Learning Workshop on Women, Land and Housing Rights: Assessing the impacts of dispossession
30 September–2 October 2020
Lusaka, Zambia
“Assessing Impacts of Women’s Dispossession from Land and Home”

Housing and Land Rights Network
Habitat International Coalition
Commitments & Obligations!
The Purposes of the United Nations are:

1. To maintain international peace and security (Article 1.1)

2. Promoting human rights and for fundamental freedoms (Article 1.3)

3. Economic and social progress and development (Articles 13, 52)
Charter of the United Nations

Development

Peace & Security

Human Rights
State Obligations!

- Legal effect + **binding** nature
- **Self-imposed** by states on states
- Regular reporting against performance criteria and indicators

**What to do** - Implementation formula:
- Respect / Protect / Fulfill (promote, facilitate, assist)

**How to do it** - Over-riding implementation principles:
- Self-determination, Nondiscrimination, Gender equality, Rule of law, Maximum of available resources, Continuous improvement, International cooperation and assistance

- **Apply to all** spheres of government and organs of the state
- State regulation of non-state actors (protect)
- **Individual, collective, domestic and extraterritorial** dimensions
Development of human rights
from general to specific; from theoretical to practical

UN Charter, 1945

Universal Declaration of Human Rights (UDHR), 1948

International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966
International Covenant on Civil and Political Rights (ICCPR), 1966

Racial Discrimination (CERD), 1965
Discrimination against Women (CEDaW), 1979
Convention against Torture (CaT), 1984
Rights of the Child (CRC), 1989
Migrant Workers (MWC), 1990
People with Disabilities (CRPD), 2006
Forced Disappearances (CED), 2006

Declarations, guidelines, body of principles, minimum rules
Diagram of UN Bodies

- **Secretariat** (UN civil service)
  - Secretary-General
  - UN High Commissioner for Human Rights (+ staff)
  - Human Rights country and regional offices

- **Security Council**
- **UN General Assembly (UNGA)**

**Charter Bodies**
- Forum on Minority Issues
- Special Procedures: The Independent Expert on Minority issues and other mandates on themes such as education, racism, health, torture and violence against women
- Human Rights Council Advisory Committee
- Expert Mechanism on the Rights of Indigenous Peoples
- Social Forum

**Human Rights Council**
- Universal Periodic Review

**Treaty Bodies**
- Human Rights Committee
- Committee on Economic, Social, and Cultural Rights
- Committee on the Elimination of Racial Discrimination
- Committee against Torture
- Committee on the Elimination of Discrimination against Women
- Committee on the Rights of the Child
- Committee on Migrant Workers and their Families
- Committee on the Rights of Persons with Disabilities

*Note: The Secretariat provides support to all the other bodies in the diagram.*

Arrows indicate the reporting order of one body to another.
Zambia’s Human Rights Treaty Ratifications

- ICESCR - acceded 10 May 1984
- ICCPR - acceded 10 May 1984
- ICERD - ratified 5 March 1972
- CEDaW - ratified 21 July 1985
- CRC - ratified 5 January 1992
- CaT - acceded 6 November 1998
- CRPD - not signed or ratified/acceded
Aspects of State obligation

Respect

Protect

Fulfill

Over-riding principles

- Self-determination (Art. 1[1])
- International cooperation (Art. 2[1])
- Maximum of available resources (Art. 2[1])
- Rule of law (Art. 2[1])
- Progressive realization (Art. 2[1])
- Nondiscrimination (Art. 2[2])
- Gender equality (Art. 3)
CERD, Article 5

Calls on States parties to:

- prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
  - (d)(v) The right to own property alone as well as in association with others...
  - (e)(iii) the right to housing...
Requires that State parties:

- provide material assistance and support programs with regard to nutrition, clothing and housing.
Legal specificity: General Recommendations (CRC)

