

DELIVERING JUSTICE: THE CHANGING GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA

Anne Griffiths

Introduction

Poverty reduction has been at the heart of global initiatives promoted by International and transnational organizations, such as the United Nations (UN), the World Bank and the UK's Department for International Development (DFID) (UNDP 2008; World Bank 2006; UNDP 2005; DFID 2004, 2008; SIDA 2002). In recognising that women and children feature disproportionately among the poor worldwide (Ruzvidzo and Tiagha, 2005), these agencies have expanded the concept of poverty to include not only material deprivation but also powerlessness that stems from a lack of access to justice. In addressing the latter in its 2008 report, the Commission for the Empowerment of the Poor (2008) identified land as one of the four pillars of legal empowerment.

This article explores women's access to land in Botswana and the changes that have ensued over time derived from institutional, legal and social transformations, brought about in part by the role played by NGO's. Based on field research carried out in the 1980s (See Griffiths 1997) and in 2009-2010 under a grant from the Leverhulme Trust it examines the factors that have led to a situation where women are now clearly represented in land transactions¹. These include enhanced

¹ I am indebted to the Leverhulme Trust and to the government of Botswana and all those who participated in the research, especially my research assistants, Phidelia Dintwe, Phenhyo Churchill Thebe, Kawina Power and Boinele Baakile.

education as well as informal and formal sector employment that have enabled some women to be more proactive, along with a shift in social attitudes towards women's role in society that is harder to define but stands in marked contrast to views expressed by interviewees in my earlier research. Understanding the social dimensions of change and their effects is important, but is something that is often overlooked by international donors who have a tendency to focus on reforming laws and institutions without having a clear grasp of how these interact with the social dynamics of their environment.² Yet such knowledge is crucial if rhetoric is to be distinguished from reality and ideological assertions are to be tested against empirical facts. For without this understanding policies may give rise to unexpected outcomes and detrimental effects that run contrary to the intentions of donor programmes and policies (Weilenmann 2009).

Within Africa, rights to land have always been the subject of contestation, fuelled by changes in demography, the mobility and density of populations and economic development. A key resource for family and household livelihood, land has been the subject of ongoing debate especially in the broader context of nation building and development. Earlier debates were polarised about the extent to which customary land tenure represented an obstacle to national progress that was associated with the kind of agricultural investment in and productive use of land that in turn is associated with clearly defined and enforceable property rights. These rights were promoted through individual, registered title that is derived from Western style law.³ Over time the neo-liberal economic agenda, that underpinned the move towards registrations of title, became broadened to adopt a more holistic approach to development and poverty, including attention to human rights, good governance, accountability and informal justice.⁴ Nonetheless, problems still arise as to how these concepts are to be defined and assessed with regard to

² See Manji (2010) on the difficulties of drafting legislation to protect women's access to land in the face of opposition from commercial lenders and the problems of reconciling financial inclusion with the aim of international development to end poverty.

³ For discussion of these debates see Griffiths (2007).

⁴ An example is provided by a Report on "Non State Systems of Justice" issued by the UK Department of International Development (DFID 2004) that, among other factors, recognizes the need to address historical context, the role of the non-state legal order, human rights compliance, and myths held about non-state legal orders.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA

Anne Griffiths

implementation. For example, one project call issued by the UN in 2008 for a study of informal justice world wide, constantly associated 'informal justice' (including customary law) with what it referred to as 'deficits' in the democratic process. This is done without every clearly identifying what is meant by 'justice', or the characteristics that are associated with its 'formal' and 'informal' character. The call also failed to address how a 'democratic process' was to be identified. This lack of clarity stems from a conflation of ideological or normative assertions that are taken to be commensurate with reality on the ground. This 'reality' however cannot be taken for granted but must be constructed through empirical observations that investigate how questions of land, poverty and access to justice are handled in specific contexts. My research is an attempt to bridge that gap. A variety of methods were employed in the data collection, including archival research, examination of court and land board records, participant observation of disputes, interviews with government personnel, members of NGO's and local people as well as extended oral life histories of families from Molepolole village, updating earlier research. In 2009 a new dimension was added, namely a study of the Kweneng Land Board and of the Land Tribunal that deals with appeals from Land Boards.

The Botswana government acknowledges that: "studies worldwide have shown that the impact of population growth on poverty is strongest at the micro-level, that is, at the level of households and communities", recognising that "poverty remains one of the major development challenges for Botswana" (Botswana Government 2003a: 24). The government also accepts that women bear the brunt of poverty, especially given female-headed households that are prevalent in the country (Botswana Government 1981a: 21; UNICEF 1993). In 2002-3, 30% of the population lived below the national poverty line. Among this group nearly two out of three were rural and most of them were women, with female-headed households proving to be the most vulnerable in both rural and urban areas (van Klaveren et al. 2009: 31-32). Under these conditions the question of women's access to land is highly pertinent given that land is not only central to the state's strategies for development but also crucial for the livelihoods and well-being of individuals, households and families.

Legal and Historical Background to Land in Botswana

Two years after acquiring Independence Botswana passed the Tribal Land Act of 1968 (Cap. 32:02, Laws of Botswana). It was the first piece of legislation to

propose substantial changes to the dominant Tswana tribal systems of land tenure, which had been left intact after the proclamation of the tribal reserves during the colonial era (Ng'ong'ola 1997: 14). This was necessary in order to more readily accommodate “more modern practices of land use, such as more exclusive allocation and utilisation of tribal grazing ranges” (Morolong and Ng'ong'ola 2007: 146). These developments were perceived as enabling a young country to provide for a land administration system that was just and that could assure all Batswana of access to land by being more accountable to elected politicians that were newly in place. This was to be done by dislodging the authority of chiefs by vesting ownership of tribal land in land boards specifically established in each tribal area to whom authority was delegated for dealing with land rights, including judicial powers over land disputes previously vested in chiefs. With an eye to progress the rules regulating land covered a complex mix of statutory and customary provisions that vary according to how land is classified under one of three categories, as tribal, freehold or state land under statutes such as the Tribal Land Act (TLA), the State Land Act (Cap. 32:01) and the Town and Country Planning Act (Cap. 32:09). As Tribal Land accounts for 70% of land in Botswana it is on this sector that my study is focused. Some of the provisions in relation to the TLA reflect a continuity with the past, leading Morolong and Ng'ong'ola (2007: 143) to observe that when it comes to Botswana “the unique features of contemporary tribal or customary land tenure in Botswana can be retraced to the manner in which the country's plural land tenure system was constructed during the first few decades of colonial rule”. Under the TLA, Land Boards were established for specified ‘tribal areas’ that corresponded with the nine native reserves proclaimed during the colonial era. However, under section 13, the Act handed over powers to Land Boards in relation to allocation, use and cancellation of land rights that had been previously vested in chiefs under customary law. Thus Land Boards replaced Chief and tribal authority control over the allocation and distribution of land.⁵

Institutional Features: Kweneng Land Board and its Powers

Kweneng is one of twelve Land Boards in Botswana that under the Tribal Land Act administers customary grants of land and common law leases. Tribal land is

⁵ Informally, chiefs and headmen continue to have some influence, especially in handling family agreements on inheritance that deal with land transfers.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

now held by the land board or by individuals either as a customary grant or a lease. Neither of these types of tenure confer “ownership” on the recipients as this vests in the Land Boards who hold it “[...] in trust for the benefit and advantage of citizens of Botswana” under section 10(1) of the Act. This wording reflects the 1993 amendment to the Act opening up jurisdiction for Land Boards to all citizens regardless of their ‘tribal’ affiliation. While the Act does not define customary rights, these are commonly assumed to cover residence (*motse*), arable agriculture (*tshimo*) and grazing (*moraka*). In dealing with tribal land, Land Boards could issue customary land certificates for residence, arable agriculture and grazing but not for hunting. These certificates, however, could not be given for non-customary uses such as trading, manufacturing, business or commerce. To deal with these activities, Land Boards were given powers to allocate common-law rights under leases. The introduction of common law leases on tribal land was designed to commercialise land rights in rural areas. One of the most important reasons for pursuing common-law title and leases is that they can be used as a security for development loans. Ordinary customary grants cannot because they are not regarded as marketable securities by formal lending institutions because the land has not been adequately surveyed to meet these institutional requirements.

