



# The Impact of National Land Policy and Land Reform on Women in Zambia



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At the community level, leaders (both civil and traditional) were consulted on their views, as were average community members. A number of focus group discussions were held, as well as individual interviews with both women and men to assess their participation in, and reflections on, the various land policy processes. Individual respondents were purposively sampled to ensure a fair balance between urban and rural, and men and women. For focus group discussions, the participants were identified using local structures such as the Ward Development Committee and the traditional leadership in rural areas.

In 2009, the Centre on Housing Rights and Evictions (COHRE), in collaboration with Zambia Land Alliance (ZLA), conducted a survey in Zambia to assess the gender sensitivity of land policy, and the impact of land reform processes on women. The survey covered three sites purposely selected for their unique land issues. These are: Lusaka in Lusaka province, Kitwe in the Copperbelt, and Nyimba in Eastern province of Zambia. Lusaka was chosen because it is the administrative, political and commercial capital of Zambia, with rapid social economic development. Kitwe is a major mining city undergoing rapid development and as such presents unique land challenges. Nyimba is a small, recently established town, and presents a contrast the major urban centers of Lusaka and Kitwe.

Both government institutions and non-governmental organizations (NGOs) were consulted and asked about their concerns regarding, participation in, and perceptions of, the Land Policy in Zambia. These constituencies were also asked about their thoughts on Zambia's land administration systems in general.

In all, the responses of over 200 individuals informed the study, of which 88 were interviewed individually. The majority of the respondents were married (69 percent), while 17 percent were widowed, 8 percent were single, 4 percent were divorced and 2 percent were separated.

## Background to Women's Land Rights in Zambia

### [Background]

Zambia is a party to a number of international human rights instruments recognizing the right of women to equality, including the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). As such, Zambia committed itself to undertake measures that would ensure women's equal rights in land and agrarian reforms as well as in land resettlement schemes.

The roots of Zambia's land administration systems run deep. In the late 1890s,

**Women's enjoyment of land rights, in both rural and urban Zambia, is hampered by male-dominated structures and patriarchal decision-making mechanisms. The reality is that the current Zambian land policy, laws and administrative systems have yet to demonstrate their usefulness to the average Zambian woman.**

the English land tenure system was introduced by the British Colonialists. During the colonial era, there was no clear land policy or law on land administration in Zambia. Before this, land was administered according to African customary law, and the customs of land administration varied from chiefdom to chiefdom due to the multiplicity of tribes in the Territory. This situation placed women in a precarious position, as most customary laws do not recognize women's equal or independent rights to land and property, and this is a situation which persists to this day.

Of the estimated 10 million people in Zambia, 57 percent are female and 43 percent are male. However, as a result of men's migration patterns over the years, women are estimated to comprise about 65 percent of the rural population. Women also provide the bulk of labour in subsistence agriculture and represent an estimated 70 percent of the unpaid labour force on small-scale farms. It is ironic that while women produce most of the nation's food, they are also the majority of Zambia's poor. Women's work also tends to be more continuous throughout the seasons, as opposed to that of men, whose work tends to be more seasonal. Despite this, and the fact that most women's livelihoods and those of their families depend on women's cultivation of land, insecure land tenure and limited access to land con-

tinue to characterize the legal relationship between women and land in Zambia.

In Zambia, the lack of women's rights to land has been perpetuated by social and traditional customs. In most cases, women face gender-based discrimination in relation to land. It is men who are seen as the owners of the land, while women are regarded merely as users. In addition, women, particularly those in remote rural areas, have been consistently left out of legal and policy formulation in matters related to land, and have faced marginalization when it comes to the implementation of those laws and policies.

## **[Policy and Legal Reforms of the 1990s]**

### **The Lands Act, 1995**

In 1991, the new democratic Government of Zambia embarked on a massive economic liberalization program, which included a change of land policy and law. This change was embodied in the Lands Act of 1995, which abolished the various categories of land and replaced them with only two: state land, and customary land. State land, as defined by the Act, is that land which is not situated in customary area. It is governed by English law and is said to cover about 6 percent of the total land area in Zambia. It consists of land mainly in urban areas along the line of rail, and is rich



tory systems of land holdings. Section 8(1) also establishes the Lands Development Fund to allow council authorities to improve land for allocation to land seekers, and facilitates the establishment of a Lands Tribunal as a means to provide access to justice on matters relating to land.