No. 1 (2001) – the aims of education
No. 2 (2002) – the role of independent National Human Rights Institutions in the protection and promotion of the rights of the child
No. 5 (2003) – general measures of implementation of CRC
No. 6 (2005) – treatment of Unaccompanied and Separated Children Outside Their Country of Origin
No. 7 (2005) – implementing child rights in early childhood
No. 8 (2006) – the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia)
No. 9 (2006) – the rights of children with disabilities
No. 10 (2007) – children’s rights in juvenile justice
No. 11 (2009) indigenous children and their rights under the Convention
No. 12 (2009) – the right of the child to be heard
No. 13 (2011) the right of the child to freedom from all forms of violence
No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)
No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)
No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights
No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31)
No. 18 (2014) jointly with CEDaW No. 31 on harmful practices
No. 19 (2016) on public budgeting for the realization of children’s rights (art. 4)
No. 20 (2016) on the implementation of the rights of the child during adolescence
No. 21 (2017) on children in street situations
No. 22 (2017) joint with CMW No. 3 in the context of international migration–General principles
No. 23 (2017) in the context of international migration, jointly with CMW No. 4–States parties' obligations in particular with respect to countries of transit and destination
No. 24 (2019) on children’s rights in the child justice system
No. 25 (draft) on children’s rights in relation to the digital environment
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.
The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including...housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.
General Comment No. 1  Reporting by States parties
General Comment No. 2  International technical assistance (art. 22)
General Comment No. 3  The nature of State obligations (art. 2, para. 1)
General Comment No. 4  The right to adequate housing (article 11 [1])
General Comment No. 5  Persons with disabilities
General Comment No. 6  The ESCRs of older persons
General Comment No. 7  The right to adequate housing: forced evictions
General Comment No. 8  Economic sanctions and respect for ESCR
General Comment No. 9  The domestic application of the Covenant
General Comment No. 10  The role of NHRI and ESCR
General Comment No. 11  PoA for primary education (art. 14)
General Comment No. 12  The right to adequate food (art. 11)
General Comment No. 13  The right to education (art. 13)
General Comment No. 14  The right to health (art. 12)
General Comment No. 15  The right to water (arts. 11 and 12)
General Comment No. 16  Equal right of men & women to all ESCR (art. 3)
General Comment No. 17  The right to work (art. 6)
General Comment No. 18  Intellectual property (art. 15.1[c])
General Comment No. 19  Social Security (art. 9)
General Comment No. 20  Cultural Life (art. 15.1)
General Comment No. 21  Nondiscrimination (2.2)
General Comment No. 22  The right to sexual & reproductive health (article 12)
General Comment No. 23  The right to just and favourable conditions of work (article 7)
General Comment No. 24  State obligations in the context of business activities
General Comment No. 25  Sustainable development
Adequate Housing

(CESCR General Comment No. 4: “The right to adequate housing,” para. 8)

- Legal security of tenure
- Services, materials, facilities & infrastructure
- Environmental goods & services (land & water)
- Affordability
- Habitability
- Accessibility (physical)
- Location
- Cultural adequacy
- Participation, assembly, association, self-expression
- Education, information, capability & capacity
- Security (physical), privacy, VaW
- Movement, reparations (refugees & IDPs)
Forced Eviction

General Comment No. 7
Forced eviction: “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”

“The prohibition on forced evictions does not, however, apply to evictions carried out by force in accordance with the law and in conformity with the provisions of the International Covenants on Human Rights” (para. 3).
Criteria of lawful eviction involves a change of habitual process that ensures all of the following conditions:

- An opportunity for genuine consultation with those affected;
- Adequate and reasonable notice for all affected persons prior to the scheduled date of eviction;
- Information on the proposed evictions, and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected;
- Especially where groups of people are involved, government officials or their representatives to be present during an eviction;
- All persons carrying out the eviction to be properly identified;
- Evictions not to take place in particularly bad weather or at night unless the affected persons consent otherwise;
- Provision of legal remedies;
- Provision, where possible, of legal aid to persons who are in need of it to seek redress from the courts;

Evictions should not result in individuals being rendered homeless or vulnerable to the violation of other human rights.

Where those affected are unable to provide for themselves, the State party must take all appropriate measures, to the maximum of its available resources, to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available. (GC7, para. 15–16)
Forced Evictions

UN CHR 1993/77

1. **Affirms** that the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing;
Forced Evictions

UN CHR 2004/28

1. Reaffirms that the practice of forced eviction that is contrary to laws that are in conformity with international human rights standards constitutes a gross violation of a broad range of human rights, in particular the right to adequate housing;
Success Story: Zambia

In 1993, the HLRC successfully advocated the passage of a resolution through the UN Human Rights Commission that declared that forced evictions are a gross violation of human rights. Upon receiving the resolution, a member organization in Lusaka, Zambia Women and Shelter Action Group (ZWOSAG), used it in its ongoing campaigns against evictions by widely publicizing its contents. That publicity and mobilization campaign resulted in the Zambian Minister of Planning’s televised announcement to suspend evictions and provide security of tenure to all who were currently threatened with evictions. Since that time, evictions are rare in Lusaka. Under the constant pressure of the NGOs, the Zambian government has enacted antieviction legislation and policies.
Committee on the Elimination of Discrimination against Women (CEDaW)

CEDaW, Article 13
States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights...

