



HOUSING AND LAND RIGHTS NETWORK
H a b i t a t I n t e r n a t i o n a l C o a l i t i o n

**Literature Review: Women's Dispossession
from Land and Home in Zambia**

Land Systems in Zambia

Most land in Zambia is under customary tenure, accounting for 94% of the country's land, with state land accounting for only 6%.¹ All land is either state-owned or customary; there is no category of privately-held land in the country.² Freehold land was abolished in 1975 and replaced with a statutory lease system for use of state land,³ which is the only legal means of holding land rights.⁴ While figures around the total amount of customary land in Zambia are widely cited, some researchers estimate that due to the land conversion clause in the 1995 Land Act (see discussion below) only about half of rural land is now genuinely under customary tenure.⁵

Zambia's current land system is rooted in its colonial history. The British Colonial Authority divided the country's land into two categories in 1924: Crown Land and Native Reserves/Native Trusts Land.⁶ After Zambia's independence from the United Kingdom in 1964, Crown Land was converted to state land (administered by the Ministry of Lands), while on Native Reserves and Native Trusts Land Indigenous peoples maintained the land tenure system that existed under British rule. The state also continued to recognize chiefs as legitimate authorities in regulating the use and allocation of Native Reserves and Native Trusts Land.⁷ These traditional leaders also retain significant power in law enforcements, dispute resolution, and negotiating development projects.⁸

Rules and institutions of customary land tenure in Zambia vary between, and sometimes within, ethnic groups. Zambia has 73 recognized tribes led by 240 chiefs.⁹ The land held by each chief is documented with the Survey Department; some chiefs keep their own records of land held by their subjects. However, the rules and institutions of these land tenure systems are generally unwritten, passed orally between generations. The rules of these systems are also dynamic and can change to adapt to new circumstances.¹⁰

Evolution of Land in Zambia

Zambia's customary tenure system began to change in the early 1990s when the Movement for Multiparty Democracy, which aimed to facilitate investment in the agricultural sector, came to power. In seeking a way to establish a right to private property the new government convened a land

conference, which recommended ‘a procedure for systematic titling of all holdings’.¹¹ The 1995 Land Act set this in motion.

Conversion of customary land to state land for the purpose of granting privately held leasehold titles, which occurs through provisions in the Land Act, is an example of the erosion of customary rights. While the converted land is governed by the Land Commissioner, and thus treated as state land, it is unclear whether or how often the converted land continues to be customary land; the authority that traditional leaders retain over the land and the state of all customary rights previously attached to that land also remains unclear.¹² Chiefs are given authority to transfer (convert) lands below 250 hectares in size; larger plots require approval by the Ministry of Lands and local council, while those over 1,000 hectares also require consent of the Lands Commissioner and/or the President. Leasehold titles are granted to investors for a maximum period of 99 years, with the possibility of extension.¹³ In cases where transfers are approved by both the state and Chiefs, customary land may be irreversibly converted to state land.¹⁴

In recent years so-called “traditional landholding certificates” (TLHC) have been introduced in areas of Zambia.¹⁵ Their purpose is to strengthen customary land rights without privatizing land; however, some argue that the certificates reinforce inequalities. Certificates are most often issued to senior family members who already control and make decisions about the land, and therefore may not increase security or access for more vulnerable groups, including women. Thus, such top-down initiatives face difficulty in counteracting the inequalities and imbalances that are prevalent at the local level. Over the long term, land conversion means that access to land for the poorest members of local communities will become more constrained, even while it provides increasing benefits for international investors, the urban elite, and some traditional leaders.¹⁶

Zambia Government Law and Policy

According to the **Constitution of Zambia, 1996** women and men have equal rights and freedoms. Article 2(1) of the Constitution explicitly 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.” However, Article 23(4) (c) and (d) provide for the exemption of customary law and “adoption, marriage, divorce, burial, devolution of property on death or other matters of personal law”, thereby offering no support to many cases of discrimination¹⁷.

Article 16 provides for the protection from deprivation of property, stating that “no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, unless by or under the authority of an Act of Parliament which provides for payment of adequate compensation for the property or interest or right to be taken possession of or acquired.”

Amendment no. 2 of 2016 states that land shall be held with principles of “(a) equitable access to land and associated resources; (b) security of tenure for lawful land holders; (c) recognition of indigenous cultural rites; (d) sustainable use of land; (e) transparent, effective and efficient administration of land; (f) effective and efficient settlement of land disputes; ... (h) investments in land to also benefit local communities and their economy; and (i) plans for land use to be done in a consultative and participatory manner.” (Paragraph 253).

