

Gender equality and land administration:: the case of Zambia

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**Gender equality and land administration:
the case of Zambia**

Rachel Spichiger and Edna Kabala

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ABSTRACT

Land, and in particular agricultural land, is central to livelihoods in rural Zambia. Zambia is characterised by a dual legal system of customary and statutory law and by dual land tenure, with state land and customary land. A first wave of socialist-oriented reforms took place after independence in 1964, which abolished previously existing freehold land in favour of leasehold. Subsequent changes in government policies under the influence of structural adjustment programmes and a new government in 1991 paved the way for a market-driven land reform. The 1995 Lands Act introduced the privatization of land in Zambia and provided for the conversion of customary into state land, with the hope of attracting investors. However, the Act has been unevenly implemented, at least in rural areas, in part due to problems plaguing the land administration institutions and their work, in part due to opposition to the main tenets of the Act from chiefs, the population and civil society. Civil society, with donor support, calls for more attention towards women's precarious situations with regard to access to and ownership of land under customary tenure, but it still expresses a desire for customary tenure to remain. However, civil society also recognizes that customary practices are often also discriminatory towards women who depend on male relatives for access to land.

A gender policy, passed in 2000, and two subsequent draft land policies tried to address women's lack of access to land by stipulating that 30% of the land should be allocated to women. What has been the role of donors in these developments? Both on the government's side and for civil society, NGOs and donor agencies, gender has increasingly come to the fore. Donors have certainly pushed for policies and changes in legislation. In particular, the recent Anti Gender-Based Violence Act has been hailed as a huge step for gender equality, and was heavily supported by donors. The land sector, however, does not receive much donor support. While it is notable that donors (e.g. USAID and the World Bank) supported the process leading to the 1995 Lands Act, no donor supported gender issues within that sector in that period. Some donors do take issues related to women's access to land into account within their agricultural programmes or through their work on democracy and governance, however. Over the last five years, several programmes implemented by NGOs (national and international) and civil-society organisations have focused entirely on women's land rights. Despite registering some positive outcomes, especially in areas of knowledge and capacity-building, these programmes have met some challenges. Apart from technical and financial issues, it was observed that changes with regard to land tenure are slow to be institutionalised, if at all, and that mechanisms to enhance the accountability of land administrators on both customary and state land are lacking. These initiatives are taking place against a chang-

ing background, as Zambia is now at an important juncture at the policy and legal levels, with attempts to codify customary law and to take steps to strengthen tenure security on customary land. How and when this will be done, and how this codified customary law will be enforced, as well as what impact it will have on women remains to be seen. What is also uncertain is what impact this will have on current policies that are under review (e.g. gender and land policies) and the direction that will be taken with regard to issues of tenure security for women living under customary tenure. Whether and, if so, to what extent donors will adopt a defining role in these coming endeavours is not yet clear, especially in a changing aid landscape, since several donor agencies have now withdrawn from Zambia.

LIST OF ABBREVIATIONS

<i>AAZ</i>	ActionAid Zambia
<i>AfDB</i>	African Development Bank
<i>AHSI</i>	African Human Security Initiative
<i>CEDAW</i>	Convention on the Elimination of All Forms of Discrimination against Women
<i>DANIDA</i>	Danish International Development Agency
<i>DfID</i>	UK Department for International Development
<i>DLA</i>	District Land Alliance
<i>EC</i>	European Commission
<i>EU</i>	European Union
<i>FAO</i>	Food and Agriculture Organisation of the United Nations
<i>GDP</i>	Gross Domestic Product
<i>GIDD</i>	Gender in Development Division
<i>GRZ</i>	Government of the Republic of Zambia
<i>GTZ</i>	Deutsche Gesellschaft für Technische Zusammenarbeit (German Agency for Technical Cooperation)
<i>HIVOS</i>	Humanistisch Instituut voor Ontwikkelingssamenwerking (Humanist Institute for Cooperation, the Netherlands)
<i>IIED</i>	Institute for International Environmental Development
<i>ILC</i>	International Land Coalition
<i>IMF</i>	International Monetary Fund
<i>JICA</i>	Japan International Cooperation Agency
<i>JWOP</i>	Justice for Widows and Orphans Programme
<i>MCC</i>	Millenium Challenge Corporation
<i>MMD</i>	Movement for Multi-Party Democracy
<i>MS</i>	Mellemfolkeligt Samvirke (since 2011 forming part of Action Aid International as ActionAid Denmark)
<i>LADA</i>	Law and Development Association
<i>NGO</i>	Non-Governmental Organisation
<i>NGOCC</i>	Non-Governmental Organisations Coordinating Council

<i>NIZA</i>	Nederlands Instituut voor Zuidelijk Afrika (Netherlands Institute for Southern Africa) (merged since April 2012 with ActionAid Nederland)
<i>NORAD</i>	Norwegian Agency for Development Cooperation
<i>OECD</i>	Organisation for Economic Co-operation and Development
<i>PF</i>	Patriotic Front
<i>SIDA</i>	Swedish International Development Cooperation Agency
<i>TCDZC</i>	Technical Committee on Drafting the Zambian Constitution
<i>UN</i>	United Nations
<i>UNDP</i>	United Nations Development Programme
<i>UNICEF</i>	United Nations Children's Fund
<i>USAID</i>	United States Agency for International Development
<i>WOLAR</i>	Women and Land Rights Programme
<i>WFC</i>	Women for Change
<i>ZAW</i>	Zambia Alliance of Women
<i>ZLA</i>	Zambia Land Alliance
<i>ZNFU</i>	Zambia National Farmers' Union
<i>ZNWL</i>	Zambia National Women's Lobby

INTRODUCTION

As in most countries in sub-Saharan Africa, land is a central means of production in Zambia, where agriculture remains a source of livelihood for most people in rural areas. Despite experiencing some economic growth in recent years, Zambia is still a country with challenging poverty levels, especially in rural areas (GRZ 2011: 9; DfID 2012). The Sixth National Development Plan lists limited access to land as one of the five constraints on economic growth and poverty reduction. Land administration and land management are seen as problematic due to unreliable land information management systems and the lack of decentralization and collaboration among different stakeholders (GRZ 2011: 7).

Economic development was also the main driver behind the 1995 Lands Act, which introduced the privatization of land in Zambia. One of the main goals of the Act is to provide for the conversion of customary land into state land.¹ The Lands Act has only been weakly implemented since its introduction. Chiefs, the population and civil society alike have opposed the Lands Act and associated policies, though for different reasons. However, they all seem to agree on the fact that customary tenure has to be taken into account. This is particularly interesting because, at the same time, customary practices, although very different among the seventy-three ethnic groups present in Zambia, are widely held to be often discriminatory to women with regard to land access and ownership and have been at the centre of the concerns of civil society.

¹ The idea was not new, however, as the Reserve and Trust Land (Adjudication of Titles) Act, 1962, provided for the conversion of reserve land into freehold. The Act was repealed in 1975 (Bruce and Dorner 1982).

The Lands Act is silent on gender issues. However, both a gender policy, passed in 2000, and a draft land policy from 2002 and 2006 tried to redress what was considered to be a gender imbalance in land access by stipulating that 30% of the land should be allocated to women. The consultation process on the policy was put on hold pending changes following a new government coming to power in 2011 and the drafting of a new constitution. These processes have meant in effect that no fully fledged land reform has taken place.

In the meantime, women's access to and ownership of land have come to the fore over the last decade, and while this issue may have been left partially to one side by the state, several NGOs (international, national and local), funded by donors, have stepped in with programmes targeted at women's land rights.

The aim of this study is to examine the land reform process and the impact of donor assistance on the inclusion of gender in this process, as well as on policy and legal processes. It will present a brief history of the reform and the policy process relating to the different tenure systems in Zambia (section 1). In section 2, it examines the reform and the current context of land tenure from a gender perspective, examining how women can access land under customary systems and how women's rights are addressed in both state and international law. Section 3 highlights the problems encountered in the implementation of the reform, with particular attention to how this has affected women. In section 4, the paper looks at past and present donor interventions and the role of donors in the land sector, with a focus on programmes related to women's land rights.

I. THE LAND REFORM

I.1 Brief historical overview

Zambia undertook its first land reforms after independence in 1964. Under Kaunda's presidency, land was declared to have no monetary value,² and through the Land (Conversion of Titles) Act of 1975 it became vested in the President, 'to be held in perpetuity on behalf of the people' (Adams and Turner 2006: 8; Smith 2004: 1644). Unused land was taken over by the state, and existing freehold land was abolished and converted into state leaseholds for terms of a hundred years and subsequent leases for terms of 99 years (Subramanian 1998: 270; Adams and Turner 2006: 8; Mudenda 2006; GRZ 2006a: 5). Only small-scale property was permitted (Adams 2003: 7). Gradual changes in government policies and reforms were undertaken under structural adjustment programmes, but it was the change of government in 1991, when the Movement for Multiparty Democracy (MMD) came to power, which was instrumental in introducing a market-driven land reform aimed at encouraging investment. The introduction of the reform did not take place very smoothly. A land policy was initiated in 1993, but never passed, and a Lands Bill was initially withdrawn due to the heated debate surrounding it (Adams 2003: 8).³ Nevertheless, in 1995, land legislation reform was introduced with

the Lands Act, which repealed the Land (Conversion of Titles) Act of 1975 (Adams 2003: 8, UN-Habitat 2005).⁴ The main elements of the new law, which was intended to promote foreign investment (Brown 2005: 89), were that land sales were allowed: previously, only the sale of improvements on the land had been permitted.⁵ Also, the categories of Reserve Land and Trust Land, introduced during the colonial regime, were merged into a new category called customary areas, while the category of state land⁶ remained; the Act recognised existing rights to land in customary areas (Brown 2005: 86), but also provided for any customary land-holder to convert the holding into a lease (Adams 2003: 9). Finally, it created a Lands Tribunal to hear and decide on disputes related to land (customary and state) (GRZ 1995; Kaunda 1995: 89; Brown 2005: 86) and a Land Development Fund for new areas of development of land (GRZ 1995).