Kweneng Land Board (KLB) is based in the village of Molepolole, which lies at the centre of the Bakwena polity or ‘tribe’. It was established before colonial overrule by Sechele I (c.1833-1892) who consolidated a disunited Bakwena around a large central settlement with outlying domains evident in Molepolole today. Always large, it has grown from a settlement of around 30,000 in the 1980s to over 50,000 in 2008, making it the largest village in Botswana today. It is both the capital and regional centre of Kweneng district where I carried out fieldwork between 1982 and 1989.

My study in 2009-2010 focused on this Land Board because in its 5,000 km² jurisdiction it administers the entire spectrum of land allocation in Botswana from rural cattle posts to peri-urban and urban residential and industrial areas. Situated close to the capital city, Gaborone, it is located in an area where nearly one third of Botswana’s 1.9 million people live. In this area, land use and tenure is a pressing issue given the growth in population (Botswana Government 2003a: 18) and the expansion of urban centres like Gaborone. This gives rise to competition for the acquisition of plots of land, not just for domestic or agricultural use, but also for commercial purposes (Kalabamu and Morolong 2004).

When Land Boards were established in 1968 the objective was to balance a number

of interests reflecting tribal authority and governmental political control that would democratise land institutions. To achieve this membership of these boards derived from a number of sources including local elections within the jurisdiction of the Land Board as well as appointees from the Ministry of Lands and Housing and the Ministries of Agriculture and of Commerce and Industry. When I carried out my research in 2009-2010 there were nine working members of KLB, four of whom were women.

Access to Land: Social Dynamics of Gendered Family Networks

My earlier research from 1981 to 1989 pointed to the need to move beyond abstract assertions about land tenure in law, to acquire a detailed understanding of the concrete ways in which individuals and families acquire access to and control over land in all its forms in practice (see Griffiths 1997). In an African context it is clear that "people's ability to exercise claims to land remains closely linked to membership in social networks and participation in both formal and informal political processes" (Berry 1993: 104). My life histories from the 1980s highlighted the difficulties women face in gaining access to or control over property, including land, under customary law. This is due to the gendered position women occupy in kinship networks and the economic, political, ideological and social domains that shape the world in which they live. The research also underscored the need to recognize the social context of law as well as the degree to which customary and Western-style law are mutually constitutive and underpinned by the gendered norms and values that operate in daily life. This is something that is often overlooked by policy makers, as is especially evident in law reform and in the current focus on informal, traditional or customary law and its perceived failure by donors to meet human rights standards.

My earlier research on life histories also highlighted the circumstances under which some women were successfully able to claim resources, including land, while others faced constraints that disempowered them. These life histories, collected in 1984, 1989 and 2009-2010, through oral testimonies and data from field notes provided by anthropologist Isaac Schapera, cover five generations of the founding families of Mosotho *kgotla*⁶ in Molepolole village. In 2009-2010 I

⁶ A *kgotla* is the assembly centre (both the physical location and the body of members) of a group of households presided over by a male headman or ward head; in the past, but no longer, all household heads were related through the male

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

focused on updating the genealogies of two particular family groups, the Makokwe family group and the Radipati family group, who are both descended from a common male ancestor, Koosimile, because these groups, although related, demonstrate very different life trajectories. Makokwe who was born in the first house, had access to a resource base that revolved round subsistence agriculture, raising livestock and migrant labour of an unskilled nature on an intermittent or contract basis. These characteristics, shared by many other families in Botswana, associated them with what Parson (1981) termed 'the peasantariat'. The members of this kin group were increasingly distanced from the elite cattle owners and higher income wage earners (Botswana Government 1981a: 8). In contrast to his brother, Radipati, who was born into the third house, was an educated man. His descendants, unlike other families in Mosotho *kgotla*, have focused on attaining education and the acquisition of skilled and secure employment, which among the younger generation is predominantly government based. This has set them apart from other families, and through the position of the younger generation who represent a growing elite in Botswana, places them among those whom Cooper (1982) has referred to as 'the salariat'. For family members the networks of which they formed part had an impact upon their access to and control over resources. For women among the Makokwe family, the gendered division of labour within the household placed them in a weaker position than that of their male counterparts. For while their labour was an essential part of the family enterprise, it was generally of a domestic and agricultural nature that was not valued on a par with that of men who provided essential cash remittances for households or who maintained control over cattle at the cattle post. In contrast, among the Radipati family, women's access to education and stable formal employment has given them a greater range of resources, including land, as well as giving them a greater degree of independence from reliance on male networks of support. However, in the 1980s when I began my research they represented a minority of women within their generational cohort.

Bearing this in mind, I expected to find a dearth of women when it came to land transactions when I began my research in 2009-2010. In order to obtain a broader

line. It forms part of the organization of Tswana society that revolves around the construction of a *morafe* or polity. *Kgotlas* are structured through a tightly organized hierarchy of progressively more inclusive administrative groupings, beginning with households that make up a *kgotla* and extending through wards, which are the major units of political and legal organization of the *morafe* as a whole. At the centre is *Kogsing*, the Chief's ward where the Chief's *kgotla* is situated.

picture, beyond qualitative life history data, my research incorporated a study of land certificates and leases from Kweneng Land Board. I was extremely privileged to be granted access to these records, which have proven hard to locate over the years but which provide important information about who is acquiring land certificates and the extent to which women are featuring in these transactions. As far as I am aware this is the first study of its kind to investigate land certificates and leases and it fills an empirical gap in knowledge about dealings in land. For as Ng'ong'ola, Professor of law at Botswana University, observed to me in 2004:

Land Boards claim to follow a gender neutral policy on allocations. But it would be interesting to apply your type of [data] analysis to the actual situation on the ground. There is not much information on how women have been fairing in their dealings with Land Boards.

My study examined 4041 certificates and 1200 leases over a ten-year period from 1999 to 2009, which was combined with the observation of women appearing as claimants and appellants before Kweneng Land Board for all types of land use.⁷ Contrary to my expectations, women were in fact featuring in the processes of acquiring certificates and leases.⁸ Overall, over half of the land certificates were registered in women's names (2,063 out of 4,041), including certificates over residential plot allocations, transfers and extensions, as well as field allocations/registrations, transfers and extensions. There were only thirty-seven cases where the sex of the certificate holder was unclear. A smaller number of women feature when it comes to fields. Out of a total of 1,611 certificates, women accounted for 44%, that is, 716 certificates. This is interesting because in my earlier research I found that where women did access land it was through inheriting fields from their mothers or grandmothers. Kalabamu and Morolong

⁷ Given the state of the records it was not possible to sample a set number from each year or to conduct a random sample from the records. Thus it was not possible, for example, to access 2,000 records with regard to fields with 200 records from each year over a ten-year period. Instead, we had to work with what was available. For further details see Griffiths (n.d.a).

⁸ While information was incomplete in a number of cases, especially for the years 1999 to 2005, it was possible to identify the sex of the certificate or leaseholder from their Omang or identity card, where the fifth number signifies a man if it is 1 and a woman if it is 2.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

(2004) state that women in 2004 were more likely to get fields as men were more interested in other types of property like cattle and cattle posts. In discussions with government personnel, NGO's and local people in 2010 there was a view that women may be handing over their fields to men because they lack the resources to work them and/or because of fears about personal safety in isolated areas where women may feel vulnerable. As the Deputy Director of Social Services explained in an interview:

Women are not really into farming because fields today are so far from the village that when they go there they have to live alone. There have been a number of cases reported of older women being raped at the farm lands and women are scared. In the past old people were used to farming but for a poor single mother who will be alone at the lands it will not be safe for her.

