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GENDER DISCRIMINATION

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GENDER DISCRIMINATION

1.1 INTRODUCTION

Women in Africa, like their counterparts the world over, suffer domestic violence irrespective of class, age, religion or social status. Incidents of domestic violence include battery, beatings, torture, acid baths, rape, and even death. It is estimated that one in every three women suffers domestic violence from the hands of those who claim to love and protect them. Many of the victims do not speak out about violations of their rights due to lack of positive response from the society. Domestic violence is so entrenched in the society that even the victims condone such violations of their rights, some claiming it is a sign of love. Due to poverty and economic dependence on men, many victims suffer in silence for fear of losing the economic support of the male perpetrator where a victim summons the courage to report to law enforcement agents, the issue is trivialized and termed a “private matter.”

Many African countries do not have specific laws prohibiting domestic violence and punishing perpetrators of domestic violence. Current laws do not adequately protect victims of domestic violence. In fact, some existing laws encourage and condone domestic violence. This is further evidence of the rules of procedures in courts are not friendly to victims of domestic violence especially, when it is in the form of sexual assault. Judicial officers and law enforcement officers, like officials of other institutions, are not sensitized to issues of domestic violence or trained on how to respond to this issue. Many of them likely also operate from the prejudices and stereotypes of the male dominated society. The combined factors of economic vulnerability and financial dependence of the woman on the man, social and cultural practices that condone domestic violence, and lack of prosecution or punishment of perpetrators discourage victims from speaking out and seeking redress. The widespread poverty and the political, cultural, and religious marginalization of women in Africa make the African woman more vulnerable to domestic violence.

Globally, there is an evident correlation between gender inequality, societal poverty, and the failure to respect, protect and fulfil these rights for women. This failure entrenches gender inequality by reinforcing women’s dependence on men, and prevents poor countries from finding a sustainable and equitable path to development. Strengthening women’s secure rights to land can help empower them to reach their potential as citizens and as economic actors, and enable them to take control over their own lives. According to a World Bank

report, “only independent or joint ownership can ensure that women have access to and control over land based earnings.” Additionally, as the World Bank recognizes, “rights to land and natural resources increase a woman’s bargaining power within the household, which results in increased allocation of household resources to children and women as well as increased household welfare.” The link between women’s land and property rights and sustainable human development is evident for a wide range of issues. For example, from the perspective of women’s empowerment, food security and poverty alleviation, the Swedish International Development Cooperation Agency (SIDA) has noted that “Women’s access to land and property is central to women’s economic empowerment, as land can serve as a base for food production and income generation.... Agricultural production and food security also increase when women are granted tenure security.” The United Nations Food and Agriculture Organization (FAO) estimates that if women had the same access to productive resources as men, they could increase yields on their farms by 20–30 percent. These gains in agricultural production could lift some 100–150 million people out of hunger. The FAO, however, noted: The potential production gains calculated by this method are *based on the existing distribution of land*. This implies that countries where women control proportionately more land could achieve the greatest potential gains. It may be the case, however, that the overall gender gap in access to agricultural resources is, in fact, wider where women control less land. The actual gains from closing the gender gap in access to resources would be greater in countries where the gender gap is wider.

On HIV, the United Nations Development Programme (UNDP) has noted that women’s rights to inheritance of property are “a crucial factor in reducing women’s vulnerability to violence and HIV, as well as empowering women to cope with the social and economic impact of the epidemic at the household level.” And on environmental sustainability, women’s farming practices are typically less likely to contribute to environmental degradation and natural resource loss. Without the basic recognition of women’s capacity and right to make fundamental decisions about their lives, women will remain relegated to the sidelines of society, among the first to suffer hardship and homelessness, violence and exploitation. For women to become active and valued participants in the lives of their communities, every woman’s right to land and property must be respected, protected, fulfilled and enforced and this must be done on the basis of equality with men. It is also clear that the global gains to be made through improving women’s land and property rights are significant. These rights contribute to women’s equality and wellbeing, and go hand in hand

with many sustainable human development goals, including women's social and economic empowerment, poverty eradication, food security, and sustainable agriculture. The gains to be made would lift up women, first and foremost, as well as entire families, communities and societies.