The main idea underpinning both the Act and the policies drafted subsequently was the gradual conversion of customary land into state land.

I.2 Categories of land in Zambia

Land in Zambia is divided into state land and customary land (state land comprising about 6-10 percent of the land).⁷

² This was not a new principle, though, as traditionally, land was seen as being given and received free and as having no commercial value (Adams 2003: 10-11; Gluckman 1941)

³ The Lands Bill was very unfavourably received (see Kaunda 1995: 91-92) for the following reasons: (i) it was seen as undermining the authority of the chiefs; (ii) it contained no restriction on the alienation of land to foreigners; and (iii) it provided for District Councils to surrender certain lands to the President, thereby depriving Councils of the 'much needed income from land' and centralizing land administration (Kaunda 1995: 91).

⁴ Other legal texts having an impact on land include the Lands and Deeds Registry Act 1914 as amended; the Land Survey Act 1960; the Agricultural Lands Act 1960; the Lands Acquisition Act 1970; and the Town and Country Planning Act (Adams 2003).

⁵ The Act repealed a previous law which prohibited land sales or land transfers to non-Zambians (Subramanian 1998: 271).

⁶ State land itself came from the category of 'Crown land', which had been created by the colonial regime and which used to be held by white settlers (Roth et al. 1995: 4).

⁷ This figure has been contested for being outdated (see among others Adams 2003).

State land

State land is land owned, bought and sold by individuals who possess registered leasehold titles (14 or 99 years). It consists of all the land that is not located within a customary area (GRZ 1995, section 2), all the land situated along a broad 30-50 km stretch along the railway line from the south to the north of the country (Adams 2003: 2; UN-Habitat 2005: 40), land under town and city councils, protected game, forest areas and national parks (UN-Habitat 2005: 40-41). It is administered by the central government (the Ministry of Lands) using English common law and is subject to taxation (Brown 2005: 82).

State land administration and management institutions

State land management in Zambia has been assessed as highly centralized (Sjöstedt 2011: 137; ZLA 2008: 8) or even 'over-centralized' (Jorgensen and Loudjeva 2005: 14). Most state institutions do not have power below the district level (*ibid.*: 24).

The institutions responsible for state land are the *Ministry of Lands, Natural Resources and Environmental Protection* (previously the Ministry of Lands), composed of a Lands Department, a Lands and Deeds Registry and a Survey Department, the Commissioner of Lands and the district councils. The *Commissioner of Lands* is 'mandated to make grants or dispositions of land to any person who qualifies to hold land within the provisions of the Lands Act, subject to direction of the Minister responsible for land matters' (Ministry of Lands website, <http://www.ministryoflands.gov.zm/index.php/guidelines-on-land-alienation-module>, accessed June 2012). He/she is therefore the only institution entrusted to allocate state land (MS Zambia 2011: 15). The *district councils* are given the power, through the Land Circular No. 1

of 1985 and the 1995 Lands Act, to administer land in the districts and control the development of land in their areas. They deal with state land 'as agents of the state under the Commissioner of Lands' (UN-Habitat 2005: 50). They are responsible for processing applications for leases of state land and evaluating requests for conversions (Brown 2005: 100) (see below).

Customary land

Customary land is held by *chiefs* and *headmen* on behalf of communities, and they are responsible for its allocation and administration. Chiefs grant occupancy and use rights to customary land and oversee its transfer between subjects (Brown 2005: 98). For day-to-day land administration, community members refer to their headman.

Converting customary land

Customary authorities are limited in their power in the conversion processes introduced by the Lands Act, and their function has remained more or less the same as in the past (Alden Wily 2003: 2; Jorgensen and Loudjeva 2005; see also Sjöstedt 2011). Customary authorities are only granted the power to decide whether or not one can apply for a title: they cannot register nor have any powers to grant title. Once the conversion has been approved by the chief it goes to the District Council, which issues a resolution to issue a title (Metcalf 2006: 8). The lease contract is then between the Commissioner of Lands (on behalf of the President), who is the Lessor, and the Lessee (Metcalf 2006: *ibid.*).

Land dispute settlement institutions

The 1995 Land Act created a *Lands Tribunal* to handle land disputes, but it has been claimed to

be inaccessible for the majority of people. It is unclear whether its jurisdiction only applies to state land. In one view, because the 1995 Lands Act states that its jurisdiction is related to land ‘under this Act’ (GRZ 1995, section 22), this means that the jurisdiction is limited to state land (ZLA 2005: 2). However, the Act recognizes the two systems of tenure. According to Adams (2003), the jurisdiction of the Lands Tribunal is ‘to settle disputes relating to land’, but in practice its focus has been on disputes on state land (Adams 2003: 5).

Local courts are the lowest judicial bodies. Their jurisdiction covers civil disputes under customary law, including land disputes and marital and property claims. Above them are *subordinate courts*, then the *High Courts* and the *Supreme Court* (Adams 2003: 5). All courts have the jurisdiction to hear disputes under both systems. However, as disputes under customary law mostly start at the level of the local courts, it is through appeal that cases reach the higher levels (Himonga 1994: 240). Also, it should be noted that most people in rural areas will try and settle their disputes with traditional dispute settlement institutions before going to a local court.

2. WOMEN AND LAND IN ZAMBIA

Even if international law as well as Zambia’s own statutory legislation upholds gender equality in matters related to land, women’s access to and ownership of land, as in many sub-Saharan African countries, relies upon customary and cultural prac-

tices, which may not be in agreement with other legislation. As was said above, most of the land in rural areas is customary, and people live under customary law. Customary law is not a unified body of law but differs among the 73 ethnic groups present in Zambia.

2.1 Women’s land rights in international and national law

International law

Internationally, Zambia ratified The United Nations’ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1985 and the African Union Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa in 2006. Apart from matters related to gender equality, both of these texts promote equal access to land (the protocol even mentions a guaranteed right to property (cf. Art. 19)).

The 1991 Constitution and the 2012 Draft Constitution

Zambia’s 1991 Constitution, amended in 1996, forbids discrimination on the basis of sex (see Art. 23). However, importantly, it does not include personal law (e.g. inheritance law) or the application of customary law under this provision (Keller 2000: 1; Machina 2002: 9; see GRZ 1991, Art. 23). However, the Constitution has been under review since 2003 and redrafted a few times; a new draft following the change of government in September 2011 was released to the public in May 2012 for consultation. The consultation process has been extended several times, and at the time of writing no final

draft constitution has been released to the public.⁸

While civil society has divided views on the draft made public in May 2012, according to one of the District Land Alliance offices, the ‘Bill of Rights had generally made adequate provisions for protection of land rights of disadvantaged people in the Zambian society.’ (*Times of Zambia*, 3 June 2012, on <http://allafrica.com/stories/201207030860.html>). The draft Constitution of 2012 indeed recognizes customary law, but stipulates it has to be ‘consistent with this Constitution’. Article 1 states that ‘any other law or customary practice that is inconsistent with any of its provisions is void to the extent of the inconsistency’ (GRZ 2012: Art. 1). Article 51 states that women and men have an equal right to inherit, have access to, own, use, administer and control land and other property, and that they have equal rights during and at dissolution of the marriage (GRZ 2012: 30, Art. 51). However, it has also been pointed out that the draft is lacking provisions to protect women’s rights, and does not tackle female representation, as it does not clearly stipulate female and male proportions in institutions.

Legislation related to marriage and inheritance

Inheritance and marriage laws affect women’s access to land and land-related assets: the

Intestate Succession Act (1989), which governs the administration of the estate of a person dying intestate, allows the surviving spouse to inherit 20% of the deceased’s estate, and, together with the children, the house (Keller 2000: 3). In polygynous marriages, which, according to the 2007 Demographic and Health Survey, apply to 14 percent of married women, half of the inheritance is divided between the children (irrespective of gender), and the remainder is split equally between the wives (OECD Gender, Institutions and Development Database, accessed on 10 September 2012). However, the Act ‘falls short of granting equal inheritance rights to women’, as a widow only gains rights of usufruct, not absolute ownership (Richardson 2004: 21). Moreover, the logic behind the Intestate Succession Act is patrilineal, thereby directly conflicting with the matrilineal systems of inheritance that are common in Zambia. This means that it is often ignored by the local courts, as it does not reflect the ways people live (Richardson 2004: 21).

An important issue is that land held under customary tenure is *excluded* from the acts governing inheritance and succession and has to be inherited in accordance with the customary law of the area (Keller 2000; Shezongo-Macmillan 2005). Indeed, despite the Intestate Succession Act, a customary practice is often followed in which the family of the deceased ‘claims it is entitled to seize the estate’, a practice often labeled ‘property-grabbing’ (OECD Gender, Institutions and Development Database, accessed 10 September 2012).

