes having both patrilineal and matrilineal systems, male members of the family are allocated land whenever they need it while female members are allocated only through male members.

A paper by Doss *et al.* (2013) shows that in most cases, women are disadvantaged compared with men with regard to reported land ownership. Moreover, there is a wide range in the magnitude of the gender gap, depending on country, region, type of land, definition of landholding, and inclusion of joint ownership, even within the same country;

Literature on land ownership patterns shows that patriarchy, 'a male-centered, male-identified and male-dominated social structure', undergirds much of the inequality issue not only in Africa but in all early social structures (Becker, 1999: 24). Berker (1999) argues that patriarchal culture values control and domination and that this is done to ensure one's own safety from others. She points out that although patriarchy is thought of in terms of women and men, it is more about what goes on among men. Patriarchy, however, is also the source of the continuing inequality between women and men leading some into defining it as "a system of male authority which oppresses women through its social, political and economic institutions (Makama, 2013: 117). Patriarchy is said to justify the marginalization of women in many areas including family, domestic matters and inheritance.

Despite evidence of efforts by African countries to introduce legislation aimed at promoting gender equality in land ownership (Veit, 2011; Lankhorst, 2012; Doss *et al.* 2013; United Nations in 2013; Burke and Kobusingye, 2014; Tura, 2014; and Vanhees, 2014;), there is inequality in land ownership patterns and mostly in favour of men. Inequitable land ownership patterns are attributed to many problems which may be categorised as follows: (1) Inadequate pluralistic policy and legal framework as well as institutions for promoting and protecting women's right to land ownership; (2) poor understanding of land law and management systems; (3) patriarchal rules and practices

which place men at an advantage over women; (4) lack of financial resources by women which hinders them from acquiring and developing land; (5) social stereotypes related to assigning of productive roles to men and domestic roles to women; (6) persistence of informal marriages in which wives remain unprotected by the existing laws; (7) the gap between high-level commitments and implementation practice; (8) biased land institutions and interpretation of laws in favour of men by some local court justices who are mostly male; (9) lack of an effective legal aid system for women; (10) lengthy trial procedure in land matters brought before the courts; (11) tedious land transaction procedures and complex application forms; (12) discriminatory social norms, attitudes, and programs at the national, regional and local levels; (13) stereotypes arising from the patriarchal nature of African societies in which male domination on matters of land makes it difficult for women to access and own land in their own right; (14) perception of women as being in transit and the notion that husbands will provide for their wives; (15) society's consideration of women as subordinate to, or the property of men and their families; (16) resistance to allow daughters to inherit land from their parents; and (17) the misconception that women are inferior class and less capable of developing land once allocated.

III. LAND OWNERSHIP PATTERNS IN ZAMBIA

Land ownership patterns in Zambia show imbalances between men and women. Women experience numerous forms of discrimination with regard to ownership rights. Most of them do not own any property until they marry (OECD, 2010) and do not enjoy the same land rights as men (Veit, 2012; and ACORD *et al.* 2012). In a legal marriage, women are entitled to enter into contracts and have access to property such as land, either individually or jointly with their husbands. Even so, patriarchy makes it difficult for women to fully benefit from this opportunity as title deeds are mostly held by men (Kachika, 2009). Further, women who enter into customary marriages are not authorised to acquire possessions (OECD, 2010). Consequently, the vast majority of land is owned by men even when women constitute a larger proportion of the country's population (51%) as compared to men (49%) (Central Statistical Office, 2012). Only 7% of women own land alone as compared with 20% of men (Central Statistical Office *et al.*, 2014). Moreover, the majority of women rely on customary land and have to bear with patriarchal traditional land administration systems that result in males dominating access, control and ownership of land (Kachika, 2009).

Inequitable land ownership affects women's livelihoods as the agricultural sector, which is primarily depended on land, remains the primary employer in Zambia (Central Statistical Office *et al.*, 2014). Further, more women (78%) than men (69%) are engaged in agriculture (Sitko *et al.* 2011). Women perform 65-70% of all agricultural tasks in Zambia and produce 80% of the nation's food stock (FAO, 2013:8). This

shows that land is inseparable from women's enjoyment of economic and social rights.

The discrimination of women in land ownership is attributed to many factors such as the dual land tenure system where customary land is administered under customary law while state land is administered under the Lands Act of 1995. Women have not benefited as much as men from the statutory tenure system because it is complicated and costly and hence prevents the former, the majority of whom are poor, with low literacy levels and inadequate access to information, from enjoying their rights to land (Mgugu, 2013). On the other hand, women who rely on customary land have to bear with patriarchal traditional land administration systems that favour men over women and hence result in men dominating the access to, control over and ownership of land (Kachika, 2009). The other factor that has contributed to discrimination of women is lack of uniform marriage laws. While the Matrimonial Causes Act of 1973 entitles spouses married under the Act to an equal share of property upon divorce, women who are not married under the Act cannot enjoy the same rights as observed earlier.