Women also feature in leases. Out of 600 residential leases there were 292 women and 305 men with only 3 applicants whose sex was unclear or who represented an 'other' category such as a company. Women did not feature as prominently in the 600 commercial leases with 347 men to 196 women, but they were still present (with only 57 in the 'other' category). Not only are women in possession of certificates and leases, but they also feature on the waiting list for land in Kweneng district. On one list, for Gamodubu and the surrounding area that is close to Molepolole, there were 10,856 names up to May 2010, consisting of 5,944 women and 4,901 men (with 11 where the sex was unclear). Overall, my most recent research demonstrates that women (from 21 to 84 years of age) are clearly acquiring land through the acquisition of customary certificates and leases to a much larger extent than has generally been recognised, although what little empirical research exists currently in Botswana points towards this conclusion (Kalabamu 2006 and 2009). The factors motivating women to obtain land and underlying their success in acquiring certificates are discussed below.

Factors Mobilising Women's Acquisition of Land

Local people, land board and government personnel, and staff from NGOs view women's current acquisition of land as being attributable to a range of factors. These include changes in the law that involve repealing legislation, such as the Abolition of Marital Power Act, number 34 of 2004, providing that women married under community of property laws are no longer subject to their husband's

exercise of marital power over matrimonial property. This means that married women can now acquire land certificates in their own right. Or it may involve amendments to existing legislation, such as the insertion of section 18 into the Deeds Registry Act (Cap. 33:02) to bring it into line with the provisions of the foregoing Act. These changes also involve the government's acknowledgement of the need to pursue gender equality, fostered by international human rights legislation and judicial decisions forcing the government to deal with gender discrimination. For example, *The Attorney General v. Unity Dow*,⁹ (dealing with discrimination against married women and the citizenship of their children) and the *Student Representative Council of Molepolole College of Education v Attorney General*¹⁰ (where a policy excluding pregnant female students from College for a year was held to be discriminatory). However, while the Botswana government has finally ratified the Convention on All Forms of Discrimination Against Women and its Optional Protocol, it has so far failed to ratify – or even sign – the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. The development of women's awareness of their rights through enhanced education and increased participation in both formal and informal sector employment is also deemed to have played a very important role. In this regard, and more generally, the work done over the last twenty-five years by NGOs such as Emang Basadi (Stand Up Women) and Ditshwanelo (Centre for Human Rights) was also cited as having had a significant impact.

Both the men and women whom I interviewed express the view that there has been a shift in attitude towards women. A male Land Board member commented:

I tend to think as the country develops more women have access to resources. Our mentality was initially that a woman belongs in the kitchen. That view has now changed. We recognize that women have contributed to the economy, not just as child minders, and that women are getting access to jobs that were predominantly male in the past.

The Acting Deputy Land Board Secretary, a woman, also observed that: "today there is recognition that women have a role to play in the socio-economic development of the country". However these perspectives are resisted in some

⁹ Court of Appeal, Civil Appeal No. 4/91 or 1992 LRC (Const) 574.

¹⁰ Civil Appeal No 13 of 1994 [1995] (3) LRC 447.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

quarters with the NGP Emang Basadi's office bearers noting that while "things have changed men resist this". They observe that men are frustrated because "their voices are now faint" and that this gives rise to gender-based violence. In part they attribute this to the fact that as women become more proactive "men may feel displaced from their roles and responsibilities" including their role as breadwinner. Men view this role as under threat "because women never used to work formally".

The Deputy Permanent Secretary at the Ministry of Labour and Home Affairs acknowledges: "the lifestyle has changed in Botswana". He attributes this to the number of programmes¹¹ that provide assistance so that "when you look at women and economic empowerment there are so many packages [available] that you see many women coming up". The senior adjudication officer of Kweneng Land Board, a woman, explained that: "married women used not to own properties, the husband owned them but this is no longer the case". She also observed that more women today are educated and "have the ability to hold their own money". She attributes women's advancement to their access to education and their ability to "stand on their own". In the past women had to get permission from the husband to apply for a plot. The requirement has been removed "because of human rights". She also observes that in the past "men had the money power".

Legal changes have contributed to this development. The legal advisor to the Ministry of Lands and Housing explained that: "women are no longer in a position where they cannot get land". According to him, in the past before the Tribal Land Act: "women could not get land in their own right when chiefs were allocating land." After this Act was passed: "there were still some problems for women who were married in community of property because they could not get land in their own right"¹². This was because "men could use marital power against their wives and so stop them from acquiring land independently. They used it to deny women access to land. When this was abolished [in 2004] women could no longer be denied land on this basis." Taken together with the 1993 amendment to the Tribal

¹¹ These include programmes for education and training in a number of sectors including agriculture and business as well as grants fostering self-employment, some of which are financed by government and some of which are jointly financed by government and international donors.

¹² This is under Roman Dutch law, which gave the husband marital power over a married couple's estate so that the wife could not hold or administer property in her own right until the Abolition of Marital Power Act was passed in 2004.

Land Act, that provided that land boards were no longer restricted to allocating land to “tribesmen” of a particular polity but were charged with allocating land to “citizens” of Botswana, he is of the opinion that “today the system is working well for women”. He sees the 1993 amendment as “placing everyone on an equal footing”.

NGOs, such as Emang Basadi and Ditshwanelo, have made a major contribution in raising public awareness about gender issues and human rights. This is acknowledged by the Acting Deputy Land Board Secretary who observes that they “have promoted women’s empowerment and the government seems to be supporting them”. A female land board member stated in her interview that Ditshwanelo has made a contribution to women featuring in land certificates and leases because:

[...] they run workshops. One of their recommendations was that having a spouse should not be a hindrance for women to acquire land. The Land Board adopted that recommendation. At the time I joined the Land Board women had to acquire their husbands’ consent to apply for land. This was also the case for transfers. Now there is no problem related to women acquiring land [in their own right].

Women, however do not represent a homogenous whole and my preliminary analysis suggests that there are certain characteristics that enhance women’s potential to acquire land. For presentational purposes I will split them into three categories although the characteristics they embody may well overlap and be interdependent. First, there are the unmarried, proactive female household heads with children, who are employed and/or run small businesses; I shall refer to these as the ‘Can Do Women’.¹³ Second, there are the family carers and investors who within their family group are unmarried and whose siblings agree to them inheriting the family yard because of their caring responsibilities and/or lack of resources or because of the foregoing and their economic investment in the home. This category will be referred to as the ‘Family Investors’. Third, there are those women whose married male friends financially assist them to acquire land because they want to set them up in “small houses”. I refer to this category as the ‘Small

¹³ This term is derived from the way one of my interviewees described his female relatives.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

House Women'. What these characteristics and categories entail is discussed in greater detail below.

(a) The 'Can Do Women'

There are more women demographically in Botswana than men, which has been the case for a number of years (Botswana Government 1995, 2004:8). Similarly, in Kweneng district, women are 52% of the population (Botswana Government 2009b: 7). Women in the district generally outlive men (Botswana Government 2009b: 11). Many of these women remain unmarried but have children. This is not a new phenomenon. Schapera (1947: 175) noted that with the advent of migrant labour during the colonial era marriage became postponed until a later stage in an individual's life cycle; that taken together with a decline in polygyny (Schapera 1950: 45; Schapera and Roberts 1975: 266; Kuper 1970: 473; Comaroff and Roberts 1977) lead to increased numbers of adults remaining attached to their natal household, especially unmarried women with children (Kocken and Uhlenbeck 1980: 53; Molenaar 1980; Griffiths 1988; 1997: 22-28; Molokomme 1991). More recently, the 2006 Demographic Survey records that 64.6% of the population has never married and that women head 46.6% of the households in the country (Botswana Government 2006: 26). The public are well aware of this, as one female sub-Land board member observed: "most women are not married so they go ahead in applying for land [because they have no husband to depend on]". She also commented that: "Batswana women have children before marriage. Then they think of having their own place. They don't want to stay in the family home [because this may cause quarrels]". Indeed, the Acting Deputy Land Board Secretary notes that: "even if women are married, we recognize that divorce rates are high and that a woman might [apply for land because] she might be chased away and obliged to return to her family home".