Other laws that relate to marriage can be mentioned, but their application is limited to civil marriages only. *The Marriage Act* regulates civil marriages but does not contain a provision related to property regimes (UN-Habitat 2005). *The Matrimonial Causes Act 2007* was

⁸ The process has been fraught with delays since 2012. The Technical Committee on Drafting the Zambian Constitution (TCDZC) extended the Consultative Period several times. On 23 July 2013, the Chairman of the Committee stated that the final draft would ‘be ready no later than December 2013’. (*Lusaka Times*, 23 July 2013, www.lusakatimes.com/2013/07/23/final-draft-constitution-ready-by-december-2013-justice-silungwe). However, at the time of writing the process is more uncertain than ever, with the President stating at the beginning of December that there is no need for a new constitution. (<http://www.lusakatimes.com/2013/12/02/government-refutes-media-allegations-sata-u-turned-constitution/>).

developed by the Zambia Law Development Commission⁹ to replace the British Matrimonial Causes Act (1973) used previously by making it ‘compatible with indigenous values’ (*Times of Zambia*, 25 February 2005, on <http://allafrica.com/stories/200502250127.html>). It regulates divorce and matrimonial causes under civil law (including, among others, the settlement of property). However, it does not mention the equal distribution of property upon divorce.

2.2 Customary law and women’s rights

Customary law in Zambia consists of different laws used by the 73 ethnic groups in Zambia (Subramanian 1998), and is not codified. It is recognised by the Subordinate Courts Act 1998 and by the Local Courts Act (Ndulo 1994: 340).

Much has been written on customary law in Africa. It has been shown that it has changed and keeps changing over time, but also that in many cases it has in fact been shaped, and sometimes even ‘invented’, by colonial authorities and the local elite involved in its definition. Zambia is a case in point (see Chanoock 1985; Colson 1971; Munkombwe and Choolwe-Mulenga 2008: 9; Himonga 1994). In relation to the evolution of customary law, some have argued that, at least in the past, traditional systems in some areas of Zambia enabled men and women to have equal access to and control over land (Keller et al. 1990; see also Wright 1983). However, this equality seems to have been undermined during the colonial period (Kajoba 2002: 36). Nowadays, customary law is considered by many to be

discriminatory against women (GRZ 2006a; AfDB 2010; UN-Habitat 2005; Keller 2000; Munkombwe and Choolwe-Mulenga 2008).¹⁰ Also, although the Subordinate Courts Act includes a provision stating that customary law should not be repugnant to justice, equity or good conscience, what can be filed under this provision remains debatable.

More specifically with regard to land, in communities where customary law is applied, women in general, as in most of sub-Saharan Africa, access land or have usufructuary rights to land through a male relative (husband, father, brother, brother-in-law). Under customary law, married couples do not own property jointly, nor do they inherit property from each other. Traditionally, every male head of a household is entitled to land for his home and cultivation, and his male children inherit his land upon his death. Women can never acquire land or landed property on their own: they have to reside with their parents, husbands or sons (Adams 2003: 19). It is upon a change in marital status, such as a divorce or becoming a widow, that problems can occur. ‘Laws on customary inheritance have been a major determining factor to accessing land by women’ (Mudenda 2005: 3). It is worth noting that in matrilineal or patrilineal communities with virilocal residence (i.e. residence with the husband), the land belongs to the husband, and the wife has the right to a share of the crops upon the dissolution of the marriage. In matrilineal and uxorilocal groups in the northern regions, the husband is given land rights, but the women are perceived to have

⁹ The Zambia Law Development Commission was established by an act of parliament in 1996, among other tasks to research and make recommendations on legislation, to revise and reform the law, and to codify unwritten laws.

¹⁰ In an interview with the *Zambia Daily Mail*, Felix Kunda, from the Justice for Widows and Orphans Programme (JWOP), notes that a common strand in the different customary laws of the country is that ‘women are treated as minors who are subordinate to men such as fathers, uncles, brothers and husbands’ (*Zambia Daily Mail*, 6 September 2012, ‘Engendering the case for land reform’, <http://www.daily-mail.co.zm/?p=13226>).

more secure land rights than in patrilineal communities. Other issues that subject women's inheritance of land to conditions include, for instance, practices of widow inheritance or levirate marriage, whereby a deceased man's brother can inherit the widowed wife. Women refusing to be subjected to this may lose their access to land previously guaranteed by their in-laws. However, the practice has been shown to be in decline (Malungo 2001).

Interestingly, civil society, for instance the Zambia Land Alliance, is of the view that what works best is working within and with the customary tenure system (ZLA 2005), and that any new policy should provide guidelines for how to strengthen tenure security within the customary system (ZLA 2008: 14). As is the case in other African countries, an idea that has been discussed in the recent years is to record customary rights (see Van Asperen and Mulolwa 2006). This has been implemented by, for instance, ActionAid Zambia in its programme on Land Rights, promoting the issuance of Traditional Land Holding Certificates. In fact, a system of chiefs' letters has been developed in recent years where both the name of the man and the wife are put on the letter (however, this approach is not systematic nor applied everywhere). The House of Chiefs has been pushing for these letters to be formally recognised (COWI 2009: 25).

One suggestion by the ZLA to make customary land law more women-friendly is to enact legislation outlawing 'traditional practices that are an encumbrance to women's land ownership in some customs' (ZLA 2008: 18). Moreover, the ZLA also thinks that legislation should include provisions on the representation of women in land administration structures on state and customary land, as this would help enforce changes more effectively (ibid.).

3. THE LANDS ACT AND ITS IMPLEMENTATION

3.1 General implementation

Since the passing of the Lands Act in 1995, the controversy surrounding it has made its implementation difficult (Mbinji 2005: 33; Sjöstedt 2011: 136): while the government recognized the need for widespread land reform, it faced strong resistance from traditional authorities and civil society (Sjöstedt 2011: 136). Implementation problems have also been ascribed, among other things, to inadequate financing, technical problems and a lack of decentralization of the land administration. The Lands Act was controversial, and so were the policy processes following the Act, which have been fraught with pitfalls.

The Lands Act: a contested text

Some scholars have, for instance, pointed to the ambiguities inherent in the Lands Act: while the Act recognizes customary rights, it also makes it easier for foreign or Zambian investors to acquire private title to customary land (Brown 2005: 86-87) and thus may deprive people of their access to land (for more details, see the section below on implementation). Moreover, paradoxically, although the 1995 Land Act confers on chiefs the power to approve requests for tenure conversions, these conversions can at the same time lead to their physical domain being reduced (Brown 2005: 98), hence also reducing the extent of their authority (even if at the same time requests for conversion may provide a source of income to chiefs). Since the Lands Bill was presented in 1994, most chiefs have held that the Lands Act and the draft policy undermine their authority (Brown 2005: 99; Kaunda 1995: 91). An-

other concern for chiefs is that, under the current legislation, there is no provision for land that has been converted into state land to be reconverted into customary land (Mudenda 2006: 4). The Act also failed to pass any statutory instruments to govern the administration of land (Mudenda 2006: 5, Adams 2003). The Act confirmed two separate systems of land tenure: a centralized state land policy and the traditional system ruled by custom on the community level (Sjöstedt 2011: 137). A main criticism is that the Act, although recognizing customary tenure, is silent on the administration of the 73 different traditions of customary tenure and did not provide for changes in the customary tenure system.

The land policy: a difficult process

The draft land policy, which had been based on consultative meetings and the National Conference that had been held in 1993, was shelved after 1993 and re-introduced in 2002. The Ministry of Lands then asked for further public consultation on the draft, which led to a review process taking place between 2002 and 2005 (ZLA 2005: 5). However, the consultation process was criticised for not sufficiently facilitating the participation of the poor, women, the young and other disadvantaged groups (Mbinji 2005: 33). A second draft land policy was drafted in 2006, but only released to the public in June 2007 (ZLA 2008: 1). Since then the new draft has also been widely debated and has not been passed yet.¹¹

¹¹ Traditional chiefs, in a contribution to the Civil Society National Consultative Meeting on Land Policy (21-22 August 2007, Lusaka), said they rejected the document 'as it threatens the existence of Chieftaincy in Zambia' (http://www.zla.org.zm/media/zla_tradleaderscommentsdlp.pdf).

*Problems related to Land Governance*¹²

Land institutions are an important reason for the uneven implementation of the Act. The land sector (headed by the Lands Ministry) has been plagued by inefficiency in land identification and allocation. According to Brown, the whole land system, whose financial and human resources are inadequate (Brown 2005: 103), is prone to corruption: 'at all levels of land administration, administrators can bend or ignore the rules governing the conversion of customary to leasehold.' (Brown 2005: 97; see also Jorgensen and Loudjeva 2005: 14). There is an important backlog of land applications, which also pushes people to look for ways to 'expedite' the process of registration. Even at the district level, district councils have also been said to abuse their position in allocating lands 'to themselves or local elites or investors' (Brown 2005: 100).