The Zambian government has introduced a number of measures to protect men and women from discrimination and deprivation of property. For example, the *Lands Act* provides support for women who hold statutory land. The *Intestate Succession Act* of 1989 imposes criminal penalties on those who wrongfully deprive rightful heirs of their property. The *Wills and Administration of Testate Estates Act* of 1989 prohibits intermeddling with the property of rightful heirs. According to this Act, any person who wrongfully deprives a rightful heir of her or his property is liable to criminal sanction. Moreover, the Anti-Gender Based Violence Act of 2011 categorises property grabbing as a crime. The Act established the victim support unit to protect women and men from property-grabbing after the death of a spouse (United Nations, 2013).

Recent constitutional review efforts resulted in the Constitution of Zambia (Amendment) Act, 2016 which, among others, provides for the establishment of the Gender Equality and Equity Commission whose mandate is to promote the attainment and mainstreaming of gender equality. There has also been an attempt to enhance the Bill of Rights in the Constitution of Zambia 1996 by including economic and social rights among others. However, the referendum process failed as it did not reach the prescribed threshold of voters for any changes to be effected (Syampeyo, 2016). Had it succeeded, it would have worked to the advantage of women. Despite the failure of the referendum, there have been calls by the women's movement, particularly the Non-governmental Organisations Coordinating Council, and the Grand Coalition on a People Driven Constitution to revisit the process of holding another referendum.

Despite efforts to create an enabling environment for both women and men to own land, women continue to face

discrimination. Therefore, appreciation of how this impacts on their economic and social rights is critical to raising an ethical awareness on the need to address this problem in Zambia. For this reason, this study ethically assessed the impact of inequitable land ownership on women's economic and social rights.

IV. LAND OWNERSHIP PATTERNS IN MUMBWA DISTRICT

Mumbwa district is located in the Central Province of Zambia. It shares district borders with Shibuyunji and Kabwe (Central Province), Kaoma (Western Province), Namwala (Southern Province) and Kasempa (North-Western Province). Mumbwa has a total population of 226,741 out of which 50.6% (113,702) is female while 49.4% (112,469) is male (Central Statistical Office, 2012).

Generally, there is scanty literature on land ownership patterns in Mumbwa district. Studies that have been conducted have only focused on related issues. A study by Women for Change (2014) suggests that there are power imbalances between men and women regarding buying, using, lending and selling of land. According to this study, unequal power relations, tradition and lack of ownership are the three major challenges that prevent women from enjoying their right to productive resources such as land. The study observes that women's limited control over land and other productive resources severely limits their efforts to attain economic, social and political empowerment. Another study by Women for Change (2015) shows higher levels of both access to and control over land by men than women. The phenomenon is attributed to culture which reported to put men especially husbands in positions of control over their wives. The study also shows that crops grown by men are allocated more land than those grown by women. Allocation of small portions of land to women results in reduced crop diversity and limits women's ability to meet family food and income needs.

While the problem of inequitable land ownership patterns has been identified and discussed in various studies, there has been little effort to show how this problem impacts on women's economic and social rights. Much less has been the effort to ethically assess this problem. Therefore, this study went further than just investigating the current state of land ownership between men and women by ethically assessing the impact of existing land ownership patterns on women's economic and social rights in Mumbwa in order to contribute to literature on land ownership patterns.

V. STATEMENT OF THE PROBLEM

The majority of women in Zambia do not own land due to inequitable land ownership patterns which are mostly in favour of men. However, more women than men are dependent on agriculture for their livelihoods. In addition, they continue to be caretakers of dependants, the young, the old, and others unable to care of themselves; women are embedded in human relationships of care. While it is

generally known that inequitable land ownership limits women's access to livelihoods, it is not clear how this affects their access to economic and social rights. Therefore, this study assessed the impact of inequitable land ownership patterns on women's access to economic and social rights specifically in Mumbwa district.

VI. AIM

The aim of the study was to conduct an ethical assessment of the impact of inequitable land ownership patterns on women's economic and social rights in Mumbwa district.

VII. SPECIFIC OBJECTIVES

- (a) To investigate the current state of land ownership between men and women in Mumbwa district.
- (b) To establish factors that contribute to the existing land ownership patterns between men and women in Mumbwa district.
- (c) To ethically assess the impact of existing land ownership patterns on women's economic and social rights in Mumbwa district.

VIII. RESEARCH QUESTIONS

- (a) What is the current state of land ownership between men and women in Mumbwa district?
- (b) What factors contribute to the existing land ownership patterns between men and women in Mumbwa district?
- (c) What is the impact of existing land ownership patterns on women's economic and social rights in Mumbwa district?

