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## **Women's Inclusion and Exclusion from Property Ownership in Botswana**

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### **Introduction**

This paper is a critical review of practices, policies, rules and laws that either enable or inhibit women from accessing and owning properties in their private capacities with special reference to Botswana. This is by no means an attempt to demean or under play the importance of exemplary reforms undertaken by the Government of Botswana in the last twenty years. The aim is to identify areas requiring further action lest we become complacent and degenerate into a 'male dominated and female subservient' society that we are trying to leave behind. Furthermore the importance of property ownership – especially ownership of land and houses - as tool for empowerment women does not need to be emphasized. Land and housing are central to human reproduction – an activity that has traditionally been pioneered by women. However, women within sub-Saharan Africa have had only guaranteed access to land. Women's rights to own land and those houses have always been in some sort of a limbo. In Botswana, for example, traditionally women owned the houses but not the land on which they were built. Women also owned and controlled the expenditure crops and harvests but did not own the land on which the crops were cultivated. The land belonged either to the husband, son or the father. Despite numerous policy and legal reforms introduced by the post independence government, few women have been able to own land in their personal and private capacities. This paper seeks to highlight some of the factors that have perpetuated women's exclusion from property ownership.

### **Exclusion and inclusion of women under customary practices**

I use the term 'customary practices' as shorthand for the unwritten rules and procedures that govern access, use, ownership, retention, and transfer of properties in a community. Although

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they are undefined and negotiable over time and space, 'customary practices' must of necessity be generally acceptable and enforceable in their respective communities. They are in essence designed to forestall conflicts although they may, at times, be the sources of conflicts when individuals or groups of individuals challenge them. This, however, may be normalised and new acceptable practices established.

Regardless of the gender system under which African communities and tribes were organised, customary practices generally excluded women from owning land, cattle and houses. Although under the 'matriarchal' gender system land was inherited along matrilineal lines, the major decision makers on critical issues including access, use and transfer of land were men – notably maternal uncles. In patriarchal tribes, such as those found in Botswana, land was vested in the respective *jural* community (clan, tribe, chiefdom or nation) with common access to all people belonging to that community. However, in practice, women were often excluded from accessing or visiting certain areas (e.g. grazing zones) within the territory. More importantly, customary practices excluded women from ownership and participation in the administration of land as well as in processes through which decisions on use, allocation and transfer of land were made.

According to Schapera (1943 and 1994), land in Botswana belonged to various independent tribes each of which was headed by a Chief. Members of each tribe were free to travel, hunt and collect or harvest natural resources anywhere within their territory provided they did not cause damage to improvements (e.g. crops) on land. Schapera (1994) observes that, except among the Bakgatla tribe where, at the time of his studies, women held arable land rights, no land could be allocated to women – whether single, separated, divorced or widowed. Women accessed land only through their husbands, fathers, sons, brothers or other male agnate. Every son who became of age (just before marriage or soon thereafter) was entitled to two pieces of land – one for his *lelwapa* or homestead and another for 'his' *masimo* or arable fields (Schapera, 1994 and 1943). Usually he obtained the pieces of land from his father's land holdings. Otherwise, he would be allocated land from the tribal reserve. Allocated land was an exclusive property of the owner and his heirs as long as the family continued to belong to the tribe or there was some village re-organisation.

Every adult man would be given land according to the size of his family (Schapera, 1994; and 1943). Men with bigger families received larger portions while polygamous ones received several *masimo* [arable fields]. Then, the man re-allocated each *tshimo* (arable field) to one of his wives. Crops from each field belonged to the woman to whom it was allocated and the field could not be used by anyone else without her permission. Within each *lelwapa* or homestead, women built several traditional houses for themselves, their husbands and children and for various activities such as sleeping, cooking and/or receiving visitors (Larsson, 1989 and 1990). According to Schapera (1943), each homestead was traditionally known by the name of the wife occupying it even though the husband - who was the household head - habitually shared it with her.