While many of these female-headed households feature among the poorest in the country, there are those that have been able to escape the net of poverty to maintain themselves and their families. There are a number of factors that have contributed to this. The first factor is enhanced formal education (Botswana Government 2009a) that not only applies to women but to the country as a whole, where three quarters of the population have attained education to a primary, if not to a secondary school level (van Klaveren et al 2009: 44). The second concerns changes in women's formal employment patterns that indicate that more women are becoming represented in this sector (Botswana Government 2006). This has

been accompanied by an increase in women's informal sector employment much of which is conducted from women's homes or along the roads (Botswana Government 2007). While NGOs like Emang Basadi have lobbied for greater women's access to employment, there are others, like the Women's Finance House that assist low income women in acquiring skills and the start up capital to finance small business ventures, such as trade kiosks, hair salons and selling airtime. For greater detail on these developments see Griffiths (n.d.a).

Finally, self-help and the proactive engagement of unmarried women have helped them to access land. The Director of Housing notes that: "there has been a move to women being more proactive and taking advantage of situations that exist because women have to fend for their families". The Deputy Director of Social Services attributes the fact "that more and more women are applying for land now" to "women becoming more independent", adding that: "In the past women held marriage as an ideal but now over time women have seen other single women who have made it in life without a man. They can see that they can make it without a man". She also observes that: "there are many independent women who are now doing well on their own, even those with low literacy levels. Perhaps they are doing well with small businesses and their success can motivate other women". This is a perspective that is held by one of the female Land Board members who attributes the number of women featuring in land certificates to the fact that "many women are unmarried".

In a collective interview with sub-Land Board members there was an acknowledgment that most of the younger generation who are unmarried tend to apply for land on their own behalf. In this context one of them stated: "my own observation is that women tend to apply for land at an early age, unlike their male counterparts". He expanded on this theme to say: "a man may only get started at thirty-eight, maybe after getting married. Men tend to wait a lot of the time until, at a late stage, they realize now I'm a man I want to go out on my own [i.e. away from my parent's yard]."

To place these general observations in context from the life history data, Radipati's daughters, Goitsemanang and Olebogeng, provide an example of proactive, unmarried women acquiring land. They are residents of Mosotho kgotla in Molepolole and form part of Radipati's family whose life histories I pursued in 1984, 1989 and 2010. Unlike other women of their generation, Goitsemanang aged 73 and Olebogeng aged 66 (in 2010) received an education beyond that of most of their contemporaries. According to Goitsemanang when her father died in the 1950s

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

her mother Mhudi managed to find the money to continue her education beyond Standard 4 Primary School. This was unusual because: "parents did not regard education as important. They are only realizing now that education means a lot. They considered cattle more important".¹⁴ As a result she was able to train as a nurse and work in South Africa until she returned home to help nurse her sick sister Salalenna. She then found employment in Gaborone with a construction company during the construction boom that was taking place in a post-independent Botswana. She worked her way up the company starting as a store worker and was promoted to a wages clerk and then to a personnel officer, a position that she held until she left in 1984 in order to return to Molepolole to look after her mother full time.

By this time she had acquired two plots of land in Gaborone. According to her nephew Bongi (Olebogeng's son)¹⁵ these plots were acquired through the government self help housing association scheme (SHAA).¹⁶ Such assets put her in a privileged position compared to many women of her generation. Through education she was able to obtain employment that not only enabled her to acquire resources for herself but also assisted her youngest sister, Olebogeng, who had also completed primary school, to find employment with the same company. She was able to nominate Olebogeng to replace her when she was transferred to Morupule Colliery where the company was putting up houses for Anglo-American in 1972. As a result Olebogeng was employed with the company up until 1989 when it was taken over. Like Goitsemanang, she too has acquired land in Gaborone under the SHAA scheme, and this land is located next to her sister's plot.¹⁷ Olebogeng currently lives in the natal household in Mosotho kgotla. Goitsemanang also lives there but she regularly goes to stay with her unmarried daughter Patricia at the other end of the village where most of the younger generation have developed plots of land that they have acquired from the Land Board. Like many women in Botswana they have never married but have had children. These children have gone on to stable and secure employment. Goitsemanang's

¹⁴ Quote from interview in 1989.

¹⁵ From an interview in 2010.

¹⁶ This programme applies to both tribal and state land.

¹⁷ While there is no comprehensive disaggregation of sexes with regard to statistics, the Director of Housing noted that in her experience most of those applying for SHAA and for the poverty alleviation and housing schemes are women.

nephew, Bongi, for example trained as a lawyer (like his uncle David) and in 2010 was acting as a legal advisor to the Office of the President. He acknowledges that his mother Olebogeng's life has been hard because she and her siblings inherited very little from their father Radipati, but that she, like his grandmother Mhudi (who died in 1988), is a 'can do' kind of person. He pays tribute to his grandmother saying that although "her children did not have a high level of education", from his perspective, "she made sure that all the grandchildren stayed with her and she instilled education in us like crazy". He observes that no other family from Mosotho kgotla is as well educated as his and in his view "education has taken us from the fringes of poverty". Goitsemanang and Olebogeng find themselves in a different position from other women who may have found it more of an uphill struggle to acquire land, or more importantly to develop it, due to limited resources within their social networks.

(b) The Family Investors

A second group of women who acquire land are those whose siblings agree to them inheriting the family yard because of their lack of resources and/or their role as caregivers for family members, or because of their economic investment in the premises. Under customary law certain norms apply to the distribution of an estate. It is generally accepted that daughters inherit fields and that the family yard goes to the youngest son. At the five *kgotla* meetings held in Molepolole in 2010 there were some discrepancies as to the treatment of these assets, with some maintaining that the family yard went to the youngest child regardless of sex (Mokgopeetsane and Ntloolengwae wards) while others were firmly of the view that it went to the youngest son (Dikoloing, Lekgwapheng and Mokgalo wards). In the case of fields, some said it went to the eldest rather than the youngest daughter (Dikoloing and Ntloolengwae wards), but all agreed that she had to be unmarried. Where there was an additional field belonging to the father, there was consensus that this went to a son, although once again there was some disagreement as to whether this was the eldest or youngest son. What these discussions reveal are the ways in which people respond to living conditions on the ground that reveal the malleable, flexible nature of customary law.

From my earlier research it is clear that transmission of property among families is focused on maintaining the future generation with an emphasis on preserving assets where available for children. Given the patrilineal nature of Tswana society where descent is traced through the male line - through the man's father where the

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

parents are married, and through the woman's father where they are not – it is not surprising that male offspring are privileged over female offspring when it comes to inheritance under customary law, with the eldest son receiving the greatest share of all the property in recognition of the responsibilities that he adopts as head of the family. For this reason, as head of the household, he not only had the role of custodian with regard to his children, but also had responsibilities for representing and maintaining extended kin (beyond his immediate nuclear family) where he was the senior male among the social network of family members.

Under this system, among children, daughters inherited less than their brothers because it was envisaged that they would marry, and go to live among their husbands' relatives where their husbands would establish their own *malwapa* (residential yards; sing. *lolwapa*). Through marriage, these women's children would be affiliated with their husband's family group, tracing descent through the male line where property devolves from father to son. What daughters tended to inherit was their mothers' personal property such as clothes and domestic utensils. They might also inherit fields that had been worked by their mothers. In contrast, brothers inherited the plough, cattle, any guns that their father may have had and other family property, including land. Among siblings property was not shared equally but depended on their birth order within the family.