### **The Land Policy**

The national land policy, though initiated in 1993, was finalized in 2000, but to date it remains a draft. It recognizes the need to increase women's access to land and states that "while current laws do not discriminate against women,

in nutrients and mineral deposits, and was tsetse fly free during colonial times. Customary land, on the other hand, is held under the customs and traditions governing land use and ownership. These differ from place to place and are usually not documented, but there are common features in the various forms of customary tenure. To obtain a title deed in customary areas, one identifies land through a village head or chief.

Some of the strengths of the Act include the limitation of the President's power to alienate customary land, and the conversion of customary land tenure to leasehold tenure. Whereas previously no one could acquire title deeds (except under special provisions) in 'customary areas,' today anyone can obtain a title deed in such areas provided they follow stipulated procedures. The extension of the powers of the Commissioner of Lands is to ensure a standard system of land tenure system in order to eliminate discrimina-

women still lack security of tenure to land in comparison with their male counterparts." The policy blames discriminatory customary and traditional practices for the problem. The Government therefore commits itself to "redress the gender imbalances and other forms of discrimination in land holding by providing an enabling environment for women...". A salient feature of the land policy is that it attempts to reduce the amount of land under customary tenure, argued to comprise 94 percent of Zambia's land-mass. Further, it seeks to address contemporary land administration challenges associated with land speculation. According to the 2002 draft land policy, land administration should recognize and promote people's right of access to land and provide land information for the country's social economic development, and to improve land delivery.

However, although the land policy mentions gender, it does not compre

hensively address gender inequality in access to and ownership of land. For example, while there was a policy pronouncement in 1999 by the Ministry of Lands to the effect that 10 percent of all advertised plots of land should be given to women, the final policy document actually did away with that step of affirmative action by omitting the 10 percent provision.

In addition, the Land Policy stipulates that a provision of a minimum of 30 percent of the available land in Zambia should be set aside for women and other disadvantaged groups. However, there are no clear guidelines on how

and thus he ignored the process altogether.

## **[Key Findings]**

**Gender insensitivity on land laws and policies:** On its face, the Land Act is 'gender neutral' and does not discriminate against women. Women in Zambia can apply for any land in any part of the country, just like their male counterparts. However, despite the significant positive changes, women's rights to land are yet to be fully realized. This is because the law ignores the long historical reality of an unequal society in which women have

## **The survey findings highlighted concerns in a number of key areas, including gender insensitivity, access to justice in relation to land matters, the high cost of legal fees, the acquisition of title deeds, land grabbing and disinheritance, and lack of awareness on the provisions in the Lands Act and the Land Policy and how they relate to women.**

to allocate that 30 percent of the land. Further, the 30 percent allocation has been criticized as not being sufficient to meet the demands for land of women and other disadvantaged groups.

Concerns regarding lack of popular participation in the drafting of the land policy were also expressed. For example, during the survey, one of the chiefs interviewed spoke about his experience in relation to the land policy. He said he knew about it, but as a chief he felt that government had not created a platform for the participation of chiefs in the developing process of the Land Policy. Only a handful of chiefs around the country participate in most national processes,

not had access, ownership or control over land. It assumes that there is gender equality in land and that traditional systems do not discriminate against women. Hence, the law does not provide a gender-sensitive framework under which these imbalances can be checked and corrected.

**The high cost of legal fees to handle land disputes:** Although the Lands Act of 1995 establishes a land tribunal as a dispute resolution mechanism, the poor, especially most rural women, are unable to afford land administration costs and legal costs in case of disputes and they remain not only at a disadvantaged but also at risk of losing their land to those more affluent.





### **Lack of awareness on land policy process:**

There was a general lack of awareness regarding the Land Policy amongst all stakeholder groups interviewed during the survey. There were, however, a number of individuals in the several focus group discussions that had heard of the Land Policy, either from the media or from other people they knew that had heard about the process. This was despite Lusaka and Kitwe having been centers of consulta-

## **Not a single participant in the focus group discussions had participated in any Land Policy reform process.**

Another threat to their security was the inadequate provisions for judicial remedy in matters dealing with customary land, in that it was not catered for under the written law.

