

WOMEN'S ACCESS TO LAND IN ZAMBIA

**Prepared for:
International Federation of Surveyors (FIG)
Commission 7 (Cadastre and Land Management)
Task Force on Women's Access to Land**

**Prepared by:
Bonnie Keller**
Rolandstr. 101
50677 Köln, Germany
tel/fax: +49 221 38 16 58
BonnieKeller@compuserve.com**

November 2000

**** with thanks to all those in Zambia who assisted me to meet knowledgeable people
and collect relevant information**

A BRIEF OVERVIEW OF ZAMBIA

Zambia is one of Africa's poorest countries. Liberalisation of the economy has not benefited the majority of citizens, 68 per cent of whom were below the national poverty line in 1998. Although poverty is more severe in rural areas, it is now increasing in urban areas due to the impact of liberalisation measures such as retrenchment of workers. Forty-four per cent of the population of ten million lives in urban areas, making Zambia the most urbanised African country except for South Africa. In 1997 only 11 per cent of the labour force were in formal employment. The majority of rural Zambians are farmers, growing crops for their own subsistence and for sale. In urban areas most people struggle to earn their livelihoods in the informal sector, for example, women by petty trading and men through piece work. Female household heads (27% of rural and 19% of urban households) are among Zambia's poorest citizens.

Social indicators are bleak. The percentage of primary school age children who are enrolled in school has decreased from 88 per cent in 1985 to 69 per cent in 1996. One-half of adult women and one-third of men are illiterate. Women give birth to an average of 6 children, and one-half have been pregnant or have a child by the time they are 18. Zambians' life expectancy at birth is now less than 40 years, reflecting the severity of the HIV/AIDS pandemic. The country has one of the world's highest HIV prevalence rates, with 20 per cent of the adult population infected. An estimated 11 per cent of children under 14 years old are orphans, and the incidence of households headed by children is growing.

The multi-party system which replaced the one-party state in 1991 has not yet institutionalised a democratic culture. Ordinary citizens increasingly express dismay about corruption in the public sector, which is characterised by low pay and poor morale. At the same time, however, political transformation has led to development of a vibrant civil society, with diverse non-governmental organisations active on many issues, including gender equality and land reform. The current government is not considered to have promoted gender equality and women's empowerment in a serious way, having – for example – taken more than four years to approve the National Gender Policy.

WOMEN'S ACCESS TO LAND: THE LEGAL AND SOCIAL FRAMEWORK

The National Gender Policy (2000) states that, "The acquisition and ownership of land in Zambia continues to be a major hindrance to women's effective participation in national development." Women's access to, control over and ownership of land are above all constrained by customary law and by attitudes and practices which reflect the subordinate position of women under customary law. In rural and urban areas, and whether educated or not, women do not have equal opportunity to access, inherit and buy land by comparison with men.

Article 23 of the Republican Constitution of 1991, amended in 1996, forbids laws that discriminate on the basis of sex. At the same time, however, the Constitution explicitly excludes from this provision, personal law – such as that concerning inheritance of property – and the application of customary law. In

the past, customary law provided some safeguards to protect women's access to (though not control over) land; however, these safeguards no longer operate today. Although there are ethnic differences in bodies of customary law and these have changed through time, an over-riding commonality is that women are treated as minors who are subordinate to men – fathers, uncles, brothers and husbands.

In rural areas, married women obtain access to land for farming through their husbands. In the event of divorce or widowhood, they may be permitted to continue to use the land, but under customary law they will never inherit control of this land. Most divorced or widowed rural women return to their natal families, where they are dependent upon male kin for access to land. The local chief may allocate a plot to a single woman, particularly if she has children, but it would be unthinkable to allocate a plot to a married woman in her own right. A man attending a seminar organised by a Sida-funded land management programme described the prevailing situation: “As head of the family, men are supposed to have the fields, not women. We give them what they need.....and buy them clothes, so why divide up your farm?” Most rural women do not yet challenge their unequal position under customary law. Female chiefs do not act differently from their male counterparts in administering land to the disadvantage of women.

The Lands Act (1995) vests all land in the President, who delegates his authority to the Commissioner of Lands to issue 99-year leasehold title deeds to applicants. The Lands Act recognises the validity of customary law in areas under customary land tenure and therefore automatically privileges men and disadvantages women. Although recognising customary tenure, the Act allows a monetary value to be put on this land and permits the conversion of customary tenure to leasehold tenure. Poor small-holder farmers complain that their traditional leaders and local bureaucrats are now allowing Zambian and foreign investors to buy the land where they and their ancestors have lived for generations. At an NGO-organised workshop to familiarise farmers with the Lands Act, they reacted angrily: “This law is only made for the rich, what about us poor?” Even were the privatisation of land carried out so as to enable poor farmers to obtain leasehold titles to their land, the vast majority of women would not benefit because under customary law they cannot own land.

