

**CUSTOM, LAW AND WOMEN'S
LAND RIGHTS IN ZAMBIA**

Zambia



➔ Zambia's Constitution recognizes property rights and protects all individuals against the deprivation of property. But other laws and customary practices often fail to uphold the land rights of women. (Above) Twashuka Women's Group, Luanshya, Zambia. Photo: © Heifer International

By Peter Veit

INTRODUCTION

Most women in Zambia do not enjoy the same land rights as men. Zambia's Lands Act provides support for women who hold statutory land, but the law does not apply to customary land. Most land is held under custom and most customary tenure systems do not provide women with significant land rights – even when they do, traditional institutions often do not effectively implement the rules.



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The Land Act establishes two main land categories: customary and State. Local courts administer customary law, and many local court rulings have perpetuated customary rules that disadvantage women.

➔ **Zambian woman shows her voting card, 2011.** Of the one million people that registered to vote in the 2011 national elections, about half were women. *Photo: © Louise Mellor/DFID*

INTRODUCTION

Various policies and laws affect women's rights to land, natural resources and other properties in Zambia, including the Constitution (1991, amended in 1998), Intestate Succession Law (1989), Lands Act (1995) and National Gender Policy (March 2000). Zambia is also party to various international treaties that require compliance with anti-discrimination standards (e.g., United Nations Convention on the Elimination of All Forms of Discrimination Against Women), although many have not been incorporated into the domestic legal system (USAID 2010; UN-HABITAT 2005; Roth and Smith 1995).

Zambia's Constitution recognizes property rights and protects all individuals against the deprivation of property. Article 2(1) prohibits discrimination by race, tribe, sex and marital status—"no law shall make any provision that is discriminatory either of itself or in its effect." Article 23(4) (c) and (d) of the Constitution, however, explicitly excludes customary law and personal or family law. Therefore, where customary and personal laws discriminate against women, the Constitution provides little support and may actually lend legal support to such

discrimination (USAID 2010; UN-HABITAT 2005; Roth and Smith 1995).

The Intestate Succession Act governs the administration of an estate when the deceased did not leave a will. It does not apply to customary land or to family and chieftainship property. Under the Act, the surviving spouse inherits 20% of the deceased's estate (Section 5(1)). Where there is more than one widow, the estate is distributed proportionally to the duration of their marriages to the deceased and to the widow's contribution to the property. Natural children of the deceased receive 50% in proportion to age and educational needs; parents receive 20%; and other dependents receive 10% in equal shares (Machira et al. 2011; USAID 2010; UN-HABITAT 2005; Richardson 2004).

The Intestate Succession Act also stipulates that where land or a house of the deceased is held under a State lease, the surviving spouse can remain in the marital home until remarriage or death. The spouse, however, does not inherit the land or house, and cannot transfer, sell or will the property. Where there is more than one surviving spouse and/or child, they hold the house as tenants in common. Despite this law, relatives

and even neighbors sometimes challenge these arrangements in court (Machira et al. 2011; USAID 2010; UN-HABITAT 2005; Richardson 2004).

LAND GOVERNANCE IN ZAMBIA

The Lands Act vests land in the President who holds it in perpetuity for and on behalf of the people of Zambia and provides that the president administers and controls all land for the use or common benefit, directly or indirectly, of the people. The law establishes two main land categories: customary land and State land. The President may alienate State land to any Zambian and, in some circumstances, to non-Zambians. The President may also alienate customary land but must first consider traditional law, consult with affected persons, and obtain permission from the chief and local authority (UN-HABITAT 2005; Adams 2003).

The Lands Act establishes a Land Tribunal (on the same level as the High Court) to settle State and customary land-related disputes, although it has not functioned well. The Tribunal is centralized, resulting in limited access especially by poor people, many of



There are 73 recognized tribes in Zambia. Customary tenure rules and institutions vary across ethnic groups, and are dynamic, changing to address new challenges and circumstances. (Above) Zambian women's group gathers to see results of new groundnut shelling technology. Photo: © Swathi Sridharan/IRCISAT



whom also lack an understanding of its role and procedures. In 2010, the government prepared a separate Lands Tribunal bill but it has not been passed into law (UN-HABITAT 2005).