1.2 GENDER DISCRIMINATION AND INEQUALITY: THE FACTS

The 1999 Constitution of Nigeria prohibits discrimination on the grounds of gender, but customary and religious laws continue to restrict women's rights. As Nigeria is a federal republic, each state has the authority to draft its own legislation. However, any law which is contradictory to Federal Law or the Constitution can be challenged in a Federal Court and cannot subsist. The combination of federation and a tripartite system of civil, customary and religious law makes it very difficult to harmonize legislation and remove discriminatory measures. Moreover, certain states in the north follow Islamic (Sharia) law, although not exclusively and only in instances where Muslims make use of Islamic courts. Adherence to Islamic law reinforces customs that are unfavourable to women, including those relating to freedom of movement, and to marriage and inheritance. As of 2006, the 'Abolition of all Forms of Discrimination against Women in Nigeria and other Related Matters Bill' was under consideration; it is unclear whether this has been promulgated into law. Nigeria ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1985.

Many of our societies, in spite of great leaps and strides of global community which have rightly buried such conceptions of the second fiddle place of the woman, have not succeeded in rising from this perception. They still see women from the prism of commodity of use. Today, there are still societies which see a woman as subservient to man, in mental and biological capacity, this is why in spite of glaring monumental achievements of women in the globe and phenomenal rise of the role women play in the world, gender sensitivity or perception of women having mental equality to man has remained unappreciated.

1.2.1 The 2012 Gender In Nigeria Report Shows The Gender Imbalance In The Following Areas:

1. Education: In eight Northern States over 80% of women are unable to read compared with 54% for men 70.8% of young women aged 20-29 in the North-West are unable to read and write and only 3% of females' complete secondary school in the northern area?

2. Health: Nigeria has one of the worst maternal mortality rates in the world with one woman dying every 10 minutes during delivering. That is 545 deaths per every 100,000 successful deliveries. Nearly 50% of Nigerian women are mothers before they turn 20. There is inability to access quality health care services, poor access to safe childbirth services and lack of adequate and affordable emergency obstetric care. In some part of my country, religion does not allow women to deliver in the hospital. This is a taboo as the husbands will not be happy to see their wives opening up to a doctor for any form of vaginal examinations. So from young age, the girl child is taught how to deliver her baby unassisted. This leads to infections and death.

3. Property Rights: Women are denied legal right to own property or inherit land. In North-East Nigeria, women own only 4% of land and just over 10% of land ownership in the South-East and South-South. When your parents leave all sorts of wealth for the children, most times, the female children have no right to partake in the sharing of their father's wealth. Daughters' inheritance rights under customary law vary considerably across the country, but in no region does customary law grant women equal inheritance rights with men. Nigerian women have very limited ownership rights. Civil law entitles women to have access to land, and a few states have enshrined equal inheritance rights into law, but certain customary laws stipulate that only men have the right to own land. For women without the means to purchase land on their own, in practice, their ability to obtain land flows solely through marriage or family. Data from the government indicates a significant gender gap in land ownership.

4. Violence: Levels of violence against women are high. Battery and marital rapes are not considered a crime. Women are sexually harassed, abused and killed, even for rituals. When a woman is involved in adultery, which of course is committed with a man, the woman always gets punished by either public stoning or by hanging while the man walks away free. Rape is punishable by life imprisonment in Nigeria, but there are no sanctions in the Penal Code against spousal rape. Societal pressure to keep silent and stigma surrounding sexual violence mean that few women report sexual assaults. A few Nigerian states have a law in place to address domestic violence, for example the Domestic Violence Law of Lagos State (2007), Gender Based Violation Law of Ekiti State (2011). However, the country's Penal Code grants husbands permission to beat their wives, provided the violence does not result in serious injury. Police are usually reluctant to intervene in domestic violence cases, unless the woman has sustained serious injury.

5. Weak Economic Base: Women occupy 21% of non-formal sector positions regardless of their educational qualifications; women occupy fewer than 30% of all posts in the public sector and only 17% of this in senior cadre. Only one in every three employees in the privileged non-agricultural formal sector is a woman. Women's access to bank loans is restricted by their limited financial resources and the difficulties they have obtaining the necessary guarantees. In certain cases, financial institutions demand prior consent of the woman's husband before granting a loan. The National Poverty Eradication Programme and their micro-credit schemes offer low interest, business-oriented loans and other micro-credit and vocational training programs for women, but access is still low statistics show that less than one-third of loans in Nigeria are awarded to women.

6. Weak Political Representation: Women and men have the same rights to vote and stand for election in Nigeria. Women comprise a small percentage of elected officials in Nigeria Senate and House of Representatives even in Ministerial positions. Employed women in Nigeria are entitled to maternity leave for twelve weeks at the state level and up to four months at the national level, and during this time are entitled to receive 100 % of their wages. However a number of discriminatory practices still exist in Nigeria in the private sector; many employers force young single and married women to sign job contracts stipulating that they will not get pregnant for the first three years of their employment. Women are under-represented in all political decision-making bodies. Only 9% of those who stood for election in Nigeria's April 2011 National Assembly elections were women. Out of the 360 members of the House of Representatives, only 25 are women, which is 6%.