Land administration itself is seen to be dysfunctional, due also to the lack of decentralization. According to the draft Land Policy of 2006, 'the Ministry has only decentralized up to Provincial Level with limited capacity where such services as land allocation, surveying of land and provision of general land information are performed. At District Level due to the lack of organisational structure the Ministry uses Councils as agents in land administration. Councils cannot take up all the responsibilities due to lack of technical skills, finances and infrastructure' (GRZ 2006a: 31, Art. 12.1.3). The land administration information system is unreliable (GRZ 2011: 7): for instance, adequate records of title conversions

¹² The problems outlined in this section reflect the situation as reported over the last five to ten years. This might change soon, as the government has now started to work in several directions with regard to land governance, aiming among other things at decentralizing land administration, introducing legislation for customary land and embarking on a comprehensive land audit for all categories of land.

are lacking (Brown 2005: 88). While some progress has been noted at the Ministry with regard to service to customers, in particular with the creation of the Customer Service Center, the registration process is still felt to be long and cumbersome (MCC 2009; see Weiser and Balasundaram 2010: 21-23).¹³

Land conversions

Since 1995, title conversions have mainly taken place in peri-urban areas or in commercial rural areas, and titles have mainly been acquired by outsiders (foreign or national), benefiting local elites and investors (Brown 2005: 100). Private tenure is indeed concentrated in and near Zambia's cities, along the railway line between Livingstone and the Congo border, in the mining areas of the Copperbelt and in certain productive farming areas (Brown 2005: 82). Even though the conversion of customary holdings into private leaseholds is provided for by the law, few smallholders are aware of this possibility (Sjöstedt 2011: 137; Brown 2005: 90). Moreover, even if people were better informed about this, the transaction costs involved in converting the land would still be too high for most landholders (Brown 2005: 90; ZLA 2008). However, the demand for conversion seems to be on the increase (Adams 2003; see also interview District Council, January 2013).

¹³ From 2006-2009, a programme from the Millennium Challenge Corporation (MCC) Zambia Threshold Programme, supported by USAID, aimed to combat corruption within the Ministry, as well as reduce the time and steps required to register land. The results of the programme seem mixed, as an end-term evaluation found that processing times had not reduced significantly (Weiser and Balasundaram 2010). On the other hand, the Customer Service Center created towards the end of the programme was felt to be positive, decreasing the chaos previously caused by individual applicants trying to track down staff in different places. More recent evaluations would be needed to assess the longer-term impact of the programme.

Areas experiencing population increase and/or economic boom (e.g. in the Northwestern Province) may witness more applications for conversion (see Ng'ombe and Keivani 2013).

On the ground, land speculation is reported to have become widespread in agricultural land and especially in tourist areas, with investors not paying for the converted customary land except for survey, registration and facilitation fees to the chiefs (Brown 2005: 91). Middlemen have taken advantage of the situation (*ibid.*). Ironically, whereas the Act aims at encouraging investment in land, by encouraging speculation it has increased absentee land ownership (Hansungule et al. 1998: 43; Palmer 2001: 9 in Brown 2005: 92).

Cases have also been heard where land that was given to investors with the consent of chiefs but eventually not developed was repossessed by the state instead of being returned back to customary land (Mudenda 2006: 6). Experts have pointed to the lack of transparency surrounding land transactions. On the other hand, the procedure of asking first a chief, then the council, then the Ministry of Lands for final approval is often bypassed, and investors and elites 'secure titles directly from the Ministry of Lands' (Brown 2005: 102).

There have been several cases of alienation of communal land to investors, for instance, non-Zambian commercial farmers, tourism operators or mines (e.g. Metcalfe 2006: 54; Ng'ombe et al. 2012). Even though the Lands Act protects customary land-holders, chiefs may not be aware of this proviso or not be willing to take it into account (Brown 2005: 92; German et al. 2011).¹⁴ Moreover, once the

¹⁴ For instance, in September 2012, a traditional leader in the Central Province allegedly sold land to investors, displacing 134 families in the process (*Lusaka Times* website, accessed in October 2012, <http://www.lusakatimes.com/2012/09/04/luo-asked-hold-chiefs-accountable-irresponsible-selling-land-investors/>)

land has been converted, it is not permitted to occupy it, effectively making its previous occupants squatters (Brown 2005: 93).

People have also been denied access to common pool resources as a result of land being sold to investors. The current context of investment in biofuels has most likely worsened the situation in this regard, as Zambia has been seeking to 'attract foreign and domestic investment' in order to revitalize the agricultural sector (German and Schoneveld 2012: 468; see also German et al. 2011).

As mentioned above, the government stated that they will soon introduce measures to tackle issues related to land governance and administration, but it is not yet clear how.

Dispute settlement institutions

The Lands Tribunal was supposed to give those who could not afford the courts access to a dispute-resolution mechanism as an alternative to the High Court (Jorgensen and Loudjeva 2005: 69; ZLA 2005: 3). This was also intended to serve poorer land-holders on customary land (Brown 2005: 91). Civil society has criticised this institution for being under-funded and lacking training (ZLA 2005: 5-6). In fact, few people know of its existence (Brown 2005: 91). The composition of the Tribunal has also come under criticism as not representing the general public nor women, and it lacks independence (ZLA 2005: 3; ZLA 2008: 23). While it was supposed to have a branch in each district center, it only has offices in Lusaka, travelling rarely due to budgetary constraints (Brown 2005: 91; Jorgensen and Loudjeva 2005: 69; ZLA 2005: 3). As a result, the Tribunal deals with cases from Lusaka, and mostly with inheritance disputes and appeals to decisions taken by the Commission-

er of Lands (Brown 2005: 91). Moreover, by 2003, 90% of its cases had been brought by men (ZLA 2005: 4).

There is a backlog of cases in local courts, which are under-resourced and under-funded, and lack adequately trained staff (African Human Security Initiative (AHSI) 2009). Also, people in general tend to use traditional courts rather than local courts, seeing it as more approachable and familiar, and more efficient. However, decisions of traditional courts have been shown to be gender-biased (AHSI 2009: 113).

3.2 The land reform and women's rights

The general context of gender equality in Zambia has played a role in how the land reform has incorporated principles of gender equality. Zambia ranks 136 out of 148 countries on the Gender Inequality Index 2012 (UNDP 2013). Although it is on the way to reach gender parity in primary education, it lags behind on several other fronts: women's access to resources and services such as health and water is low. Access to and control over productive resources remain problematic. Women's public and political representation is also low, with little participation in decision-making institutions. Only 12% of the Parliament is female (Sadie 2005, AfDB 2010), far from the SADC Protocol on Gender and Development target of 50% by 2015 (AfDB 2010: 7). At the local government level, only 7% of councillors were women in 2010 (ibid.).

Did the land reform try and answer or mitigate the problems faced by women and outlined in the previous sections? In fact, the 1995 Lands Act is gender-neutral and provides for everyone to have the ability to convert customary land into leasehold.

At the same time, by omitting to mention or discuss women's or gender issues, it is blamed for lacking a gender-sensitive framework under which the existing inequalities in land access could be checked and corrected (Machina 2002: 6). The Act also 'allows' discrimination because of its recognition of customary practices which can be discriminatory, a fact underlined by the Government in the Draft Land Policy 2006: 'the major drawback (...) is that the Land [*sic*] Act allows customary laws which mainly confer land ownership on men to apply to the administration of traditional land' (GRZ 2006a, Art. 14.1.3). Although customary practices are heterogeneous and in constant evolution, they often tend to discriminate against women, as we have seen above.

The Gender and Land Policies

A turning point was the 2000 Gender Policy, followed by two Draft Land Policies (2002 and 2006), which brought gender concerns into the land debate by mentioning women's lack of access to land, especially in customary areas. The land policies mention that 30% of the land should be allocated to women and the rest competed for by men and women on an equal basis. 'The Government has (...) recognised that women still lack control over land especially in customary areas as opposed to lacking access that they gain through their male relatives [*sic*]. The reason for this lies in customary practices' GRZ 2006a, Art. 14.1.6). The 2006 draft also states that the government will 'review statutory and customary laws and practices that perpetuate gender discrimination' and 'implement at least 30 percent land ownership for women' (*ibid.*) and that they will 'mainstream

gender in all institutions administering and managing land' (*ibid.*)¹⁵

Despite these attempts at introducing a gender balance in land access and mainstreaming gender in land policies, there are no provisions for the enforcement of the policies' provision on the allocation of 30% of the land to women.

Several commentators have noted the lack of clarity in the policies, including the gender policy, especially with regard to the kind of land the provision concerns and how this provision should be implemented and enforced (e.g. WLLA 2010; Adams 2003: 19; Jorgensen and Loudjeva 2005: 16). Both draft land policies are vague on this, only speaking about 'land' without specifying whether this is state or customary land. This ambiguity can have important consequences: MS-Action Aid Denmark reported that some local (traditional) authorities used the lack of explicitness in the gender policy as an excuse not to reserve 30% of their land for women (MS-ActionAid Denmark 2011: 29). UN-Habitat, for instance, considers the statement in the 2002 draft to mean 30% of state land and 30% of customary land (see UN-Habitat 2005: 43-44). The Commissioner of Lands, in an interview with UN-Habitat, said the policy was already being implemented on state land (UN-Habitat 2005: 43). Interviewees at one district council office in the Southern Province stated that they try and apply this clause when taking in applications for plots advertised by the coun-

¹⁵ According to the Zambia Land Alliance, there had been a policy pronouncement in 1999 by the Ministry of Lands, to the effect that 10 per cent of *all advertised* plots of land should be given to women, but the final policy document 'did away with that step of affirmative action by omitting the 10 per cent provision' [my emphasis] (Machina 2002: 7). However, it seems that a circular to this effect exists for district councils to effectively implement the 30%. To date, no disaggregated data could be produced on the number of women owning state land.

cil.¹⁶ However, no sex-disaggregated data on ownership or on applications for state land are available to illustrate the impact of affirmative action on women's land ownership in practice. A government audit of gender mainstreaming found that the Ministry 'had not adhered to the requirement of at least thirty percent (30%) land ownership by women' but also that sex-disaggregated data is lacking, as the IT system used by the Ministry of Lands does not make the sex parameter mandatory (Mwiimbu et al. 2012: 12-13).