However, these formulations of customary law derived from archival and oral sources were never rigidly adhered to as my 1980s research demonstrated (Griffiths 1997: 46). This continues to be the case, as in 2010 it transpired that among Makowe's descendants a married daughter, Kgomotso, was allocated a family ploughing field but she requested that it go to her older, married brother Ranko, since she had acquired another field to plough from a *rakgadiagwe* (patrilineal aunt). What emerges from these histories is that in some cases families follow established norms, as in the case of Rammutla, who is the youngest son of Nkgadikang, who was Makokwe's second son. He inherited his parent's residential yard when his father died and had the certificate transferred into his name although his mother is still alive and living with him and his wife in the yard. On the other hand other arrangements may be made. It is interesting to note that the two children from Nkadikang's first marriage, a boy and a girl, took over their mother's property when she died and sold the developments on it, splitting the proceeds between them.

Thus there is a flexible approach to inheritance that incorporates adherence to traditional norms as well as allowing for other approaches to the distribution of

property. Distributing property according to consensus reached among family members has always been a feature of customary law, but what is clear is that the basis upon which such agreements are made is open to a broader range of factors driving the process of negotiation than in the past. This flexibility is apparent from the land certificates that demonstrate that women are inheriting land although they are neither the eldest nor the youngest child and do not conform to earlier depictions of customary law norms. What appears to be at work here is an example of Erlich's (1936) 'living law'. For what is happening is that siblings are agreeing to a different form of distribution through the signing of affidavits that are submitted as part of the transfer process. These affidavits signed by chiefs or headmen testify to the fact that the deceased's family have agreed to the land being transferred to the transferee. This must be done before the Land Board can certify a change in title to the land certificate, issuing a new certificate in the transferee's name. In discussing inheritance, headmen and land overseers acknowledge that families may reach their own arrangements with regard to the allocation of the family yard and fields. When asked if they find many of these agreements being made, the members of Dikoloing ward comment that: "due to modernisation it happens a lot". A young woman from Lekgwapheng ward gave an example drawn from her aunt's experience. She told us that the certificate was written in her aunt's name because the family agreed that it should be done that way and wrote letters agreeing to this to the Land Board. The headman of Mokgopeetsane Ward, Kgosi Benjamin, noted that where an inheritance is concerned the family: "come to me bringing all their names and I must write a letter to the Land Board".

In Ntloengwae ward the headmen explained that the reason why women are appearing on certificates today is because "sometimes when one of the siblings looks after the other siblings or parents the plot will be transferred to the person who was looking after other family members" and women often take on this caretaking role. Or, he explained: "maybe the yard was developed by that particular person and having invested a lot in that plot the certificate will be transferred to the person who developed the plot". This was the case with Radipati's daughter, Goitsemanang in the 1980s. Although no formal land certificate was involved, Mosotho *kgotla* members supported Goitsemanang against her brother David's attempts to take control of the yard because of the financial investment she had made in it.

These practices may be attributed in part to changes in labour patterns within familial and household networks. In the 1930s for example, the Makokwe family were linked into co-operative networks that extended across several households

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

and had contributed to the livelihoods of individuals and family members through the pooling of resources among and between generations. This involved staggering contracts at the South African mines to acquire money to invest in livestock and seeds for subsistence agriculture. It also involved sharing plough oxen and pooling labour as well as herding cattle at the cattlepost.

In recent years other options for maintaining livelihoods, outlined earlier in the paper, have loosened these co-operative ties and dependencies. The widow of Ntologelang, one of Makokwe's sons, observes that her grandchildren "are not keen to work jointly like their parents used to do" and that "they are only interested in taking care of their immediate families" although they do come together for "weddings and funerals". The advent of the plough and of government programmes providing free seed and ploughing services for up to five hectares of land mean that households are no longer so dependent on the extended networks for support that they used to be. Another widow of one of Makokwe's sons, Nkadikgang, commented that: "since we resorted to using tractors the spirit of brotherhood that hovered upon us died a natural death as we stopped helping each other". Other potential sources for securing livelihoods, such as access to other forms of employment, for example in the construction or service industries, and the development of informal sector businesses have created other opportunities. This has created a situation where the youngest living son of Makokwe, Ramokaki, bitterly reflects that he is facing challenges as a subsistence farmer, not only because he is old and sick¹⁸ but because "only two of my grandchildren are keen to help me take care of my livestock".

What appears to be emerging are smaller, more nucleated family units where support is concentrated among fewer members. This is especially the case where resources are scarce.¹⁹ Women have always taken on the role of caregivers within the family but the older generation appear to accord this role more recognition than they have in the past. This forms part of a more general move towards a reassessment of and recognition of changing gender roles within the society (Kalabamu 2003), and a more egalitarian approach to inheritance rights (Kalabamu

¹⁸ He never quite recovered his health after working at the South African mines from 1957 to 1970.

¹⁹ Motzafi-Haller (1986) notes the way in which in extreme cases poverty over time impacts on families and households by creating a truncated set of relationships brought about by the downsizing of family membership through abandonment.

2009). In *kgotla* discussions and interviews in 2010 they observed that daughters could be depended upon to a greater extent not only to provide care-giving services but even economic support because sons were expending their resources elsewhere, often on women and children outside their immediate family group.

When it comes to inheritance, Ntloengwae ward members note that: “siblings meet and agree as to whom the land should be transferred”. In reaching these decisions the wealth and status of the siblings plays an important role with the result that “the poorest sibling who may be unemployed will be given the yard because the other siblings are in work and have already acquired other plots”. Where family members have adequate access to resources and feel secure, they can afford to redistribute property according to need. Such an approach is not uncommon. There are examples of this kind of distribution taking place among Makokwe’s descendants. His only daughter, Olebeng, the youngest child in the family, was given control over the natal household in Mosotho *kgotla* in the 1980s because her older brothers had all married and established their own households. She lived there for many years until she married in 2001 (in late middle age) and went to stay at her husband’s homestead. It is not only women who benefit from these redistributions. Note the case of Ranko referred to earlier who benefited from his sister, Kgomotso, transferring her inherited field to him because he had no access to a field and she had acquired another elsewhere.

A member of the Molepolole sub-Land Board provided an illustration of the kind of factors that are taken into account in dealing with inheritance. He is the eldest child in a family with eight children, including six girls and two boys. He explains that in his family he and his siblings “have given our mother’s house in Tshosa ward to our younger sister. This is because she is still young and doesn’t have a lot of money. Most of us are old enough to look after ourselves”. It turns out that this sister is not the youngest in the family. Of the four sisters who come after him, one is a nurse, one is an engineer who studied in the UK, one is a civil engineer in Gaborone in the Roads Department and the fourth sister is working for the Land Board. They are all married. Then comes the sister who is not married and who is working in Jwaneng “in a very simple job in one of the shops”. His brother has graduated from University and is now working for the Citizen Empowerment Development Agency. The youngest child, “a sister, is studying information technology at the University of Botswana and will be graduating this year (2010)”. He explains that they did not give the plot to their youngest sister “because she will be able to pursue a good living”. In the family’s view “my youngest sister will be able to look after herself [while] my [other] poor sister is not married and not

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

getting a lot of money.”

Such considerations are not confined to practices in Molepolole and Kweneng District. The senior adjudication officer for Kweneng Land Board, who is not from the district, is one of eight children in a family of six girls and two boys. She and her siblings have done well in life. In her own case, she and her deceased husband who was a senior police officer managed to acquire residential, commercial and agricultural land throughout the country in the course of employment transfers. She has no worries about there being sufficient property for her children to inherit. However, there is one sibling, a sister who did not progress beyond Form 3 at school and who has not managed to get a job. This sister now takes care of their elderly parents. All the siblings support her care-giving by contributing 200 Pula (about £20) a month for her upkeep. It is expected that when the parents die she will inherit the family yard because of her straightened circumstances.