CEDaW, Article 14
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the rights to:

- participation
- health
- information
- family planning
- social security
- training and education
- right to organize

- access agricultural credit and loans
- equal treatment in land and agrarian reform, as well as in land resettlement schemes
- adequate living conditions
- water and sanitation, transport and communications
CEDaW, Article 14(2)(h)

Obliges States parties to ensure that women enjoy adequate living conditions particularly in relation to housing sanitation, electricity and water supply, transport and communications.
No. 1: reporting guidelines
No. 2: reporting guidelines
No. 3: education and public information programmes
No. 4: reservations
No. 5: temporary special measures
No. 6: effective national machinery and publicity
No. 7: resources
No. 8: article 8
No. 9: statistical data
No. 10: tenth anniversary of the adoption of CEDAW
No. 11: technical advisory services for reporting
No. 12: violence against women
No. 13: equal remuneration for work of equal value
No. 14: female circumcision
No. 15: women and AIDS
No. 16: unpaid women workers in rural & urban family enterprises
No. 17: measurement & quantification of the unremunerated domestic activities of women & their recognition in GNP
No. 18: disabled women
No. 19: violence against women
No. 20: reservations
No. 21: equality in marriage and family relations
No. 22: article 20 of the Convention
No. 23: women in political and public life
No. 24: article 12 - women and health
No. 25: article 4 paragraph 1 - Temporary special measures
No. 26: Women Migrant Workers
No. 27: Older women and protection of their human rights
No. 28: The Core Obligations of States Parties under Article 2 of the Convention
No. 29: Article 16 - Economic consequences of marriage, family relations and their dissolution
No. 30: women in conflict prevention, conflict and post-conflict situations
No. 31 CRC No. jointly with CEDaW GR No. 18 on harmful practices
No. 32: gender-related dimensions of refugee status, asylum, nationality and statelessness of women
No. 33: women’s access to justice
No. 34: the rights of rural women
No. 35: gender-based violence against women, updating No. 19
No. 36 the right of girls and women to education
No. 37: Gender-related dimensions of disaster risk reduction in the context of climate change
CEDaW No. 34 (2016) on the rights of rural women
State obligations:

- Implement substantive equality in relation to land and temporary special measures, comprehensive strategy to achieve equal access to natural resources, and address discriminatory stereotypes, attitudes and practices that impede their rights to land and natural resources (57);
- Ensure that customary systems do not discriminate (58);
- Raise awareness about rural women’s rights to land, water and other natural resources among all relevant actors (58);
- Ensure that legislation guarantees rural women’s equal rights to land and other natural resources, irrespective of civil and marital status or guardian or guarantor arrangements, and that they have full legal capacity (59);
- Promote rural women’s access to and meaningful participation in agricultural cooperatives (59a);
- Enhance rural women’s knowledge and role in fisheries and aquaculture, and promote their access to forests and sustainable forest resources, including safe access to fuelwood and non-wood forest resources (59b);
State obligations:

- Strengthen customary and statutory institutions and mechanisms for defending or protecting women’s rights to land and other natural resources, including community paralegal services (59c);

- Implement agricultural policies that support rural women farmers, recognize and protect the natural commons, promote organic farming and protect rural women from harmful pesticides and fertilizers and their effective access to agricultural resources (62);

- Ensure that land acquisitions, including land-lease contracts, do not violate the rights of rural women or result in forced eviction, and protect rural women from the negative impacts of the acquisition of land by national and transnational companies, development projects, extractive industries and megaprojects; (62c);

- Obtain rural women’s free and informed consent before any acquisitions or project affecting rural lands or territories and resources, and, when such land acquisitions do occur, they align with international standards, including adequately compensation (62d);

- Adopt and effectively implement laws and policies that limit the quantity and quality of rural land offered for sale or lease to third States or companies (62e).
Concluding observations on the initial report of Zambia

Population distribution

56. Over 60 per cent of the population of Zambia lived in rural areas, chiefly in scattered villages which were not easily accessible by motorized transport. The Government had established the National Housing Authority in order to upgrade housing standards in both the urban and rural areas. The Department of Agriculture provided rural extension services to peasant farmers in order to enable them to produce sufficient food at least for themselves and their families. The Department of Water Affairs had the task of ensuring the general availability of potable water. A number of other ministries and departments were engaged in efforts to improve the living standards of the people and worked in close co-operation with the multilateral agencies of the United Nations system.
Mr. Lichilana, Zambia:

68. Regarding the structure of Zambian society, some Zambian families were matrilineal, others were patrilineal.

69. As to whether the average Zambian lived in daily fear of a nuclear holocaust, he did not think that was the case. Zambians were most worried about the possibility that the South African racist regime would attack them with nuclear weapons, and about the nuclear arsenals maintained by the super-Powers.