Urban land is outside the jurisdiction of customary tenure. In the so-called conventional residential areas, where people with more income live, the vast majority of 99-year leasehold title deeds are held by men. Although increasing numbers of single and a few married women buy plots of land in their own individual right, joint titling of plots by married couples is very rare.

Most men do not consult their wives on land issues and are strongly opposed to joint ownership. Men are said to shun joint ownership on grounds that a wife may be tempted to commit murder for the sake of property ownership; or, should a married man die and his widow remarry, “another man” would then benefit from the property. The prejudice against women owning land forces married women to avoid provocation and the risk of divorce by even

mentioning the possibility of joint ownership, even when they have the financial means to contribute to land purchase.

Squatter settlements in urban areas where the poor live were for many years illegal – that is, not officially recognised. Residents invested in housing, even though they had no security of tenure, with one long-term study having shown that women give a higher priority to investment in housing than men give. In these areas it is now widely accepted that female household heads have the right to land and home ownership but that, for married couples, the man is still the “owner of the house.” The City Council in Zambia’s capital city, Lusaka, recently designated the majority of formerly illegal squatter settlements as Statutory Improvement Areas. This means that residents now have the right to apply for Occupancy Licences (with leasehold rights of 33 years, renewable).

There is inadequate sex-disaggregated information on land titling. The record keeping system in the Ministry of Lands in theory allows for retrieval of data on sex of title holder, as well as joint titles. In practice, such data cannot be routinely provided. Thus, concrete information is very sketchy. In a 1988 study of land ownership by over 800 farmers in rural settlement schemes, 95.7 per cent of titles were held by men, 3.7 per cent by women and only 0.6 were joint titles held by married couples. At the present time the Department of Lands estimates that about 15 per cent of title deeds are held by women.

The way in which land is administered militates against women’s equal access. Officials of district councils, which act as agents for the Commissioner of Lands in processing applications for land title, are often biased. They accept the traditional subordination of women and apply this bias in executing their responsibilities. For example, at least until very recently, it was common to ask a married woman to present evidence of her husband’s consent in her application for land. Although half of adult women are illiterate, councils advertise the availability of plots in newspapers. The bureaucracy associated with acquisition of land is costly, cumbersome and lengthy, requiring an applicant to repeatedly visit council offices, as well as travel to Lusaka. Women who have fewer financial resources in general than men, and who have far greater demands on their time, are therefore disadvantaged. They are also less aggressive than men, and when the file containing their application “sinks to the bottom of the pile,” they are less likely than men to complain.

Besides allocation of land according to customary law and through purchase, land is also acquired through inheritance. In areas under customary tenure, a wife cannot inherit land or other property from her husband. Inheritance of rights of access to land and control of other property is the prerogative of the deceased’s kin, usually males.

When a person dies without a will, which is usually the case, the Intestate Succession Act (1989) is supposed to protect the interests of the surviving spouse and children. The Act allows the surviving spouse to inherit 20 per cent of the deceased’s estate and, together with the children, the house.

However, land under customary tenure is excluded and cannot be inherited. The Law notwithstanding, the deceased's man's relatives typically grab his property, including "his" house. Female relatives of a deceased man usually participate in property grabbing, not understanding that they will likely suffer from the practice themselves in the future. Non-enforcement of the Intestate Succession Act, the exclusion of land under customary tenure and property grabbing are such serious problems in Zambia that these are long-standing issues on the agenda of the women's movement.

If the deceased had title to land or owned a house, the administrator of his estate, appointed by his relatives, often tries to get ownership transferred to himself, rather than acting as a trustee for the widow and surviving children as the law intends. This illegal practice can be challenged in land administration agencies or in courts, only if officials are knowledgeable about the law and the rights of women and children. Local courts often make decisions based on customary law, whether it applies to a particular case or not. Many widows accept the loss of property, a share of which is rightfully theirs, because the emotional costs of challenging in-laws is too high. Because women do not have equal right to property ownership, widowhood usually means loss of the right of access to fields where their labour has been invested and to their homes. Widows are amongst the poorest Zambians.