IX. SIGNIFICANCE OF THE STUDY

A large proportion of women depend on land for livelihood. Therefore, equitable land ownership is an ethical issue which has a bearing not only on women's dignity and well-being but also on their dependents. While a number of studies have been done on how inequitable land ownership in Zambia affects women's livelihoods, no study of this nature has been conducted in Mumbwa district. Therefore, this study was conducted to bring out new knowledge on the subject and to contribute towards raising ethical awareness among policy makers, traditional leaders and Zambian citizens in general on the need to address the problem.

X. ETHICAL THEORETICAL FRAMEWORK

Considering the topic and objectives of the study, rights theory and ethics of care provided the ethical framework that guided data collection and informed ethical analysis.

XI. STUDY DESIGN

This was a qualitative case study design conducted in Mumbwa and Shakumbila chiefdoms and focused on ethically assessing

the impact of inequitable land ownership patterns on women's economic and social rights in Mumbwa district.

XII. METHODOLOGY

The study was based on a case study design using a qualitative methodology with an ethical component in order to gain an in-depth understanding of the issue. The ethical component comprised two ethical theories, that is, rights theory and the ethics of care that guided data collection and ethical analysis.

XIII. DATA COLLECTION METHODS

Data collection methods involved both primary and secondary sources. Primary data was collected through in-depth interviews, FGDs and observations. A total of 43 in-depth interviews were conducted comprising 18 community members (10 females and 8 males) and two male traditional leaders from Mumba chiefdom, 19 community members (10 females and 9 males) and two headpersons (1 female and 1 male) from Shakumbila chiefdom, one government representative and one representative from a local Non-Governmental Organisation (NGO) called Women for Change. In addition, 35 community members (22 females and 13 males) were engaged in four focus group discussions. Two FGDs were conducted in Mumba Chiefdom each consisting of 8 participants and two in Shakumbila chiefdom consisting of 7 and 12 participants respectively. Secondary data was collected by reviewing books, journals, articles and internet-based materials.

XIV. DATA ANALYSIS

Content analysis was used to analyse data. Data was coded based on objectives and then grouped into themes. The themes were then analysed to establish the interconnectedness of data in answering the research objectives. Thereafter, an ethical evaluation of the study findings was conducted.

XV. FINDINGS

Regarding the current state of land ownership in Mumbwa district, the study found that there is inequality in land ownership between men and women. While both men and women have access to land, it is mostly owned and controlled by men. Women mostly exercise control only if they are unmarried or widowed.

Inequitable land ownership patterns were attributed to five factors namely power imbalance, culture, land allocation practices, suppression and allocation of labour. Power imbalance accounted for men owning more land than women and exercising greater control over it. Men owned more land than women because they were considered to be heads of households. Men were perceived to be in charge of everything where the concept 'everything' was used to include all living and non-living things except man. Thus, women were put in the same category as property and placed under man's control. Further, findings indicated that men enjoyed more ownership

rights because the culture in the study location did not allow women to have land in their own names but only through their husbands. The unmarried women were not given land because it was believed that they would get married and access it through their husbands. When the issue of culture was probed, it was discovered that marriage had a significant role to play. Two particular aspects were raised with regard to marriage and land allocation. The first aspect was that men were the ones that proposed marriage and paid dowry. Consequently, they felt that they had 'special rights' over women and hence expected to be the ones to have a final say over what happened in their homes. Secondly, upon marriage, a woman shifted to her husband's village. That made the woman an 'outsider' which consequently compromised her claim rights to land. As a result, men and women had culturally been conditioned to think that land was just for men hence making it difficult for women to enjoy equal land rights with men.

This study found that land allocation practices also contribute to men owning and controlling more land than women. In-depth interviews with community members and headpersons revealed that land was allocated to men while women were expected to access it through their husbands or parents. Headpersons did not have power to give land to married women without their husband's consent. Further, it was observed that it is mostly men and unmarried women that are registered in village records, which shows some level of discrimination against married women. Literature review shows that where land ownership among couples is concerned, it is possible to register both the husband and wife but this was not the case in Mumbwa district. The fact that men are the ones that are registered creates the impression that land belongs to men. Some headpersons justified the practice by saying that they could not give land to a married woman because when land was given, it was given to the whole family which comprised husband, wife and children. However, when that line of reasoning was probed, both female and male participants said that in reality it was not like that. They said that when a woman lost her husband, headpersons were not even present to defend her against land grabbing.