The **Lands Act of 1995** vests all land in Zambia in the President (Section 3(1)), whose consent is required for all transactions except those pertaining to use and occupancy of customary land (Section 8(3)). The Act grants the President the right to convert land held under customary tenure systems to leasehold title, in consultation with Chiefs and those impacted by the conversion, and taking local customary land laws into consideration (Section 3(3)-(4)) and the 1985 Administrative Circular No.1 Procedure on Alienation, Section 4(D)(ii)).¹⁸ The Land Act marks the first time the role of Chiefs in land administration was formally recognized; however, the Act was widely rejected by Chiefs due to the conversion provision, which is seen as a way to eliminate traditional authority over land.¹⁹

The **Lands Acquisition Act 1970** provides for compulsory government acquisition of land and other property through eminent domain.

The **Subordinate Courts Act** states that it shall not stand in the way of customary law, with the understanding that customary law is not “repugnant to justice, equity or good conscience, or incompatible, either in terms or by necessary implication, with any written law” (Article 16). The extent to which this Act could be used to challenge customary law or decisions within the customary system is unclear.²⁰

The **Gender Equity and Equality Act of 2015** establishes the Gender Equity and Equality Commission provide for measures to ensure gender equity, equality and integration of both sexes in society, including equal rights to allocation and acquisition of land and other property (Paragraph 27(3)(b)). It has not yet brought into effect.

In **2000** the **National Gender Policy** set into law that at least 30% of land in Zambia (in the statutory system) should go to women.

The **Intestate Succession Act of 1989** governs the administration of an estate in cases where there is no will. It does not apply to customary land, chieftainship property, or family property. The Act grants to the surviving spouse or child (or both) usufruct rights to the house of the deceased (Section 9), not ownership. The logic behind the Act is patrilineal, which conflicts with the many matrilineal systems of inheritance in Zambia, and is thus often ignored by local courts.²¹

The **Draft National Land Policy of 2017** was rejected by traditional leaders between 2015 and 2017. While no new draft has been finalized or presented, it was reported that in July 2020 the Minister of Lands announced that a new draft is now ready.²² Key proposed contents of the draft policy include:

- ◇ Traditional leaders would maintain their powers to administer and allocate land to prospective developers;
- ◇ Minimum age for acquiring land would be reduced from 21 to 18 years of age;
- ◇ Zambia Development Agency (ZDA) would have authority over all land allocation to foreign investors;
- ◇ Land held by foreign investors would be surrendered back to the government after 30 years (approximate) when the investment lease period comes to an end.

The **Urban and Regional Planning Act No. 3 of 2015** provides for a framework for administering and managing urban and regional planning, including a “democratic, accountable, transparent, participatory and inclusive process ... that allows for involvement of communities, private sector, interest groups and other stakeholders in the planning, implementation and operation of human settlement development.”

The objective of the **National Resettlement Policy of 2015** is to “guide the implementation of the resettlement programme which empowers citizens who may not have the capacity to purchase land on the open market... and to assist to put in place operational instruments to guide resettlement and compensation of Internally Displaced Persons (IDPs) in the country in line with the African Union Convention for the Protection and Assistance of IDPs in Africa (Kampala Convention).”

The **Lands and Deeds Registry Act of 2006** provides for the issuing of Certificates of Title and Provisional Certificates of Title pertaining to leasehold land. It does not apply to customary land.

The **Lands Tribunal Act of 2010** provides for the powers and functions of the Lands Tribunal. The Tribunal was established under the 1995 Lands Act, intended as an efficient, effective, fast-track court pertaining to a variety of land-related issues. Individuals may file claims related to disputes or injustices stemming from land conversions with the Lands Tribunal. Functions of the Lands Tribunal include²³:

- ◇ Adjudication over land disputes to protect individual and institutional interest in land;
- ◇ Operation as a circuit court to reach the most vulnerable who cannot afford legal fees;
- ◇ Provision of alternative dispute resolutions

While the tribunal was intended to help the poor, who did not hold land titles to protect their customary land rights, lack of awareness of the Tribunal in rural areas and lack of mobility of the Tribunal (which general stays in Lusaka) has resulted in an ineffective and inaccessible grievance mechanism²⁴.