MOST IMPORTANT ISSUES AFFECTING WOMEN'S SECURITY OF TENURE

The most pernicious problem that women face in getting access to land, and having security of tenure, is **customary law**. This law is not codified (that is, written down), and certain common practices today are not "traditional" (that is, unchanged from the past). Property grabbing, for example, is not traditional. In the past widows and children were looked after by their in-laws, rather than robbed. People invoke the sanctity of customary law when it suits their personal interests. A male farmer, for example, who benefits from his control over his wife's labour on his fields will not altruistically allow her to have her own land. Women who stand to gain from the misfortune of a widowed in-law will be in the forefront of property grabbing. Discrimination against women under customary law is protected by the Constitution, the Lands Act and the Intestate Succession Act. Small wonder, then, that personal attitudes and everyday practices which perpetuate gender inequality persist, when they are validated by the highest law of the land.

A lack of commitment to gender equality by the current government is a basic constraint to women's security in land. The Constitutional Review Commission (1995) recommended that "the Constitution should reaffirm the principle of equality for men and women in all respects [including] that women have equal rights with men regarding the use, transfer, administration and control of land and enjoy the same rights with men with respect to inheritance." This recommendation was not accepted. Zambia will have presidential and parliamentary elections in 2001. There is no evidence in the public statements of the opposition parties that they take gender equality any more seriously than does the ruling Movement for Multiparty Democracy.

Women's and men's **lack of knowledge** about the negative impacts of discrimination against women is a constraint. Most people do not know about the Lands Act, do not think that its provisions have anything to do with them and in particular do not question women's lack of right to own land. Many women face particular constraints in accessing information about land issues because they do not have the same or equal access to the media which brings information to men – newspapers, radio and public meetings. Most women are also much less familiar with the intricacies of government bureaucracies than men and find the procedures for obtaining land title daunting.

The **complicated bureaucracy** for administering land is therefore also a constraint for women. Some of the outlying districts are hundreds of kilometres from Lusaka, where land titling procedures are centralised. According to reports of those who have gone through the process, one must visit the Department of Lands often and demand that attention be paid to one's file – a process which most women would not be able to undertake because they face so many competing and urgent demands on their time.

Most women cannot easily raise capital or get loans, but **obtaining title to land costs money**. Even without paying bribes to officials, which is reportedly commonly, an applicant for a plot of land must hire a surveyor and pay a variety of official charges. Even should a female applicant manage to pay these costs, the law requires that a plot be developed within a short period of time, otherwise it is liable to be repossessed. The new system of privatising land benefits the well-to-do and offers little possibility for the poor, and especially for poor women, to access land and have security of tenure.

RECOMMENDED INITIATIVES

Legal changes are needed. The protected status of customary law under the Constitution and the Lands Act should be abolished to promote women's ownership of land. The provision in the Intestate Succession Act that privileges land held under customary tenure should be amended so that a surviving spouse can inherit claims to such land. A new legal framework will not, however, automatically improve women's status. Civic organisations and relevant government institutions, such as the Department of Lands and the Gender and Development Division at Cabinet Office, need to intensify efforts to **educate citizens about women's right to own land**. Both women and men, and specific target groups such as traditional leaders, should be reached by information campaigns at community level, using participatory methods. It is particularly important that the advantages to both spouses of **joint ownership** of land be stressed. The AIDS tragedy in Zambia is making some people more receptive to improving the claims of surviving spouses and children to land and houses, and joint ownership is an important strategy in this context.

Affirmative action is warranted to increase women's access to land. The Department of Lands now tries to allocate 10 per cent of available plots to women applicants, a very low figure by comparison with the 30 per cent stated in the National Gender Policy and the 60 per cent demanded by the women's

movement. Whatever the target, procedures for giving women priority are still ad hoc, and not systematic. The Lusaka City Council is planning to issue Occupancy Licences to plot/house owners in the Statutory Improvement Areas where poor people live. This initiative provides an opportunity to give priority to female household heads and to married couples who are willing to have their Licence in both their names.

The land administration and management bureaucracy should be **decentralised and simplified**. This will benefit everyone who seeks to have security in land, but most of all it will benefit women. Although it may not be possible to reduce the fee structure substantially, eliminating corruption which increases the costs of land transactions is basic.

Surveyors can assist to reduce the costs of land ownership for poor women. Through their professional association, the Surveyors' Institute of Zambia (SIZ), they can establish **survey aid services**, a pool to which members will volunteer hours to make surveys for those with demonstrated financial need. SIZ can also establish a programme to **encourage young women to consider careers in surveying**, since this profession is currently gender segregated.