**The limited benefits of title deeds for women:** The Land Policy has a market orientation based on neo-liberal reasoning that land reform is more likely to result in poverty reduction if it is implemented in accordance with the operation of existing land markets. For women, most of whom are unable to access markets due to economic marginalization and poverty, accessing title deeds is not the best way to help them escape a life of poverty. Rather, it is more important for women to be acknowledged as having equal rights to access, own and use land, and provided with security of tenure.

tion by the government to inform the Land Policy. There was a small proportion (26 of 88) of individuals from the individual interviews who had either heard about the policy or knew something about it. Out of the 26 who had heard about it, 10 of them did not really understand it nor could tell what its contents is. The majority of the individuals that knew something about the land policy had learnt about it from the media (both electronic and print, but mainly electronic). The women expressed adequate awareness raising and dissemination of information on the policy to the public. It was clear from the survey that women can really inform the reform process and content. Throughout the survey, women regretted that they had been neglected as part of the process and urged to be involved in the ongoing land policy implementation.

### **Land grabbing and disinheritance:**

In Zambia, inheritance plays a big role in land administration and the distribution of wealth. The majority of persons interviewed were residing in customary (leasehold) areas. This was mainly because the majority of respondents were from Lusaka and Kitwe where leasehold tenure systems were more pronounced. In areas under customary tenure, a wife rarely inherits land or other property from her husband, and her rights to joint marital property are not recognized. In most cases, the right to inherit land and other property is the prerogative of the next of kin, who is usually defined

also usually participate in property grabbing, not understanding that they are likely to suffer from the same fate themselves in the future. Many widows have little choice but to accept the loss of property because the stress and risk of ostracization that comes with challenging one's in-laws are too high.

Some of the women interviewed in Nsengas of Nyimba said that in their villages, widows continued to have access to their lands after the death of their spouse. Some of the women indicated that although they jointly 'owned' the land they were using for cultivation with their husbands, it is

**In most cases, widows are dispossessed of their land, resulting in the surviving family returning to their original villages or being forced to the city to try and make ends meet. To change the situation will require more than just policies and laws but more education and sensitization for women and men, as well as traditional leaders who enforce practices that discriminate against women.**

as having to be a male. Although the Intestate Succession Act (1989), a statutory framework to govern the distribution of an estate of a person who dies intestate, it is not applicable to customary land. When a person dies without a will, the Intestate Succession Act (1989) allows the surviving spouse to inherit 20 percent of the deceased's estate and, together with the children, a house where one exists. However, land under customary tenure is excluded from the law and cannot be inherited. Typically, the deceased man's relatives grab whatever property there is, including the land and the house, leaving the widow destitute. Female relatives of the deceased man

still common to lose the land to the man's family members upon his death. Again, this situation is partly due to the customary system that exists in that areas, where women are not considered part of their husband's family and once widowed, they do not have a choice other than to return to her family, even after several years of marriage.

**Lack of security of tenure:** The respondents in the survey were of the view that women had *de facto* security of land tenure when they either owned or accessed land through established procedures, i.e. through the family, and with the approval of the chief.



*I am the first born in family of two girls. My mother never bore a son. So I do not have a brother. In 1987, my mother purchased a parcel of land. During land registration, we did not have male member in our immediate family. What was happening was that you needed to have a man registered on behalf of the family. Automatically on our side there was a hitch. I offered myself to be registered but my uncles objected to it. They neither wanted my mother to do it. She then allowed them to do it on her behalf. When the titled deeds were released my mother learnt that her name was missing and that the parcel in question had been registered in one of my cousins' names, my uncles' son. My mother immediately raised the issue with local chief and all her efforts have not bore any fruits. Many years later, both of us have been and are still fighting for our rights. My sister and I have sought justice since my mother died in 2001. Nothing is forthcoming. All the structures that have been in place have not favoured us. The first local chief understood the whole matter well and was quite supportive. The rest have not had clear positions on this case and referred us to the land tribunal but we do not have money to follow this up in the Tribunals and therefore helpless."*

**- A woman respondent from the Nyimba community**



However this process of land allocation is not documented, neither by the family, nor the headman or the area chief. This gap created a great sense of insecurity for women. Many noted that in the absence of such documentation, the government could easily allocate their land to any developer, with little or no regard to their interests. This was a source of insecurity for most women.