7. Gender Preference: Traditionally, most parents prefer boys to girls, thus, right from birth women are viewed and treated as inferior or second-class citizens. It is a calamity for a woman to give birth to only girls. The consequence is that the husband must marry another wife so as to ensure that his lineage does not go into extinction.

1.3 DOMESTIC VIOLENCE IN NIGERIA

A. Forms and Prevalence of Domestic Violence

According to an Amnesty International report on Nigeria: on a daily basis women are beaten and ill-treated for supposed transgressions, raped and even murdered by members of their family. In some cases, vicious acid attacks leave them with horrific disfigurements. Such violence is too frequently excused and tolerated in communities, and not denounced. Husbands, partners, and fathers are responsible for most of the violence against women. In

Nigeria, women and girls are subjected to multiple forms of violence in the homes. However, the most common form of violence is wife battery ranging from slapping, kicking, verbal abuse, denial of financial resources, rape, and death. Due to a dearth of official statistics, it is difficult to establish the extent of domestic violence. However, it is believed that gender based violence is of “epidemic proportions,” and is “seldom reported because of fear of reprisal and lack of response from law enforcement officials. Statistics relating to this problem would not be available until women are motivated to report domestic and other forms of violence.” Non-governmental organizations rely on media reports and the number of victims who come to them for assistance for statistics. For example, “No Safe Haven: An Annual Report of Attacks on Women in Nigeria,” reports a total of 170 cases based on media reports covering the period from December 2004 to November 2005. These do not include incidents reported to the police or to civil society organizations. Obviously, this is just the tip of the iceberg, as hundreds of cases go unreported and undocumented. Domestic violence cuts across all communities in Nigeria and at times is excused by a woman’s actions or inaction. When a woman suffers violence due to failure to meet some socially accepted standard of behaviour, such failure is usually an accepted excuse for the violence she suffers, especially within the family context. A woman could suffer violence for refusing sex, nagging, or challenging the man’s behaviour; for example, if he took a second wife or is an alcoholic. She could be subjected to violence for not preparing meals on time, having, or being under suspicion of having, a sexual relationship outside the marriage, or being accused of witchcraft.

Interestingly, under certain circumstances, women, more than men, tend to justify the infliction of violence. In a survey conducted in 1999, a higher proportion of female than male respondents justified “wife beating,” and this proportion was found to be higher in the northern central zone and lowest in the South western zone. In another survey carried out by Project Alert in 2001, women and girls in Nigeria were asked about abuses within the family unit. Participants in the survey were picked randomly and included women working in the market, women in other work places, and students at the university. In a particular state, Lagos, more than half of the participants confirmed their partners, boyfriends, or husband had beaten them. Some of the reasons why they were beaten included drunkenness, financial problems and refusing to have sex with the perpetrator. Many of the participants had reported physical injuries and threats to their family, the perpetrator’s family and to their religious

leaders while some just endured the abuse. There was no report of any respondent filing a complaint with the police or seeking redress in court.

1.4 THE EFFECTS OF GENDER DISCRIMINATION ON NATIONAL DEVELOPMENT

A complete picture of how discrimination against women is affecting National development may not be handy but some of them are stated below:

- (a) Due to lack of women in decision-making positions, there is low investment in such sectors as health and education that are crucial to human development outcomes.
- (b) Limitation of women's choices and options is hampering the achievement of economic growth and development.
- (c) Women's reluctance to take responsibilities in politics due to lack of economic empowerment to actualize their ambitions
- (d) The increasing incidence of insecurity, violence and crime such as armed banditry, kidnapping, prostitution, child trafficking, cultism, increasing culture of begging are due to poverty in the society which women empowerment can ameliorate.
- (e) Inability to access quality health services and have fewer and better nourished children has impaired material and children's health
- (f) Large number of out-of-school drop-outs due to early marriage, early child-birth, poor sanitation and shortage of female teachers.
- (g) Limited contributions to household cash income and limited influence on spending at the family level. Of serious constraints to economic growth are the facts that women are petty traders, subsistent farmers and house helps.
- (h) The violence now threatening the security and corporate existence of Nigeria is not a happenstance. When violence was perpetuated against women at the domestic front, it was condoned because it was women that were being battered. Now the society is worst for it.