70. Zambia's primary concern was to develop its economy, now that the blacks' exercise of political rights had been ensured. Since independence, citizens had those rights in Zambia, for the law made no distinction as to colour or creed.

73. The Anti-Corruption Commission had been established because human beings were by nature corruptible. Its aim was to ensure that persons who abused positions of responsibility were dismissed.
14. The Committee notes that the prevalence of customary law - certain traditions, customs and cultural practices - leads to substantial discrimination against girls and women, in particular widows, thereby preventing them from fully exercising their rights under the Covenant.

48. The Committee recommends that the State party undertake all necessary measures to guarantee an adequate standard of living, including through the provision of social safety nets for the most disadvantaged and marginalized groups, in particular those women and children who have been the hardest hit by structural adjustment programmes, privatization and debt servicing.

50. The Committee recommends that the State party ensure that the draft land policy with regard to the allocation of land to women does not contradict articles 3 and 11 of the Covenant.
Non-discrimination

25. Some progressive provisions on non-discrimination in relation to children in the new Constitution. However, …not adequately implemented with respect to children belonging to the most vulnerable groups, such as girls, children with disabilities, children belonging to religious minorities, children living with HIV/AIDS, migrant and refugee children, orphans and children born out of wedlock.

26. Ensure equal access to education, basic health care and other welfare services for all children. It also recommends that the State party intensify its efforts to eliminate discrimination against the most vulnerable groups of children, such as girls, children with disabilities, children belonging to religious minorities, children living with HIV/AIDS, migrant and refugee children, orphans and children born out of wedlock. …prioritizing …vulnerable children and youth in …National Development Plan.
United Nations

Committee on the Rights of the Child

Concluding observations on the second periodic report of Zambia

Best interests of the child

27. The Committee notes that the Children’s Code Bill and the National Child Policy include reference to the best interests principle. It is, however, concerned that the principle is not considered under customary law and by religious leaders in many areas of children’s rights, particularly in rural areas in cases of inheritance, education and land allocation.

28. CRC recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions as well as in all policies, programmes and projects that are relevant to and have an impact on children. In this regard, the State party is encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority as well as traditional and religious leaders for determining the best interests of the child in every area and for giving it due weight as a primary consideration.
5. The Committee also commends the State party for its efforts to implement the Convention through various policies, programmes and initiatives such as: the policy that reserves 30 per cent of titled land specifically for women, at a subsidized rate, as prescribed in the National Gender Policy (2000);
Concluding observations of the Committee on the Elimination of Discrimination against Women: Zambia

Rural women

37. The Committee reiterates its concern at the disadvantaged position of women in rural and remote areas (who form the majority of women in Zambia), which is characterized by poverty, illiteracy, difficulties in accessing health and social services and a lack of participation in decision-making processes at the community level. While welcoming the adoption of the Citizens Economic Empowerment Act and other initiatives such as the policy that provides for the allocation of 30 per cent of titled land to women, the Committee reiterates its concern that the customs and traditional practices prevalent in rural areas prevent women from inheriting or acquiring ownership of land and other property and from accessing financial credit and capital. While the Intestate Succession Act is said to protect against property-grabbing, rural widows often still face challenges in maintaining their property rights.
38. The Committee calls upon the State party to:
(a) Take the necessary measures to increase and strengthen the participation of women in designing and implementing local development plans, and to pay special attention to the needs of rural women, in particular women heads of household, by ensuring that they participate in decision-making processes and have improved access to health, education, clean water and sanitation services, land and income-generating projects;
(b) Establish a clear legislative framework to protect women’s rights to inheritance and ownership of land;
(c) Introduce measures to address negative customs and harmful practices such as property-grabbing, especially in rural areas, which affect the full enjoyment of the right to property by women.
40. …amend laws relating to marriage and inheritance, given that these are the main ways by which women have access to land. [Intestate Succession Act (1989) prohibits eviction of a surviving spouse from a matrimonial home and protects a woman’s access to inheritance, but not always happens; should amend to explicitly extend to customary land and family property (currently, section 2 excludes its application to customary land)].
40. …recommends that the Government formulate a policy to encourage the joint registration of property, which would help to address the issue of unequal succession.
Philippines, Malasia and Romania regretted discrimination against women

72. Canada asked Zambia to provide information on progress to date in addressing discriminatory practices emanating from customary laws, in follow-up to the commitment made by Zambia in 2008 to take measures to improve the situation of widows and girls, including through protection of their right to inheritance and prevention of early marriages. Canada welcomed the steps taken by Zambia to develop new legislation on freedom of the press and access to information.
Philippines, Malaysia and Romania regretted discrimination against women.