The Local Courts Act (1966) recognizes local courts as the administrators of customary law and some statutory law. Decisions from these courts can be appealed to higher courts which enforce customary law if it is not “repugnant to natural justice or morality” (Section 12(1)(a) and (2)). Most local court justices are men and many local court rulings have perpetuated customary rules that place women in disadvantaged positions. There are also traditional courts presided over by customary leaders that resolve conflicts in accordance with local customs and practices. Traditional courts are not recognized by government.

The Lands Act does not make specific reference to gender and does not explicitly discriminate against women. It, however, has profound implications for women's land rights because it applies only to statutory land. Statutory land includes State and leasehold land, including land that has been converted from customary tenure to leasehold tenure (see below). The law does

not provide for the documentation, registration or titling of land held under customary tenure.

The Lands Act defines State land as land “not situated in a customary area”—a residual category which officially constitutes 6% to 7% of Zambia. State land is generally located in larger cities and along the “line of rail,” where soil fertility is good and agricultural markets are nearby. Under the Lands and Deeds Registry (Amendment) Act (1994), State land has formal registered title deeds and is administered by the Ministry of Lands directly or by councils under delegated powers. The procedure to obtain a title for vacant State land includes the President's consent and can take years. Previously, an individual could apply for a provisional title, based on a 14-year lease, although this no longer applies. The President can also issue leaseholds of State land—up to 99 years and renewable.

Under the Lands Act, land under customary tenure can be converted into private leasehold tenure and brought under the statutory system subject to the President's approval. The process involves recognizing customary rules and obtaining the approval of the chief.

Once converted, the government officially registers the leasehold tenure. The law is silent on whether converted land remains customary land under the authority of traditional leaders, but, in practice, the land is moved to the Land Commissioner and becomes State land. Most land held under custom is converted to leasehold for investment purposes (Brown 2005; Metcalfe 2005). Statutory land is deemed by many local people and investors to be more secure than customary tenure.

Statutory land is subject to the constitutional provision of gender equity. Most statutory land is held by men, although since the passing of the Lands Act, women are gaining control of more statutory land. Implementation of this provision has been weak. Challenges include biased land institutions, tedious land transaction procedures and complex application forms.

Land can be titled individually in a woman's name or jointly in the name of both spouses. In urban areas, some educated single women and married women own plots in their own names. Most land, however, is held by men and a small percentage of land is owned jointly by married couples. In most rural and peri-urban areas, land is considered to be owned by the male head of household; few women have their names on land documents or consider themselves to be landowners. In settlement and resettlement areas, women and men have rights to land, but applications and offers are usually in the man's name (Machira et al. 2011; GOZ 2005; Machina 2002; Keller 2000).

The allocation of statutory land also falls short of the National Gender Policy (2000) which articulates a national vision of “attainment of gender equality and equity” and a blueprint for gender and development activities. The Policy provides that 30% of land available for State distribution should be allocated to women, with the remaining 70% going to men and women fairly. In 2004, the government approved the Strategic Plan of Action to operationalize the Policy, although it has not been well implemented. Many line ministries do not have sectoral policies that

incorporate gender, and few allocate the financial resources to ensure gender equity (USAID 2010).

In contrast to statutory land, land held under customary tenure and chieftainship property is by the Lands Act administered according to local customs. The law recognizes ethnic groups as de facto custodians (not owners) of customary land and recognizes customary tenure as a form of landholding—“(E)very piece of land in a customary area which immediately before the commencement of this Act was vested in or held by any person under customary tenure shall continue to be so held and recognised and any provision of this Act or any other law shall not be so construed as to infringe any customary right enjoyed by that person before the commencement of this Act” (Section 7(1)).

Few laws govern or regulate customary tenure and traditional rulers. The Chiefs Act (1965) provides that chiefs may perform their functions under customary law if they do not contradict the Constitution or other written law (Section 10(1)(a)). This section appears to contradict the constitutional provision on gender equity which explicitly excludes customary law. In practice discriminatory customary rules and practices have continued.