Schapera (1943 and 1994), Roberts et al (1970), Othogile (1992) and Dow and Kidd (1994) observe that traditional provisions for property inheritance among Tswana tribes excluded or disadvantaged women. When a man died, the eldest son, if mature, assumed his father's position as head of the family. He became chairman of the family meetings and representative in

matters needing male representation. He also assumed management of the family cattle. When a man died before marriage or without a male issue, the father, brother, or any other male agnate inherited his property. The type and amount of property each child was entitled to inherit was dictated by the child's sex and position in the family. The largest share of the deceased man's estate went to the eldest son or principal male heir. He inherited most of the cattle, land and the family cattle-post. The remainder of the estate (mainly cattle) was divided among other children. According to Schapera (1994:231), daughters and widows received no cattle at all. However, the eldest son or principal heir was obliged to maintain and support them while they lived with him.

The foregoing arrangements for property ownership and control were designed to maintain and buttress male supremacy over women in an era of men's insecurity caused by frequent intertribal wars over land and cattle in a region where pastures and sources of water for livestock feeding were scarce and far between. The land 'ownership' factor connected men - who spent most of their daytime grazing and protecting cattle - to women who built houses for night shelter and produced food for the family. Although regressive by today's norms, it served a somewhat useful purpose in those times.

With the advent of capitalism, market economies and waged employment promoted by colonial regimes, men's exclusive ownership and control of land, cattle and houses started to crumble. Schapera (1943 and 1994) observes that by the 1930s, chiefs had started to allocate land to unmarried mothers. Fathers too were allocating land and some cattle to their daughters for keeps. While single mothers - never married, widowed and divorced - owned and controlled their own arable and residential properties and to some extent, cattle, married women continued to be disadvantaged. First, as long as a woman was married, land to that household would be allocated to the husband even he had been absent for a number of years. Alternatively, the chiefs would allocate land to the eldest son. Second, in some tribes, when a daughter got married the field allocated to her by her parents reverted to her parents and as it could not "go with her to her husband" (Schapera, 1994: 203). However, Schapera (1994) observes that among the Bakgatla, on marriage daughters went with their land to their husbands and came back with it on divorce.

Third, cattle owned by a married woman were kept at her husband's cattle-post although they did not form part of his estate. In practice, the woman had less control over the cattle because she could not dispose of them without the husband's permission - which could be granted or denied (Schapera, 1994; Dow and Kidd, 1994). On divorce, the wife took her own cattle back to her father's or brother's cattle-post although the ex-husband was entitled to keep some. Divorced women who left children behind had to leave their cattle behind as well. Unmarried daughters too entrusted their cattle with their brothers or fathers mainly because they lacked cattle management skills (Dow and Kidd, 1994). In some tribes, unmarried women became entitled to a share of their deceased father's estate.

The above practical reforms have been attributed to several factors. First, with the introduction of wage employment, land, cattle and subsistence agriculture in general ceased to be the only sources of livelihoods. Many women earned independent incomes as teachers, nurses, secretaries and domestic workers while others sold traditional beer and agricultural produces. Second, and related to the foregoing, many women became *de jure* and *de facto* heads of

households – a position that had hitherto been the preserve of men. Women became *de facto* heads of households following prolonged absences of their husbands while in paid employment in South Africa. Third, land, houses and cattle became saleable properties. Thus women were able to use their monetary earnings to buy such properties, especially in urban areas. Fourth, women's absolute ownership and control of land and some cattle guaranteed their ability to provide shelter and food for their children. Furthermore, as observed by Dow and Kidd (1994), land was considered plentiful and less socially and economically valued than cattle. Hence, men's indirect control of women's cattle.

## **Legal reforms and state policies**

As observed elsewhere (Kalabamu, forthcoming 2006), post-independence government policies and legal reforms with regard to women's land and property rights have been introduced in piecemeal. They, therefore, seem to be contradictory and at times confusing. This section discusses the key policies and legal reforms introduced by the government since 1966 when Botswana became an independent state.

### *Legal reforms*

The first Act passed by the Government of Botswana and which had a bearing on women's land and property rights was the Tribal Land Act (1968). Enacted in 1968, and until its amendment in 1993, the Tribal Land Act effectively disfranchised all women in the country's rural settlements. Section 10(1) of the Act transferred all rights and titles to from *jural* communities, notably tribes, to land boards established under the same Act. But more importantly, the land boards were to hold the title to land on behalf of the respective tribesmen instead of tribesmen and tribesmen or just simply the indigenous inhabitants. The above offending section was amended in 1993 in order to make it 'gender neutral'. The words 'tribesman' and 'tribesmen' were replaced with 'citizen' or 'citizens' of Botswana wherever they appeared in the Act.