Civil society has been very vocal in criticising the reform for not sufficiently taking women's needs and constraints into account. A main criticism of the draft policy 2006 by the Land Alliance is that because its main goal is still the conversion of customary holdings into titled holdings, it rests on market-driven principles, which on the whole discriminate against women (who tend to be poorer and not able to enter the land market). They also disagree with the policy's condemnation of customary tenure, on the contrary seeing customary land administration as having 'many advantages for the poor, women, youth and the disabled, even over statutory tenure' (ZLA 2007: 4). Likewise, the NGO Women for Change (WFC), established in 1992, seeks to 'preserve and at the same time encourage traditional authorities to adopt more pro-women policies' (Tripp 2004: 3).

Conversions or access to state land

Women are disadvantaged in their access to state land and in their ability to convert customary land: it is usually men who can convert land, as women cannot own customary land in the first place. Also, as mentioned above, for all poorer landholders, but perhaps more

so for women, who also tend to have fewer financial resources, bureaucracy is costly, cumbersome, lengthy, requiring repeated visits to council offices, as well as travelling to Lusaka (Keller 2000: 3, see also ZLA 2007: 4-5, Chinene et al. 1998, ZLA 2008). Councils advertise the availability of plots in newspapers, which discriminates against women, half of whom are illiterate (Keller 2000: 3). Another issue of importance is that, even if women are allocated state land, they might not be able to develop it during the eighteen months allowed by the Government to do so, due to their economic situations (Milimo et al. 2004: 5). Moreover, in practice, it is difficult to measure any progress on, for instance, the allocation of land to women due to the lack of sex-disaggregated data on land (Keller 2000: 3; ZLA 2008).

Joint titling

There is no automatic co-ownership or inheritance by spouses (Jorgensen and Loudjeva 2005: 33). Joint titling of plots is very rare (Keller 2000: 2), and even if not forbidden, it is not something that people do: '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' (Keller 2000: 2). Married women, on the other hand, have been seen 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' (Keller 2000: 2-3).

Land dispute settlement and women

As far as dispute settlement is concerned, the complicated and costly procedures and

¹⁶ Interview District Council, January 2013.

the other problems outlined above in relation to the Lands Tribunal place land dispute settlement out of reach of most rural women. Moreover, while issues related to inheritance such as property grabbing could be addressed by using statutory law and the state courts, most people, especially women, will shun these for practical, financial but also cultural reasons, and will use local courts or traditional courts instead. Unfortunately, these may be more easily biased against women. According to a legal expert, '(...) when a person is not satisfied with the ruling of one local court, he or she goes to another local court. Such local courts may not correctly interpret the new legislature [*sic*], the law of succession, that may prevent sexual cleansing and provide better way of sharing property. The other problem is that women under traditional customs are not expected to represent themselves in these courts, but are represented by men. Such men – brother, father or uncle – may be biased against women' (interview in Malungo 2001: 380). These issues are indirectly addressed not through the land agencies but through separate programmes funded by donors on access to justice or support given to the justice sector, as will be shown below.

Representation in institutions

It has been argued that gender-equitable representation in institutions 'may increase the likelihood of achieving gender-equitable outcomes from the processes of land tenure governance' (FAO 2013: 52). In general, as mentioned above, women are not well represented in decision-making institutions in Zambia, and this is reflected in land institutions. There are no provisions for gender balance in the different institu-

tions responsible for land administration or land dispute settlement at the national or local levels.¹⁷

3.3 Recent developments with regard to customary law

With the creation of the Zambia Law Development Commission in 1996, the government has, over the last ten years, shown an interest in codifying customary law, and very recently has been focusing upon customary land. In October 2012, the Minister of Lands called for legislation to ensure security of tenure for people on customary land (Ministerial Policy Statement 2012: 1-2) and announced a land audit of all categories of land. At the time of writing, it is not clear whether this has been implemented or not. Potential changes with regard to customary land administration have not been articulated clearly either. For instance, questions that come to mind relate to (1) the type of customary law that traditional courts will apply (e.g. will it be a unified customary law?), (2) the extent to which these changes will affect women, (3) whether the 30% clause will be part of this new customary law, (4) whether succession law as well as principles of gender equality will be mainstreamed in this law, and (5), whether land registration will be part of this plan, and if so, how this will be implemented.

¹⁷ A counter-example to this is, for instance, the Tanzania Village Land Act, which provides for female representation on the village adjudication committee and village land councils (UNIFEM 2011: 586).

4. DONOR-SUPPORTED INTERVENTIONS AND EXPERIENCES

4.1 Donor assistance to Zambia since independence

Donor support has been fluctuating since independence in 1964, with an ‘aid boom’ in the 1970s and 1980s,¹⁸ followed by a period during the end of the 1980s when Zambia, led by the UNIP party, refused to follow IMF regulations. In 1991, when the MMD party took over, structural adjustment was reintroduced, and donor support rose sharply in the early 1990s.

Since 2003, donor coordination has been strengthened through an on-going harmonization process, starting with the Harmonisation in Practice and leading to a Joint Assistance Strategy for Zambia (JASZ) signed in 2007 by sixteen cooperating partners (bilateral and multilateral). Representing a common strategy, the JASZ was hailed as a ‘unique document in the history of aid cooperation’ (Wohlgemuth and Saasa 2008: 7). This led some to see Zambia as a ‘showcase’ of the aid effectiveness agenda. However, the implementation of this agenda has not been as smooth as it appeared to be (Leiderer 2013: 12). Fragmentation is still present, as some donors are ‘reluctant to move out of their preferred sectors, especially the “darling” sectors of health and education’ (Leiderer 2013: 13-14). Also, despite some alignment and harmonization through basket funding and budget support, ‘the most important do-

¹⁸ Zambia was one of the richest countries in sub-Saharan Africa after independence, but its economy, mostly based on revenue from copper, took a plunge when copper prices fell, and it was subsequently affected by the oil crisis, leading Zambia to resort to donors’ assistance (Leiderer and Faust 2012).

nors operate outside government systems’ (Leiderer 2013: 22).¹⁹

The aid landscape is still in flux. In recent years Zambia has become less dependent on foreign aid. In 2010 official development assistance was provided by 20 donors,²⁰ but concentrated on three donors (the US, the European Commission and the United Kingdom) (Leiderer 2013). Whilst non-traditional donors, including China, Brazil and India, have shown increasing interest in Zambia,²¹ some of the major bilateral donors have recently withdrawn (Denmark, the Netherlands) or plan to do so in the future.

4.2 Support to land and related sectors

Unlike several other countries in sub-Saharan Africa, the land sector in Zambia has not been significantly supported by donors. Interestingly, several donors seem to have been involved in doing research on land tenure but without significant follow-up. In recent decades, donor assistance to land has increasingly taken the form of support for civil-society organisations or international and local NGOs working on advocacy or implementing programmes on land. Support is also often given indirectly through support to agricultural programmes. The Netherlands and Danida, for instance, have been important funding sources for issues related to land through their support to NGOs, as well as

¹⁹ For instance, in 2007 the Global Fund to Fight Aids, Tuberculosis and Malaria and PEPFAR provided 340 million USD, against 51 million USD from OECD DAC countries! (Leiderer 2013: 22).

²⁰ Leiderer (2013) notes that there are a number of donors not included in this count who provide assistance through NGOs (Leiderer 2013: 6).

²¹ However, one should note that China’s assistance in Zambia is not new, having started already shortly after independence.

supporting programmes on gender in general. Whether other donors will take their place is not yet known. USAID is the largest bilateral donor in Zambia, with support mostly to the health and education sectors. The EU is the second largest donor, and some of its core programmes are indirectly related to land (e.g. agriculture programme, and the Access to Justice programme (together with GIZ)).

Support to research and policy processes: from the Lands Act to today

Donors seem to have taken an active part in discussions linked to policy processes over the last three decades. This includes funding for research and conferences on land. Current support takes place more indirectly through support to civil-society organisations involved in advocacy. In 1982, for instance, the Netherlands commissioned a study from the Land Tenure Center of the University of Wisconsin-Madison on land tenure in Zambia as part of a food strategy study (Bruce and Dorner 1982). The authors of the study already reported feeling ‘inclined towards a policy of the gradual replacement of customary tenure by leasehold’ (Bruce and Dorner 1982: 41). However, the Netherlands did not pursue work in that direction. A little later, in 1986, the Land Tenure Center published the ‘Country Profiles of Land Tenure in Africa’ at the request of USAID. Donors were certainly present during the Lands Act process, but without becoming involved in programmes or pilot projects.²²

The 1995 Land Act, introducing a market-based land policy, was in fact one of the key conditionalities required from Zambia

in order to restructure its international debt (Brown 2005: 85, see also Izumi 1999: 9). It has been described as a ‘largely donor-driven piece of legislation designed to make the ownership and sale of land more compatible with structural adjustment’ (Scott 2002: 408). The process included a National Conference on Land Policy and Legal Reform in 1993 to discuss the Lands Bill. The conference was supported by the World Bank and the IMF, and funded by USAID (Ng’ombe and Keivani 2013). Later, after the Bill had been withdrawn, the Act was passed anyway, ‘following a great deal of pressure’ from the World Bank (Hansungule et al. 1998: 43).