(c) The Small House Women

Given the sensitive nature of the subject matter, it is hard to get information on the third category of unmarried women who receive financial assistance to acquire and develop land from married men. It was drawn to my attention by one of the male main Land Board members who observed that while not wishing to take anything away from women's achievements because "women are working and sweating for themselves", he does "know of a few women who are involved with married men. [These men] get fed up of going to motels and lodges and encourage the women to get a plot and develop it so they can visit them there." He noted: "there are a few like that. If you were to check you would find that they don't have the means themselves to develop the plot but there are developments going on [paid for by the men]". These relationships may represent a longstanding tradition in Botswana where women enter into relationships that are accorded some recognition but do not count as marriages (Schapera 1947: 173). In these cases the woman is referred to as a 'nyatsi' (often glossed as 'concubine'). In these circumstances there is no legal obligation, as there would be in a marriage, for the man to support the woman as a wife. However, he may voluntarily provide financial assistance during the relationship by building her a house or developing land she has acquired as a form of security for her and any children they may have in the event of the relationship coming to an end. The subject of small houses features regularly in the Botswana press and highlights family conflicts that arise in relation to the distribution of resources among family members. While the women associated with

these houses are often taken to task for exacerbating family breakdown, almost nothing is said about the men who engage in these relationships. Discussion surrounding this category of women raises questions about the extent to which women featuring on certificates or leases actually have control over the land in question or are dependent on others for managing and developing it. In other words, what status does a person acquire by being named on a certificate, or rather what does this ‘title’ convey in relation to land?

Actual Control of Land and Informal Transactions

My recent research, outlined above, supports the thesis that there have been marked changes over time that have contributed to a greater number of women acquiring certificates and leases in relation to land in contemporary Botswana. Similar findings are emerging in relation to women and land in South Africa (Budlender et al. 2011). However, the question arises as to what extent being named on a certificate translates into actual control of land by those categories of women, mainly unmarried, who now tend to acquire land.

With regard to tribal land, certificates and leases do not represent ownership of the asset, as that remains vested in the Land Board for the benefit of Botswana citizens. What they represent is a right to use and develop the land. For this reason, land itself cannot be sold, but transfers for money can and do take place where the ‘title’ holder may sell developments on the land to another person. It is well known in Botswana that all kinds of informal transactions take place in relation to land that are not apparent from the existing formal documents. Kalabamu and Morolong (2004: 161), for example, noted that in a district of Gaborone there is a gender bias that leads unemployed women to apply and get plots that are later registered in their partners’ names on the assumption that women do not have adequate financial resources to develop the land. Such practices may give rise to an activity referred to as “fronting”.²⁰ This is a situation where people who do not qualify for the land in question find someone to front for them. This may come about because, for example, with the SHAA programme

²⁰ For bringing this to my attention, I am indebted to Professor Kalabamu from the Department of Architecture and Town Planning and Mr Dumba, who worked for over 20 years at the Ministry of Lands and Housing and currently in Home Economics, Faculty of Education, at the University of Botswana.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

their income exceeds the threshold for the grant. This strategy enables them to acquire land and develop it. They then get the 'title' holder, who is acting as a proxy, to transfer it to them in due course. This is not a new phenomenon. When commercial ranches were put out to tender in the 1970s, a Commission of Inquiry held in 1980 discovered that many of those who were successful in their tenders were in fact acting as proxies for certain Chiefs who already had substantial interests in cattle and land. This enabled the Chiefs in question to consolidate their interests and expand them without having to adhere to the restrictions placed on the tendering system. The problem of fronting and speculative dealings in land is one that has long been acknowledged by the government (Botswana Government 2003b: 11).

As noted earlier, title to customary land through certificates and leases does not confer ownership. This means that land certificates relating to the family yard and inheritance are not regarded as conferring absolute rights on the titleholder. When explaining that the youngest son in the family inherits the family yard under customary law, the members of Mokgalo ward explained: "this does not mean that he gets complete control of it. If his sister marries and gets divorced she can come back to stay in the yard, or even a man who gets divorced. The last born can't chase them away because they also have the right to stay in that yard". The members of Dikoloing ward also noted that: "the property is for all family members regardless of certificate being in one person's name". These views on the status of land certificates were endorsed by senior members of Bakwena Tribal Administration, including the Senior Chief's Representative, the Chief's Representative and Senior Headman, Patricia Sechele.²¹ This attitude was also reflected in interviews with family members. When I asked Bongi Radipati, for example, what he envisaged would happen to the family compound in Mosotho *kgotla*, he responded that it would:

[...] fall into the children's hands because my family have steadfastly refused to change this [that is put it in the name of one person]. So all six children have an equal and undivided share and it will remain like that. We all gather here at Christmas and at the other long holidays and we call it our home. It will never

²¹ In 2010 there were 52 headmen in Molepolole. Out of these three were women of whom Patricia Sechele is the most senior. She is the daughter of the late Mac Sechele a member of the Kwena royal family and former Chief Regent. When I began my research in the 1980s there were no headmen who were women.

pass into private hands.

Nonetheless, having your name on a certificate or lease does give an individual a degree of authority and power when it comes to dealing with the Land Board, especially in the case of transfers where the Board has to approve the sale of developments on the land to transferees.²²

Diverging Family Profiles: Effects of Social Stratification on Resources

It is clear that social networks continue to play an important role in facilitating access to and control over land. In this process it appears that gender is less of a consideration than it once was compared with the social stratification of families and households that emerged out of their encounter with colonialism and that continues to operate today.²³ For as the histories of members of the Makokwe and Radipati family demonstrate, access to resources varies according to affiliation within networks that are configured out of different domains embracing both the peasantariat and the salariat. This gives rise to dimensions of “class” created out of a constellation of factors that contribute to the accumulation of human/social as well as economic capital. These factors include education, employment (formal and informal), and the capacity to enhance self-development and proactively pursue opportunities. While social mobility, as Radipati’s family illustrate is attainable, what makes this possible are the advances made over generations that derive from families’ genealogical histories. For what is key is the resource base upon which individuals and their families can draw. Where there is a degree of affluence and sufficient resources are available for family members there is more room for negotiation and consensual decision-making. This is illustrated by the earlier discussions on inheritance.

Where, however, resources are not so accessible and under pressure conflicts are more likely to arise. Given that the first allocation of residential land is free, a number of unmarried, unemployed young women at Lekgwapheng Ward explained

²² Many disputes involve allegations of a titleholder wrongfully transferring land without the consent of the family where this land forms part of a family’s inheritance.

²³ For a detailed discussion of the historical, political and economic dimensions giving rise to this see Griffiths (1997: 17-27 and 62-105).

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

that they had been motivated to apply to the Land Board for land due to “overcrowding” at home. They observed: “when people are living in an extended family there are disputes and as a result chiefs will work overtime to deal with these disputes in extended families”. They accounted for this on the basis that “many of the young women who are unmarried have children. When they go out and work and leave their children with a younger family member, these family members sometimes do not treat the children equally and this causes quarrels in the yard”. For this reason, these young women express the view that “we have to have our own yards, especially when we have children”.—Overcrowding is a common problem in Molepolole. It also occurs in Mokgweetsane ward where one unmarried man (20 years old) explained that he has applied for land because it has become “very crowded” in the family yard where he lives. He is one of eight children living there together with his unmarried sisters and their children. Although unemployed, he is hoping that if he gets a plot his employed, older brothers will help him to develop it. In such situations tensions may arise leading to those with “title” seeking to chase away other siblings. These tensions not only promote disputes among siblings but also arise between widows and their mothers-in-law and/or sisters-in-law. Quarrels may also arise between a cohabitant of a deceased male partner who seeks to retain the residential yard and the deceased’s family who seek to remove her from the premises²⁴. In the past an unmarried woman had almost no chance of claiming the yard but in recent years there is an indication that this is no longer an unsurmountable barrier²⁵.