Approximately 94% of the land in Zambia is officially designated as Customary

Area (Mudenda 2006; Brown 2005; Van Loenen 1999; Chinene et al. circa 1995), and about 82% of the farming households cultivate traditional land (1.1 million households in 2008). Since the Lands Act was enacted, a considerable amount of customary land has been converted into private leasehold tenure. While this converted land is still designated as Customary Area, in 2005, only an estimated 84% of land was actually held under customary tenure (Brown 2005; Metcalfe 2005). Today, that figure is no doubt lower.

LAND RIGHTS IN CUSTOMARY SYSTEMS

There are 73 recognized tribes in Zambia, headed by 240 chiefs, eight senior chiefs and four paramount chiefs (Machira et al. 2011; Mudenda 2006). Customary tenure rules and institutions vary across and sometimes within ethnic groups. They are also dynamic, changing over time to address new challenges and circumstances.

Customary tenure systems are generally unwritten—most land held under custom has no formal documentation—with traditional rules passed orally from generation to generation.

The land held by each chief, however, is documented and the information held by the government Survey Department. Some chiefs keep records of the land held by their subjects (Sichone 2008; Mulolwa 2006; Van Asperen & Mulolwa

+ FACT

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2006). The holders of customary land do not pay land taxes to government. In the past, people paid homage to their chiefs and some continue to do so.

Under most customary systems, land is held by the community, but individuals, families and clans have private use rights that are often held for generations. A share in village land is regarded as a birth right. In many groups, some land is also held and managed as common property. Under customary law, land can



The allocation of statutory land falls short of the National Gender Policy, which provides that 30% of land available for State distribution go to women, with the remaining 70% going to men and women fairly. (Above) Village off Lundazi Road. Photo: © bathyporeia



be transferred to another community member, but sales to outside people and entities were historically prohibited. This restriction, however, is eroding, especially in areas with fertile and otherwise valuable land. Common methods of acquiring land include: clearing of bush land; allocation from the chief; inheritance; inter-vivo transfers; and purchases.

Under most customary arrangements, the chief or headman allocates land and regulates communal areas. In many groups, women access land through their natal families and husbands. A chief may allocate land to a single woman for farming, especially if she has children, but rarely to a married woman in her own right. Female chiefs or headwomen do not act differently from their male counterparts in administering land, and most rural women do not challenge their unequal positions under customary law (Machira et al. 2011).

In Zambia, customary land was historically kept in the lineage or clan. Customary tenure was dependent on the societal systems (matrilineal, patrilineal) and more specifically on the custom of settling after marriages (uxorilocal, virilocal). In matrilineal societies, descent and inheritance followed the mother's line; in uxorilocal marriages, a man and woman moved to the woman's home to live after marriage. In patrilineal societies, descent followed the father's line; in virilocal marriages, the couple moved to the husband's home to live (Van Asperen & Mulolwa 2006; Chinene et al. circa 1995).

Sixty-nine of Zambia's 73 ethnic groups are matrilineal. In matrilineal societies with uxorilocal marriage, land passes through the female line to male family members who generally control land use. Women access land through their natal families and men receive land through their wives. When a man dies, his primary heirs are his sisters' children, although his widow and children usually retain access to some land. Since women can remarry, this practice helps ensure land remains within the family (Van Asperen & Mulolwa 2006; Chinene et al. circa 1995).

In patrilineal societies, a male member receives a portion of land simply by



Various efforts designed to strengthen women's land rights and their agricultural productivity are underway. (Above) Woman tests a groundnut shelling machine. Photo: Swathi Sridharan/ICRISAT

lineage or clan membership. In patrilineal societies with virilocal marriages, unmarried female members are allocated land through male members.

Such allocations are temporary until the woman marries and moves to her husband's home. Married women access land through their husbands and generally do not have land titles (Van Asperen & Mulolwa 2006; Chinene et al. circa 1995). While divorced women are often denied continued land use, widows may be permitted to use some land. Many divorced or widowed women return to their original homes, where they depend on male kin to access land (Van Asperen & Mulolwa 2006; Chinene et al. circa 1995).

Tenure arrangements have changed significantly over time and, in some communities, customary systems have been abandoned. In some areas, customary land has become more individualized, the nuclear family has grown in importance, and land has been passed down through the nuclear family

as opposed to a lineage or clan (Machira et al. 2011; GOZ 2005; Unruh et al. 2005; Hansungule et al. 1998). Some farmers, especially in matrilineal societies, prefer direct bequeathment to children and have pioneered inter-vivos transfer, wills and even statutory registration.