USAID had also funded research undertaken by the Land Tenure Center from the University of Wisconsin Madison between 1993 and 1994, on the basis of which a national action plan had been developed in collaboration with the Ministry of Lands (Roth 1995: xi). According to Adams, the recommendations issued from this research have ‘not been carried through’ (Adams 2003: 17). Despite the fact that these efforts were geared at the time towards land individualization and registration, mainly titling, it is remarkable that, although ‘[h]ighly-positioned civil servants in the Ministry of Agriculture told [the Country Economic Memorandum Mission] that USAID supports titling’, a representative from USAID ‘denied any involvement in the land debate’ (Jorgensen and Loudjeva 2005: 75).

In 2003, Adams noted that no donor was ‘providing significant support to the land sector’ (Adams 2003: 21). However, donors were indirectly involved in the land policy process at a later stage by providing, for instance, financial support to the land-policy countrywide consultation process after 2002 (e.g. the Finnish Embassy, HIVOS, Oxfam, German Technical Cooperation (GTZ) (UN-Habitat 2005: 45)). In 2005, a Poverty and Social Impact

²² It emerges that Oxfam GB requested an investigation into the impact of the privatization of the mines on land tenure arrangements on the Copperbelt (Hansungule et al. 1998).

Analysis (PSIA) of reforms of land, fertilizers and infrastructure funded by the Norwegian government and supported by the World Bank came out against moving towards the full conversion of land that had been pushed for a decade earlier. Rather, it recommended focusing on ‘improving the existing state system’ by providing titles and better access to dispute resolution before expanding the system and only launching pilot land transfers ‘where titling makes economic sense – e.g. in highly productive areas with good infrastructure’ (Jorgensen and Loudjeva 2005: 55). Following this, in April 2006 the World Bank requested Oxfam and the Zambia Land Alliance to convene a meeting in order to inform CSOs ‘on its proposals on land policy and management’ (Adams and Palmer 2007: 60). They came up with a ten-year ‘plan of Action for strengthening land administration in Zambia’, recommending among other things the harmonisation of land-related laws, the decentralization of the functions of the Lands Tribunal to community level, the creation of District Land Boards and the strengthening of survey systems (Adams and Palmer 2007: 61; WB 2006). However, no project or programme seem to have resulted from this.

Support to land administration

No donor support is currently provided to the legal framework or to land administration (USAID tenure portal 2010: 11; interview Ministry of Lands, January 2013). Although general support to the land sector is not high, some initiatives, even if not directly related to women’s land rights, are worth mentioning here. For instance, urban and peri-urban land has for several years been the focus of a few donors concerned with the tenure security consequences of the high level of urbanisation of the country, in particular in the Cen-

tral and Copperbelt provinces. From 1997 until 2003, for instance, SIDA supported urban spatial planning under the Land Tenure Initiative (see Berrisford 2011); this was followed by another project aiming to build capacity for land tenure administration in Lusaka (however, SIDA have withdrawn from urban development).

Land administration institutions have also received some forms of support. From 2006-2009, the Zambia Threshold Programme, whose overall goal was ‘to combat administrative corruption (...) and reduce administrative barriers to increased trade and investment’, focused on the Ministry of Lands among three other government entities (Weiser and Balasundaram 2010). The programme aimed to improve transparency and efficiency, as well as combating corruption. The main goals were to reduce the number of steps needed to register deeds and titles, to develop a new software system and to create a customer service center. Despite the successful completion of the latter goal, the project’s impact was judged to be only partial (MCC 2009). Related to but not directly dealing with the land sector is the support given to, for instance, decentralization and local government through programmes by JICA, GTZ, UNDP, the World Bank, Danida, DfID, Irish Aid and the EU within the framework of the Joint Assistance Strategy for Zambia, which can indirectly have an impact on land administration.

Support to agriculture

Support to agriculture often, of course, relates to land issues. The World Bank supports the GRZ’s Farm Block Development project, which aims to use undeveloped areas with a potential for commercial agriculture in every province. It includes ‘negotiating with chiefs,

converting the customary land to state land, and investing in complementary infrastructure such as feeder roads, electricity, water for irrigation, and communication facilities'. However, this project, which started under the MMD, is not aimed at enhancing or strengthening small-holders' tenure security, but rather at attracting large-scale farming investment. The land is demarcated into large plots and offered to investors as long-term leaseholds, which are 'expected to benefit neighboring smallholders with the development of infrastructure, opportunities for secondary businesses, and establishment of new markets' (USAID 2010: 10). USAID also supports land-related issues through its work in agriculture. Together with the Swedish International Development Agency (SIDA), USAID is funding the Food Security Research Project (FSRP), on-going for more than a decade; included in the project was an analysis of customary land (USAID 2010: 10).

4.3 Support to gender issues

A large part of the focus on gender is located in the education and health sectors, which, as in other countries, reflects donor countries' stronger focus on gender equality in the social sectors rather than in the economic and productive sectors (OECD 2011: 13). Health and education are also the sectors in which the biggest progress has been made.²³ Some of the activities in the health sector can be linked to both land and gender, for instance, in issues of succession and inheritance. The prevalence of HIV/AIDS has highlighted the problems related to the inheritance of land and other types of prop-

²³ For instance, gender parity in education has increased and gender has been mainstreamed in activities in the health sector, in particular in the field of HIV/AIDS.

erty, in particular where laws or customary practices had gaps.

However, according to a gender-sector analysis commissioned by DfID and Irish Aid, in terms of progress on gender equality and women's empowerment, and despite some examples of good practice, the period 2000-2010 has been called a 'lost decade' (Jennings and Nkonkomalimba 2011: 5; see also GRZ 2006b). This failure can be ascribed to different factors, such as the lack of cooperation and unified thinking among donors and civil-society organisations, the lack of skills and resources to support gender analyses in both government and CSOs, which would effectively enable gender mainstreaming (and related to this a lack of sex-disaggregated data), the lack of capacity and resources in the different government institutions relating to gender and the limited commitment to gender mainstreaming in the line ministries. Interestingly, it has also been argued that gender mainstreaming 'has resulted in the evaporation of gender issues' because of the lack of accountability at sector level (Jennings and Nkonkomalimba 2011: 19).

Another factor identified by that analysis is 'the limited understanding of and engagement with customary structures and practices and their impact on policy implementation' (Jennings and Nkonkomalimba 2011: 6). Indeed, as has been mentioned before, it is often at the level of implementation that the problem is the greatest, and where the institutions implementing policies and access to them matter the most. Crucially, NGOs have tried to fill this gap, as will be shown below.

Government, donors and gender equality: current challenges

The Ministry of Gender and Child Development was created in 2012 by the current gov-

ernment. Prior to that, the institution responsible for gender at government level was the Gender in Development Division (GIDD) created in 1996, supporting since 2006 an Office of the Minister of Women and Gender in Development. The GIDD itself followed a succession of different institutions, such as the Women's Desk and the Women in Development Department. The GIDD was mandated by the government to coordinate, monitor and evaluate the implementation of the 2000 National Gender Policy. Several donors have supported the GIDD, and subsequently the Ministry of Gender and Child Development.

Despite donor support, the GIDD is affected by a lack of funds and capacity in terms of the staff and skills needed to fulfil its mandate (AfDB 2010: 6; Jennings and Nkonkomalimba 2011). The Ministry today still faces the same challenges in terms of funding and staffing and suffers from a lack of coordination between partners (interview, Ministry of Gender, January 2013; see also OECD 2011: 9). A majority of GIDD's funding has come from partner countries, as the government's funding has been delayed or not delivered, making processes difficult due to a lack of continuity (Jennings and Nkonkomalimba 2011: 16). Support to the GIDD and gender equality have been allocated through a multi-donor trust fund (Ireland, Norway, the Netherlands and the UN system) under a Joint Gender Support Programme put in place in 2008 (AfDB 2010: 6).²⁴ In agreement with the Paris Declaration on Aid Effectiveness, the programme has been coordinated by one Cooperating Partner (UNDP). A mid-term

review found that, despite having achieved positive results such as gender audits of three ministries (agriculture, land and education), these audits have not necessarily had an impact on policies. Linkages between the Gender Focal Points in the line ministries and the GIDD are weak, compounded by the fact that the GIDD is understaffed. Cutting budgets has also contributed negatively to gender equality, which is routinely overridden by other priorities: 'Once you have budgeted for meetings with farmers, there is no money for gender' (Deputy Director of the Ministry of Agriculture and Cooperatives in Rozel Farnworth and Munachonga 2010: 22).