Apart from the difficulties applicants face in being allocated land, due to long waiting lists, there is also the problem of having sufficient resources to develop it when their applications are successful. Many of the young women from Lekgwapheng Ward who were awaiting allocation did poorly at secondary school and when they left they did not find any kind of employment (formal or informal).

²⁴ It is beyond the scope of this article to deal with disputes but it is important to note that they may take any number of paths that see them criss-crossing between the local *kgotla*, the Chief’s *kgotla*, the Customary Court of Appeal, the Land Tribunal, the Magistrate’s and High Court, even going as far as the Court of Appeal.

²⁵ See Banynabolhe Gasebotho (female cohabitant of deceased) vs Kemolaole Modise (mother of the deceased male cohabitant), Customary Court of Appeal MO 211/2009, heard at Chief’s *kgotla* on 23rd February, 2010 where the cohabitant was awarded the deceased’s yard.

Nor have they had any support from the fathers of their children who are also unemployed. So, even if they do acquire land, in their present circumstances they lack the resources to develop it. Given the current pressure on land, repossession of undeveloped land is on the agenda. Kweneng Land Board had a policy of repossessions that was not actively pursued. However, the Board Secretary observed in May 2010 that they are now trying to “intensify this” as a result of the annual Performance Agreement signed between Kweneng Land Board and the Ministry. Many land boards now promote a policy of repossession on the basis of failure to develop residential land within five years of allocation, impacting on those who, for whatever reason, lack the capacity to develop land that they have acquired.

Concluding Observations: Implications for Justice Delivery

At the beginning of this article I stressed the need for policy-making in development circles to take account of empirical data in framing proposals for intervention. For without this data there is a danger that ideological assertions are treated as matters of fact, that if acted upon can give rise to unexpected outcomes that undermine the intentions and expectations of donor programmes. As a result of an empirically based study, my recent research on women’s access to and control over land demonstrates that women in Botswana today are in a much stronger position regarding acquisition of resources, including land, than they were twenty-five years ago. This study, that has a longitudinal perspective derived from ongoing fieldwork over years, has enabled me to trace continuities and changes in governance structures at all levels that shape and are shaped by women’s engagement with them. Such a perspective provides an understanding of the context in which changes in women’s relationship to land have come about through enhanced education and informal and formal sector employment that coupled with legal reforms has enabled them to become more proactive in their pursuit of land. An historical dimension reveals how these processes of transformation have, in part, involved the changing social dynamics of families and households that mark a shift in attitudes towards inheritance. This allows, for example, women as carers or investors in the family natal compound to inherit it on their parents’ death. Such arrangements can be viewed in a number of ways, as an example of consensual agreements that have always been a feature of customary law, or as reflecting a change in customary norms under the current conditions of family life in Botswana that are in tune with Ehrlich’s (1936) living law. This is evident not only in the case of unmarried women but also with regard to married women and widows.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

For, in applying customary law, headmen in Molepolole today accept that “when the husband dies everything is transferred to the wife including the brand of cattle”. Of course this observation does not prevent the *de facto* seizing of assets, regardless of who is legitimately recognised as having control over them. What is interesting is that this view expressed by headmen about widows' rights demonstrates a change in attitude from my earlier research where it was the deceased person's brothers and uncles who were said to oversee the estate and determine the transfer to beneficiaries, and who were often accused of property grabbing. This alteration in approach is corroborated by findings in the Chief's *kgotla* for 2009 that demonstrate that women, particularly widows, followed by daughters, are being appointed to administer the estates of deceased persons (Griffiths n.d.b). Under the Succession (rights of the Surviving Spouse and Inheritance Provisions) (Cap. 31:03) statutory law has recognised women's rights to inheritance as a surviving spouse for some time. Its provisions, however, do not apply to estates that are dealt with under customary law.²⁶ Nonetheless, norms of succession are being incorporated more generally into the operation of daily life. This is not surprising as my earlier research demonstrated the mutually constitutive nature of law that extends beyond the boundaries of an institutional setting.

These changes in justice provision for women feature not only in terms of public institutional delivery, but also in terms of more private family arrangements. Such developments owe much to the work of NGOs. These organizations, of which there are many in Botswana,²⁷ have campaigned tirelessly on a number of fronts for general social change as well as for changes specifically geared towards women. They have extensively lobbied government, provided skills training and seed capital to promote business development at a number of levels, as well as running workshops in local areas nationwide to promote a better awareness of social issues such as property ownership for women, maintenance for children, and gender-based violence. Unfortunately, the continued operation of these services was under threat in 2010 for a number of organisations due to insecure funding. New contracts needed to be negotiated with donor agencies and the likelihood of their renewal was open to question given Botswana's elevation to a middle ranking

²⁶ See s. 3 of the Act.

²⁷ Others in addition to those previously cited include Reteng (with a focus on indigenous minority groups), Skills Share Botswana (promoting indigenous women's projects), Gender Links (focusing on gender and the media) and Bonela (dealing with HIV, Ethics and Law).

country from an international aid perspective and the effect of the recent global recession on donors' finances. As the government of Botswana is unlikely to have the resources to take these services over, either in terms of manpower or finances, or in terms of motivation, withdrawal of support from these NGOs will seriously impair service delivery on the ground. This will have implications for future development in the country.

In acknowledging the transformations that have taken place my research has also highlighted the continued importance of family networks in promoting access to resources needed to acquire control over land. These networks represent diverging constituents that reflect the impact of social stratification derived from family genealogical histories. This has implications for identifying social inequality and targeting programmes to deal with it that must be based on an understanding of the factors that give rise to it. The research reveals that in the process of acquisition, development and control over land, social networks continue to play a key role. For women's access to land and control over it is affected by whether or not the family networks of which they form part have sufficient resources to assist them, both in developing land allocated to them by the Land Board, or in transferring land to them as inheritance. As noted earlier, where there are sufficient resources available to family members there is more room for negotiations and consensual decision-making, whereas where this is not the case, disputes and conflicts are more likely to arise with a danger of repossession by the Land Board. Understanding the factors that shape these networks and that contribute to individuals' upward or downward mobility is crucial if governments, international agencies, and NGOs are to create effective programmes for dealing with poverty reduction and access to justice.

A step towards achieving this goal in development is for donor agencies to rigorously address the following questions when proposing the formulation of policy considerations and/or interventions. Firstly, what are the underlying assumptions on which such policies or interventions are based? Secondly, for what ends are these policies or interventions being pursued, including assumptions about outcomes? Thirdly, what are the sources of data that are being drawn on to inform the analysis and how and why have they been selected? Finally, what are the constraints and limitations or biases of the proposed approaches to policy and interventions (and conversely their strengths)? A careful consideration of these dimensions should help provide a more grounded approach to development, one that is based on an understanding of fact and not fiction.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

References

BERRY, Sara S.

1993 *No Condition is Permanent: The Social Dynamics of Agrarian Change in sub-Saharan Africa*. Madison: University of Wisconsin Press.

BOTSWANA, GOVERNMENT OF

1981a *National Development Plan (NDP 6) 1981-1991*: 21. Gaborone: Ministry of Finance and Development Planning.

1981b *Report of the Commission of Inquiry into Ngwaketse Development Area Ranches and Government's Decision on the Recommendations of the Commission 1981*. Gaborone.

1995 *Household Income and Expenditure Survey 1993/94*, Main Report, Volume 1.

2003a *National Development Plan (NDP9) 2003/04-2008/09*: 18. Gaborone: Ministry of Finance and Development Planning.

2003b *Ministry of Lands and Housing*, Mathuba, B. M. Botswana Land Policy. Unpublished Paper presented at an International Workshop on Land Policies in Southern Africa, Berlin Germany, May 26th – 27th May 2003.

2004 *Household Income and Expenditure Survey 2002/03*, Main Report, Volume 1. Central Statistics Office: Gaborone.