**Lack of access to justice:** The 1995 Lands Act established a Lands Tribunal. The aim was to efficiently settle land disputes in a timely manner. However, the situation on the ground is that the Courts are congested and the judges have piles of cases to handle at

a time which delays access to the legal process, let alone to justice. It is also very expensive to pursue cases in this Court. The Act does not favour the poor in a number of respects. It provides, for instance, in Section 25, that a person may appear before the Tribunal either in person or “through a legal practitioner at his own expense” and so where a person does not have money to hire the services of a lawyer, then that person loses out. This severely affects women and widows who most often do not have the necessary economic means of accessing legal support.

## **[Conclusions and Recommendations]**

Although there have been reforms in land administration systems in Zambia since independence, these reforms are yet to fully have a positive impact on women. Women continue to suffer discrimination related to rights over land. They are faced with many challenges such as

lack of security of tenure, lack of information, lack of necessary capital to develop land, dispossession and disinheritance of their lands upon the death of their spouse, and lack of access to justice, among others. These challenges are as a result of the patriarchal society in which Zambian women live, and the lack of gender sensitive laws and policies related to land.

To address these gaps in the land policy agenda, there is the need for a more inclusive and responsive reform in the land administration sector. To ensure that women’s equal right to land are upheld in Zambia, the following key steps are recommended:

- The State should initiate an extensive and comprehensive review of the current Land Policy and the Lands Act of 1995 in order to ensure that these are amended to incorporate a gender-sensitive perspective and approach. The review process should include the meaningful participation of women from all across Zambia, so that the practical concerns of women are addressed.

- The State, in partnership with civil society organizations, should develop and implement a sustained educational program on women’s land rights in Zambia, targeting different sectors of Zambian society, including men, women, traditional leaders, people living in both rural and urban areas, as well as the illiterate. Similarly, the State, in partnership with civil society organizations, should conduct sustained local advocacy on land rights aimed at



- The State should ensure that the Land Policy provides for security of tenure for women. This change alone would result in increased investment in land on the part of women, and would improve not only the quality of land but also the quality women's lives and those of their families.

- The State should support alternative dispute resolution mechanisms, so that poor women are able to access justice faster and easier. Civil society organizations and State agencies should ensure women's access to justice by holding trainings for women on self representation and legal aid schemes. These initiatives should particularly benefit grassroots and community women.

- The State should ensure that women's interests in land are registered in women's names to ensure ownership and adequate benefit. This step will also protect women when there is a risk of a man (be it husband, brother, father or other) mischievously mortgaging the land without their consent, and also prevent the fraudulent actions of estate developers.

- The State should ensure that women are given title deeds in their names after registration of their lands as evidence for ownership, and also to enable them to get credit facilities from the banks for their businesses. There is also a need to simplify the land administration system to lessen costs so that poor people, especially women, have access to land titles.

combating negative cultural practices which discriminate against women, including through the use of media. Through this effort, people's attitudes and perceptions can be changed.

- The content of the Land Policy, the Lands Act and other relevant laws should be widely disseminated to the general public through the development of summarized versions of the law, media campaigns and educations, the use of community radios and durbars held by the chiefs. There should also be a specific education targeted at women. The State should ensure that the Land Policy and land reform processes are made available and accessible to grassroots women.

In those areas where such people would like to have title deeds to land but cannot afford the costs, the Government should provide free title deeds to such people.

- The State should establish monitoring mechanisms to ensure the proper distribution of land, particularly vis-à-vis the allocation of the 30 percent of land which is to be made available to women and other minority groups. These monitoring systems should also meaningfully engage all stakeholders, including grassroots women.

- Civil society organizations should engage with formal political structures to advocate for more gender-sensitive land policies, and should continue to document violations of women's land rights in Zambia. They should also participate in policy formation related to

land, and monitor its impact on women. In so doing, it is important to have a clearly-defined role, in order to work in partnership with the Government while at the same time maintaining independence.

- Civil society organizations should continue to educate and build the capacity of women to protect their rights to land. They should also strengthen their roles as watchdogs at local and national levels to ensure that the rights of women to land are effectively protected and realized.





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**WOMEN'S LAND LINK AFRICA (WLLA)** is a joint initiative of organizations dedicated to the improvement of women's land and housing rights in Africa. The purpose of WLLA is not to re-create but rather to enhance and support already ongoing work on women's housing and land rights in Africa.