Partner countries are found to be silent on gender and to lack a common position and strategy on gender equality (Jennings and Nkonkomalimba 2011: 20). The same is said of the work done on land. According to MS ActionAid's Land Rights Programme Review, coordination among donors needs to be improved. Donors among themselves but also NGOs diverge in approaches to advocacy strategies, but also, and more crucially, on how to secure access to land and the rights of smallholders (COWI 2009: 41).

Role of civil society and NGOs

Civil society in Zambia, often supported by foreign donors, has been instrumental in policy and legal processes. In particular with regard to gender equality, the work of the umbrella organisation NGOCC (Non-Governmental Organisations' Co-ordinating Council) deserves to be mentioned. Several organisations are working on land rights: important actors include, for instance, the Zambia Land Alliance (ZLA) and the Zambia National

²⁴ The programme was supposed to start in 2008, but started after an eighteen-month delay in 2009 (Mwenechanya 2011: 4).

Farmers' Union (ZNFU), both of which have branches at district level.

While civil society is considered very vocal in Zambia, and has certainly had an important input in gender-related forums, some fear that, like donors, it lacks a common vision or goal on gender equality (Jennings and Nkonkomalimba 2011). Civil-society organisations might also be weakened by the recent implementation of the NGO Act No. 16 of 2009. The government's decision to implement the Act has been considered a blow to NGOs, as it allows government interference in the work and structures of NGOs, despite an earlier promise in the PF manifesto to revise the Act passed under the MMD government (Civil Society Press Statement, 15 September 2013, <http://www.ngocc.org.zm/index.php/about-ngocc>).

Support to policy, research and advocacy on gender equality

Donors have been involved in substantial ways in advocacy and policy-making. The GIDD was assisted by the Netherlands in facilitating the inclusion of gender concerns in the constitutional review (Milimo et al. 2004: 5). Earlier, DfID and UNDP had provided financial and technical assistance to the GIDD in the 2000 Gender Policy process.²⁵ The current Ministry of Women and Child Development has been involved in the new constitution-making process: the Ministry led the 'women's position' on the draft Constitution, which emphasized the removal of clauses that limited gender equality and strengthening the clauses upholding the rights of women as well as men. Several donors are also involved in the National Gender

Policy that is currently under review and that is expected to cover access to assets such as land for women.²⁶

An important recent milestone in gender equality has been the adoption of the Anti-Gender Based Violence Act in 2011. Several donors have collaborated on the development and implementation of the Anti-Gender Based Violence Programme, with financial support during the campaign being provided by UNDP, UNICEF and DfID.²⁷

Support to gender equality: the link to land

Although not much of an issue in the 1995 Lands Act, inequality with regard to land access and land ownership between men and women had been discussed before in Zambia, in particular with regard to agricultural productivity (see Milimo 1990, Kumar 1994). Tracing the way in which these issues have been incorporated into policies, one can note that they have increasingly come to the fore over the last fifteen years, including in the wake of the discussions surrounding the 2000 Gender Policy. While this paper does not aim to uncover or discuss the different theoretical currents underpinning the approaches on women's land rights, it is still interesting to note that most of the donors' main discourse on women's land rights, despite claims of it being borne out and underpinned by rights-based approaches, often relates to or uses the efficiency argument on gender equality, i.e. that gender equality makes sense economically or socially in terms of nutrition and health. Expressions of this are found in the argument that women's rights are part and parcel of the

²⁵ Interview DfID, January 2013; interview UNDP, December 2013.

²⁶ Interview Ministry of Gender, January 2013.

²⁷ Interview UNDP, December 2013.

fight against poverty: ‘women do not have the same land rights as men, and that is the reason why they are disadvantaged and they don’t progress very much, and when we are addressing poverty in general, if we don’t address those land rights issues for women, then we will not achieve very much.’²⁸ USAID uses the same line of argument in the description of their ‘Feed the Future’ Programme (2011-2015), which aims at helping women farmers to ‘have equal opportunities to access credit, receive training, and own property. Why is this important? When women increase their income, they tend to invest in their children’s health and nutrition and in improvements in their family’s quality of life. Since women are usually in charge of preparing food for their families, their participation in programs that improve nutrition is vital’ (www.feedthefuture.gov, accessed in April 2013). This is reflected in the ways in which gender equality is tackled: despite NGO discourses framing land access for women as women’s *rights* to land, women’s land access and ownership are more often part and parcel of programmes dealing with agriculture than programmes in their own right. There are obvious reasons for this, as the following paragraphs will show, but also consequences.

Women in agriculture

In practice, projects related to agriculture often partly or indirectly tackle access to land one way or another, for the obvious reason that access to land is at the core of farming. Regardless of the fact that women play an important role in agriculture, owning land (even customary land) is often a pre-condition to

be able to become a member of a cooperative, for instance, or to benefit from the government’s support schemes for food security, which means that most women smallholder farmers do not qualify for this type of support (NORAD 2011). Conservation agriculture projects, in selecting lead farmers, often select men, as they ‘own land’ (*ibid.*). In order to mitigate this, agricultural programmes or projects therefore often have a gender component and try and mainstream gender into their initiatives. For instance, Sweden, the Netherlands,²⁹ Finland and the Swedish Cooperative Centre (SCC) together supported the Zambia National Farmers’ Union’s (ZNFU) implementation of their strategic plan through a Joint Financing Agreement running from 2009 until 2013. One of the main goals of the plan was to mainstream gender in initiatives related to agriculture, climate change and environmental sustainability. However, it was found that gender has not received enough attention and that, although a gender policy was developed by ZNFU and people seemed aware of the policy, it ‘has not been implemented to any substantial degree’ (Chipeta et al. 2012: 23).

Support to gender in land administration

The AfDB, within its Economic and Sector Work, planned ‘a gender-responsive audit of Zambia’s land resources and tenure systems’, which would enable the AfDB to mainstream gender equality in its interventions in the sector (AfDB 2010: 17). A gender audit of the land administration took place in 2011, financed by UNDP and DfID.³⁰

²⁹ Support was phased out after 2009.

³⁰ Interview Ministry of Gender, January 2013; unfortunately, no data are available on the results of the audit.

²⁸ Interview with Swedish Cooperative Center, January 2013.

Support to justice reform: linkages to land

As noted above, access to justice and institutions is central to defending or redressing women's rights. Started in 2006, the Access to Justice programme was first supported by Denmark, and it has taken on the EU and GIZ as new partners since 2011. It aims to provide easier access to justice for all, in particular 'disadvantaged sections of the population'. The programme is seen as having been quite successful, as illustrated in the increase in clients applying for legal aid, reduced complaints about missing files in the judiciary and the improved services of the Victim Support Unit of the police, especially with regard to women and children.³¹

Challenges: culture and gender roles

As noted in previous sections, for women to 'own' land in Zambia is often considered something alien and as going 'against the grain' of local practices. Therefore programmes aiming at supporting women's land rights face cultural constraints in relation to gender roles. Women cannot be targeted alone by a project without taking into account men, the household and relations between men and women. NORAD report that, even if conservation farming projects try and select women as 'lead farmers', this is problematic in practice, as these women's husbands often do not agree or, for instance, do not allow them to participate in Conservation Agriculture training if the lead farmer is a man (NORAD 2011: 11).

³¹ The Law and Development Association (LADA), a legal clinic in the Monze district, mentioned appreciating working with the Victim Support Unit, which they considered efficient and very cooperative (interview LADA January 2013).

4.4 Specific interventions on land and women

Illustrating the increasing interest of donors in land security for the poor, a few recent programmes have addressed the dearth of interventions with regard to gender equality in land tenure. Worth noting, for instance, is a new programme which started in mid-2013 focusing on the security of tenure of marginalised households. This is being implemented by DanChurchaid and the Zambia Land Alliance, and is financed in large part by EuropeAid.³² The programme targets both customary and statutory tenure in one district. It is looking into 'practical methods of documenting customary land' and aims at strengthening the capacity of non-state actors dealing with issues of land in collaboration with state sectors (<http://www.danchurchaid.org/projects/list-of-projects/projects-in-africa/securing-land-rights-for-poor-and-marginalised-households-in-zambia>, accessed on 3 June 2013). No details are available at this stage about how this will be implemented in practice.

Recently, two programmes targeted women and their access to land, the first two programmes of this kind in Zambia. Interestingly, both were implemented by ActionAid Zambia, in collaboration with other NGOs. The first was the Women and Land Rights Programme, and the second was called WOLAR (Women and Land Rights Programme), and was implemented in collaboration with NIZA, several donors and NGOs. The former was implemented in Zambia only, while the latter was part of a broader programme taking place in other countries in southern

³² The project, 'Enhancing Sustainable Livelihoods for Poor and Marginalised Households through Land Tenure Security in Three Districts of Zambia', was scheduled for 2012-2015, but was launched after some delay in June 2013.

Africa (Mozambique, Malawi, South Africa, Zambia and Zimbabwe). Despite the positive impact both projects have had, they also illustrate the difficulties in working on attitudinal changes with regard to women's ownership of land.