1.5 INTERNATIONAL RECOGNITION OF WOMEN'S LAND AND PROPERTY RIGHTS

Despite the potential gains, the current Millennium Development Goals (MDG) framework does not directly address women's land and property rights. Goal 3, to Promote Gender Equality and Empower Women, does not contain any specific target in relation to these rights. Similarly, Goal 1, which seeks to eradicate extreme poverty and hunger, provides no specific target in relation to these rights. This silence has led organizations including the

OECD Development Centre to note that women's control over resources, including land and property, is one of the “missing dimensions” of the current MDG framework, and that examining this issue can in part “shed light on the bottlenecks that hamper further progress across all the MDG targets.” More recently, however, international policy documents have addressed women’s land and property rights. In May 2012, the Committee on World Food Security officially endorsed the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. The Guidelines recognize the importance of gender equality in land tenure as critical to the strategies to reduce hunger and poverty, support sustainable development, and enhance the environment. They exhort States to “ensure that women and girls have equal tenure rights and access to land, fisheries and forests independent of their civil and marital status,” and to ensure that policy, legal, and organizational frameworks for tenure governance are “non-discriminatory and promote social equity and gender equality.” The United Nations Conference on Sustainable Development held in June 2012 (Rio +20) also visibly raised the importance of women’s land and property rights. In the Rio +20 outcome document, ‘The World We Want,’ women’s land and property rights are explicitly reflected at paragraphs 58(k), 109, and 236-244.

Paragraph 240, for example, clearly notes: We are committed to equal rights and opportunities for women in political and economic decision-making and resource allocation and to removing any barriers that prevent women from being full participants in the economy. We resolve to undertake legislative and administrative reforms to give women equal rights with men to economic resources, including access to ownership and control over land and other forms of property, credit, inheritance, natural resources and appropriate new technology. This recognition of the centrality of women’s land and property rights builds upon the increasing attention that the issue has received in recent years, despite their exclusion from the current MDG framework. In fact, women’s land and property rights have been recognized in dozens of international human rights instruments and related standards. In 1997, the former United Nations Sub-Commission on the Promotion and Protection of Human Rights adopted the first resolution by an international body directly addressing women’s housing and land rights specifically, urging governments to:

- Take all necessary measures in order to amend and/or repeal laws and policies pertaining to land, property and housing which deny women security of tenure and equal access and rights to land, property and housing;

- Encourage the transformation of customs and traditions which deny women security of tenure and equal access and rights to land, property and housing; and
- Adopt and enforce legislation which protects and promotes women's rights to own, inherit, lease or rent land, property and housing.

In 1998, the Commission on the Status of Women adopted its first resolution on women's housing and land rights, resolution 42/1 on *'Human rights and land rights discrimination,'* recognizing that "secure land rights are key rights for the economic empowerment of women." During the early to the mid-2000s, the former United Nations Commission on Human Rights (now the Human Rights Council) also adopted a series of resolutions on *'Women's equal ownership of, access to and control over land and the equal rights to own property and to adequate housing'* (resolutions 2000/13; 2001/34; 2002/49; 2003/22; 2005/25). Beyond these resolutions, international bodies and experts relevant to women's land rights have adopted a number of additional pronouncements. The General Comments and Recommendations of the UN Treaty Bodies are particularly instructive. The Committee on the Elimination of Discrimination against Women stated that "there are many countries where the law and practice concerning inheritance and property result in serious discrimination against women.... Such provisions contravene the Convention on the Elimination of All Forms of Discrimination against Women and should be abolished."

The UN Committee on Economic Social and Cultural Rights (which monitors States party compliance with the International Covenant on Economic, Social and Cultural Rights) has stated in its General Comment No.16 that "women have a right to own, use or otherwise control housing, land and property on an equal basis with men, and to access necessary resources to do so" and has highlighted women's equal inheritance rights. On food security, the Committee has said that national strategies to ensure food and nutrition security for all should "give particular attention to the need to prevent discrimination in access to food or resources for food. This should include: guarantees of full and equal access to economic resources, particularly for women, including the right to inheritance and the ownership of land and other property, credit, natural resources and appropriate technology. The United Nations Human Rights Committee (which monitors States party compliance with the International Covenant on Civil and Political Rights) has similarly said: "Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses." The Committee has also stated unequivocally that "The

capacity of women to own property ... may not be restricted on the basis of marital status or any other discriminatory ground.”

This commitment from the international community is an important foundation on which to build, and must be urgently translated into reality for the world’s women. The post-2015 process represents a critical moment to ensure that women’s land and property rights receive the attention that they deserve on the international development agenda.