The **National Agriculture Policy, 2012-2030**, aims “to develop a competitive and diversified agricultural sector driven by equitable and sustainable agricultural development” including by “working with the Ministry of Lands to increase the number of farmers with title deeds as an incentive to adopt sustainable land management practices and enhance the collateral value for accessing credit.”

The **National Housing Policy, 2020-2024**, was developed “to facilitate improvements in housing delivery through institutional and regulatory frameworks and coordination mechanisms in the midst of a growing housing demand” in line with the housing development agenda with the 7th National Development Plan (2017-2021), Vision 2030, the Sustainable Development Goals and the New Urban Agenda. This includes creation of new housing, enhancing affordability of housing, and improved regulation. The Policy also “promote[s] research and development aimed at encouraging the use of traditional and locally available building materials” and plans to “introduce mechanisms to increase the provision of social and institutional housing and set the framework for mobilizing housing finance.”

Women and Land Tenure

Customary systems within Zambia have always differed. Prior to colonization, some of these traditional systems enabled equal access to and control over land for men and women,²⁵ but this was largely undermined by the colonial system²⁶ resulting in the current largely discriminatory customary system.

Since 1995 the Lands Act has provided protection for women under the statutory system but does not apply to land held under the customary system. In both the statutory and customary systems, rules and their implementation vary at the local level. In the statutory system, some local government councils have put measures in place that call for land allocations to women higher than the 30% dictated by law.²⁷ Rules between customary systems vary, change over time, and are sometimes even abandoned; in some cases, women’s land rights are even further eroded, while in other cases they are being strengthened.²⁸

Widows in Zambia are particularly vulnerable to land and housing violations. The practice of “property grabbing”, whereby relatives of a deceased man take possession of his land and property at the expense of his widow, is growing.²⁹ Women who are victims of this type of grabbing are sometimes unknowledgeable about the law, which under the statutory system states that widows retain usufruct rights to the house.

Research shows that the HIV/AIDS pandemic is exacerbating the impoverishment of rural women who lose access to land after the death of their husbands.³⁰ The same research revealed that there is no difference between matrilineal and patrilineal villages in access to land for widows: they are both at

equal risk of losing their rights to land. In cases where women were able to retain their land, it is normally due to the influence of local traditional authorities, more so than Government decrees.

In addition to land tenure issues, women farmers in Zambia tend to get lower yields than their male counterparts, a phenomenon that has been documented throughout the developing world. While 52% of people working in agriculture in Zambia are women, women obtain 20-25% less output per hectare than men.³¹ Researchers assert that the discriminatory land distribution results in women receiving or retaining land with lower quality soils, based on findings that women field managers are more likely to be allocated less productive land.³²

Urban Informal Settlements

Lusaka is a rapidly growing, largely unplanned city that is dominated by informal settlements.³³ In 2015 the Government revealed that 70% of urban dwellers live in such informal settlements, caused by a combination of population growth, housing shortages (of about 3 million units), and poor urban planning.³⁴ These urban dwellers face critical health risks, including exposure to pollutants and heavy metal tailings leading to lead poisoning and collapse of mud brick housing during rains.³⁵ The new National Housing Policy is expected to address this critical issue.

Conflict over Customary Land

Many vulnerable farmers in Zambia have been pushed off the land they have cultivated for decades, both by other farmers who claim they have rights to that land, or by traditional leaders of chiefs holding authority to grab and then sell land without consulting those using the land. Chiefs, and their misuse of power, are often at the center of disputes: at times the same piece of land is granted to more than one farmer, or land is retroactively denied to families. There can also be confusion over ownership, due to high fees demanded by chiefs in exchange for use of land that farmers interpret as payment for purchase.³⁶ While the Land Tribunal is intended to help resolve such claims, in practice it is inaccessible to poor farmers in rural areas.³⁷

Foreign Investment, Large scale land acquisitions, and Land Grabbing

Zambia is a fertile and agriculturally productive country that is drawing the attention of foreign investors. As an example, the Mkushi farm block in Mkushi district, in Zambia's Central Province, is a 176,000 ha piece of land that was reserved for colonial tobacco farmers in the 1950s. In more recent years, since independence, the land has become "a showpiece of agricultural development"³⁸ and Zambia's breadbasket, producing large amounts of Zambia's wheat (40%), soybeans (21%), and maize. Mkushi is now held up as a model for other investment projects.³⁹ In addition to the productivity

potential, Zambia offers political stability, strong property rights, and a governmental commitment to agricultural development.⁴⁰

While some argue that the term 'land grab' is not used accurately in every case, and encompasses more general concerns around investment,⁴¹ it is clear that there have been cases of foreign investment in land in Zambia that at the very least raise questions about the impact on and protection of local people.