Despite the amendments and replacement of chiefs with land boards consisting of elected members and 'civil servant' advisors, various studies have revealed that land boards do not readily allocate land to women – especially married women (Molokomme et al. 1998; NRS, 2003; Kalabamu and Morolong, 2004). Land boards may only allocate land to married women upon receipt of a written consent from the husband – a requirement which is not applied to married men. They also require young women to be assisted by their fathers or male guardians. Land boards justify their actions by saying that "traditionally a married woman could not request a plot independently from her husband, and to allocate her one would be seen as divorcing the couple ... [or] that there is a shortage of land so that each couple should be allocated only one plot" (NRS, 2003: 163).

The Married Persons Property Act (1971) was the second most relevant legislation that affected women's property rights. However, the Act did nothing more than provide intending couples a choice to either marry in or out of community of property. If married out-of-

community, properties to whomsoever acquired them or are registered to the exclusion of the other partner unless he/she produces evidence of his/her contribution. On separation, divorce or death, each partner takes whatever he/she brought into the marriage plus his or her personal belongings including gifts (e.g. land, houses, cattle and cars) bought, donated or registered in their names by their erstwhile husband (Molokomme, 1986). If married in-community-of-property or under customary law, properties acquired by either partner (before or during the subsistence of the marriage) belong to both parties in equal but undivided shares. Should the couples legally divorce, their properties are divided equally (50% to each) regardless of either party's quantum of contribution and reasons for divorce. However, during the subsistence of the marriage, the husband is the sole administrator of the joint estate.

Although in theory, the Act appears to favour and give women a choice, in practice, it is difficult to implement. First, it treats women as 'minor' who have to enter into legal divorce or wait (and pray?) for their husbands' deaths to become property owners. Second, few intending couples ever discuss such prenuptial issues as it may indicate lack of trust on the part of the enquiring partner. Third, any party opting for the out-of-community marriage is seen as not being committed to the 'until death does apart' obligation (Kalabamu, 1998). Fourth, for couples married in-community of property, the husband may easily dispose of expensive properties before a divorce suit is instituted. However, as noted below, this is no longer practical.

Amendments to the Deeds Registry Act constitute the latest legal reforms. The Act was first promulgated in 1960 – about six years before independence. Until 1996 when the Act was amended, no immovable property could be registered in the name of a woman married in-community-of-property unless the property was specifically excluded from the marital power of the husband. In 1996, the Act was amended to provide that neither spouse, whether married in community of property or not, may alone deal with the Registrar of Deeds without the written consent of his/her partner. Thus, neither party can register or dispose of property of without the written consent of the other partner. My personal observation is that, only women are required to declare their marital status and produce their husband's consent, if married. Male persons are not asked to declare their marital status. An act, Abolition of Marital Power (2004), was recently approved by parliament. This Act abolished the common law rule that gave a husband power over his wife. Under this Act any woman regardless of her marital status does not require the consent of a husband to enter into any contract or transaction with banks, building society or any other financial institution. Its implementation and effects are, however, yet to be assessed.

### *Policy reforms*

The Government of Botswana does not have for policies on property ownership and women's empowerment with the exception of the 1999 national policy on housing (which has six lines on gender issues in a 24-page document). Otherwise all official policies and documents on land, housing and property issues lack gender analysis and avoid mentioning gender and making reference to women's needs and interests. The government has, instead, consistently pursued so called 'gender neutral' policies or relied on market forces to empower women.

In both urban and rural areas state agencies allocate land and housing on the “first-come-first-served” basis although, of late, the government has scaled down its role in estate development and tended to promote and support private sector initiatives, which is informed by the market forces. Both approaches do not favour women at all largely because they ignore historically constructed power differences between men and women. In the first instance, poverty is more widespread among women than men because the former lack “material resources such as cattle and land, and access to political organisation and influence” (Good, 1999: 187). Women’s poverty arises from their historical exclusion from cattle ownership and management as well as contemporary female exclusion from lucrative and well-paid jobs. Machacha (2003) observes that only 23% of cattle owning households were headed by women in 2001. This, however, was an improvement from the figure 12% in 1983, and 14% in 1993. In 1993/94 about 41% of all female-headed households were categorized as poor compared to 34% among male-headed households (Jefferis, 1997).