2006 *Botswana Demographic Survey 2006*, Central Statistics Office: Gaborone.

2007 *Informal Sector Survey Report (ISS)*, Central Statistics Office: Gaborone.

2009a *Education Statistics 2000, Stats Brief*, Central Statistics Office: Gaborone.

2009b *Kweneng District Development Plan (KDDP6) 2003-2009*, Kweneng District Council, Kweneng District Development Committee. Ministry of Local Government.

BUDLENDER, Debbie, Sibongile MGWEBA, Ketleetso MOTSEPE and Leilanie WILLIAMS

2011 *Women, Land and Customary Law*. Community Agency for Social Enquiry, South Africa.

COMAROFF, John L. and Simon A. ROBERTS

1977 'Marriage and Extra-marital Sexuality: The Dialectics of Legal Change among the Kgatla'. *Journal of African Law* 21: 97-123.

COMMISSION FOR THE LEGAL EMPOWERMENT OF THE POOR

2008 *Making the Law Work for Everyone – Volume 1*, New York, United Nations Development Programme. Accessed at <http://www.undp.org/legalempowerment/report/index.html>

COOPER, David

1982 *An Overview of the Botswana Class Structure and Its Articulation with the Rural Mode of Production: Insights from Selebi-Phikwe* (Dated 1980). Cape Town: Centre for African Studies, University of Cape Town.

DFID (Department for International Development)

2004 *Non-State Justice and Security Systems*. Policy Division.

2008 *Guidance Note, Justice and Accountability*. A DFID Practice Paper.

EHRLICH, Eugen

1936 *Fundamental Principles of the Sociology of Law*. Translated by W. L. Moll. Harvard Studies in Jurisprudence, no. 5. Cambridge, Mass: Harvard University Press. (Originally published 1913).

GRIFFITHS, Anne

1988 'Support among the Bakwena'. Pp. 289-316 in Franz von Benda-Beckmann, Keebet von Benda-Beckmann, Eric S. Casino, Frank Hirtz, Gordon R. Woodman and Hans F. Zacher (eds.), *Between Kinship and the State: Social Security and Law in Developing Countries*. Dordrecht: Foris Publications.

1997 *In the Shadow of Marriage: Gender and Justice in an African Community*. Chicago and London: University of Chicago Press.

2007 'Making Gender Visible in law: Kwena women's access to power and resources'. Pp 139-163 in Anne Hellum, Julie Stewart, Shaheen Ali, Amy Tsanga (eds.), *Human rights, plural legalities and gendered realities: Paths are made by walking*. Harare, Zimbabwe: Weaver Press.

n.d.a. 'Families, Networks and Lifecycles: Legal Pluralism and Women's Access to Land in Botswana.' *Acta Juridica* forthcoming.

n.d.b 'Managing Expectations: Negotiating Succession under Plural Legal Orders in Botswana'. In John Eekelaar and Mavis Maclean (eds.), *Families: Deviance, Diversity and the Law*, forthcoming.

KALABAMU, Faustin Tirwirukwa

2003 *Changing Gender and Institutional Roles in Self-Help Housing in Botswana: The Case of Lobatse*. The Institute of Southern African Studies. Lesotho.

2006 'Patriarchy and women's land rights in Botswana'. *Land Use Policy* 23/3: 237-246.

2009 'Towards egalitarian inheritance rights in Botswana: the case of Tlokwen'. *Development Southern Africa* 26/2: 209-223.

KALABAMU, Faustin Tirwirukwa and Siamisong MOROLONG

2004 *Informal Land Delivery Processes and Access to Land for the Poor in Greater Gaborone, Botswana*. DFID Contract No SSR Project R8076.

THE GENDERED DYNAMICS OF LAND TENURE IN BOTSWANA
Anne Griffiths

- KOCKEN, E.M. and G.C. UHLENBECK.
1980 *Tlokweng: A Village Near Town*. ICA Publication no. 39. Leiden: Leiden University, Institute of Cultural and Social Studies.
- KUPER, Adam
1970 'The Kgalagari and the Jural Consequences of Marriage'. *Man* 5: 466-482.
- MANJI, Ambreena
2010 'Eliminating Poverty? "Financial Inclusion", Access to Land, and Gender Equality in International Development'. *Modern Law Review* 73(6): 985-1025.
- MOTZAFI-HALLER, Penina
1986 'Whither the "True Bushman": The Dynamics of Perpetual Marginality'. Pp. 259-328 in F. Rotland R. Vossen (eds.), *Proceedings of the International Symposium on African Hunters and Gatherers*. Sprache and Geschichte in Afrika, vol 7, no. 1. Sankt Augustin: Monastery of Sankt Augustin.
- MOLENAAR, Marja
1980 *Social Change within a Traditional Pattern: A Case Study of a Tswana Ward*. M.A. thesis, University of Leiden.
- MOLOKOMME, Athaliah
1991 "*Children of the Fence*": *The Maintenance of Extra-marital Children under Law and Practice in Botswana*. Research report no. 46. Leiden: African Studies Centre.
- MOROLONG Siamisung Thoki and Clement NG'ONG'OLA
2007 'Revisiting the Notion of Tribal Land'. Pp. 142-175 in Charles M. Fombad (ed.), *Essays on the Law of Botswana*. South Africa: Juta Law.
- NG'ONG'OLA, Clement
1997 'Land Rights for Marginalized Ethnic Groups in Botswana, with special reference to the Basarwa'. *Journal of African Law* 41: 1-26.
- PARSON, Jack
1981 'Cattle, Class, and State in Rural Botswana'. *Journal of Southern African Studies* 7: 236-255.
- RUZVIDZO, T. and H. N TIAGHA
2005 'The African Gender Development Index'. Pp. 22-47 in Christi van der Westhuizen (ed.), *Gender Instruments in Africa*. Pretoria, South Africa: Institute for Global Dialogue.
- SCHAPER, Isaac
1947 *Migrant Labour and Tribal Life: A Study of the Conditions of the Bechuanaland Protectorate*. London: Oxford University Press.

1950 'Kinship and Marriage among the Tswana'. Pp. 140-165 in Alfred R. Radcliffe-Brown and Cyril Daryll Forde (eds.), *African Systems of Kinship and Marriage*. London: Oxford University Press for the International African Institute.

SCHAPERERA, Isaac and Simon ROBERTS.

1975 'Rampedi Revisited: Another Look at a Kgatla Ward'. *Africa* 45(1): 258-279.

SIDA (SWEDISH DEVELOPMENT COOPERATION AGENCY)

2002 *Swedish Development Cooperation in the Legal Sector*.

UNDP (United Nations Development Programme)

2005 *Programming for Justice: Access for All. A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*. Bangkok: UNDP.

2008 *Strengthening the Rule of Law in Conflict/Post Conflict Situations. A Global UNDP Programme for Justice and Security 2008-2011*. UNDP.

UNICEF (UNITED NATIONS CHILDREN'S FUND)

1993 *Children, Women and Development in Botswana: A Situational Analysis*. Report prepared by Mandeleo (Botswana) for the Government of Botswana and UNICEF.

VAN KLAVEREN, Maarten, Kea TIJDENS, Melanie HUGHIE-WILLIAMS and Nuria R. MARTIN

2009 *An Overview of women's work and employment in Botswana*. Working Paper 09-81, Amsterdam Institute for Advanced Labour Studies, University of Amsterdam.

WEILENMANN, Markus

2009 'Project Law - A Legal intermediary between local and global communities: A Case Study from Senegal'. *Anthropologica* 51: 39-51.

WORLD BANK

2006 *Equity and Development*. World Bank Development Report.

STATUTUORY PROVISIONS BOTSWANA

Abolition of Marital Power Act

State Land Act (Cap. 32:01)

Town and Country Planning Act (Cap. 32:09)

Tribal Land Act (Cap. 32:02)