99. Zambia *endeavours to correct the perception that* female children were deprived of their inheritance. The Intestate Succession Act guaranteed all children of persons who died intestate 50 per cent of the estate irrespective of their gender. Twenty per cent is guaranteed to the wife, with a further 20 per cent awarded to the parents and 10 per cent to other beneficiaries. This Act enshrined the right of female children and wives to inherit and was enforced in the local courts.
58. Algeria noted the strengthened framework to protect human rights and the establishment of a Technical Committee to draft a new constitution. It welcomed the priorities of Zambia on education, health, agriculture, local authorities and housing. It urged international support for Zambia.
Human Rights System Reviews: Zambia

- CEDaW reviewed in 2011
- UPR 2012, 2018
- SDGs / Voluntary National Review in June–July 2020
- Report to CESCR overdue since 2010!
WOMEN’S HOUSING AND LAND
IN THE GLOBAL AGENDAS

Housing and Land Rights Network
Habitat International Coalition
UN 2030 Sustainable Development Agenda

1. No Poverty
2. Zero Hunger
3. Good Health and Well-being
4. Quality Education
5. Gender Equality
6. Clean Water and Sanitation
7. Affordable and Clean Energy
8. Decent Work and Economic Growth
9. Industry, Innovation and Infrastructure
10. Reduced Inequalities
11. Sustainable Cities and Communities
12. Responsible Consumption and Production
13. Climate Action
14. Life Below Water
15. Life on Land
16. Peace, Justice and Strong Institutions
17. Partnerships for the Goals
HLPF 2021 theme:
“Sustainable and resilient recovery from the COVID-19 pandemic, while promoting economic, social and environmental dimensions of sustainable development: Building an inclusive and effective path for the achievement of the 2030 Agenda in the context of the decade of action and delivery for sustainable development”
Goal 5: Attain gender equality, empower women and girls everywhere

Target 5.a

Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.
Goal 5: Attain gender equality, empower women and girls everywhere

Target 5.a

- **Sub-indicator (a)** Measures the prevalence of people in the agricultural population with ownership or tenure rights over agricultural land, disaggregated by sex. No. people in agricultural population with ownership or tenure rights over agricultural land disaggregated by sex.

- **Sub-indicator (b)** The extent to which women are disadvantaged in ownership/tenure rights over agricultural land. Number of women in the agricultural population with ownership or tenure rights over agricultural land. % of ♀ in the total agricultural population with ownership or tenure rights over agricultural land.
Target 5.a

- **Sub-indicator (a)** Measures the prevalence of people in the agricultural population with ownership or tenure rights over agricultural land, disaggregated by sex. No. people in agricultural population with ownership or tenure rights over agricultural land disaggregated by sex.

- **Sub-indicator (b)** The extent to which women are disadvantaged in ownership/tenure rights over agricultural land. Number of women in the agricultural population with ownership or tenure rights over agricultural land. % of♀ in the total agricultural population with ownership or tenure rights over agricultural land.
Goal 5. Achieve gender equality and empower all women and girls

Target 5.1: End all forms of discrimination against all women and girls everywhere
Indicator 5.1.1: Whether or not legal frameworks are in place to promote, enforce and monitor equality and non-discrimination on the basis of sex

Target 5.2: Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation
Indicator 5.2.2: Proportion of women and girls aged 15 years and older subjected to sexual violence by persons other than an intimate partner in the previous 12 months, by age and place of occurrence

Target 5.3: Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation
Indicator 5.3.1: Proportion of women aged 20–24 years who were married or in a union before age 15 and before age 18

Target 5.4: Recognize and value unpaid care and domestic work through the provision of public services, infrastructure and social protection policies and the promotion of shared responsibility within the household and the family as nationally appropriate
Indicator 5.4.1: Proportion of time spent on unpaid domestic and care work, by sex, age and location

Target 5.5: Ensure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life
Indicator 5.5.1(a): Proportion of seats held by women in national parliaments
Indicator 5.5.1(b): Proportion of seats held by women in local governments
Commitments & Obligations!
obligations
The Purposes of the United Nations are:

1. To maintain international peace and security (Article 1.1)
2. Promoting human rights and fundamental freedoms (Article 1.3)
3. Economic and social progress and development (Articles 13, 52 [GA & SC 55])
Charter of the United Nations