The WOLAR Project was a two-year project supported by the MDG-3 Fund of the Netherlands government and implemented by a partnership of the Institute for Southern Africa (NIZA), Action Aid in Mozambique, Zimbabwe, Malawi and South Africa and the Non-Government Organization Coordination Council (NGOCC) in Zambia. It aimed at enhancing women's awareness, support and control over land and on mobilizing productive resources and services in order to meet their basic livelihood needs and become more economically independent and secure. In Zambia, the NGOCC implemented the WOLAR Project in eight target districts (Kafue, Mansa, Monze, Mkushi, Nakonde, Chipata, Solwezi and Kaoma). Other organizations that collaborated with NGOCC in the implementation are Action Aid Zambia (AAZ), the Zambia Alliance of Women (ZAW), the Zambia Land Alliance (ZLA) and the Zambia National Women's Lobby (ZNWL). Part of the project was training in conservation farming, community forums on land rights, legal assistance to women who had been evicted from their land and developing educational materials and radio programmes on women's land rights (NGOCC 2011). Despite its successes, in Zambia the programme did not achieve all the planned objectives.³³ NGOCC staff observed that tackling land administration and gender discrimination issues are part of a long-term process, and that

discrimination remains. Also, other challenges are related to the multifaceted nature of access to land: having or owning land is in itself not an answer to poverty. For instance, many of the disadvantaged women who obtained land were forced to sell it, as they lacked the financial means to exploit it.³⁴

The Women and Land Rights Project in Zambia (WLRP), which took place between 2009 and 2012, was an initiative under the Building Local Democracy Programme of MS ActionAid Denmark. It was jointly undertaken by ActionAid International Zambia, Young Women in Action, Young Christian Women's Association and the Zambia Land Alliance. The project aimed at promoting women's access to, control over and use of land in selected districts of Southern, Central and Lusaka Provinces in Zambia. This project focused on developing and implementing innovative approaches to securing women's land rights in fifteen communities in six districts in these three provinces. As an outcome of this work, the project 'aimed to develop innovative and citizen centered participatory models that can change practices within traditional institutions dealing with customary land matters, influence more positive community attitudes to women's right to land and open up for more women focused interventions.' The important innovation was to bring on-board traditional authorities as agents of change: the project mobilised 460 traditional leaders, some of whom have since developed ways to document land ownership by using traditional certificates of land ownership.

The programme has therefore been successful on several counts, both on sensitization, but also by encouraging dialogues between (poor) women and chiefs, and, ac-

³³ Interestingly, documents consulted mostly mention Malawi when they speak about results from the WOLAR, as well as, to a lesser extent, Zimbabwe and South Africa.

³⁴ Interview NGOCC, January 2013.

According to NGOs and people in the communities, giving rise to some changes in attitude in these communities. Also, the question of 'women owning land' has become less of an 'issue' in the eyes of men. However, it has also been felt that the rate at which change is taking place is being hampered by the 'high levels of negative attitudes towards women owning land (...) as some community members are deep-rooted in anti-women land rights beliefs' (WLRP presentation, Monze, December 2010). This points again to the centrality of the role played by cultural beliefs and practices.

CONCLUSION

Zambia's 1995 Lands Act, while recognising both customary and state land, opened the way to the privatization of land, under pressure from donors to create a land market that would attract foreign and national investors. The Act provides for the conversion of customary land into state land, i.e. land available for purchase and individual, registered ownership. The Act, as well as subsequent draft land policies in 2002 and 2006, have been contested, and it has been unevenly implemented so far. Policy processes have been fraught with delays and resistance from different stakeholders. Interestingly, traditional authorities, civil-society organisations and people have expressed the wish for customary land tenure to remain. So far, the majority of land in Zambia is still customary. Chiefs do not accept the land policy because it threatens their authority over land. Civil society is in general of the opinion that customary tenure should remain, albeit with changes as to its content so as to enhance or strengthen landholders' tenure security.

Tenure security has been rendered fragile by the increasing pressure on land. However, not everybody is equally affected, and women are therefore at the core of this discussion. The Lands Act itself is silent on gender issues, but over the last fifteen years, concerns over gender equality with regard to land access and ownership have been increasingly voiced. Customary law, in particular, is seen to discriminate against women's access to land. Scholars have pointed to the important role of the colonial regime in degrading pre-colonial tenure systems in which women and men previously had equal access to land. Nowadays, despite variations among the 73 ethnic groups and their kinship systems, women are said mostly to have usufructory rights to land, and to depend upon a male relative to access land.

To a certain extent this could be redressed by law, but this is not happening, for several reasons. While the 1991 Constitution forbids discrimination on the basis of sex, it excludes inheritance and customary law from this provision! Legislation regarding inheritance such as the Inheritance Succession Act of 1989 is regarded as partly adequate, as it provides for some, but not equal, rights of inheritance for women. The biggest point of contention, though, is that customary land is excluded from the Act, therefore rendering it useless on matters related to, for instance, the inheritance of land in customary areas. More importantly, the implementation of these laws is constrained in many ways. Institutions may not exist or not function adequately. The Land Tribunal, which is supposed to handle land disputes, is not decentralized and is therefore inaccessible to most people. Traditional courts do not apply statutory laws, and while local courts could apply them, they have been shown to lack the resources to do it and to be socially out of the reach of most women, who

will more easily go to traditional courts, even if these tend to be more biased against them.

Women are discriminated against on state land as well. The government, recognising that women's access to land was constrained in several ways, stipulated that 30% of the land should be allocated to women. This requirement, originating in the 2000 Gender Policy and taken up by the two draft Land Policies, is still not being systematically implemented by the districts in charge of the allocation of state land. Moreover, state land is mostly inaccessible to women and poorer segments of the population, for whom the costs of registering and titling are far too high, and the procedure too time-consuming and demanding. Here again, institutions are the key to implementation processes, but they are plagued by understaffing, a lack of resources and corruption. Districts have also been accused of selling land to local elites. The lack of checks and balances on land institutions affect customary land as well. Reports of displacements through illegal sales of land by chiefs to investors flare up time and again.

Donors, whose involvement in Zambia has been fluctuating since the 1970s, have not given significant support to the land sector. Unlike in some other countries, which have experienced a full-fledged land reform supported by donors, only a few projects on land administration have taken place, and where they have, they have focused mostly on urban areas. Land administration institutions have received some forms of support, but only through isolated projects. Assistance has been provided to research and policy processes, such as the Lands Act in 1995 and subsequent processes.

Gender equality only came to the fore at a later stage, when donors, along with civil society, advocated the inclusion of gender issues in later processes, such as the inclusion of the

clause on the allocation of 30% of land to women in the gender policy. This evolution came together with other changes in donors' strategies and thinking. While they at first staunchly supported the conversion of customary land into state land, they then backtracked and adopted, as in other countries, an alternative approach recognizing customary law and the role of customary authorities.

Several donors include gender concerns in their activities related to land, but this mostly takes place indirectly through assistance to agriculture programmes or support to the justice sector. However, apart from a gender audit of several line ministries, including the Lands Ministry, there has been no government, donor-supported programme on women and land.

This is reflected in the general state of affairs with regard to gender equality, which is low on the list of donors and government's priorities, at least in practice. Currently, gender mainstreaming, adopted by the Gender in Development Division (GIDD) and the Ministry of Women and Child Development, is far from being implemented. Despite some progress in areas of health and education, it has been found to be lacking in most other sectors. The GIDD is understaffed and lacks the skills and technical support as well as the funds required to properly implement gender mainstreaming; in other ministries as well, cuts in budgets routinely de-prioritize gender.

The most important actors linking up land and gender equality in Zambia have been civil-society organizations and NGOs, both national and international. Over the last decade they have had an increasing influence on land issues through projects aimed at enhancing the tenure security of the poor, and women in particular. They contributed to the introduction of Traditional Land Holding Certificates and developed the idea of record-

ing the names of both husband and wife on these certificates in some cases. Apart from the success of these new approaches in some areas, these projects have also reported positive outcomes in terms of sensitization and awareness-raising, and they have recorded some attitudinal changes with regard to women's ownership of land. However, these projects also illustrate how long changes on the ground can take, and how they can be resisted on the basis of cultural and social practices. In particular, the idea of individual land ownership for women has failed to take root everywhere. This has been compounded by the increasing scarcity of land and the resulting pressure on it, which has made it more difficult for headmen, and husbands, to be willing to allocate land to women which they can call their own. However, one of the major innovations of these projects is to link women and traditional authorities to influence cultural perceptions and practices, and it deserves to be further explored and developed. Synergies with the household approach adopted by SIDA in their agricultural support programme in particular could be worth investigating.

Despite these positive trends, different evaluations point to the fact that donors, as well as NGOs, lack a unified strategy and, importantly, lack a common vision on how best to address problems related to the tenure security of landholders.

What both recent and future developments hold remains to be seen. For instance, recent attempts at codifying customary law, also with regard to land, have been undertaken by the government. These potential changes might have a crucial impact on women's rights to land and the ways in which these will be tackled, but not much can be hypothesized at the time being. While changes in statutory legislation can remain un-implemented in ar-

reas of customary law, changes in customary law might be more enforceable, although this will be highly dependent upon traditional institutions and can only have a partial effect at the level of the household or family upon whom women depend for land. The passing of a new Constitution should, when it takes place, have an impact on a new land policy, as should other laws which have been put on hold as long as a new Constitution was not in place. The role of donors will also be crucial to examine in the future, not least in a changing aid landscape. Donor support to a current project on land rights for poor households which includes communities, traditional and district authorities in its implementation is a sign that the importance of the role of and linkages between institutions are being recognized and that they could pave the way for a larger-scale program. It might also be a sign that other donors might fill the space left vacant by donor countries who have recently withdrawn.

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