There is a growing practice of "property grabbing" in which relatives—including female relatives—take possession of the land and other property of a deceased man. Some relatives argue that they grab property because they are burdened by the responsibilities of caring for the decedent's family. In practice, however, many families claim the property but do not uphold the accompanying caretaker responsibilities (Machira et al. 2011).

Various efforts designed to strengthen women's land rights are underway. Some actions focus on educating women about their legal rights and sensitizing communities about the advantages of strong women's rights. Other efforts address the cultural practices that stand

FACT

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as barriers to implementing gender-fair inheritance laws. Still other investments focus on changing discriminatory customary rules (Machira et al. 2011).

Some non-governmental organizations (NGOs) focus on documenting customary tenure arrangements, and encouraging chiefs to keep a land register of who is entitled to which plots. While such records do not carry the same legal weight as government-issued title deeds, written documents defining the boundaries of family land and identifying the landholder can help men and women defend their rights in cases of ownership conflicts (Machira et al. 2011; Vind-Andersen 2010).

In October 2009, the National Constitutional Conference adopted the report of the Land and Environment Committee, and reached agreement on new land provisions. Among other measures, the 2010 draft Constitution provides for: equitable access to and ownership of land by women; continuation of customary and private leasehold tenure systems; means to secure customary land; and cost-effective and efficient settlement of land disputes. It also prohibits land speculation, establishes maximum holdings of arable land; and calls for periodic land audits to address imbalances in land alienation, equitable access to State land, and settlement of landless people (USAID 2010).

Zambia's experience shows that while customary tenure systems often do not provide women with strong land rights, in many societies, traditional rules and leaders are changing or being abandoned. In some cases, the changes are further eroding women's land rights. In other cases, they are being strengthened. The Lands Act supports women's rights to statutory land; many NGOs are working to strengthen women's land rights; and some local government officials and traditional leaders are advancing women's rights. Passage of the draft National Land Administration and Management Policy, enactment of the draft Constitution and reform of the Lands Act, Intestate Succession Act and other discriminatory laws would further support women's land rights and help

eliminate discriminatory cultural rules and practices. Where customary rules provide women with equal land rights, strengthening of traditional institutions could improve implementation.

In Zambia, a growing number of women are challenging the system when their land rights are violated, and, in some cases, gaining the support of local leaders and advocates (Vind-Andersen 2010). For example, some NGOs are helping organize community widows' support groups that attempt to fend off property grabbers. Additionally, some local government councils have put in place measures calling for land allocations to women beyond the 30% threshold in the National Gender Policy. There are also indications that some chiefs have started allocating land to women, including single women, widows and women's groups (Machira et al. 2011; USAID 2010).

Various reforms have been initiated. The draft National Land Administration and Management Policy of October 2006 recognizes that many women lack control over land, especially in customary areas, and some customs exclude women from accessing and holding land by virtue of their status and gender. The Policy recognizes that: 1) the "acquisition and

ownership of land in Zambia continues to be a major hindrance to women's participation in national development;" 2) "In its current form, customary tenure does not offer sufficient protection for disability care, gender equality and resource conservation as provided for in the Constitution of Zambia;" and 3) "The major drawback...is that the Lands Act allows customary laws which mainly confers land ownership on men to apply to the administration of traditional land."

The draft Policy adopts "[t]he principle of encouraging fair and equitable access to land and secure tenure among all the people of Zambia irrespective of their abilities, race, beliefs, gender and ethnicity." It calls for government measures to address land and gender matters, including: "(a) Review statutory and customary laws and practices that perpetuate gender discrimination; (b) Mainstream gender in all institutions administering and managing land; (c) Implement at least 30 percent land ownership for women; and (d) Devise an advocacy and sensitization programme on gender." It also calls for recognizing "the rights of land users by defining these rights through formal survey and registration so that everyone, irrespective of social status, gender or origin can have similar rights to land."



Women planting trees with the Savannah Project in Mufulira Town.
Photo: © Trees for the Future



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