Despite inroads made by women into previously ‘male dominated’ fields and professions (e.g. chieftainship, public administration, parliament, the executive, judiciary and military), men continue to dominate decision making processes because ‘men’ (including women sympathetic to male mentality) outnumber women, occupy higher status posts and may, at times, remake policies or re-interpret law. The Tribal Land Act (1968), for example, does not require people (whether married or not) to reveal their marital status or to be assisted by any other person – male or female. Yet, as noted earlier, land boards require women to declare their marital status and refuse to allocate land to married women unless they obtain their husbands’ consent. The husband may be absent on employment or study abroad or may simply refuse to grant his consent.

Similar decretory discriminations have been reported in the allocation of self-help housing plots in Lobatse (Kalabamu, 1998 and 2001). Officers working in self-help housing schemes in Lobatse would not allocate plots to single women or register plots in the names of married women. Yet none of these requirements were stipulated in rules and procedures for allocating self-help housing plots. To circumvent these bottlenecks, single women presented male acquaintances as their husbands and had plots registered in the names of these acquaintances while married women let the officers register the plots in the names of their husbands. Thus, as far as women’s property rights in Botswana are concerned, first-come-first-served policies disadvantage them because the playing fields and starting points are gendered in favour of men.

A study sponsored by the UK Department for International Development and Cooperation (DfID) observed that, to women and youths, the first-come-first-served system for land allocation is apt for bribery, nepotism and corruption (Kalabamu and Morolong, 2004). Women and youths (male and female) argued that although they were not blatantly discriminated on gender basis, officers in land allocation agencies tended to favour the rich over the poor. They claimed that the rich are allocated plots first because they pay bribes. “You have to know someone at the land board to get land. At times when people go to apply, they will be told to come with five or at five (*tla ka 5*) and those who know will come with Pula<sup>2</sup> 5000.00 for bribery. While those who do not know will come at 5 O’clock and find offices closed,” they claimed. According to youths, land is

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<sup>2</sup> Pula (P) is the national currency. At the time of the study P 1 was equivalent to USD 0.22.

no longer as easily accessible as it was in the past. “Land used to be allocated by chiefs in their own way, and when land board took over, the old ways of allocating land were abandoned and the land board regulations are not working well. The land board regulations should have been built on the ones that were used by chiefs”, they said. The youths further argued that there

“is gender biasness in land ownership, to the extent that our mothers here have registered their own plots in the names of their partners because they [male partners] were earning income. If you inquire from plot holders here on how they got their plot you find that most of the plots here in reality belong to women but because of the respect of men they are registered under men’s names”.

As noted above, plots are often registered in men’s names because of officials’ instructions as well. Because poverty is more widespread among women than men, the new state approach whereby allocation of land and properties will be determined by market forces women will undoubtedly face more exclusion than in recent past.

## **Conclusions**

Women’s rights to property in Botswana have not been clearly defined and spelt out. Customary practices appear to have been some kind of joint partnership – men owned the residential and arable land while women owned and controlled crops and structures on land. The property ownership was symbiotic and complimentary – an outcome of based on many generations of trial and error. The customary practices have, however, been unable to accommodate the new order of social, economic, political, demographic, and above all, gender relationships. The pot could not contain the pressure and started cracking. The initial solution or reform was conceived in entrenching women’s exclusion from property ownership (at least in theory). However, later policies and reforms have been more progressive – again in theory than in practice. Recent policies and legal reforms have sought to repair cracks in the old customary pot rather than moulding a new – hence amendments of this, that and those Acts which appear to inhibit women’s ownership of property. These repairs have been unable to adequately satisfy the interests and needs of the present generation of women. I contend that, unless we mould a new pot, many women will continue to be excluded from property ownership for a long time to come. Holding on to the highly contested customary practices creates more problems than it solves. We need a comprehensive, over-arching, expandable, multi-layered, and gendered policy and legal reform instead patches of repair works.

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