In 2009 investors approached the government of Zambia with a request for two million hectares of land, on which they wanted to plant castor oil plants (*Jatropha curcas* L.) for biodiesel production. The investors were widely reported as Chinese, though the firm was actually Kaidi Biomass Zambia Limited (KBZ), a joint venture between the Chinese 'Zhongying Changjiang International Investment Guarantee Limited' and the Zambian entity 'Biomass Development Plc'. Their request included a US\$3 billion investment to establish a biodiesel industry in Zambia, that would also create approximately 50,000 jobs. Traditional leaders in the five districts targeted (Mporokoso and Luwingu in Northern Province and Nakonde, Isoka and Chinsali in Muchinga Province) expressed their willingness to provide large parcels of land for the project. The Paramount Chief Chitimukulu, however, disapproved of the project and issued a statement to his chieftains that warned against it, citing risks of large-scale plantations. Nonetheless, a contract for a US \$450 million project was signed in 2011. However, due to widespread concern, the company was only granted two initial parcels of 2,000 ha with the possibility of an additional 80,000 ha upon further review, causing the Chinese investor to pull out of the deal.⁴²

The drive for large scale export-oriented agricultural projects focused has led to actual displacement as well. In the 1990s, thousands of Zambian copper miners – farmers who had already been displaced by the copper industry – lost access to the state land that they relied on for subsistence farming as members of the Zambian elite sought to privatize the land for export agriculture. This move catalyzed farmers and local communities to organize into cooperatives in opposition to such takeovers, some of the first in response to political and economic measures taken after neoliberal restructuring in the country.⁴³

There have also been more general concerns over the extent to which agribusiness in Zambia is able to shape policy in the country, given the existing governance gaps, which include a limited ability to monitor and regulate, in development processes, land tenure relations, and labour practices. This influence is not limited to agribusiness: donors have been able to influence government through the Zambia National Sugar Adaptation Strategy, and subsequently sugar price formation and transmission has been heavily influenced; investor concessions are also prevalent.⁴⁴

Recommendations

To improve tenure security in Zambia, civil society advocates working with and within the customary system in the formulation of new policy, which could include guidelines specifically on the customary system⁴⁵. Specific recommendations from the Zambia Land Alliance include⁴⁶:

- Development of “separate legislation, and to provide in statute for community land, whose ownership will be in the community. Provision must be made for a clear framework and minimum standards for how customary land should be administered, for recognition, protection and registration of community rights to land and land-based resources, taking into account multiple interests of land users, including women;
- ...provision to recognise the rights of landholders and users in customary tenure so that everyone, irrespective of social status, gender or origin can have similar rights to land.;
- [Granting or recognition of] rights of local communities to define the rules of access to and use of resources in their territories should be recognised and promoted, as long as they are consistent with the broader legal provisions, including gender equality. There is need to collaborate with traditional authorities and other land stakeholders to review holding practices, usages and legislations governing land holding, land acquisition, usage and delivery with a view to better protect land rights within customary tenure.
- ... recognise and promote customary land dispute resolution, finding ways in which they can be recognised on a par with more formal land dispute mechanisms;
- Establish an upper limit on the size of land an individual can hold by the use and location;
- Establish appropriate land taxation system that will serve as an incentive for optimal utilization of land, but also be a deterrent to land hoarding and speculation;
- ...enact legislation to outlaw traditional practices that are an encumbrance to women’s land ownership in some customs.
- Continue the affirmative action of ensuring that women receive 30%, as a minimum, of all new land allocations in state land.
- Put in place appropriate legislation to ensure the 30% provision of all land allocations are made exclusively to women, and that single mothers, widows and women in polygamous arrangements are considered as priority.
- The policy needs to provide for spousal consent to disposal of land.
- Government should undertake to guarantee land inheritance rights of unmarried or married daughters, irrespective of the land tenure within which the land was held in.”

Others have advocated creating a record of customary rights, such as Traditional Land Holding Certificates, which have already been introduced in parts of Zambia, though with some controversy.⁴⁷ Several chiefs in Zambia have developed their own system of documentation, where often the names of both partners, men and women, are recorded. While the approach is not universal in the customary system, nor systematic, the House of Chiefs has pushed for these letters to be formally recognized.⁴⁸

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