1.6 RECOMMENDATIONS AND CONCLUSION

The “persistent inequalities and struggles over scarce resources are among key determinants of situations of conflict, hunger, insecurity and violence.” Gender inequality in secure rights to land and property is intimately tied to all of these development-related problems, which are key factors impeding efforts to achieve equitable and sustainable human development. Indeed, women’s enjoyment of secure rights to land and property is essential to several of the current MDGs, including improvements in poverty and hunger, gender inequality, environmental sustainability, universal primary education, and combating HIV. But without secure rights, women are relegated to a lower social status and more vulnerable to poverty, hunger, and violence as compared to men. Moreover, women cannot fully participate in the economy and cannot realize their full potential as individuals. Unfortunately, the lack of attention given to land rights issues has translated into less meaningful gains in achieving several of the current MDGs.

The very cross-cutting nature of women’s secure land and property rights represents a substantial opportunity: Efforts to strengthen and enforce such rights can help achieve multiple goals in a post-2015 development framework. But, without focused and explicit attention to women’s secure land and property rights that opportunity could be squandered.

Accordingly, the post-2015 framework must:

- Recognize the transformative nature of women’s land and property rights with respect to a range of development goals related to advancing women’s empowerment, gender equality, food security and environmental sustainability;
- Include specific targets related to advance and secure land and property rights for women, as well as targets related to women’s access to productive resources more generally (such as credit, agricultural extension services, and agricultural inputs). Such targets should be crafted to address *de jure* protection of women’s land and property rights, as well as their *de facto* enjoyment of these rights;

- Ensure that these targets are themselves informed by, and aligned with, relevant international human rights standards protecting women's land and property rights, (including as they relate to women's access to, use of and control of housing, land and property; gender equality; equal inheritance rights; and equal rights in marriage);
- Ensure that affected women and women's organizations are able to meaningfully and effectively participate in the articulation and monitoring of these targets.

These recommendations address both substance and process for the post-2015 framework.

The good news is that there are many things that States can do to improve the status of women's land rights and property, both *de jure* and *de facto*. While it is beyond the scope of these recommendations to discuss fully all of the effective strategies which have been shown to advance the enjoyment of women's land and property rights in practice, it should be noted that such practices certainly do exist.

For their part, States can address the problem of gender inequality in land and property rights in at least three ways. First, States should design and revise laws to ensure that women are accorded full and equal land and property rights with men, and should undertake administrative reforms and other necessary measures to give women and men the same access to credit, capital, appropriate technologies, markets, and information. Adequate enforcement mechanisms must also be put in place.

In this respect, part of the solution lies in removing discriminatory barriers in law and policies which exclude women from access to these resources, be they overtly or covertly discriminatory. It is important that all relevant laws, for example, personal laws, marriage and family laws, and land laws, etc. – are clear and consistent in their support of women's land rights. Laws which seem on their face to be 'gender neutral' must also be examined for their discriminatory impact. For example, the CEDAW Committee in its recent concluding Observations on Sri Lanka underscored this point when they noted "that discriminatory practices prevent women from acquiring ownership of land since only the 'head of household' is authorized to sign official documentation such as land ownership certificates and receive pieces of land from Government," because in Sri Lankan society the 'head of the household' was most often deemed to be male. The Committee urged the government of Sri Lanka to abolish the concept of 'head of household' in administrative practice and recognize joint or co-ownership of land and to amend its national legislation to ensure joint or co-ownership.

Second, States should also support the transformation of customs, traditions and patriarchal practices and norms that deny women secure land tenure. Awareness-raising campaigns and community dialogues can be effective ways to build understanding and support for women's land rights. Customs and traditions which support women's equal rights to land and property should be championed and shared.

Third, States should take proactive measures to ensure women's equality and to ensure that policies related to and affecting land and property rights actively promote gender equality and prioritize women's needs. In this regard, States should adopt temporary special measures as needed.

In all of the above, it is vital to ensure genuine and effective participation by women (especially the poor and marginalized) in the design, implementation, monitoring and evaluation of all laws, policies and programs that relate to land and property. Furthermore, States should specifically monitor the gender-differentiated impacts of their laws, policies and programs, in particular those concerning rural development and food security, with a special emphasis on women's land rights. These strategies are fully consistent with international human rights laws and standards noted above, and would go a long way towards advancing these rights for women in both law and practice. Gains in increasing the number of women with secure land and property rights across the world will help achieve progress in a post-2015 development agenda that seeks to eradicate poverty, address gender inequality, and build an equitable, secure and sustainable world. The world must not allow this opportunity to pass by again.