Suppression was found as one of the prominent factors that contributed to inequitable land ownership patterns between women and men. Findings indicated that some men especially husbands simply did not want a woman to have her own land because they had fears that she might surpass them and refuse to submit to their authority. Suppression of women was also attributed to the treatment of women as foreigners in their husbands' villages. A good number of women were reported to have had their pieces of land repossessed by their husbands upon being seen to be doing well in farming. Unmarried women were also suppressed in the sense that they were expected to just wait for marriage on the assumption that they would have access to land once they got married. It was reported that it was difficult to give unmarried women land

because it was believed that once they got married, they abandoned everything including land to join their husbands.

The other factor which contributes to the existing land ownership patterns between men and women in Mumbwa is allocation of labour. Findings indicated that men were mostly in charge of activities that had productive value such as rain-fed agriculture, gardening and charcoal burning. Even though women were made to provide labour for these activities to be carried out, it was men that made decisions and controlled the marketing of what was produced and by consequence the money realized from such activities. As such, it was commonly accepted that the money belonged to men. As a result, men were advantaged in two ways. Firstly, it was believed that men were the ones that looked for money and hence land should be allocated to them to help them fulfil their role of looking after their families. Secondly, men were able to use the money to influence the allocation of land in their favour because even traditional land was allocated at a cost as opposed to the past when traditional land was freely given to would be developers. This means that one needs to have money to acquire land. The study showed that women were mostly involved in activities that did not result in monetary benefits such as preparing food, ensuring cleanliness for all family members, taking care of the sick and so forth. While these activities were important, the fact that there was no money realised from them had resulted into a belief that it was not women's responsibility to look for money. As a result, there was no need to give them land because they had no business with it as their male figures (husbands, fathers, brothers and uncles) were the ones that looked after them. So the way labour was traditionally allocated reinforced both the belief and the practice that land should mostly be allocated to men while women should just access it through their husbands or male guardians.

The study found that unequal land ownership had many negative effects on women's economic rights. Women's limited ownership of land severely limited their efforts to earn enough to meet their family basic needs. As a result, they became overdependent on men and when they did not get enough resources, they ended up engaging in risky behaviours such as alcohol abuse and prostitution. So, women's lack of adequate resources due to unequal land ownership creates a cycle of poverty which further reduces their likelihood of owning land as they do not have adequate resources. Findings also indicated that lack of land ownership by women resulted into hunger and limited access to education by children.

The ethical evaluation of findings shows that there is discrimination of women on the basis of sex and marital status despite the fact that men and women should enjoy equal rights to land. This situation should not be tolerated as Zambia is a State Party to many international commitments that affirm equal rights to land. However, laws to concretely address factors that contribute to women's discrimination in land ownership are weak and not adequately implemented. The laws need to be grounded in rights ethics. Using ethics

of care, land ownership for women is critical to promoting their well-being as care-givers. Safeguarding land rights for women does not only affect them but also affects children and the aged who are mostly under their care. Hence rights ethics and care ethics complement one another in promoting the well-being not only of women themselves but also of the ones who depend on them.

XVI. CONCLUSION

Land ownership is critical to the development of any nation. People in rural areas are primarily dependent on land for agriculture which is their main livelihood activity. Moreover, land ownership is a human right which should be enjoyed equally by both men and women. However, land ownership rights are not enjoyed equally due to the persistence of social norms and values, marital and inheritance patterns and religious practices which mostly favour men and discriminate against women. While both men and women have access to land, ownership is mostly enjoyed by men. As land owners, men are the ones that exercise control and define how land should be used. This is due to five main factors which are power imbalances, culture, land allocation practices, suppression of women and allocation of labour. The unequal land ownership impacts negatively on women's ability to earn enough to meet their family basic needs. Consequently, it negatively affects their ability to have adequate food and facilitate their children's access to education.

An ethical evaluation of findings on inequality in land ownership shows that women in Mumbwa district face discrimination in land ownership on the basis of gender and marital status. Such discrimination is contrary to both Zambian laws and international commitments that affirm equal rights to land ownership. Zambian laws concretely addressing factors that contribute to women's discrimination in land ownership are weak and do not adequately support the rights of women to land in practice. The ethics of care shows that land ownership for women is critical to promoting their well-being as care-givers because they play a greater role than men in providing care. Compromising women's land rights not only affects them but also affects their children and the aged who are mostly under their care. Rights theory and care ethics complement and support one another in focusing on the critical importance of ownership and control of land by women.

XVII. RECOMMENDATIONS

Based on findings of the study and the ethical evaluation of the findings, it is recommended that government should fully implement laws that promote Gender Equality and Equity in order to attain gender equality in land ownership. Traditional leaders in Mumbwa district should promote joint land ownership for couples by recording both husbands and wives in village land records. Civil Society Organisations should intensify their sensitisation and capacity building programmes on equal land rights. Finally, further

studies should be conducted on the application of laws on equal land ownership rights among married people.

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